

TACKING, STACKING, AND CRACKING: RACE AND  
REAPPORTIONMENT IN MONTEREY COUNTY, 1981-1992

A Report for *Gonzalez v. Monterey County Board of Supervisors*

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Revised Version

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## I. PREFACE

### A. CREDENTIALS

1. I am a professor of History and Social Science at the California Institute of Technology and the author of *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910* (Yale University Press, 1974), as well as 32 scholarly articles, 49 book reviews, and 24 papers at scholarly conventions. I have served as an expert witness in nine federal voting rights cases and a consultant in nine others, and I testified before a subcommittee of the U.S. House of Representatives in 1981 about the renewal of the Voting Rights Act. I was the principal expert witness on the intent issue for the Mexican-American Legal Defense and Education Fund in the Los Angeles Supervisors' redistricting case, *Garza v. County of Los Angeles*. I was educated at Princeton and Yale, and have taught at Michigan, Harvard, and Oxford, in addition to Caltech. My curriculum vitae is attached to this report as Appendix A.

### B. PURPOSE OF THIS REPORT

2. What use is a historian expert witness in voting rights cases? Why not rely exclusively on lay witnesses, long-suffering law clerks, and the law-office

history of legal briefs? I think well-trained and careful historical expert witnesses can bring three benefits to cases: First, those who are experienced scholars in the history and development of voting rights can illuminate the particular situations and events at issue with their knowledge of similar situations and events elsewhere. Experience drawn from the close study of one racially-tinged redistricting, for instance, suggests where to look and what to look for in considering another allegedly racially-impacted reapportionment. Second, historians are used to culling through massive amounts of documents and distilling them into coherent narratives and analyses. They bring order to the chaos of research materials, and, unlike participants in the struggle, they must attempt to be comprehensive, to see the events from all sides and to take into account all of the evidence. Third, unlike attorneys, who are obliged to be partisans, academics are expected to temper their enthusiasm for a case, because in their primary careers, at least, a reputation for shading or distorting the truth may be fatal.

3. Even if historians might be useful, why write -- or read -- an extensive report? First, writing forces the scholar to clarify the logical steps that he has gone through in forming his opinions, and it makes any flaws or gaps in logic more readily apparent than in less formal modes of presentation. Second, an extensive, fully documented paper allows the reader to assess the credibility of the historian. Does he know the professional literature? Has he contributed to

that literature himself? Has he personally examined all the relevant documents? Has he analyzed them carefully and thoughtfully? Has he presented the evidence responsibly? Third, a paper may allow the reader to form alternative explanations for at least some of the events covered, and to challenge the interpretations of the author. Expert witnesses should be more than celebrity endorsers or critics of one side or another, as if they were lending their names to athletic shoes. A well-done paper encourages reflection.

## II. SUMMARY OF THE REPORT

4. I begin the substantive part of this report in section III. by sketching nine factors that, I have argued extensively elsewhere, should be part of examinations of intent in voting rights cases. These factors are based on the practices of historians in writing normal scholarship, as well as in conducting research for legal cases. I also introduce a new and, I hope, useful term to reapportionment jargon. In succeeding sections of this part of the report, I discuss legal and logical standards for considering evidence of intent, and briefly explore possible connections between Fourteenth Amendment theory and "influence districts." The concept of an influence district flows naturally, I argue, from the "right to equal concern and respect" that the Fourteenth Amendment embodies. In other terms, the Reconstruction Amendments guarantee every person a right not to be discriminated against, and the experience of four centuries of American history suggests that members of minority groups are especially likely to need the vigilant protection of the law.

5. Section IV. moves from the general to the specifics of Monterey county, and explains the background, context, and events of the 1981 County reapportionment. Before a 1963 California Supreme Court decision, the Monterey County Board of Supervisors was one of the most malapportioned

governmental bodies in the country. In defiance of a clear and explicit state law, the agricultural interests of the South County and North County refused to reapportion for 77 years, controlling three sparsely populated districts at the increasing expense of urban residents in Salinas and on the Monterey Peninsula. Then, as now, it took judicial action or the threat of it to move entrenched Anglo incumbents in Monterey County toward a democratic electoral system.

6. The racially polarized Supervisorial campaigns of two black candidates, Pearl Carey and Jack Simon, during the 1970s set the stage for the 1981 reapportionment. In a series of patently self-protective line drawings, the members of the Board of Supervisors shifted Marina from District One to District Three in order to make it more difficult for Latinos, as well as African-Americans and Asian/Pacific Islanders, to elect candidates of their choice. Naturally, they did so by preserving the seats of the Anglo incumbents. The newly elected First District Supervisor shed his electorally weakest area. The Fifth District Supervisor neatly maneuvered his major opponent out of his district by swapping Pacific Grove, an overwhelmingly Anglo city, to the Anglo incumbent in the Fourth District, in return for the Toro area, where the Fourth District Supervisor was politically weak. The addition of Pacific Grove allowed the Fourth District incumbent to avoid adding multiethnic Marina to his territory. Several Supervisors shamelessly employed the counts of transient

military personnel to bring their population counts up to the constitutionally mandated standard.

7. Section V. focuses on the events of 1991-92. The 1981 reapportionment worked as designed: Only one member of a minority group ran for the Board of Supervisors over the next decade. Changes in the Voting Rights Act, in the tenor of the Department of Justice, in the legal experience of the Latino community, and in Monterey county's demographic balance, however, assured that 1991 would not be a simple repeat of 1981. In November, 1991, socially conservative Supervisors from the North and South County areas came together to pack Latinos into the district of their least favorite Anglo opponent. At the same time, they preserved the incumbency of the Salinas Valley Supervisor by keeping the proportion of Latinos in his district below a threshold at which Latinos might have an opportunity to elect a candidate of their choice. Despite considerable activity on the part of the cities of Seaside and Marina and the availability of several plans that united them, the Supervisors ignored their protests and chose merely to shift Marina from one southern-based district to another, deliberately continuing the fragmentation of the African-American and Asian/Pacific Islander communities.

8. Meticulous and extensive criticism by Latinos and a stinging protest letter from the Supervisor whose district had been packed led the U.S. Department of

Justice to raise questions about reapportionment. This pressure, combined with the fortuitous resignation of the North County Supervisor, succeeded in forcing the Board to draw a second district that exceeded 60% Latino in population, although no doubt much lower percentages of the voters. Leaders of Seaside and Marina and representatives of the black and Asian communities, however, were excluded from the negotiations, and their increasingly forceful objections were again disregarded. In 1991-92, as before, each Anglo Supervisor tried to guard his or her self-interest during the remapping, and as before, members of minority groups lost out, at least at some stages of the process.

9. In Section VI. I examine more generally whether the Supervisors in 1981 and 1991-92 reapportioned themselves with a racially discriminatory intent. After summing up the evidence in favor of the intent thesis, I examine other rationales that have been or could be offered to explain or excuse the outcomes. I conclude that the intent thesis is better supported than alternatives that have been raised or that I have been able to think of. Those wishing a distillation of the principal arguments about discriminatory motives in this case may wish to turn to Section VI before reading the more detailed parts of the paper.

### III. HOW HISTORIANS AND JUDGES DETERMINE INTENT

#### A. THE NINE INTENT FACTORS

10. How does a historian uncover the motives of the framers of an electoral structure? In "How To Determine Intent: Lessons from L.A.", a 141-page published paper based on my testimony in the Los Angeles County redistricting case and other cases, on other federal court opinions, and on the practices of historians, I have set out nine "intent factors." The paper is attached to this report as Appendix B. Depending on the evidence available, which is always more scanty than we would prefer, we would put more emphasis on one factor, less on another.

11. Before enumerating the factors, it may be helpful to explain the role that judicial opinions and records have played in shaping my views about intentions and, more generally, about the causes of human actions. Why not confine myself merely to "common sense" and the writings of historians and other social scientists? By analyzing judicial opinions explicitly, am I not merely

offering a "legal argument," reaching "a legal conclusion"?<sup>1</sup> Why think systematically about such topics at all?

12. To take the last question first, systematic thinking clarifies, generalizes, moves beyond *ad hoc*, potentially easily biased analyses. Explicit general standards make it more difficult for an analyst to reach whatever conclusions she wishes to from case to case. Moreover, while social scientists' and even philosophers' discussions and practices may be instructive, they do not very often explicitly discuss questions of intentionality, or, when they do, the discussions are typically so abstract as to offer little guidance for such topics as how to determine the intent of legislators or those who draw boundary lines between electoral districts.<sup>2</sup> Judges and legal scholars, on the other hand, often suggest quite explicit and provocative guidelines or critiques of more closely parallel situations. Much of what I know about determining intent, I have learned from such sources or in reaction to the arguments that they have made. Furthermore, the spillover of discussions of intent, especially of the original intent and current meaning of the Fourteenth Amendment, from law into history and political science has extended the scholarly scope of "legal

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<sup>1</sup>Lee Blackman, "Memorandum of Points and Authorities in Support of Objection to the Declaration and Report of J. Morgan Kousser," June 24, 1992, pp. 1, 6.

<sup>2</sup>See, e.g., John R. Searle, *Intentionality: An Essay in The Philosophy of Mind* (Cambridge, Eng.: Cambridge Univ. Press, 1983).

opinions."<sup>3</sup> In this area, the demarcation lines between disciplines are fading. Any historian who would write on intent without examining legal scholarship would be derelict in her duty.

13. There are also more practical grounds for being aware of judicial cases. First, it would seem futile to adhere to even the highest professional standards of historians if judges, unbeknownst to the historian, had explicitly rejected such standards. If the case law is all against you, why bother? And how can you know whether it supports or undermines you unless you know what it says? Second, I have been studying voting rights and race relations, including voting rights laws and the intentions of those who passed them, for nearly thirty years. The nature of the topic and that of my scholarly interests allows no neat compartmentalization between "law" and "history." I have published articles about law in history journals and articles about history in law journals.<sup>4</sup> In my experience, crossing artificial scholarly boundaries almost invariably leads to new insights.

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<sup>3</sup>See, e.g., Raoul Berger, *Government By Judiciary: The Transformation of the Fourteenth Amendment* (Cambridge, Mass.: Harvard Univ. Press, 1978); William E. Nelson, *The Fourteenth Amendment: From Political Principle to Judicial Doctrine* (Cambridge, Mass.: Harvard Univ. Press, 1988); and other citations in Kousser, "Expert Witnesses, Rational Choice, and the Search for Intent," in Jack N. Rakove, ed., *Interpreting the Constitution: The Debate Over Original Intent* (Boston: Northeastern Univ. Press, 1990), pp. 313-35.

<sup>4</sup>"Are Expert Witnesses Whores? Reflections on Objectivity in Scholarship and Expert Witnessing," *The Public Historian*, 6 (1984); "'The Supremacy of Equal Rights': The Struggle Against Racial Discrimination in Antebellum Massachusetts and the Foundations of the Fourteenth Amendment," *Northwestern University Law Review*, 82 (1988), pp. 941-1010.

14. The first factor is models of human behavior in particular situations, which are often drawn from experience or research. For instance, have lines between electoral districts been used elsewhere to make it more difficult for members of protected minority groups to elect candidates of their choice? The answer is, of course, yes, and the more historians and expert witnesses learn about such instances, the more they find racially and politically discriminatory purposes and effects in reapportionment. As I demonstrate in "How to Determine Intent," during the "First Reconstruction" after the Civil War -- just as soon as African-Americans constituted a large enough enfranchised group to have a major influence on elections in the U.S. -- whites began to draw district lines to dilute black political power. In the *Garza* case, I showed that racial gerrymandering takes place in contemporary California. It is also the tritest of truisms to note that politicians' self-interest is never closer to the surface than during reapportionment. When those who do the redistricting are all Anglo, and members of minority groups form large groups of voters, one should at the very least be alertly on guard for possibly discriminatory acts.

15. Such models, whether explicit or implicit, whether based on scholarship or experience, whether acknowledged or unacknowledged, do affect where the analyst starts, and the only honest thing to do is to be selfconscious of the fact and to admit it. Someone who believes that politicians are always selfless altruists who draw district lines thinking only of the public good, and never of

the effects on their own political fortunes and those of their partisan or ideological allies, will expect to find only disinterested motives in particular cases. The most hard-boiled political consultants claimed during the *Garza* case to have acted entirely selflessly. More skeptical observers do not take such statements at face value.

16. But these models should never entirely determine the analyst's conclusions, and in my case, they have not. In *Sumter County Council v. U.S.*, I concluded that the evidence that Sumter County had originally adopted its at-large election method for a racially discriminatory intent was inconclusive. In a report to the Santa Monica Charter Commission in January, 1992, I found it very doubtful that a case could be made that the method of at-large election of Santa Monica's City Council was maintained for a racially discriminatory purpose in 1975. In *De Baca v. San Diego County Board of Supervisors*, I reached only a "very tentative conclusion" that district lines had been drawn in 1991 with an intent to discriminate against Latinos, and denied that they had been drawn to discriminate against African-Americans.

17. Models, assumptions, hunches are important. Anyone who claims to start without them is fooling herself or attempting to fool her audience. But anyone who merely tries to fit the evidence in a particular case into a preconceived scheme, who weighs evidence less heavily than assumptions, who does not,

after forming a tentative conclusion, *put her thesis at risk* of being refuted cannot be said to have engaged in the search for truth.

18. It may be useful here to introduce some reapportionment jargon. The most familiar term is "packing," which is the act of concentrating a particular group in a district or set of districts beyond the proportion that they require, in the particular time and place, to exercise effective political control of the areas.

An example would be a district that is 80% Republican or 80% black.

"Cracking" refers to the fragmenting of a geographically and politically cohesive group. In Los Angeles County, the core of the Latino community in East Los Angeles was split almost equally between two supervisors' districts.

"Stacking" means arranging the lines so that a group that could control or significantly influence one or more districts is kept below a threshold of potency in each district. For example, it might be possible for a group to compose 20% of the voters in one district, but the redistricter splits it into two districts in which the group comprises no more than 10% of the voters. A final term, which I introduce here for the first time, so far as I know, is "tacking."

By "tacking," I refer to the practice of electorally burying a distinctive group of voters in a district that is politically or ethnically adverse to them by extending that district, often by a geographically narrow corridor, to capture their area. In the recent congressional reapportionment in California, for instance, the

"Special Masters" tacked the overwhelmingly black and Latino city of Pomona in Los Angeles county onto a heavily Republican Orange county district. In Monterey county in 1981, as we shall see below, the coastal city of Marina was tacked onto the agricultural South County Third Supervisorial District to diminish Marina's influence and enable the Third District to attain the constitutionally mandated population totals.

19. The second intent factor is the historical context. Were racial issues or political campaigns by members of minority groups important at the time and place? In *Garza*, for instance, it was extremely significant that there was special redistricting in 1959 that resulted in a large shift of Anglo voters in West Los Angeles, Beverly Hills, and West Hollywood from the Fourth to the Third District. This came less than a year before the census was to be taken and just after a very close contest in the Third District in which an Anglo candidate defeated a Mexican-American.

20. A third factor may be the exact text of a law or the exact lines of a redistricting, and a fourth is basic demographic facts. How many members of relevant minority groups were there, how concentrated were they, and what were the trends in the population? In *Garza*, the rapid growth of the Latino population in an area split between two supervisorial districts was an important fact that did not escape the attention of those who drew district lines. During

the redistricting in Monterey county in 1991-92, the wide array of plans, all with demographic totals neatly attached, as if to prove that ethnic considerations could never have been missed by any participant, shows just how ethnically self-conscious the line-drawing by the all-white Board was. Every proposed district line tells a story.

21. Two basic political facts that constitute the fifth factor are the number of minority group members elected and the approximate extent of racial polarization among the voters. The former is a measure of effect, and the latter, insofar as it is widely known, can be assumed to inform the decisions of those who design electoral structures. For example, in Los Angeles County before 1991, it was well known that no Latino had served as a supervisor in this century, and it was widely understood that Latino candidates had little chance to win elections in overwhelmingly Anglo districts. Therefore, redistricters had to have been well aware that districts that contained large majorities of Anglo voters were extremely unlikely to elect candidates that were the first preferences of Latinos. In Monterey county, no black or Latino has been elected supervisor in this century, although two black candidates threatened to win during the 1970s, before the 1981 reapportionment.

22. The sixth and seventh factors are the background of key decisionmakers and other actions that they performed. Were they all white? Did they allow all

minority groups a real forum in which they could express themselves on the decision? What other policies that affected minority groups did the decisionmakers favor and carry out?

23. Sometimes, decisionmakers will make what are termed "smoking gun" statements, and they constitute the eighth factor. When a "numbered post" system was substituted for a "free-for-all" at-large election system in Memphis, Tennessee in 1959, a newspaper article on the relevant bill, based on interviews with legislators, was headlined "Bill Has Racial Purpose." The story went on to explain at length just how blacks would be disadvantaged by the change. In California in the late twentieth century, politicians are generally too careful to make "smoking gun" statements.

24. State policies and formal and informal institutional rules constitute the final factor. If a locality is merely following a mandated state policy (for instance, one providing for at-large elections for all cities of a specified size range), then it is difficult to attribute any particular motive to the locality. Departures from usual rules or practices may hint at ulterior motives. In a recent case decided by the U.S. Supreme Court, boards of county supervisors in Alabama changed the rules to strip individual board members of powers that they had previously had just after the first election of a black to the board. Although the Court decided that such a move did not have to be precleared by

the Justice Department, it seems likely that it could be challenged as intentionally discriminatory under section 2 of the Voting Rights Act or the Fourteenth Amendment. In reapportionment cases, inconsistency in dealing with different areas or groups, or inconsistent or frivolous justifications of various decisions may provide evidence of ulterior, possibly racial motives.

B. LEGAL STANDARDS: MIXED MOTIVES, HOSTILITY, ORIGINAL  
INTENT, AND MAINTENANCE

25. The motives of human beings are often complex and the existing evidence about them, imperfect. Does that mean that we can say nothing about purposes? Must we accept stated reasons for actions? If we find plausible "good" motives for some action, must we disregard "bad" motives for the same action? Must we so precisely weigh "good" against "bad" motives that we can say that "bad" motives were important if and only if we can show that the "bad" motives were necessary for the action to occur? Must only open admissions of motives count as evidence, and must "circumstantial" evidence be dismissed as insufficient? I believe the answer to all these questions is no, and that the case law on voting rights supports this answer.

26. In *Hunter v. Underwood*,<sup>5</sup> Justice Rehnquist, speaking for a unanimous Supreme Court, invalidated a suffrage provision of the 1901 Alabama Constitution largely on the grounds that the convention that instituted the provision was generally motivated by a desire to disfranchise African-Americans. He dismissed the state's argument that the convention wished to disfranchise poor whites, too, as irrelevant, and he made no serious attempt to weigh the importance of each motive. A clear racially discriminatory purpose, the Court held, fatally infected the constitutional convention's actions. In the Los Angeles County Supervisors' case, Federal District Judge David V. Kenyon thought it sufficient to find that "the Board has redrawn the supervisorial boundaries over the period 1959-1971, *at least in part*, to avoid enhancing Hispanic voting strength in District 3....The Supervisors appear to have acted *primarily* on the political instinct of self-preservation. The Court finds, however, that the Supervisors *also* intended what they knew to be the likely result of their actions and a prerequisite to self-preservation -- the continued fragmentation of the Hispanic Core and the dilution of Hispanic voting strength."<sup>6</sup> Affirming Judge Kenyon's opinion, a unanimous Appeals Court declared explicitly that "the discrimination need not

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<sup>5</sup>471 U.S. 222 (1985).

<sup>6</sup>*Garza v. Los Angeles County Board of Supervisors*, 756 F.Supp. 1298 (1990), pp. 1317-18, emphasis added.

be the sole goal in order to be unlawful."<sup>7</sup>

27. To prove a discriminatory intent, must those who took some action be motivated by racial hostility, or, if they claim not to have been, must we accept their protestations at face value? Again, I think that the answers are no, and that judges' opinions agree. Many American defenders of slavery claimed to be doing blacks a favor by bringing them from a "barbarian" to a "Christian" country, and they purported to treat their slaves kindly, as they might dependent children. Those white politicians who disfranchised African-Americans in the South at the turn of the century often asserted that they meant no racial harm, but that since blacks (they insisted) were inherently incapable of voting responsibly, to strip them of their votes was merely to act in the best interest of society. Naturally, we would reject such outrageous apologetics as racist today. In the Ninth Circuit Court of Appeals' decision in the *Garza* case, conservative Republican Judge Alex Kosinski asked rhetorically whether there could be "intentional discrimination without an invidious motive," and he gave a homely example to demonstrate that there could be: "Assume you are an Anglo homeowner who lives in an all-white neighborhood. Suppose, also, that you harbor no ill feelings toward minorities. Suppose further, however, that some of your neighbors persuade you that

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<sup>7</sup>*Garza v. Los Angeles County Board of Supervisors*, 918 F.2d 763 (1990), p. 771.

having an integrated neighborhood would lower property values and that you stand to lose a lot of money on your home. On the basis of that belief, you join a pact not to sell your house to minorities. Have you engaged in intentional racial and ethnic discrimination? Of course you have. Your personal feelings toward minorities don't matter; what matters is that you intentionally took actions calculated to keep them out of your neighborhood."<sup>8</sup>

28. Even if an action was originally taken with a racially discriminatory intent, might not the passage of years wipe that motive away? If there was no discriminatory motive in the beginning, shouldn't the motives of those who merely continued the system be irrelevant? If one proves motive, does one still have to demonstrate an overwhelmingly discriminatory impact? Again, the answers seem to me to be negative. In the remand trial of *Mobile v. Bolden* and a companion school board case, in both of which I testified, the laws establishing at-large electoral systems were traced to the 1870s. In both cases, the federal district court found that this original taint invalidated the system.<sup>9</sup> In *County Council of Sumter County, S.C. v. U.S.*<sup>10</sup>, another case in which I testified, the

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<sup>8</sup>*Garza v. Los Angeles County Board of Supervisors*, 918 F.2d 763 (1990), p. 778.

<sup>9</sup>*Bolden v. City of Mobile*, 542 F.Supp. 1050 (S.D. Ala. 1982); *Brown v. Board of School Commissioners of Mobile County*, 542 F.Supp. 1078 (S.D. Ala. 1982), aff'd 706 F.2d 1103 (11th Cir. 1983, aff'd 474 U.S. 1005 (1983)).

<sup>10</sup>555 F.Supp. 694 (D.D.C. 1983).

motives for both the adoption and the maintenance of an at-large system for local offices were at issue. In a unanimous decision joined in by Judge Robert Bork, the system of at-large elections was invalidated at least partially because of discriminatory maintenance. In *Garza*, the Appeals Court ruled that in cases in which a discriminatory intent was proved, plaintiffs merely had to make *some* showing of injury, and that they did not have to prove that voters from one ethnic group could form a majority of a proposed district.<sup>11</sup>

### C. "INFLUENCE DISTRICTS" AND INTENT

29. Of the many facets of the Fourteenth and Fifteenth Amendments, perhaps none is so fundamental as what Ronald Dworkin has termed "the right to equal concern and respect."<sup>12</sup> Individuals should be treated equally regardless of race, color, creed, or any other trait that is irrelevant to public purposes. This definition of equality is not the mere invention of a late twentieth century legal philosopher. In the 1880 jury selection case of *Strauder v. West Virginia*<sup>13</sup>, Justice William Strong glossed the first section of the Fourteenth Amendment by

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<sup>11</sup>*Garza v. Los Angeles County Board of Supervisors*, 918 F.2d 763 (1990), pp. 769-71.

<sup>12</sup>Ronald Dworkin, *Taking Rights Seriously* (Cambridge, Mass.: Harvard Univ. Press, 1977), at 180.

<sup>13</sup>100 U.S. 303 (1880), pp. 307-08.

saying: "What is this but declaring that the law in the States shall be the same for the black as for the white, that all persons, whether colored or white, shall stand equal before the laws of the States and, in regard to the colored race, for whose protection the Amendment was primarily designed, that no discrimination shall be made against them by law because of their color? The words of the Amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity or right, most valuable to the colored race - the right to exemption from unfriendly legislation against them distinctively as colored; exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race."

30. The Reconstruction Amendments and the Voting Rights Act reflect as well the empirical judgment of Congress and the American people that some groups have been so often treated unfairly that the law should be particularly attuned to possible instances of discrimination against them. Whether this discrimination is directed at relatively small or quite large agglomerations of individuals belonging to such groups is irrelevant, for otherwise, states could discriminate against any set of individuals who fell below some threshold percentage. The right not to be subject to discrimination on the basis of membership in a historically deprived group is an individual right, not one that depends on the percentage of the group in the area. Even though only about

five percent of West Virginians in 1880 were black, it was illegal to bar one black from a jury because of his race.

31. Applied to the circumstances of this case, the "equal concern and respect" standard mandates that African-Americans and Asian/Pacific Islanders should have been treated equally with Anglos and Latinos in the 1981 and 1991-92 reapportionments, regardless of the fact that they could not form majorities in any one of the five Monterey county supervisorial districts. If they have no rights unless they can make up half of the voters in a district, what would be wrong with disfranchising them entirely? If their influence can be diminished at the will of the Anglo majority, why not destroyed altogether?

32. The conclusion must be that if African-Americans and Asian/Pacific Islanders were treated with less concern and respect than members of other groups during the recent reapportionments, if the places where they concentrated were cracked and stacked, and tacked onto districts in which they were submerged, if their influence was intentionally minimized in pursuit of ideological, incumbent-protecting, or other goals, then their rights have been legally violated.

## IV. THE 1981 REAPPORTIONMENT

### A. THE BREAKUP OF THE ESTABLISHMENT ON THE MONTEREY COUNTY BOARD OF SUPERVISORS

33. Before the mid-1960s, members of the ludicrously malapportioned, grower-dominated Monterey County Board of Supervisors served long terms. In the First and Fifth Districts, for instance, M.S. Hutchings and A.B. Jacobsen arrived on the Board together in 1933 and remained until death, the one in 1952, the other in 1955. William J. Redding of the Third District served for the twenty years after 1939, George Dudley of the Fourth, from the beginning of World War I until the end of World War II.<sup>14</sup> The South County had two districts, the North County one, and the towns and nascent cities in between shared the final two. Naturally, all of the supervisors were white, as they had been since 1893.<sup>15</sup> No African-American, Asian/Pacific Islander, or Native American has ever been elected to the Board.

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<sup>14</sup>Exhibit #1 to Joaquin G. Avila to Chief, Voting Section, Civil Rights Division, Dept. of Justice, Feb. 12, 1992 (hereinafter referred to as Avila Comment Letter).

<sup>15</sup>Avila Comment Letter, p. 18, n.21.

34. Despite a population equality requirement for supervisorial redistricting that had been part of state law since at least 1883, the Monterey County Board of Supervisors refused to redistrict itself from 1886 until 1963. During those 77 years, the population spread between the most and least populated districts grew from 1.5:1 to 62:1. 53% of the population resided in a single district, the Fifth, which covered all of the Monterey Peninsula, while less than 1% of the people lived in the South County Fourth District. Only a lawsuit, in which the city of Seaside joined private plaintiffs to demand an end to such gross inequities, forced the Board to live up to the requirements of state law.<sup>16</sup>

35. In reaction to the California Supreme Court's unanimous decision in *Griffin I*, the Board established the outlines of the supervisorial districts in the basic form in which they existed until April, 1992. The North County First District then contained no incorporated cities. The Second was comprised of most of the city of Salinas, including the then-recently-annexed Alisal area. The Third covered the agricultural Salinas Valley, as well as the coastal area south of Big Sur. The Fourth took in Seaside, most of Fort Ord, and a bit of Monterey, while the Fifth encompassed the rest of Monterey, Pacific Grove, and Carmel. Decided just before *Reynolds v. Sims*, *Griffin II* allowed a population disparity of

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<sup>16</sup>*Griffin v. Board of Supervisors of the County of Monterey*, 60 C.2d 318; 33 Cal.Reptr. 101, 384 P.2d 421 (1963), hereinafter referred to as *Griffin I*; *Griffin v. Board of Supervisors of the County of Monterey*, 60 C.2d 751; 36 Cal.Reptr. 616, 388 P.2d 888 (1964), hereinafter referred to as *Griffin II*.

2.2:1, over the protests of Seaside.<sup>17</sup>

36. The requirement of more equally populated districts for the Board of Supervisors and, under *Reynolds* and associated state decisions, for the state legislature, opened up the Board to new faces and raised the possibility that some of those faces might be dark. In District Two, two-term supervisor Burt Talcott had been elected to Congress in 1962. District Three's Robert G. Wood left for the State Assembly in 1968. Roger Payner of District Four ran unsuccessfully for the State Senate in 1976. Sam Farr, of District Five, won an Assembly post in 1980.<sup>18</sup> Between 1965 and 1975, five different men represented the Third District.<sup>19</sup> A generation ago, even before the passage of the Voting Rights Act, it took judicial action to force the rural supervisors of Monterey County to look past their personal power and the parochial interests

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<sup>17</sup>*Griffin II*, at pp. 753-54.

<sup>18</sup>Avila Comment Letter, Exhibit #1; "Pearl Carey to Run for Supervisor Post," *Monterey Herald* (hereinafter *MH*), Sept. 25, 1975.

<sup>19</sup>Tom Wieder, "Two Vie in 3rd District," *MH*, Nov. 2, 1974. Perhaps the first citation to a newspaper article is the best place to discuss the use of such evidence in general. Political historians conventionally rely a great deal on newspapers, especially for information about persons who do not leave large collections of papers. In the research for my book on nineteenth century litigation on racial discrimination in schools, for instance, I have read more than 125 different newspapers for stretches of at least six months. Second, newspapers provide details that people later forget or have an interest in forgetting or in remembering incorrectly. People understandably want to put the best face on their motives for taking some action in the past. In the midst of an intentional discrimination lawsuit, it is not to be expected that representatives of a challenged jurisdiction would avow discriminatory intentions, even if they had them. Newspaper evidence is therefore often more believable than sworn testimony, and it is even more often the only detailed evidence available on a matter.

of their unfairly and illegally underpopulated districts. Since 1964, the Supervisors have learned how to use statutory and constitutional constraints effectively in the continuing struggles to retain their own political power and to disadvantage their enemies. For four generations, Monterey County supervisors defied state law; since then, reapportionment in the county has been the continuation of the struggle for political power by other means.

#### B. THE BLACK CAMPAIGNS AND RACIAL ISSUES OF THE 1960s AND 1970S

37. Perhaps it was the movements for civil and women's rights that thrust Pearl Carey into Monterey county politics, or perhaps the feisty black woman needed only the opportunity that reapportionment provided. After her husband retired from the military, the Careys bought a house in Seaside because, according to her, "that was where real estate agents showed houses to blacks."<sup>20</sup> Extremely active, Pearl Carey served as president of local chapters of the NAACP, the Business and Professional Women's Club, the Democratic Women's Club, and the ACLU, and she helped organize the National Women's

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<sup>20</sup>Walter Neary, "Woman targets 'inequalities,'" *SC*, March 6, 1990, p. 1C, col. 1-3.

Political Caucus in the county.<sup>21</sup> Defeated for a city council post in Seaside<sup>22</sup> in 1966, Carey won in 1970 by 30 votes. Rather than ignoring or trying to sidestep the racial issue, Carey attempted to broaden it, employing hard-edged prose that contrasted sharply with the conventional political platitudes of most campaigns: "We should not make the mistake of seeing the inequality problem as essentially a racial one," she declared. "There are many poor whites and some middle class blacks and browns. What is required is not merely an end to racism but an end to the political powerlessness of poor people, no matter what their color, creed or national origin." Almost immediately after the 1970 election, forces loyal to Mayor Lou Haddad began to organize a recall against the two black and two white councilpersons who feuded with Haddad over urban renewal, redevelopment, zoning, and appointments.<sup>23</sup> "I have kept my promises and have lived by my convictions, never afraid to stand alone," Carey

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<sup>21</sup>"Pearl Carey to Head Peninsula NAACP Branch," *MH*, Dec. 13, 1974; Elise Jerraam, "Activist Women Have Many Interests," *ibid.*, July 5, 1977.

<sup>22</sup>From 1960 to 1970, Seaside grew from 19,353 to 35,935, surpassing Monterey to become the second largest city in the county (after Salinas). In 1970, 20.4% of Seaside's population was African-American, 11% was Asian or other, and 68.4% was white. (The census generally classed Latinos as "white" at that time.)

<sup>23</sup>It is not clear to what extent racial issues underlay the split between Haddad and his opponents. In a referendum on urban renewal, the voters, by a 1120 to 997 margin, rejected the councilpersons' efforts to control the local urban renewal agency. The greatest support for the council came at the Martin Luther King Junior High School and the Noche Buena School, where Haddad's forces lost by 205-108 and 187 to 105, respectively. At Fremont Junior High in the southeastern portion of the city, the Mayor's position prevailed by 251-83. Everett Messick, "Seaside Voters Reject Council UR Takeover," *MH*, June 2, 1971, p. 1, col. 2-3.

pronounced.<sup>24</sup> Nevertheless, in a June, 1971 election, she fell victim to Haddad's "patronage political machine" by 31 votes. According to the *Monterey Herald*, which opposed the recall, "There are no allegations whatsoever of dishonesty or illegal conduct on the part of the four councilmen . . . . The only issue, if it can be called that, seems to be the inability of one member of the Seaside council [Haddad] to govern productively with the four other members."<sup>25</sup> When she ran for Seaside mayor in 1972, the *Herald* endorsed Carey as "a woman who is committed to something more than the politics of self-aggrandizement...a proved leader with a demonstrated capacity for working with people - all kinds of people - to get things done."<sup>26</sup> Defeated by 65 votes by Bernard J. Dolan, Jr., she ran again, and lost again, in 1974. A delegate to the Democratic National Convention in 1972, Carey in 1974 became the first citizen of Monterey county to be elected to the national committee of a major political party. For her partisan activities, she was fired from her federally-funded job for violating the Hatch Act, a dismissal that she

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<sup>24</sup>"Statements of 17 in Next Week's Seaside Election," *MH*, June 25, 1971, p. 5, col. 1-8.

<sup>25</sup>The other three councilpeople were Gerald McGrath, who had barely lost for fourth district supervisor in 1968, Oliver Murray, and Anglo, and Stephen Ross, an African-American first elected in 1964. "'Landmark' Seen in Seaside Recall Suit," *MH*, June 1, 1971, p. 6, col. 6-8; Everett Messick, "Seaside Voters Reject Council UR Takeover," *ibid.*, June 2, 1971, p. 1, col. 2-3; "Renewal Dispute in Seaside," *ibid.*, June 4, 1971, p. 1, col. 1; "Judge Won't Halt Seaside Recall Vote," *ibid.*, June 15, 1971, p. 1, col. 1; "Vote *Against* Recall in Seaside," *ibid.*, June 25, 1971, p. 22, col. 1-2; "Showdown Near in Seaside Recall," *ibid.*, June 28, 1971, p. 1, col. 2-3

<sup>26</sup>"...Laiolo, Dahlstrand, Norberg Elected in Carmel," *MH*, April 12, 1972; "For Seaside Mayor and City Councilman," *ibid.*, April 7, 1972, p.18. The paper's "all kinds of people" comment was presumably a subtle message to whites and Asians to vote for Carey despite her race.

appealed on First Amendment grounds, unsuccessfully, to the U.S. Supreme Court. And Democratic party activism could only be an advantage in a county in which Democrats made up nearly 60% of the two-party registrants.<sup>27</sup>

38. When one-term Fourth District Supervisor Roger Payner decided to run for the Democratic nomination for State Senate in 1976, Carey was the first to announce for his position. Had she been elected, she would have been the first woman and the first black on the Monterey County Board of Supervisors.<sup>28</sup>

"There has never been a minority group member on the board and I think it's about time for everybody to have the same opportunity," she remarked just before the primary.<sup>29</sup> According to her eventual runoff opponent, Michal Moore, Carey was endorsed by the *Herald* and other newspapers, as well as "the black organizations" and "every civic organization that was white dominated on the peninsula, "had a tremendous organization that was peninsula wide that

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<sup>27</sup>"Voter Rolls Below 1972's", *MH*, Oct. 18, 1976, p. 3, col. 5-7.

<sup>28</sup>"Pearl Carey to Run for Supervisor Post," *MH*, Sept. 25, 1975; "Pearl Carey Elected to National Post," *ibid.*, Jan. 27, 1975; "Mrs. Carey 'Very Encouraged' By Washington Trip," *ibid.*, April 18, 1974; "Pearl Carey Loses Job With State," *ibid.*, March 19, 1974. Apparently, the first black woman to run for countywide office in Monterey County was Jane Van Hook of Seaside, directing attorney of the Legal Aid Society, who in 1972 ran for Superior Court Judge against 18-year incumbent Stanley Lawson. Despite an endorsement from 420 persons or couples, Van Hook lost by a 74-26 margin. "Vote for Jane Van Hook For Judge Monterey County Superior Court No. 1," *SC*, June 2, 1972, p. 5; "Let's Reelect Judge Lawson," *ibid.*, June 3, 1972, p. 4, col. 3-4; "County Vote at a Glance," *ibid.*, June 7, 1972, p. 1, col. 6-7; "Lawson Wins Easily," *ibid.*, June 7, 1972, p. 1, col. 1-2.

<sup>29</sup>Al Parsons, "Six seek to represent county's 4th district," *Salinas Californian* (hereinafter referred to as *SC*), June 4, 1976.

had seen her as a tireless worker for various causes on the peninsula," and outspent the other candidates. She was widely expected to finish first in the primary, Moore thought. The real contest was to get into the runoff with her.<sup>30</sup>

39. As predicted, in the six-candidate primary, Carey took first place, nearly doubling the vote of her old antagonist Joe Dolan. She finished 6.7% ahead of second-place Moore, a 29-year old white land economist who had been in the county for a mere four years, was completely unknown to the public before the election, and had never previously taken any part in politics whatsoever.<sup>31</sup> The core of Carey's support was in Seaside, the center of black population in the county, where she received 38% of the votes to 11% for Moore. In Monterey, Moore led her by 24% to 21%, but in the almost entirely white unincorporated rural and suburban parts of the district, Carey garnered a mere 12%. Still, with her superior name recognition, endorsements, and financing,<sup>32</sup> Carey, except for her race, would have seemed a dominant favorite in the second election, especially since her sex seemed, in public at least, an advantage. Thus, the *Salinas Californian* noted that "Mrs. Carey has extensive experience in public life, and

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<sup>30</sup> Hal C. Moore Deposition Transcript, Aug. 12, 1992, pp. 70-80.

<sup>31</sup> Moore Deposition Transcript, pp. 11-12, 69.

<sup>32</sup> Assemblyman Willie Brown headlined a fundraiser for Carey, an unusually big name for a Monterey County contest. "Partisan Overtone," *MH*, Oct. 17, 1976, p. 3B, col. 2.

as a woman and with her special concern for human problems would bring a new dimension to the all-male board." Nevertheless, the paper endorsed her opponent because it "like[d] the cut of Moore's jib."<sup>33</sup>

40. As in runoff primaries in the southern U.S., which have made it almost impossible for black candidates to win in white-majority districts, Carey lost the one-on-one contest with Moore in November by a 3-2 margin, although she carried the District's largest city, Seaside.<sup>34</sup> When elected, Moore was the youngest county supervisor in the state and the youngest in the history of Monterey county. He was, the *Californian* pronounced, the "dark horse victor."<sup>35</sup> As a supervisor, Moore was unsympathetic to minorities, stating on one occasion, for instance, that public agencies "are being railroaded into inefficient economic positions by minorities using the heavy hammer of moral guilt."<sup>36</sup> When a provision of the County's general plan that required housing

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<sup>33</sup>North County, Toro races," *SC*, Oct. 27, 1976, p. 4, col. 1-4.

<sup>34</sup>I have written lengthy reports for two law suits challenging runoff primaries in the South, *Brooks v. Harris*, which involves the state of Georgia, and *U.S. v. Memphis*. In both, the evidence that the runoff requirement was adopted with a racially discriminatory purpose, and that it has had the expected effect, is overwhelming. On the basis of my report, the federal district judge in the Memphis case temporarily enjoined the use of the runoff requirement for the October, 1991 municipal elections, a step that resulted in the election of the first African-American mayor in the city's history.

<sup>35</sup>Steve Hensch, "Board to have one new face," *SC*, June 4, 1980, p. 1, col. 1-4.

<sup>36</sup>Federal Criticism of Bus Company Hit by Moore," *MH*, Nov. 14, 1977; Moore Deposition Transcript, pp. 69, 84-85. Moore admitted in 1992 that the 1977 quotations in the newspaper were probably correct.

developers to set aside 15% of their units for "low- and moderate-income persons" came before the Board, Moore opposed it, citing the fact that it prohibited landlords from discriminating against families with children. This anti-discrimination ordinance, he declared, was merely another bad example of governments "fooling with the market," which he condemned.<sup>37</sup> In his two terms as supervisor, according to the *Monterey Herald*, Moore "spent much of his time finding ways to reduce the cost of county programs, although at times this might hurt his urban constituents who used the services."<sup>38</sup> Nominally a Democrat when elected to the urban district in 1976, Moore headed George Deukmejian's Monterey county campaign for governor in 1982 against the first African-American ever nominated for that post by a major political party, Tom Bradley.<sup>39</sup>

41. The progressive and pushy Carey was not the only African-American to run for the Monterey county Board in 1976, nor does her political stance or gender account for her defeat. Immediately to the north, in the district that

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<sup>37</sup>Paul Engstrom, "On a 3-2 vote, Housing element passes," *SC*, Sept. 23, 1981, p. 2, col. 3-4.

<sup>38</sup>Ken Peterson, "Moore, Peters Evaluate Their Roles," *MH*, Jan. 8, 1985.

<sup>39</sup>"Moore Enters Race For 4th District Post," *MH*, Oct. 1, 1975; "Moore Named Deukmejian Campaign Chairman," *ibid.*, Jan. 20, 1982.

contained Marina,<sup>40</sup> a very different sort of black politician, a classic small-town pol, also entered a supervisor's race in 1976. The *Salinas Californian* described him as "a man of volcanic energy . . . mercurial, a man of many words and few fixed positions, an engaging, back-slapping, off-the-rack politician."<sup>41</sup> Having moved to Monterey County in 1945 at the age of 21, Jack Simon attended Monterey Peninsula College, served in minor civil service posts, worked as a barber, owned a bar and grill, dealt in real estate, and joined every conceivable club. President of the North County Civic Club for 23 years, he also served four terms as president of the Castroville Chamber of Commerce, was an elected member of the Boards of Fire Commissioners of Seaside and North County, and held memberships in the Mexican-American Political Association, the Fil-American Community Club, the Marina American Legion, and the Alisal High School PTA. After working for the incorporation of Seaside in 1954, he left for Castroville in 1957, but retained friendships in the coastal city. Having waged quite respectable races against incumbent First District supervisor Warren Church in 1968 and 1972,<sup>42</sup> Simon

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<sup>40</sup>Incorporated in 1975, after two unsuccessful tries, Marina grew from 3310 in 1960 to 8343 in 1970 and 20,647 in 1980. In 1980, when the first ethnic breakdowns become available in the printed census, the city was 17.7% black, 9.9% of Spanish origin, and somewhat more than 12.9% Asian (the census listed only three Asian groups separately in the city). Betty Doty, "Being Marina's first mayor is a fast aging process," *SC*, Oct. 17, 1976, p. 28, col. 1; U.S. Census, 1980.

<sup>41</sup>"North County, Toro races," *SC* Oct. 27, 1976, p. 4, col. 1-4.

<sup>42</sup>In 1968, Simon lost by 66-34, and in 1972, when Church avoided a runoff by garnering 53% of the primary vote, Simon again finished second. Patricia McNally, "Church, Branson Victors; Smith, Poyner Face Runoff," *SC*, June 7, 1972, p. 1, col. 4-8. In Simon's newspaper advertisements,

was hopeful that 1976 would be his year, when Church declined to stand for reelection. Among Simon's supporters in Marina was Japanese-American leader Robert Ouye, shortly to become the first elected mayor of the city.<sup>43</sup> Like Carey, Simon finished first in the primary, like her, he was endorsed as "a progressive" by the *Monterey Herald*. His opponent was a 67-year-old former judge, Kenneth Blohm, who as a school trustee had "shown a conservatism that verges on rigidity," according to the *Californian*. "Blohm's not your traditional politician. He doesn't mince words, and you always know right where he stands."<sup>44</sup> In a runoff characterized by what the *Californian* called "mud-slinging," Simon lost by a 56-44 margin, running much more strongly in the urban part of his district, Marina and Salinas, than in the unincorporated rural and suburban area.<sup>45</sup>

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there were almost no blacks and few Hispanics, despite Simon's residence in Castroville and the fact that many people with Spanish surnames endorsed him. A good of example of this tactic of trying to deemphasize his race is his appearance, surrounded by ten Anglo women, in an ad in *SC*, June 2, 1972, p. 13, col. 5-6.

<sup>43</sup>Lancelot C. McClair Deposition Transcript, June 10, 1992, at 83; "Simon Again Heads Chamber of Commerce in Castroville," *MH*, Dec. 31, 1969; "Simon Announces for Race in 1st District," *ibid.*, Feb. 7, 1972; "2 Incumbent Supervisors Re-Elected," *ibid.*, June 7, 1972; "Jack Simon Announces for Supervisor," *ibid.*, Sept. 24, 1975; "Jack Simon top Vote Reciever: Attention Marina Voters!" *ibid.*, July 24, 1976; "Simon Reelected to Head North County Civic League," *ibid.*, May 8, 1984; "Candidate Withdraws But Wins," *ibid.*, Nov. 6, 1985; "Jack Simon Seeks Supervisor's Seat," *ibid.*, Jan. 9, 1980; "Takahashi New Mayor Of Marina," *ibid.*, Aug. 5, 1981, p. 1, col. 6.

<sup>44</sup>"North County, Toro races," *SC*, Oct. 27, 1976, p. 4, col. 1-4.

<sup>45</sup>"Supervisorial candidates speak on issues," *SC*, June 3, 1976; Ken Schultz, "Blohm wins N. County board seat," *ibid.*, Nov. 3, 1976.

42. In both supervisorial districts in 1980, Anglos were overwhelmingly in the majority. While 18% of those of voting age in Marina were black, only 4% were in District 1 as a whole. For Seaside and District Four, the corresponding figures were 30% and 13%. Blacks needed very substantial white and Latino crossover votes in order to be elected in such districts. And it takes no profound statistical analysis to conclude that black candidates did not get a sufficient white crossover: The fact that no black has ever been elected to the Board of Supervisors in Monterey County shows that.

43. A look at the election returns in more detail shows that Carey won 7 of the 46 precincts in District Four in the runoff, and all were above 20% black. In fact, of the 10 precincts that were over 20% black, Moore carried only 3, including one (Seaside 11) in which the vote reported in the County's 1981 Submission amounted to 103% of the number of registered voters in the precinct. As the black percentages in each precinct rose, Moore's percentages regularly fell. In areas that were less than 10% black, Moore got 65.6% of the votes; in those between 10% and 19%, 61.1%; in those from 20% to 29%, he got 55.8%; while in the ones above 30% black, Moore received only 38.1% of the vote. In the First District, where the concentration of blacks was less and the proportion of Latinos was much greater, the patterns of voting were more complex, but still similar. In precincts below 10% black, Blohm received 56% of the votes; in those above 10%, all of which were in Marina, 53.3%.

44. Instead of focusing on the precincts one by one or grouping them into different categories, the statistical technique referred to as "ecological regression," which is the standard method of analyzing election returns in history<sup>46</sup> and which was accepted by the U.S. Supreme Court in the *Gingles* case, allows one to consider the pattern formed by all of the precincts at once. In this instance, the more sophisticated technique both confirms and strengthens the conclusions of simpler means of analysis.

45. Ecological regression<sup>47</sup> demonstrates that both the Carey-Moore and Simon-Blohm runoffs were starkly racially polarized and that African-American voters in both elections were markedly cohesive.<sup>48</sup> In the

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<sup>46</sup>The first detailed paper in the historical literature explaining ecological regression was my "Ecological Regression and the Analysis of Past Politics," *The Journal of Interdisciplinary History*, 4 (1973), 237-52. The first book to use the method was my *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910* (New Haven, Conn.: Yale Univ. Press, 1974).

<sup>47</sup>Table 1 shows both "weighted" and "unweighted" estimates, which are very similar in this instance. The rationale for weighting (here, by the square root of the number of registered voters in each precinct) is that in precincts containing many people, the relationships in the "sample" should be measured more accurately than in tiny precincts. This is basically just common sense. In a precinct containing 10 people, a great many small influences might skew the proportion voting a certain way. In a precinct containing 100 people, such influences are more likely to offset each other. For a more technical and extensive discussion of weighting in ecological regression, see my "Making Separate Equal: Integration of Black and White School Funds in Kentucky," *The Journal of Interdisciplinary History*, 10 (1980), 399-428.

<sup>48</sup>Election returns were taken from the County's 1981 Section 5 submission. The County gave numbers of registered voters in each precinct and multiplied them by the proportions of blacks and Latinos in the population to arrive at an estimate of their numbers in the voting areas. Where census tracts and precincts do not match perfectly, the County obviously assigned the same ethnic percentages to several adjacent precincts.

Estimates of the voting age population for each ethnic group in each precinct prepared by Rand demographer Peter Morrison differ only very slightly from the County's cruder estimates, and are especially close for the major group of interest in these elections, blacks. Morrison also estimated the number of Asians in each precinct. Including Asians in the regression equation, however, makes the results much less reliable because of the extremely high correlation between the percentages of

Fourth District, approximately three-fourths of the blacks turned out to vote, and about 94% of them backed Carey. Although turnout among the small percentage of voters who were black in District One was much lower, essentially all of them endorsed Simon.<sup>49</sup> More than two-thirds of the Anglos in the Fourth District cast ballots for the unknown, but non-black Moore, while in the First District the tally was a much closer 55-45. The Latino vote seems to have gone overwhelmingly for Moore, and marginally for Blohm.

46. Even though the black candidates both lost, the election was not wholly devoid of hopeful signs for them. 30-40% of Anglos were demonstrably willing to cross over to support a well-qualified black candidate. If reapportionment in the new decade joined Marina and Seaside, increasing the black percentage of a new Fourth District to closer to 20% and eliminating some overwhelmingly white areas, then a Carey, a Simon, or some combination of reformer and glad-hander might integrate the Board.

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Asians and blacks by precinct ( $r = 0.85$ ). As is predictable in instances of high multicollinearity, the standard errors of the parameters increase markedly -- those for the coefficient for the percentage black more than double. Since the estimates are less reliable and more difficult to interpret, I have taken the usual statistical advice and dropped one of the highly correlated variables, in this case the Asian percentage.

<sup>49</sup>Small negative estimates are not a cause for concern, but an indication of the strength of a set of relationships and a consequence of a set of precincts with a limited range of values of the independent variables. In the First District, there was only one precinct above 13% black. For a further discussion of estimates outside the logical bounds, see my "Making Separate Equal."

**TABLE 1: ECOLOGICAL REGRESSION AND NEIGHBORHOOD MODEL  
ESTIMATES OF RACIAL POLARIZATION  
IN THE 1976 SUPERVISORIAL RUNOFFS IN DISTRICTS ONE AND FOUR**

<i>MODEL</i>	<i>ANGLO</i>	<i>BLACK</i>	<i>LATINO</i>
		<i>DISTRICT 4</i>	
Weighted OLS			
% of Population	79	13	8
Turnout	68	79	34
Carey (black)	22	74	1
Moore (white)	45	5	33
Unweighted OLS			
Turnout	68	73	56
Carey	22	69	14
Moore	46	4	42
		<i>DISTRICT 1</i>	
Weighted OLS			
% of population	68	4	28
Turnout	76	20	70
Simon (black)	34	21	30
Blohm (white)	42	-2	40
Unweighted OLS			
Turnout	76	10	70
Simon	33	17	30
Blohm	43	-7	39

### C. EMPLOYMENT DISCRIMINATION BY GOVERNMENTS IN MONTEREY COUNTY

47. A week after the election, lawyers for the Board of Supervisors reached partial agreement with California Rural Legal Assistance on a three-year-old federal suit against the County for employment discrimination. Although admitting no wrong, the County agreed to meet the employment goal of hiring minority group members in proportion to their percentage in the County's workforce. Only the sheriffs held out against settlement.<sup>50</sup> Because there was no trial, the extent of previous employment discrimination by the County is unclear, but it is evident that the County had not recruited minority workers at their population rate. A similar suit by the League of United Latin American Citizens (LULAC) against the City of Salinas, which dragged on for at least the years 1977-81, which Salinas lost, and which cost the city at least \$300,000, demonstrates the widespread incidence of employment discrimination complaints against governments in Monterey County.<sup>51</sup>

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<sup>50</sup>"Racial Suit Settled," *MH*, Nov. 9, 1976, p. 19, col. 2.

<sup>51</sup>"LULAC seeks price city pays to defend itself," *SC*, June 3, 1980, p. 7, col. 5-6; Michael G. Mooney, "Salinas files for rehearing in Padilla suit," *SC*, Sept. 11, 1981, p. 1, col. 3; *LULAC v. City of Salinas Fire Department*, 88 F.R.D. 533 (1980), 654 F.2d 557 (1981).

## D. DEAD SOULS AND INCUMBENT PROTECTION

48. After the 1971 reapportionment, the Fourth District included Seaside, Toro, Del Rey Oaks, about half of Monterey, a portion of Fort Ord, and unincorporated territory down the west side of the Salinas Valley to Arroyo Seco, while the First District took in Marina, part of Fort Ord, part of Salinas, and much of the unincorporated North County.<sup>52</sup> The county's largest city, Salinas, was trifurcated. The boundaries were widely criticized as irrational, especially the tentacled Fourth District. "I see no need for Four to go . . . down the ridge to Soledad when we have almost 100,000 on the Monterey Peninsula," Fifth District Supervisor Willard Branson remarked.<sup>53</sup> "The lines in Monterey separating the Fourth and Fifth Districts," the *Monterey Herald* later reported, "were drawn through some backyards and alleys and have proved confusing."<sup>54</sup>

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<sup>52</sup>Tom Wieder, "2 Incumbent Supervisors Re-Elected," *MH*, June 7, 1972.

<sup>53</sup>"Redistricting Hearing Reset," *MH*, June 10, 1971, p. 3, col. 1-2.

<sup>54</sup>Ken Schultz, "County Reapportionment Okayed; Marina Will Shift to Different District," *MH*, Aug. 18, 1981, p. 1. The lines between the Fourth and Fifth Districts drawn in 1981 were complex and confusing, as well. Referring to a map in the paper, the *MH* traced the boundaries: "The new Fourth District includes Pacific Grove and the portions of Pebble Beach and New Monterey above the heavy black line pictured above. The dividing line follows the edge of the Spyglass Hill Golf Course, zig-zags at Forest Lake Rd. to Lopez Rd. and then follows Congress Road in a line to the Pacific Grove city limits. From there, the boundary parallels the northern edge of the Presidio of Monterey, looping around the Presidio at Lighthouse Avenue and then back along Pacific Street in Monterey before curving north with Highway 1." "Dividing Line," *MH*, Aug. 23, 1981, p. 2A, col. 4. Whatever the purposes of the 1981 reapportionment, simplifying and rationalizing boundary lines was not among them.

49. In 1981, according to the County's Section 5 submission to the Department of Justice, the Supervisors adopted four basic tenets for reapportionment:

- "A) Affect the representation of Monterey County Population as little as possible.
- B) As much as possible retain the integrity of Municipalities within Monterey County by not bifurcating them or in no case trifurcating them.
- C) As much as is possible closely align within common Supervisorial Districts the coastal cities and likewise the inland valley cities.
- D) Retain as much as is possible the rural/agricultural basis of the First and Third Supervisorial Districts."<sup>55</sup>

Not only did the Supervisors not mention protecting minorities among their criteria; they also blatantly violated every standard that they set for themselves.<sup>56</sup>

50. Population shifts over the decade meant that the three southern districts needed to gain population, while the two northern ones had to lose it.<sup>57</sup> The easiest and most logical way to accomplish the change would have been for the South County Third District to extend north in

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<sup>55</sup>Ross J. Underwood to Assistant Attorney General, Civil Rights Division, Department of Justice, Sept. 16, 1981. This letter and its attachments are hereinafter referred to as 1981 Submission. Capitalization in original.

<sup>56</sup>There is apparently no direct evidence in Board Minutes that the Board ever formally adopted those criteria, and at least one supervisor who served in 1981 does not remember them. Marc J. Del Piero Deposition Transcript, Aug. 25, 1992, p. 38.

<sup>57</sup>In 1970, the population of the county as a whole was 4.9% black and 7% Asian and other. Latinos were not counted separately, as such. In 1980, the county's population was 6.3% black, 25.9% Latino, 6.5% Asian/Pacific Islander, and 1% American Indian.

the Salinas Valley, taking in parts of eastern Salinas, and for the Fourth District to move north along the coast, adding Marina and giving its unincorporated southern section to the Fifth District. Although other, smaller shifts would also have been necessary to bring the districts' populations within constitutionally tolerable limits, these would have been the basic alterations. They would have joined communities of interest, kept valley and coastal regions separate, minimized change and supervisors' travel time across their districts, probably split cities less than either the 1971 plan or the final 1981 plan did, and retained the fundamental characteristics of the First and Third Districts. In particular, as Tables 2 and 3 show, such a realignment would have brought together the two cities in the northern part of the county with the largest percentages of Democratic registration and the greatest propensity for voting for such black candidates as Lt. Gov. Mervyn Dymally and State Atty. Gen. candidate Yvonne Braithwaite Burke -- the only cities to cast majorities for Dymally. If one of the common objectives of reapportionment is to join communities of interest, then Seaside and Marina formed the most obvious community of interest of any two cities in the county. They were the most politically similar, the most racially diverse, and the most racially liberal in voting patterns. In accord with this logic, the two plans proposed by the office of the Monterey County Registrar of Voters, which served as the chief technical consulting agency during the 1981 reapportionment, joined most of Marina and Seaside in District Four.<sup>58</sup> But as it generally does in reapportionment, logic gave way to political advantage, in this case racial, as well as incumbent political advantage.

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<sup>58</sup>"Reapportionment plans call for two districts in Salinas," *SC*, Aug. 1, 1981; documents attached to Ross J. Underwood to Board of Supervisors, regarding Aug. 4, 1981 meeting. On the authorship of the plans in 1981, see Ross J. Underwood Deposition Transcript, Aug. 11, 1992, p. 17.



**Table 2: Seaside and Marina Were Similar in Partisanship**

City or Area	Percent of Two-Party Registration Democratic				
	Year				
	June 1976	June 1978	June 1982	June 1988	June 1990
Carmel	45.6	46.3	45.1	42.6	43.3
Del Rey Oaks	60.3	61.2	60.9	60.8	59.2
Marina	69.0	70.0	65.8	62.7	61.0
Monterey	61.6	61.2	57.7	56.3	55.2
Pacific Grove	58.6	59.1	56.2	57.7	58.7
Salinas	61.7	63.2	62.6	62.6	62.4
Seaside	78.8	79.2	77.8	74.8	71.4
Unincorporated	50.1	50.7	48.9	49.0	48.9
<b>Total County</b>	<b>59.0</b>	<b>59.8</b>	<b>58.1</b>	<b>57.9</b>	<b>57.5</b>

**Table 3: Seaside and Marina Were the Only Sizable Cities in Monterey County to Give Majorities to African-American Candidates in 1978**

City or Area	Percent of Total Votes for		
	Brown, 1978	Dymally, 1978	Burke, 1978
Carmel	49.8	39.3	40.6
Del Rey Oaks	53.9	38.7	41.9
Marina	65.0	51.8	53.1

Monterey	60.7	46.9	48.3
Pacific Grove	58.3	46.0	47.6
Salinas	52.2	43.3	45.2
Seaside	73.9	64.8	65.6
Unincorp.	44.8	35.7	38.9
<b>Total County</b>	<b>52.4</b>	<b>42.6</b>	<b>44.7</b>

51. In 1980, the South County or Salinas Valley Third District was 41.8% Latino in population, and if it entered heavily Latino eastern Salinas, also known as Alisal, it would probably have a Latino majority, especially if it gave up part of Fort Ord to another district. This, of course, was exactly what Latinos desired. At a hearing on June 23, 1981, for instance, the Valley Organizing Task Effort (VOTE) proposed three options, all of which would have put Alisal in the Third District.<sup>59</sup> "It just seems the Chicano community has been ignored here for a long, long time," Juan Martinez of VOTE told the Board later. "What we want is a little piece of the action." The organization's plea for a solid agricultural district was, he declared, "not taken seriously."<sup>60</sup> Instead, Third District Supervisor Dusan Petrovic haughtily refused even to discuss including Alisal in his district,<sup>61</sup> and he floated rumors that if the area were attached to his district, the Salinas Valley would secede from Monterey County.<sup>62</sup> Although at another time, the irascible Petrovic's bluster might have produced an adamant counterreaction, this time his fellow Board members capitulated -- because it was in the interest of most of them to do so. Consequently, Petrovic was allowed to capture

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<sup>59</sup>County 1981 Submission, Exhibit D.

<sup>60</sup>County 1981 Submission, Exhibit D; "Supervisors OK Reapportionment," *MH*, August 18, 1981.

<sup>61</sup>Moore Deposition Transcript, pp. 33-37: "Q. Weren't there Hispanic organizations pushing to have East Alisal added to district three? A. Yes, there were. Q. And did you have any discussion with Mr. Petrovic about that? A. I tried to and he wouldn't discuss it . . . he simply turned on his heel and walked away with me . . . saying 'I won't dignify that.'"

<sup>62</sup>Del Piero Deposition Transcript, pp. 47-49.

more of Fort Ord and to annex Marina to his district.

52. According to the *Monterey Herald*, newly elected First District Supervisor Marc Del Piero was "eager" to give up multicultural Marina, which had been his weakest area in the June, 1980 primary, and which he had lost in the November, 1980 runoff.<sup>63</sup> Incorporated in 1975, Marina prided itself on an ethnic diversity that made it "different from the composition of Pacific Grove, Carmel. It's thoroughly integrated. There are no ghettos. Every part of the city is totally intermixed and that's something, that we have learned to live in harmony. And we really cherish that pattern," says the current mayor.<sup>64</sup> When the 1981 redistricting plan was made public, Marina city officials were furious at what even a South County conservative denounced as "preposterous gerrymandering."<sup>65</sup> District Three was rational, declared the *Salinas Californian*, "except for Marina, which sticks out on the map like a swollen appendix. Nobody wanted it . . ." The new map showed "the power of incumbents to solidify their power bases," the

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<sup>63</sup>"Supervisors to Face 3 Redistricting Plans," *MH*, Aug. 3, 1981; "Marina Criticizes Reapportionment," *ibid.*, Aug. 18, 1981. Although he claimed in 1992 not to remember whether or not he had carried Marina in 1980, Del Piero recalled in exquisite detail the exact nuances of his interview with the *Herald* that resulted in a critical article about his desire to dispense with Marina. He also did not recall telling Moore that he wanted to drop Marina. Del Piero's memory was conveniently selective. Del Piero Deposition Transcript, pp. 23-26, 71-72.

<sup>64</sup>Edith Johnsen Deposition Transcript, Aug. 12, 1992, p. 48.

<sup>65</sup>Harry F. Casey, "Hispanics are involved in process, where are others?" *KCR*, Aug. 28, 1991. The order of the two words in the original quotation has been reversed.

paper concluded.<sup>66</sup> "For years," Marina City Councilman Paul Davis complained, "Marina has been the stepchild of Monterey County." Now, it was being put in a district "having nothing at all compatible." Marina City Councilwoman Barbara Bird "accused the supervisors of using politics as a fundamental guideline in drawing a plan." Rather than move Marina out of the First District and separate it from areas which the city planned to annex, a unanimous resolution of the City Council suggested that the Board accept VOTE's proposal to move Alisal into the Third District. Marina Mayor Robert Ouye, an Asian-American, conveyed the resolution to the Supervisors in a letter read at a meeting at which the Board "brush[ed] aside complaints by Marina city officials on a supervisorial redistricting plan . . ."<sup>67</sup> During the 1980s, allegedly because of Marina's votes against him in the 1980 election, Del Piero "could be counted on to be in opposition to Marina . . . on almost any kind of expansion or growth or any activity whatsoever that we had."<sup>68</sup>

53. In stark contrast to their treatment of Marina, the supervisors were much more

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<sup>66</sup>"South County and the court," *SC*, Aug. 21, 1981, p. 12, col. 1-4.

<sup>67</sup>Ken Schultz, "County Reapportionment Plan Okayed; Marina Will Shift to Different District," *MH*, Aug. 18, 1981, p.1; Ken Schultz, "Supervisor No Driver, But He Gets A Round," *ibid.*, Aug. 24, 1981; "Supervisors Adopt County Budget," *MH* Aug. 25, 1981, p. 19, col. 1-3; "Reapportionment: Marina to Seek Changes," *ibid.*, August, 1981, in County 1981 Submission, Exhibit G; Robert T. Ouye to Monterey County Board of Supervisors, Aug. 21, 1981, in *ibid.*; Doug Beeman, "Marina, South County irked by new district," *SC*, Aug. 21, 1981, p. 1, col. 1-3; "Board sets hearing on reapportion plan, *ibid.*, Aug. 25, 1981, p. 12, col. 2-3.

<sup>68</sup>Johnsen Deposition Transcript, p. 73.

responsive to the wishes of one man in an agricultural area just north of Marina, the Armstrong Ranch, into which Marina expected to develop. Marc Del Piero simply met with the "most predominant resident" -- an Anglo -- who lived in the virtually unpopulated census tract, asked him what district he wanted to be in, and honored his wishes.<sup>69</sup> When a Japanese-American mayor of Marina spoke, he was ignored. When a white grower did, the all-white Board of Supervisors complied.

54. The shift of Marina from the First to the Third District is the prime example, but not the only one, of three important generalizations about redistricting in Monterey County that the record of 1981 and 1991-92 reveals: First, changes that benefit two or more supervisors have been easiest to effect. The switch of Marina from the First to the Third District and the consequences of that switch helped *four* supervisors. Second, the interests of minority group members in such swaps have been, at best, ignored. Third, in reapportionment, what you avoid taking is often just as important as what you give up.

55. In a summary article on the redistricting entitled "Supervisors shore up voter bases" -- which the County did *not* include in its Section 5 submission to the Department of Justice -- the *Salinas Californian* made clear some of the incumbent-protecting consequences of the new lines. Not only did Del Piero "dump"

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<sup>69</sup>Del Piero Deposition Transcript, p. 80.

Marina, he also picked up a larger proportion of North Salinas, where he lived and whose voters he felt quite comfortable with.<sup>70</sup> Just as losing Marina helped Del Piero and gaining it made it possible for Petrovic to evade Alisal, avoiding the addition of Marina to his Fourth District aided Supervisor Michal Moore, who, in the *Californian's* words, "initially appeared to be the most likely candidate to pick up Marina from Del Piero." As the paper pointed out, "Moore sits on the board of the regional sewage district -- a highly unpopular issue in Marina, where the water district there has been stubbornly fighting the district for years. . . . Moore also dropped the Toro area, where growth issues have become increasingly volatile and can snag all but the most ardent environmentalist."<sup>71</sup> In 1976, Toro resident Joseph Sullivan carried every precinct in Toro in the Fourth District primary and failed by only 42 votes to edge Moore out of the runoff. In a 1980 rematch, Sullivan's margin was reduced to 52.1% in Toro.<sup>72</sup> (Moore's later false claim to have done "very well [in Toro] every time that I ran" -- in fact, he only carried it one time out of three -- undercuts his denial

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<sup>70</sup>Doug Beeman, "Supervisors shore up voter bases," *SC*, Aug. 20, 1981; Del Piero Deposition Transcript, pp. 73-74.

<sup>71</sup>*Ibid.*; Moore Deposition Transcript, pp. 18-19. Elected as a strong environmentalist, Moore was often in trouble for his uneven opposition to big developments, close financial ties to developers, and the appointment of personal supporters, instead of environmentalists, to important commissions. See "Michal Moore," *MH*, June 6, 1976; "Moore Blasts The Herald for Coverage of Marriott Vote," *ibid.*, Oct. 31, 1978; "Mrs. Evans Still Planners' Chairman, for Now," *ibid.*, Feb. 8, 1978; "Salt in a Wound," *ibid.*, Oct. 27, 1978; Ken Schultz, "Infighting Strains Dealings Among Supervisors," *ibid.*, Feb. 9, 1982; "Grand Jury Panel Checking Friends of Grove Allegation," *ibid.*, Feb. 9, 1982.

<sup>72</sup>The election returns for 1976 and 1980 are part of the County's 1981 Submission and "Toro, Spreckels precinct voting results," *SC*, Nov. 5, 1976, p. 11, col. 1-6. Sullivan's residence information comes from "Sullivan For Supervisor 4th District," *ibid.*, June 2, 1980, p. 3, col. 1-4.

that he moved Toro into the Fifth District to enhance his own reelection chances.)<sup>73</sup>

56. Moore's refusal to take Marina into his district and his desire to flee Toro left the Fourth District short of population. One logical possibility that would have made the 1981 map much more tidy and fulfilled one of the Supervisors' stated goals for the reapportionment, uniting split cities, was apparently never considered: the transfer of the other half of Monterey from District Five to District Four. Apparently, making Monterey whole offered no marked benefit to any incumbent. Instead, the Board hit on a solution that perfectly fit the political interests of both Moore and Fifth District Supervisor William Peters, which was for Moore to take in the affluent Anglo city of Pacific Grove from the Fifth District. Pacific Grove was less than two percent black in 1980, whereas Marina was eighteen percent black.<sup>74</sup> Moore's conduct was particularly egregious when compared to his rhetoric in public meetings. In the Aug. 4 Board meeting, for instance, Moore criticized the trifurcation of Salinas and expressed a wish to eliminate "the bisection of other cities where possible. . . . He feels the integrity of interest in the cities on the Monterey Peninsula should be maintained."<sup>75</sup>

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<sup>73</sup>Moore Deposition Transcript, pp. 48-49. Former Registrar of Voters Ross J. Underwood says that Moore told him that he wanted to transfer Toro to another district. Underwood Deposition Transcript, Aug. 11, 1992, pp. 32, 51.

<sup>74</sup>The area of Marina outside of Fort Ord, which voted in higher percentages than that in Fort Ord, was 22.5% black in 1980.

<sup>75</sup>Board of Supervisors Minutes, Aug. 4, 1981.

57. Elected in 1980 over Pacific Grove resident Neill Gardner by a razor-thin 51-49 margin, Peters had been indicted for campaign-law violations just before the November, 1980 runoff. Facing a trial on ten charges of conflict of interest at the same time as reapportionment was being negotiated, Peters' career was in serious jeopardy in 1981, and he needed every edge that reapportionment could give him.<sup>76</sup> (He was eventually convicted and sentenced to a \$10,000 fine.)<sup>77</sup> Since his 1980 loss, Gardner had been leading a recall effort against Peters.<sup>78</sup> Moore told Underwood that, after the recall effort began, Peters had indicated that he wanted Pacific Grove out of his district.<sup>79</sup> Connecting the Fourth District to Pacific Grove necessitated the split of

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<sup>76</sup>The trials dragged on for years. "D.A. Files Amended Action Against Peters," *MH*, Feb. 25, 1981; "Peters Denied Hearing, Ordered to Stand Trial," *ibid.*, Aug. 8, 1981, p. 3, col. 1-2; Margo Burke, "Supervisor Peters Denies Charges, Describes 'Threats' Before Election," *ibid.*, Aug. 26, 1981, p. 3, col. 1-3; Paul Denison, "Jury Rules for Peters on 10 of 14 Charges," *ibid.*, Sept. 2, 1981, p. 1, col. 4; Denison, "Judge Clears Peters; Round 2 Yet to Come," *ibid.*, Sept. 9, 1981, p. 1, col. 3-4; Doug Beeman, "Peters remains in the spotlight," *SC*, Aug. 8, 1981, p. 1, col. 1-6.

<sup>77</sup>"Supervisor Peters to Face Second Civil Trial," *MH*, Aug. 11, 1983; Everett Messick, "\$10,000 fine Still Not Paid," *ibid.*, July 4, 1985.

<sup>78</sup>Doug Beeman, "Supervisors shore up voter bases," *SC*, Aug. 20, 1981; "Peters Recall Bid Begun," *MH*, April 7, 1981; Ken Schultz, "Gardner Admits Starting Recall Try," *ibid.*, April 9, 1981.

<sup>79</sup>Underwood Deposition Transcript, p. 54. In his Deposition Transcript, pp. 43-45, Moore denies that Peters asked him to move Pacific Grove out of the Fifth District or that Moore thought there was a substantial likelihood that the recall would pass. The time sequence of actual events undermines Moore's story. The Board adopted the final plan "in concept" on Aug. 18, so it must have been drafted earlier. Peters' first trial was not over until Sept. 1, and the recall effort was only suspended until after the trial. In fact, Peters was retried repeatedly and finally convicted, and he did not dare to run for reelection in 1984. It was simply not possible for Moore to have known during the first two weeks of August, 1981 that Peters was out of trouble. It was just as clear that the center of that trouble was Pacific Grove. "Peters Recall Group Delays Action," *MH*, June 4, 1981; Ken Schultz, "Prosecution Opens in Trial of Supervisor Peters," *ibid.*, Aug. 14, 1981; "Aborted Peters Recall Attempt Officially Ends," *ibid.*, Aug. 28, 1981; Ken Schultz, "Peters Wins Dismissal of Grand Jury Charges," *ibid.*, Nov. 7, 1981; Alex Hulanicki, "Peters Drops Out of Fifth District Supervisor Race," *ibid.*, Feb. 15, 1984; Alex Hulanicki, "Peters Supporters Blame Civil Suit," *ibid.*, Feb. 16, 1984; "Peters' Decision Correct," *ibid.*, Feb. 17, 1984; Board of Supervisors Minutes, Aug. 18, 1981.

the unincorporated, extremely affluent, and very fractious community of Pebble Beach, which strongly protested the self-interested actions of the supervisors.<sup>80</sup> To make up for the population loss in Pacific Grove, Peters obtained the one-quarter black portion of Fort Ord adjacent to Seaside from District Three. It might more logically have gone to Moore's Fourth District, but if it had done so, it would only have increased the District's black proportion. Like other changes in 1981 and 1991, this shift benefited at least two supervisors, but no minority voters.

58. Although newspaper reporters, the Department of Justice, and, of course, ordinary citizens of Monterey County did not know it then, the redistricting plans that protected incumbent interests so perfectly were not drawn by the supposedly impartial Registrar of Voters, Ross J. Underwood, as the public account stated, but by Supervisor Michal Moore, the man who had saved the county from Pearl Carey, a man whose actions and statements showed little sympathy with minorities, and a man whose political future was markedly improved by the results of the reapportionment.

59. Underwood first drew two plans on the basis of the Board's stated criteria, assertedly without consulting any Board member. Both of the plans, as noted above,

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<sup>80</sup>Underwood Deposition Transcript, p. 40; "Supervisors Adopt County Budget," *MH*, Aug. 25, 1981, p. 19, col. 1-3.

joined Marina to Seaside in the Fourth District.<sup>81</sup> Before presenting the maps to the Board in a public session, however, Underwood was summoned to Moore's house, where Moore presented him with a scheme that he had devised, with the help of his administrative aide, and which placed Marina in the Third, rather than the Fourth District. Moore's map then became the basis for negotiation, Underwood's two plans becoming as irrelevant to the process as the only other plan that had the effect of enhancing minority group interests, that of Project Vote. Rather than an originator of maps, Underwood thereafter became merely a tabulator of statistics, making sure, for example, that the supervisors understood the ethnic consequences of any proposed change by providing the relevant ethnic percentages. The only major alterations to Moore's kitchen table map were the interchanges of Pacific Grove and Toro, the jagged bifurcation of Pebble Beach, and the shift of the Fort Ord portion of Seaside from District Three to District Five.<sup>82</sup>

60. There was another important facet to the events of 1981, a reapportionment nuance that was frequently admitted from at least 1964 through 1992 -- the trade in "dead souls." In Gogol's famous comic novel, the vulgar and grasping Paul Chichikov buys the rights to deceased serfs (also called "souls" in Russian) to serve as collateral

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<sup>81</sup>The plans did leave the Fort Ord portion of Seaside in Petrovic's district. Attachments to memo from Ross J. Underwood to Board of Supervisors, relating to Aug. 4, 1981 meeting.

<sup>82</sup>Underwood Deposition Transcript, pp. 17-37, 42, 57-59; Moore Deposition Transcript, pp. 12-14.

for loans. As long as the authorities are not formally told of their deaths, he can borrow more and more money.<sup>83</sup> Likewise, from 1971 on, and continuing in 1991-92, supervisors used low-voting military populations to pad the population totals of their districts without threatening their incumbency.<sup>84</sup> As Supervisor Marc Del Piero summed it up: "I think everyone was aware that they [denizens of Fort Ord] didn't vote much."<sup>85</sup> The 1971 plan, according to the *Monterey Herald*, "calls for using Fort Ord's 32,000 nonvoting population to bring all five districts to approximately the same 49,000 population," and was "opposed by most Peninsula cities."<sup>86</sup> In a discussion at a public meeting on July 21, 1981, Fourth District Supervisor Michal Moore suggested that "the third district ought to reflect a rural base to protect rural interests, and that the military offers a base to preserve that district."<sup>87</sup> A politically influential King City editor<sup>88</sup> noted that "it was necessary to comply with the new laws by putting more

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<sup>83</sup>Nikolai Gogol, *Dead Souls*, George Gibian, ed., (New York: Norton, 1985).

<sup>84</sup>In their 1963-64 reapportionment, the Supervisors put most of Fort Ord in District Four (others were in District One), justifying the fact that District Four then had the largest population by pointing out, as the State Supreme Court put it, that most of the military at Fort Ord "do not register to vote and do not pay taxes." *Griffin II*, p. 755.

<sup>85</sup>Del Piero Deposition Transcript, p. 77.

<sup>86</sup>"Redistricting Hearing Reset," *MH*, June 10, 1971, p. 3, col. 1-2.

<sup>87</sup>County 1981 Submission, Exhibit D. Cf. Underwood Deposition Transcript, p. 33; Moore Deposition Transcript, pp. 20-21.

<sup>88</sup>In 1992, Third District Supervisor Tom Perkins named the editor, Harry F. Casey, as one of his representatives on a committee to consider expanding the Board to seven members. *King City Rustler* (hereinafter *KCR*), April 8, 1992.

population into the rural third district. This was accomplished in 1970 [sic] by including Fort Ord, thought to be a non-voting population. This was by agreement with the total board in order to retain the rural flavor of the third district."<sup>89</sup> Third District Supervisor Dusan Petrovic wanted all of Fort Ord because, as the *Salinas Californian* put it bluntly, "Fort Ord's military population does not vote." His purpose, which he exalted as "in the paramount interest of the county," was to assure "that South County maintain its own person on the board."<sup>90</sup> Petrovic maintained the same view in 1989, declaring that "Fort Ord, in its entirety, should be part and parcel of the Third District. Fort Ord will give us the numbers one-man, one-vote requires and then South County would be assured of one seat on the board. The reason Fort Ord is important in reapportionment in the county is it contains residents without any great contribution of votes."<sup>91</sup> County data support Petrovic: Fort Ord, which the final 1981 plan split between the Third, Fourth, and Fifth Districts, was 29.2% black and 11.1% Latino, but of its 22,420 people, only 1251 or 5.6% were registered to vote in Monterey county.<sup>92</sup> By tacking Marina onto a Third District in which, in 1980, blacks constituted less than 3% of the registered voters, and by adding all of the electorally

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<sup>89</sup>Harry F. Casey, "Hispanics are involved in process, where are others?" *KCR*, Aug. 28, 1991.

<sup>90</sup>Myrna Alvitre, "Redistricting plan changes still needed, supervisor says," *SC*, Sept. 5, 1981.

<sup>91</sup>Suzi Taylor, "Petrovic balks at the concept of a 'Hispanic' district," *KCR*, April 5, 1989, p.1.

<sup>92</sup>County 1981 Submission, Exhibit H. Similarly, only 5.3% of the people who lived at Fort Hunter Liggett were registered, and the figures from the Monterey Presidio and the Naval Postgraduate School were 25.6% and 28%, respectively.

dead souls in his part of Fort Ord, Petrovic avoided the Latinos in Alisal, thereby keeping his district safe for South County growers -- and for himself.<sup>93</sup> "My main sorrow," the Supervisor told his colleagues after the final adoption of the 1981 plan, "is that the Third District didn't get more of Fort Ord."<sup>94</sup> As Moore put it, more bluntly, Petrovic "wanted the nonvoting portion of Fort Ord."<sup>95</sup>

61. Incumbent protection in Monterey County in 1981 meant retrogression for minority voters of all colors. As Table 4<sup>96</sup> shows, instead of increasing the Latino percentage in the Third District, the final 1981 plan slightly reduced it. Instead of boosting the black percentage in the Fourth, which had the highest concentration of African-Americans, the plan diminished it. And the maximum Asian proportion in any single district decreased, as well. Moreover, the Board specifically rejected plans that

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<sup>93</sup>The registered voter estimate is the County's, in County 1981 Submission, Exhibit L.

<sup>94</sup>Doug Beeman, "Supervisors send redistricting plan to feds," *SC*, Sept. 9, 1981. The article went on to note matter of factly that "Fort Ord's non-voting population was used in 1970 to equalize the Third District's population with other supervisorial districts. Under the new plan, Fort Ord's population will be divided among three districts."

<sup>95</sup>Moore Deposition Transcript, p. 29.

<sup>96</sup>The figures for Table 4 were computed by Rand demographer Peter Morrison on the basis of maps supplied to him by the County. He corrected some apparent addition errors in the County's 1981 Section Five Submission. Morrison also drafted the "Maximum Black and Asian Concentration Plan" by putting all of Seaside and Marina, including the portions of those cities within the boundaries of Fort Ord, into the Fourth District. To obtain population equality for the Fourth District, he had to exclude some overwhelmingly Anglo precincts. The Board never formally considered Morrison's plan, but of course it easily could have.

would have increased the percentages of minorities in the Third and Fourth districts.<sup>97</sup> Underwood's Plan #1 would have raised the percentage of minorities in the Third District to 61%, while his Plan #2 would have increased that percentage in the Fourth District to 40.2%. Finally, the Supervisors did not seriously consider substantial boosts in the minority percentages of these districts. If all of Seaside and Marina, including the Fort Ord portions, had been placed in the Fourth District, the black percentage would have nearly doubled, compared to the final 1981 plan, and the minority percentage would have been 49.4%, rather than 30%. (Compare the "Maximum" and "Final" plans.) If the Third District, in consequence, had had to give up Marina and Fort Ord, it would probably have had to take in Alisal. With these two changes, there would be no possibility that Peters's Fifth District could shed Pacific Grove. Minorities might have been better off, but a clear majority of the Board would have been threatened.

62. The political fates of black and brown minorities, of Marina and Alisal, were inextricably linked in 1981 and, given the power of incumbent white supervisors to protect their positions in reapportionment, almost inevitably defeated. As Second District Supervisor Barbara Shipnuck, the only dissenter on the 1981 plan, remarked, her fellow Board members had "failed to assuage the public perception that the plan

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<sup>97</sup>It is a sign of how little attention the Board paid to the VOTE plan that the 1981 County Section Five Submission does not even contain ethnic percentages for it or enough information about the map so that they can be computed.

was political and not rational."<sup>98</sup> Probably under pressure from the substantial group of Latinos in her district, Shipnuck reversed her earlier grudging approval of the plan at the last moment,<sup>99</sup> opposing it, she later said, "because the plan did not create a Latino majority district, and because it placed the City of Marina, an urban area, in the Third District, which was otherwise primarily the agricultural South County."<sup>100</sup> As Petrovic reportedly told Supervisor William Peters, he refused to take Alisal into the Third District because if it were included, Petrovic "didn't think he could win in the district."<sup>101</sup>

63. Despite section 5 protest letters from Latino leaders, the Reagan Justice Department, notably lacking in vigor under Asst. Attorney General William Bradford Reynolds, refused to interpose an objection to Monterey County's 1981 reapportionment.<sup>102</sup>

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<sup>98</sup>"Supervisors OK Reapportionment," *MH*, Aug. 18, 1981.

<sup>99</sup>Marc J. Del Piero Deposition Transcript, Aug. 25, 1992, p. 57. In a preliminary hearing on Aug. 18, 1981, Shipnuck had voted for the plan. Board Minutes, Aug. 18, 1981, p. 2.

<sup>100</sup>Barbara Shipnuck Declaration, June 23, 1992, p. 2.

<sup>101</sup>Moore Deposition Transcript, pp. 39-40.

<sup>102</sup>William Bradford Reynolds to Leon Panetta, May 27, 1982. On the larger record of the Reagan Administration in the area of voting rights, see Norman Amaker, *Civil Rights and the Reagan Administration* (Washington, D.C.: The Urban Institute Press, 1988), 139-56.

## E. A GLIMPSE OF THE RACIAL CLIMATE

64. In 1979, writer, college teacher, radical activist, and longtime resident of Carmel Milton Mayer infuriated his fellow townspeople by publishing an expose and condemnation of racism, "Cold Pogrom in Carmel," in the internationally circulated magazine of the Center for the Study of Democratic Institutions in Santa Barbara. "There is nothing in darkest Mississippi," Mayer charged provocatively, "as solidly segregationist as Carmel, California. . . . there isn't a Negro living in Carmel, and the smartest psychiatrist in the business says, 'I wouldn't advise a black family to move in. The children would suffer in the schools.' And the churches? 'The Carmel churches wouldn't lift a finger for them.'"<sup>103</sup>

65. These were not merely the ravings of an overly sensitive Quaker pacifist civil libertarian.<sup>104</sup> Eight days after the County submitted its 1981 reapportionment plan to the Department of Justice, a *Monterey Herald* story about controversies over development in the county included a comment that captured an important strain in public opinion in Monterey County. Explaining to the *Herald's* reporter why land use issues were so controversial, the president of the environmentalist Carmel Area

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<sup>103</sup>Milton Mayer, "Cold pogrom in Carmel," reprinted in *The Carmel Pine Cone*, Oct. 18, 1979.

<sup>104</sup>For biographical information about Mayer, see "Milton Mayer to Speak At Unitarian Church," *MH*, July 18, 1964; Lewis Leader, "A CLU to Honor 'Unemployed Newspaperman' Milton Mayer," *ibid.*, Oct. 17, 1979; "Milton Mayer, Writer, Teacher, Dies at 77," *ibid.*, April 22, 1986.

Coalition, Stanley Worth, declared that Monterey County "is a fairyland by comparison with other places. You've got to realize this is an extremely wealthy area and not put it in terms of an East Los Angeles, which it is not. *We do not have the problems of Mexicans, blacks, Jews, all that. It's why so many people want to come here, to get away from all that.*"<sup>105</sup> In response to Worth's comment, a letter to the editor by Mark William Gross acknowledged that "It is an unfortunate truism that many people feel as Worth does about minority groups." He went on, however, to criticize Worth less than he did the *Herald* for not suppressing the outpouring of "bigotry." The reporter, Gross felt "could have easily displayed tact and taste by editing out the racist and anti-Semitic dimension, and I must question his motives for not doing so."<sup>106</sup> Another letter writer reminded readers of the paper that months ago, "that perceptive commentator, Milton Mayer, provoked indignation and angry denials when he confronted our community with an unwelcome image of racial prejudice and discrimination. Milton, who has known our area for more years than most of us, now has sadly been vindicated by Worth."<sup>107</sup> In this racial climate, it was easy for incumbent supervisors to shift lines in their own self-interest and at the expense of members of racial and ethnic minority groups.

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<sup>105</sup>Ken Peterson, "Every Opinion on Monterey County Growth Invariably Generates Opposing Argument," *MH*, Sept. 17, 1981, p. 27, col. 1-6. Italics supplied.

<sup>106</sup>"Motives Questioned," *MH*, Sept. 25, 1981, p. 23, col. 1-2.

<sup>107</sup>"Race Pollution," *MH*, Sept. 24, 1981, p. 25, col. 1.



**TABLE 4: RETROGRESSION IN 1981:  
ETHNIC PERCENTAGES OF EACH SUPERVISORIAL DISTRICT  
BEFORE REAPPORTIONMENT, IN EACH PROPOSED OPTION, AND IN THE**

<i>District%</i>	<i>Black</i>	<i>% Latino</i>	<i>% Asian</i>	<i>Total Minori</i>	
		<i>FINAL PLAN</i>			
		<i>PRE-1981 PLAN</i>			
1	6.2	24.9	9.9	41.0	
2	1.8	45.4	6.2	53.4	
3	9.1	41.3	4.9	55.3	
4	14.9	11.3	9.0	35.2	
5	1.3	4.5	3.2	9.0	
		<i>UNDERWOOD'S PLAN # 1</i>			
1	1.4	31.2	7.2	39.8	
2	1.5	45.0	5.9	52.8	
3	11.6	42.4	7.0	61.0	
4	16.9	8.2	11.0	36.1	
5	1.3	4.8	3.0	9.1	
		<i>UNDERWOOD'S PLAN # 2</i>			
1	1.4	31.2	7.2	39.8	
2	1.5	45.0	5.9	52.4	
3	10.2	40.0	4.3	54.5	
4	18.2	8.6	13.4	40.2	
5	1.3	4.5	3.3	9.1	
		<i>MOORE'S ORIGINAL PLAN</i>			
1	1.5	31.2	7.2	39.8	
2	1.6	45.1	5.9	52.6	
3	8.6	41.0	8.3	57.9	
4	19.4	8.2	8.2	35.8	
5	1.3	4.8	3.0	9.1	
		<i>FINAL 1981 PLAN</i>			
1	1.5	31.2	7.2	39.8	

2	1.6	45.1	5.9	52.6
3	8.6	41.0	8.3	57.9
4	13.7	7.6	8.7	30.0
5	7.6	5.7	4.1	17.4

*MAXIMUM BLACK AND ASIAN CONCENTRATION PLAN (NOT CONSIDERED)*

1	1.5	31.2	7.2	39.9
2	1.6	45.1	5.9	52.6
3	3.0	39.2	3.5	45.7
4	25.4	10.0	14.0	49.4
5	1.3	4.5	3.3	9.1

## V. THE 1991-92 REAPPORTIONMENT

### A. CONSEQUENCES OF 1981

66. A perfectly designed discriminatory electoral structure would discourage all members of opposition groups from running. Monterey County's 1981 redistricting was nearly perfect. In 1968, 1972, 1976, and 1980, black candidates had run for supervisorial posts, never finishing worse than third and twice gaining pluralities in primaries. During the 1970s and 80s, Seaside elected three black mayors and several councilpeople, and Marina elected blacks to the Board of the Monterey Peninsula School District in 1985 and 1991 and a Japanese-American, who had strong backing from the black community, in 1991.<sup>108</sup> Such lower offices provide an electoral base, exposure, and experience to candidates who might wish to move up. Nevertheless, there was not a single black or Asian Supervisorial candidate in Monterey county after 1981. Nor did a Latino candidate run until 1990, despite the election of several Latino politicians to city councils. As the most prominent of the black politicians, current Seaside Mayor Lance McClair put it, when asked if he would "ever consider running" in a supervisorial district in which Marina was separated from Seaside, "If I had a lot

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<sup>108</sup>Edith Johnsen Deposition Transcript, Aug. 12, 1992, pp. 15-18.

of money. I doubt it. I doubt it. I doubt it. I will tell you right now, it would be very discouraging."<sup>109</sup> One of the consequences of the reapportionment efforts of 1991-92 was to maintain the discriminatory division of Seaside and Marina which severely hampered the political influence of African-Americans and Asian/Pacific Islanders. Indeed, with the right candidate and the right conditions, blacks or perhaps Asians might have been able to elect a supervisor of their choice -- if Marina and Seaside had been in the same supervisorial district.

#### B. THE LAW, DEMILITARIZATION, AND DEMOGRAPHY

67. The stage on which the reapportionment of 1991-92 took place was much different from that of a decade earlier. In 1981, the Reagan Administration had tried to weaken Section 5 of the Voting Rights Act, and career attorneys in the Voting Section of the Civil Rights Division of the Department of Justice were wary of the new administration and unwilling or unable to pressure localities, especially those outside the South, to comply with the spirit of the law.<sup>110</sup> By 1991, there had been nine largely successful years of litigation and increasingly vigorous enforcement of Section 5

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<sup>109</sup>Lancelot C. McClair Deposition Transcript, June 10, 1992, at 90.

<sup>110</sup>Drew S. Days, III and Lani Guinier, "Enforcement of Section 5 of the Voting Rights Act," in Chandler Davidson, ed., *Minority Vote Dilution* (Washington, D.C.: Howard Univ. Press, 1984), 172-77; Amaker, *Civil Rights and the Reagan Administration*, 148.

preclearance under the 1982 amendments to the Voting Rights Act, and President Bush's appointee to oversee the Civil Rights Division, John R. Dunne, was much more sympathetic to the revised Act than William Bradford Reynolds had been. Procedures for section 5 submissions were much fuller and scrutiny was much less casual than in 1981. From the beginning of the 1990s reapportionment process, Monterey County officials knew that they would have to make a real effort to satisfy the Justice Department that they had been fair to minorities, and Latinos realized that an invigorated Section 5 gave them more leverage than they had enjoyed ten years earlier.

68. Closer to home, Latinos had won several important voting rights cases in California during the 1980s. In Watsonville, just across the Santa Cruz county line from Monterey county, at-large elections had been overthrown by a judicial decision.<sup>111</sup> Salinas settled a similar suit out of court, and the Hartnell Community College and Salinas Union High School districts switched from at-large to district elections in order to preclude suits.<sup>112</sup> In all cases, the lawyer was a former attorney for the Mexican-American Legal Defense and Education Fund (MALDEF), Joaquin Avila, who was by 1991 specializing full-time in voting rights law and who was well known to the Latino community in Monterey county. From the beginning of the struggle over the reapportionment of the Board of Supervisors, Avila and his allies in the *Raza* Redistricting Committee, a county-wide Latino group, prepared for litigation,

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<sup>111</sup>*Gomez v. City of Watsonville*, 863 F.2d 1407 (9th Cir. 1988).

<sup>112</sup>Avila Comment Letter, at 29. The Salinas case was styled *Armenta v. City of Salinas*, Civ. Act. No. C-88-20567 WAI (N.D. Cal. 1988).

if necessary, and Anglo incumbents on the Board had good reason to fear them.<sup>113</sup>

Furthermore, the widely noticed MALDEF victory over the Los Angeles County Board of Supervisors in the *Garza* case put every local governmental body on notice that courts would not allow incumbent self-interest to continue to run roughshod over the interests of minority groups. *Garza* forewarned the Board, and Avila forearmed *La Raza*.<sup>114</sup>

69. The ethnic issues that were central to nearly every redistricting in the county involved not only Latinos and Anglos: they concerned African-Americans and Asian-Pacific Islanders, as well, and they illuminate white racial attitudes. The Monterey Peninsula Unified School District, which served Monterey, Seaside, and Marina, elected its seven trustees at-large from two districts before 1992 -- Marina comprised one electoral subdistrict, and Monterey and Seaside together made up the other. Only one Latino and one Asian had ever been elected trustees, and since 1967, only six board members had been chosen from Seaside, the District's largest city. In February, 1992, a redistricting task force proposed creating a third district by joining a 27% minority area of north Monterey to Seaside. In the face of threats of recall and litigation, the trustees voted for the plan five to one with one abstention after an appeal from Marina trustee Wini Chambliss. "I believe that being honest and at one with

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<sup>113</sup>Calvin Demmon, "Latino groups want to take part when supervisors draw districts," *MH*, Feb. 20, 1991, p. 1A; Marty Burleson, "Hispanics unveil plans for districts," *SC*, Aug. 14, 1991.

<sup>114</sup>Hereinafter, I will refer to the *Raza* Redistricting Committee as simply *Raza*, without italics.

myself is more important than an election any day," Mrs. Chambliss intoned. "We cannot talk about equal quality education on one hand and practice deceit and racism on the other." Two other Marina trustees voted with Chambliss, as did two of the four from Monterey. Seaside was unrepresented on the board.<sup>115</sup>

70. The end of the Cold War and the consequent decline in military expenditures threatened to hit Monterey county hard, as the Pentagon announced on April 12, 1991 that it planned to move the 7th Army the state of Washington, and that Fort Ord, the county's largest military installation, was to be severely downsized.<sup>116</sup> Marina and Seaside, the cities nearest to the Fort, were sure to be dislocated, both wanted to plan for economic development to replace the troops, and both realized that the Board of Supervisors held at least some of the keys to land-use development.<sup>117</sup> Even less than before could these cities, which contained 62% of the county's blacks and 39% of its

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<sup>115</sup>Mariann Zambo, "North Monterey Fights redistricting," *MH*, Feb. 4, 1992, p. C-1, col. 4-5; Zambo, "MPU SD board favors three trustee areas," *ibid.*, Feb. 12, 1992, p. 3-C, col. 3-4.

<sup>116</sup>Douglas C. Holland to Chief of Voting Section, Civil Rights Division, U.S. Department of Justice, Dec. 9, 1991, p. 3, hereinafter referred to, with attachments, as County 1991 Submission; Edith Johnsen Deposition Transcript, Aug. 12, 1992, p. 27. A similar attempt to "gut" Fort Ord in 1981 had been defeated by a group spearheaded by Congressman Leon Panetta. See Michael G. Mooney, "Gut Ord, defense chief says," *SC*, Sept. 23, 1981, p. 1, col. 1-6; "Seaside Divided Over Plans for Ord Cutbacks," *MH*, Sept. 26, 1981, p. 4, col. 5-6; Kevin Howe, "Panetta Plots Strategy To Halt Fort Ord Cuts," *ibid.*, Sept. 29, 1981, p. 1, col. 3-4.

<sup>117</sup>McClair Deposition Transcript, 34-37. That a committee later found much of the Fort's land too polluted for current development only raised the stakes. Governmental bodies would have to correct environmental damage even before they could work towards development. Marty Burleson, "Fort Ord unfit for development," *SC*, Jan. 24, 1992, p. 1B, col. 2-6.

Asian/Pacific Islanders,<sup>118</sup> afford to be the unwanted and powerless stepchildren of the county.<sup>119</sup> Submerged in overwhelmingly white districts or thrown in with inland Latinos who had different concerns, Marina and Seaside would be largely powerless and unable to control their own destinies. As in 1981, they would join the Latinos in fighting Anglo incumbents over the Board's reapportionment. But this time, the stakes were higher.

71. Between 1980 and 1990, Monterey county's total population grew from 290,444 to 355,660, an increase of 22.5%. That growth, however, was extremely uneven. While the Salinas Valley Third District grew by 36% and the Salinas City-based Second, by 34.9%, the North County First, still predominantly agricultural, but adding people who were willing to substitute long commutes for the high housing prices of the Silicon Valley, expanded by only 24%. More strikingly, the Peninsula-centered Fourth increased by only 12.2%, and the south coastal Fifth, by only 4.7%. To comply with *Reynolds v. Sims*, any reapportionment plan necessarily had to shift district lines considerably.

72. Perhaps even more consequentially, while the African-American and

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<sup>118</sup>Report of Peter A. Morrison to John McDermott, June 7, 1992.

<sup>119</sup>As one unnamed citizen later told the *Salinas Californian*, "With the closure of Fort Ord on the horizon, it would be a crime not to put Seaside, Marina, and Fort Ord in the same district." "More views on redistricting," *SC*, March 28, 1992, p. 9A, col. 3-4.

Asian/Pacific Islander populations grew at about the same rate as the county as a whole, maintaining their proportions of 6% and 7%, respectively, the Latino percentage jumped from 26% to 34%, even assuming that there was no census undercount. That a county that was 47% minority had elected no minority supervisors in nearly a century seemed suspicious, especially because the minority groups were geographically rather concentrated. While the Latino percentage in the First District had grown from 24% in 1980 to 38% in 1990, and that in the Second and Third from 46% to 58% and 42% to 43%, respectively, the Fourth and Fifth Districts still contained few people of Hispanic origin. The Fourth was 11% Latino in 1980 and 13% in 1990, while the Fifth was 5% in the earlier year and 6% in the latter. Blacks and Asian/Pacific Islanders were largely centered in the Third and Fourth Districts -- in Marina and Seaside -- as they had been in 1980. By 1991, it was difficult to draw equally populated districts that failed to allow minority voters a chance to elect candidates of their choice or at least to have a strong influence on that choice.

73. Newspapers focused public opinion on the irrationality, as well as the potential illegality of current district lines. "It is obvious," the *Salinas Californian* remarked, "that the present third district, the so-called south county seat, is impossible. . . . It's a district that makes no sense in terms of common interests: The focus of Marina's worries often differs from those of people living between Greenfield and King City."<sup>120</sup>

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<sup>120</sup>"Plan to add another supervisor deserves a close look," *SC*, *Feb. 19, 1991*.

The *Monterey Herald* echoed the inland paper: "The fact is that the present boundaries -- most notably in the Third District - are illogical. The Third District stretches from Marina down into South County, areas whose interests diverge. . . . Already there is talk that Marina will be taken out of the district and it will be redrawn to become heavily Latino."<sup>121</sup> Since joining Marina to the Big Sur/Carmel Fifth District was no more rational than attaching it to King City,<sup>122</sup> and since the First and Second Districts needed to *lose*, not *gain* population, the most obvious move was to attach Marina to Seaside in the urban Fourth District. More than eight months before the Board adopted a plan, the placement of Marina was recognized as one of the chief issues in the reapportionment.

### C. THE PLAYERS AND THEIR GOALS

75. Two of the five supervisors who were active in the 1991-92 reapportionment had sat on the Board in 1981. Barbara Shipnuck had, in the words of the *Monterey Herald*, "pulled a major upset" in 1978 to become the first woman ever to take a place on the

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<sup>121</sup>"Drawing the lines," *MH*, Feb. 20, 1991.

<sup>122</sup>After the 1991 plan had been adopted, an unnamed citizen of Marina told the *Salinas Californian* that "The districting is wrong because Marina has been unrepresented for the last ten years wearing a cowboy hat with the people of South Monterey County. Now the people of Marina are expected to wear knickers and be associated with the people of Big Sur, Carmel and Pebble Beach." "More views on redistricting," *SC*, March 28, 1992, p. 9A, col. 3-4.

Board.<sup>123</sup> An energetic former schoolteacher and a liberal Democrat, Shipnuck so easily won reelection in 1982 in her Salinas City district that she drew no opposition in either 1986 or 1990. Naturally for an Anglo in a 58% Latino district, Shipnuck cultivated Latino leaders, and she cooperated closely with the Raza group during 1991-92. Both she and Raza no doubt wished to avoid an outcome in which Latinos were packed into a district in which she was the incumbent.<sup>124</sup> Campaigning against a prominent Hispanic would be painful for Shipnuck, and she was such a formidable candidate that the outcome would be very doubtful, no matter how high the Latino proportion.<sup>125</sup> Even if she were beaten, Raza would only have substituted a sympathetic brown face for an arguably equally sympathetic white one, and by acceding to such a district, Raza would have reduced its chances of replacing a supervisor who was less popular with Latino voters.<sup>126</sup> Although neither Raza nor

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<sup>123</sup>Ken Schultz, "County to Get First Woman Supervisor," *MH*, Nov. 8, 1978.

<sup>124</sup>In an early one-on-one meeting with Lapkoff, Shipnuck "expressed the preference that if there was a Latino-Salinas District, that her neighborhood did not belong in that district because it was a white neighborhood." Lapkoff Deposition Transcript, p. 32.

When the County's demographers revised the "C-6C" plan to designate Shipnuck as the incumbent in the most heavily Latino district, Raza opposed the plan for the stated reason that they wished to be able to contest the 1992 election, instead of having to wait for 1994. Roy Camp, "Raza backs redistricting plan," *SC*, Oct. 22, 1991. That may have been one reason. But they also had little to gain and much to lose by contesting the seat with Shipnuck.

<sup>125</sup>After the Board adopted the "November plan," which put Shipnuck in the most heavily Latino district, the *Monterey Herald* commented that "in the new Second District, where Latinos make up 66% of the population, the incumbent - Mrs. Shipnuck - is especially strong . . ." "A mess of maps," *MH*, Oct. 27, 1991.

<sup>126</sup>Tom Perkins Deposition Transcript, June 11, 1992, pp. 38-39.

Shipnuck was gauche enough to make any public announcement of their parallel course of action, it is significant that in both the "compromise" Raza plan of October, 1991 and during the discussion of what became the April 7 plan, only the First District was designated the district with the highest proportion of Latinos.<sup>127</sup>

76. Shipnuck was the only Supervisor to note to demographer and County reapportionment consultant Shelley Lapkoff during one of Lapkoff's individual meetings that "it was possible to have a highly concentrated, or a concentrated Black district by putting Seaside, Marina and Fort Ord together, and she was in favor of that, of a concentration of Blacks."<sup>128</sup>

77. First elected in 1980 at the age of 27, nine months after taking the Bar Exam, Marc Del Piero was a Republican from a family that had moved to Pajaro in 1917 and had thrived in farming and development. Although a fervent promoter of the suburban and especially the agricultural interests of his constituents, he had always faced opposition in the 62% Democratic First District.<sup>129</sup> In 1980, he had received 55.5% of

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<sup>127</sup>During her deposition, Shipnuck heatedly denied that there was any such "agreement" between her and Raza. Barbara Shipnuck Deposition Transcript, June 15, 1992, pp. 55-62. Their parallel interests were sufficiently clear that no agreement was necessary. And if she were forced into a new, overwhelmingly Anglo and much more rural and suburban district than she had previously represented, such a formal, public bargain would no doubt be a campaign liability.

<sup>128</sup>Lapkoff Deposition Transcript, pp. 35-36.

<sup>129</sup>"N. County candidates go after non-survivors['] votes," SC, June 5, 1980, p. 13, col. 1-6; Del Piero Deposition Transcript, pp. 6-8, 14-16.

the votes in the runoff, and in 1984 and 1988, 53.7% and 63.4%, respectively, in a pair of two-man primaries. By 1990, hopeful Republican opponents were beginning to stir, a shift of lines in Salinas could boost Del Piero's already rapidly rising Latino percentage to over 60%, and *Raza* would be delighted to retire an ideological opponent, shifting the Board to a 3-2 liberal majority. During the redistricting, Del Piero had to wage an ideological war against being placed in a "Hispanic district," on the one hand, and a personal battle to cut potential opposing candidates out of his new district, on the other. Even in early discussions, Del Piero reportedly said that he would be satisfied to be thrown into the same district as Shipnuck, but not both Shipnuck and Salinas City Councilwoman Phyllis Price Meurer.<sup>130</sup>

78. Sam Karas of the Fourth District was the other liberal Democrat on the Board. A wholesale meat dealer in Monterey for 38 years before becoming supervisor, Karas also owned the Wharf Theater and did a bit of acting himself. When Michal Moore decided not to run for reelection in 1984, longtime activist Karas, whose only previous elective office had been a term on the Board of the Monterey Peninsula Unified School District, launched a longshot campaign against Charles Benson, who had been a member of the Del Rey Oaks City Council for 31 years. Benson, the *Salinas Californian* pointed out in an editorial endorsing him, "currently is the chairman of five different boards in the county involved in issues ranging from mosquito abatement

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<sup>130</sup>Jesse Sanchez Deposition Transcript, June 11, 1992, p. 56. Del Piero told Lapkoff directly and through Karas that he did not want Marina in his district. Lapkoff Deposition Transcript, pp. 27-28, 42-43.

to water pollution control to sanitation. If he can use his proven leadership ability to help build a solid coalition on the board, he will be a major addition."<sup>131</sup> After barely avoiding elimination in the 1984 primary, Karas came from behind to take the runoff with only 51.7% of the vote. The chief issue was development -- in particular, the Pebble Beach Company's hotel/residential complex at Spanish Bay, which the Supervisors unanimously approved a week before the 1984 election, and which Karas opposed and Benson backed. "I think it was the no-growth faction" that accounted for Karas's victory, Benson remarked. Karas declared himself "shocked" by his win.<sup>132</sup> Although he was unopposed for reelection in 1988, Karas did not have a perfectly secure seat. Very early in the reapportionment process, in February, 1991, Karas predicted that the Third District would move north to pick up at least part of Alisal, while his own Fourth would inherit Marina. Eventually, if not at once, Karas surmised, Latinos would be able to elect someone in the Third District.<sup>133</sup> Although he appeared not to have very strong preferences on exactly where the new boundary lines were drawn,<sup>134</sup> he very much wanted to be reelected. "I wish to inform everyone," he stressed in his announcement for reelection in 1992, "that I love every second of being

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<sup>131</sup>"Support Kauffman, Benson," *SC*, Nov. 1, 1984, p. 11, col. 1.

<sup>132</sup>Jeannie Echenique, "Kauffman, Karas win board seats," *SC*, Nov. 7, 1984, p. 1, col. 2; Karas Deposition Transcript, p. 11.

<sup>133</sup>"Karas seeks re-election as supervisor," *MH*, March 25, 1992, p. 3C, col. 4-6; Calvin Demmon, "County to redraw districts," *ibid.*, Feb. 15, 1991, p.1; "Drawing the lines," *ibid.*, Feb. 20, 1991.

<sup>134</sup>Shelley Lapkoff Deposition Transcript, July 17, 1992, pp. 19-21, 25.

a county supervisor."<sup>135</sup>

79. The Board's newest member, former King City Councilman Tom Perkins, had run second in the 1990 primary to three-term incumbent Dusan Petrovic, and had been appointed to the office by Gov. George Deukmejian when Petrovic resigned in a personal scandal.<sup>136</sup> Like Petrovic and Del Piero, Perkins was a Republican in a district of Reagan Democrats.<sup>137</sup> Since his "primary concern" in reapportionment was "the agricultural interests in south County," he was as unlikely as Petrovic had been to want to add Alisal to the Third District.<sup>138</sup> In February, 1991, Perkins agreed with Karas that the Third would give up Marina to the Fourth and take in some of Alisal. Perkins noted, however, that "Alisal isn't all Hispanic," and thought that he might

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<sup>135</sup>"Karas seeks re-election as supervisor," *MH*, March 25, 1992, p. 3C, col. 4-6. In contrast, Jesse Sanchez says that Karas told him that he "was getting old" and did not particularly care about "preserving his incumbency." Sanchez Deposition Transcript, pp. 48-52.

<sup>136</sup>Tom Perkins Deposition Transcript, June 11, 1992, pp. 6-7; David Fisher, "Lawyer says county not liable for Petrovic crimes," *SC*, Sept 14, 1991, p. 1C, col. 2-6; Roya Camp, "Board whittles 1st District staff," *ibid.*, March 27, 1992, p. 1C.

<sup>137</sup>Tom Perkins Deposition Transcript, June 11, 1992, p. 33. In 1984, 61% of the major party registrants in the Third District called themselves Democrats, but only 36.5% of the District's voters backed Walter Mondale for President, a difference of 24.5%. In the First District, the registration - Mondale difference was 26.8%; in the Second, 22.1%; in the Fourth, 11.7%; and in the Fifth, only 6.7%.

<sup>138</sup>"News article was a disservice," *KCR*, July 3, 1991; Suzy Taylor, "Petrovic balks at the concept of a 'Hispanic' district," *ibid.*, April 5, 1989, p.1. Perkins later denied that he treated small groups in his district with any less attention than he did large groups, a statement undercut by his obviously increased devotion to low-cost housing once the Latino percentage of his district was raised by 10% in April, 1992. See Tom Perkins Deposition Transcript, pp. 93-94, 96-99.

survive.<sup>139</sup>

80. The pivotal member of the Board on many issues, a moderate Democrat in the county's only district in which Republicans composed a majority of the two-party registrants, was a German immigrant and former political science instructor, Karin Strasser Kauffman. Elected to an open seat in 1984 with 57.9% of the vote in the runoff, the Board's second woman encountered no opposition in 1988. An advocate of slow growth, Strasser Kauffman characterized her district as "essentially people who value open space, visual beauty and low density...Carmel and Carmel Valley will remain the heart of the Fifth District; I see no problem there."<sup>140</sup> Although she wished to add more of Fort Ord to her district, presumably for its dead souls,<sup>141</sup> she seemed an uneasy fit for Marina, a city eager for development, worried about saltwater intrusion, anxious to tap a southern aquifer in order to develop the Armstrong Ranch area, and potentially in conflict with the unincorporated Toro area of her district under the 1981 lines.<sup>142</sup> Her political sympathies were with charming Carmel, rather than gritty Alisal. When in 1989 Latino activists and Salinas City Councilpersons requested a small

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<sup>139</sup>Calvin Demmon, "County to redraw districts," *MH*, Feb. 15, 1991, p.1.

<sup>140</sup>"Supervisors will consider drawing new district boundaries," *Carmel Pine Cone*, Sept. 26, 1991; Karin Strasser Kauffman Deposition Transcript, June 15, 1992, pp. 6-12; Tom Perkins Deposition Transcript, p. 31; Barbara Shipnuck Deposition Transcript, p. 13.

<sup>141</sup>"Fort Ord had historically been used as a balancer among the five districts," she acknowledged. Strasser Kauffman Deposition Transcript, p. 26.

<sup>142</sup>Perkins Deposition Transcript, pp. 16-17; Strasser Kauffman Deposition Transcript, pp. 22-24.

amount to staff five centers to encourage people to cooperate with the 1990 U.S. Census and to help them in completing it, Strasser Kauffman joined Del Piero in opposition to the motion. She had "some real aversions," she said, "to some of the head-counting efforts that were being suggested, especially in efforts to increase the count of the homeless."<sup>143</sup> Although she insisted that she had supported Pearl Carey for supervisor in 1976, a close check of Carey's extensive endorsement advertisements in the *Monterey Herald* and *Salinas Californian* shows that none include Strasser Kauffman's name.<sup>144</sup>

81. Important participants who lacked decisionmaking authority were officials of the cities of Seaside and Marina, who became particularly concerned with future governmental arrangements after the Pentagon announced the departure of the Seventh Army from Fort Ord; the South County Anglos who, at least formally, proposed the plan that formed the basis for that adopted in October, 1991; the North County Anglos who became active in 1992, when they realized that the District that they lived in was likely to be split up; an Oakland consulting firm, Lapkoff Demographic Research (LDR), which consulted with the Supervisors privately, drew plans, provided technical

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<sup>143</sup>Ken Schultz, "Latino census funds: Salinas si, county no," *MH*, March 7, 1990. Karas and Shipnuck voted aye; Petrovic was absent. In a later effort, after Perkins replaced Petrovic on the Board, Perkins joined Del Piero and Strasser Kauffman in opposition to a census outreach effort supported by Raza and the NAACP. See Perkins Deposition Transcript, pp. 84-85.

<sup>144</sup>Strasser Kauffman Declaration, June 24, 1992, p. 8; "Pearl Carey, The Common Sense Candidate," *MH*, Oct. 31, 1976, p. 4A, col. 4-8; advertisement, *ibid.*, Nov. 1, 1976, p. 17; advertisement, *SC*, Nov. 1, 1976, p. 22, col. 4-6. The *MH* ads were signed by 86 and 350 people or couples, respectively, the *SC* ad by 360, including Sam Karas.

assistance, ran meetings, and kept detailed records about the reapportionment process,<sup>145</sup> and the County Counsel's office, which provided the supervisors with legal advice that the elected officials followed or ignored, in accordance with their political interests.

82. The Raza Redistricting Committee deserves special mention. With representatives from throughout the county, the committee was by far the best organized extra-governmental group during the reapportionment.<sup>146</sup> Its most visible representative, Alisal lawyer Jesse Sanchez, repeatedly met with supervisors, appeared at public meetings, and talked to reporters. Since the population centers of Latinos were different from those of African-Americans and Asian/Pacific Islanders (the latter groups lived predominantly in the same census tracts), Latinos were not forced to cooperate with other members of minority groups, but their interests were not directly in conflict, either. Fundamentally, as was often noted in 1991, the districts that other members of minority groups were concentrated in "were not priorities for the Raza Redistricting Committee."<sup>147</sup> As early as February, 1991, Sanchez suggested that a

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<sup>145</sup>The Lapkoff firm had become well-known in Monterey County through drawing districts for governing body of the Hartnell Community College. "What Shape for Things to Come?" *North Monterey County Fortnighter*, Aug. 9, 1991, p.3. LDR was chosen over two other firms, Peter Morrison of Rand, and Joaquin Avila, on May 14, 1991, on the basis of cost, expertise, and their previous experience in the county. Aleta Cozart to Board of Supervisors, May 10, 1991, and Board of Supervisors Minutes, May 14, 1991, both in Exhibit 60, 1991 County Submission; Del Piero Deposition Transcript, p. 86.

<sup>146</sup>Calvin Demmon, "Latinos to show plan to remap county districts," *MH*, Aug. 13, 1991, p. 1C.

<sup>147</sup>Lapkoff to Supervisors, Aug. 23, 1991, in 1991 County Submission, Exhibit 39; Report of Sanchez statement in Lapkoff to Supervisors, Aug. 13, 1991, in 1991 County Submission, Exhibit 60; Roya Camp, "Voting plan by Hispanics runs into controversy," *SC*, Sept. 4, 1991. Jesse Sanchez Deposition Transcript, June 11, 1992, p. 33..

Raza plan might put Marina and Seaside in the same district.<sup>148</sup>

#### D. ANTAGONISM, DEADLOCK, AND NON-ISSUES

83. The unusual fractiousness of the Board probably hampered compromise and prolonged controversy. Both personal and ideological matters bitterly divided the supervisors. "Mrs. Shipnuck and I seldom talked during [the] eleven years" that he was on the Board, Marc Del Piero remarked. "She dislikes me intensely." "And you dislike her?" the attorney asked. "Not as much as she dislikes me." In 1981, Del Piero believes, Shipnuck wanted to move North Salinas from his First into her Second District purely to damage him.<sup>149</sup> In 1991, according to Del Piero, Shipnuck threatened Perkins that she would run all-out against Perkins if he did not vote for the Raza Plan.<sup>150</sup> Shipnuck and Strasser Kauffman were recognized to be harshly

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<sup>148</sup>Calvin Demmon, "Latino groups want to take part when supervisors redraw districts," *MH*, Feb. 20, 1991, p. 1A. At this point, Raza had not been formally organized yet, and its leading public voice, Sanchez, had not decided whether to target one, two, or many districts. Board of Supervisors Minutes, Feb. 19, 1991.

<sup>149</sup>Del Piero began to clash with her when he was a Planning Commissioner, even before his election to the Board in 1980. Del Piero Deposition Transcript, pp. 30-32, 44-46.

<sup>150</sup>Del Piero Deposition Transcript, pp. 95-96. Perkins told Lapkoff that he did not want to end up in the same district as Shipnuck. Lapkoff Deposition Transcript, p. 61.

antagonistic to each other,<sup>151</sup> and everyone seems to be afraid of Strasser Kauffman.<sup>152</sup>

During the 1981 negotiations, Del Piero was chosen to place a phone call to the hospitalized Petrovic because he "was the only person Petrovic would talk to."

Petrovic and Moore "only voted together about one percent of the time and that was by accident." Moore and Peters were office neighbors and fairly close for awhile after Peters's 1980 election, but they soon fell out about business matters and began rather publicly investigating each other's affairs for evidence of corruption.<sup>153</sup> In 1981, Del Piero, Peters, and Petrovic formed a temporary coalition to expel Moore and Shipnuck from coveted positions on the Local Area Formation Committee (LAFCO) Board. The next year, Petrovic allied with Moore and Shipnuck to throw Peters off the LAFCO. In 1983, Peters retaliated against Petrovic by defenestrating him.<sup>154</sup>

84. In part, the disintegration of the Board into pettiness was a product of districts drawn to protect incumbents by diluting the political power of ethnic minorities.

Representing the district with the highest proportion of Latino voters, Shipnuck

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<sup>151</sup>Judy L.E. Pennycook Deposition Transcript, June 11, 1992, pp. 31-32.

<sup>152</sup>During the negotiations over what became the "April 7 plan," Sanchez found dealing with Strasser Kauffman "unpleasant," and their one phone conversation "quickly degenerated into a shouting match." Sanchez Deposition Transcript, pp. 48-52.

<sup>153</sup>Moore Deposition Transcript, pp. 37, 53, 86-88; Underwood Deposition Transcript, p. 53.

<sup>154</sup>Ken Schultz, "Veteran Supervisors 'Coup' Victims," *MH*, Sept. 30, 1981, p. 3, col. 1-3; "Peters Ousted From Two Key Assignments," *MH*, Sept. 24, 1982; "Peters Replaces Petrovic on LAFCO With Moore," *ibid.*, Jan. 19, 1983.

naturally had a much different agenda for the Board than supervisors from more rural or suburban districts that were dominated by Anglos.<sup>155</sup> As Del Piero noted, one of the reasons for their mutual antagonism was that "I think she felt that I was an impediment to her being able to pursue a more aggressive government policy in the County."<sup>156</sup> According to Jesse Sanchez, when the city of Salinas replaced its at-large method of naming its City Council with one based on districts and began electing councilpersons that were more representative of the views of the Latino community, the Council's agenda shifted noticeably.<sup>157</sup>

85. In turn, the antagonisms and ever-shifting alignments on the Board prevented the formation of the sorts of stable coalitions that the underprivileged need to promote positive governmental programs.<sup>158</sup> As the *Monterey Herald* noted in 1983, "frayed relations between board members . . . have led to internal bickering and political in-fighting that diluted the effectiveness of supervisors in tackling major issues, such

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<sup>155</sup>In 1992, County agencies and four cities in Monterey county paid for a systematic telephone survey that asked questions about the respondents' satisfaction with the quality of their lives, their health, and their priorities for social service agencies. The survey found wide differences in the responses of blacks, Latinos, and Anglos. Marty Burleson, "County survey shows needs vary among the races," *SC*, Feb. 25, 1992, p. 1C, col. 5-6.

<sup>156</sup>Del Piero Deposition Transcript, pp. 30-31.

<sup>157</sup>Sanchez Deposition Transcript, p. 40.

<sup>158</sup>3 the classic statement of this thesis, see V.O. Key, Jr., *Southern Politics in State and Nation* (New York: Vintage Books, 1949), chapter 14. For an attempt to test Key's thesis systematically, see my "Progressivism -- For Middle-Class Whites Only: North Carolina Education, 1880-1910," *Journal of Southern History*, 46 (1980), pp. 169-94.

as health care and land use."<sup>159</sup> Instead of devoting at least equal attention to social services as to issues of development, as the Board might well have done had it included any members of minority groups, it focused on the latter.<sup>160</sup> Both directly and indirectly, then, redistricting tilted the Board and shaped its agenda in ways that robbed members of minority groups of the equal ability to influence governmental policies.

#### E. WHAT HAPPENED AND WHY

86. According to the County's 1991 Section 5 Submission, the Board adopted a series of specific guidelines for the reapportionment process, but individual supervisors deny that they voted for them or followed them.<sup>161</sup> In any case, most of the rules were either technical (reduce population deviations to no more than 10%), vague (districts should be geographically compact), or ignored (avoid splitting cities, do not fragment minorities). They were for public or Washington consumption, and were largely irrelevant to the process. The only significant resolutions enjoined those who drew

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<sup>159</sup>Ken Schultz, "Peters Works Hard to Erase Shadow on His Political Career," *MH*, Feb. 13, 1983.

<sup>160</sup>Del Piero Deposition Transcript, p. 61. The numerous news stories concerning Peters and Moore, cited elsewhere in this paper, as well as the discussions of the 1984 campaigns of Strasser Kauffman and Karas in the text reinforce the impression of the Board's concentration on development issues.

<sup>161</sup>1991 County Submission, pp. 29-30; Tom Perkins Deposition Transcript, pp.70-75; Strasser Kauffman Deposition Transcript, p. 30.

district lines not to put two Supervisors in the same district and to keep each Supervisor's home in his or her district -- in other words, to protect incumbents.

87. The legal advice that the Board received was of much greater moment, at least potentially. On Sept. 10, 1991, Dr. Jeanne Gobalet of LDR passed on to the supervisors a copy of a public memo on statewide reapportionment that State Attorney General Dan Lungren and Deputy Attorney General Rodney O. Lilyquist had written in response to a request from Gov. Pete Wilson.<sup>162</sup> It was not a complicated legal document, but a series of specific guidelines with obvious implications for local reapportionment efforts:

"1. Under section 2 of the Voting Rights Act, the creation of 'majority-minority' districts in a redistricting plan, for the purpose of preventing minority vote dilution, takes precedence over all other criteria used to draw district boundaries except for the 'one person, one vote' requirement.

"2. If a district can be created with a racial minority population high enough to guarantee the election of a candidate of the racial minority community's choosing, section 2 of the Voting Rights Amendment generally requires the creation of such a district in a redistricting plan.

"3. Depending upon the totality of the circumstances, section 2 of the Voting Rights Act and the California Constitution generally require that geographically compact

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<sup>162</sup>The memo is part of Exhibit 41 to the 1991 County Submission.

racial minority communities of interest not be divided in a redistricting plan."<sup>163</sup>

88. In the context of the geographic patterns of minority settlement in Monterey County, rule number two mandated the creation of at least one, and probably two districts in which Latinos composed well beyond a majority of the population. Rule number three meant that geographically compact, politically cohesive minority could not be fragmented even if it was insufficiently large "to constitute a majority in any configured district..." Expanding on the influence district concept, Lungren and Lilyquist discussed the intent standard in *Garza* and the effect standard featured in the revised Section 2 of the 1982 Voting Rights Act.<sup>164</sup> This memo, to which Supervisor Marc Del Piero explicitly referred in his speech at the meeting at which the Board adopted its "November plan," put the Board on notice that there was high legal authority for the view that minority communities could not be fragmented, whether or not they could form a majority in a district, that the influence of even comparatively small groups could not be willfully diluted, and LDR followed it up with an oral presentation to the Board that noted that "The Voting Rights Act and related court decisions require that minority groups be neither overly concentrated nor fragmented."<sup>165</sup> Furthermore, in an appearance before the Board early in the process,

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<sup>163</sup>*Ibid.*, p.2.

<sup>164</sup>*Ibid.*, pp. 9-11.

<sup>165</sup>Exhibit B to Leroy W. Blankenship Declaration, June 24, 1992.

Jesse Sanchez reminded the Supervisors, reading from the *Garza* opinion, that, legally, incumbent protection was no excuse for the intentional fragmentation of minorities.<sup>166</sup>

Board members had reason to know long before they adopted a plan that if they cracked Marina and Seaside, they were, at the very least, in danger of violating the Voting Rights Act.<sup>167</sup>

89. Although the advice of the County Counsel, Douglas Holland, partially overlapped and partially contradicted the published opinion of the State Attorney General, no one seems to have asked Holland to explain the divergence in public. Requested at a Sept. 30 Board meeting to study Lungren's opinion and report back to them about it,<sup>168</sup> Holland told the Board on Oct. 15, 1991 that "in order to comply with the Voting Rights Act and to survive pre-clearance, Monterey County must create at least one district that has an effective majority of a protected minority." On October 22, Holland announced his judgment that the County was not obligated to create a second strong Latino district, but recommended that since Monterey was subject to Section 5 preclearance, white voters be reduced to a minority in the Third District.<sup>169</sup>

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<sup>166</sup>Sanchez Deposition Transcript, pp. 13, 45.

<sup>167</sup>Tom Perkins, who could barely recall talking to any of the other supervisors privately about redistricting and who denied having any inkling of his peers' objectives in reapportionment or ever discussing with his erstwhile ally Strasser Kauffman why she switched sides in the Spring, could not recall seeing the Attorney General's memo. Official memory loss during litigation is one of the great constants of voting rights cases. See Perkins Deposition Transcript, pp. 27-30, 46-47, 62-63, 83.

<sup>168</sup>Calvin Demmon, "County redistricting hearing draws SRO crowd," *MH*, Oct. 1, 1991.

<sup>169</sup>Exhibit 39, 1991 County Submission.

The implication that this was a merely cosmetic change could hardly have been clearer.

90. Because of the hefty proportion of non-citizens in the Latino population,<sup>170</sup> everyone recognized that a bare population majority of Latinos would give them influence, not control.<sup>171</sup> **Holland's advice on Latinos therefore paralleled the advice on blacks and Asian/Pacific Islanders that he was reported in the *Monterey Herald* as having given the supervisors on April 7, 1992. As the news article paraphrased Holland, "Because there are not enough black residents in Seaside and Marina to constitute a voting majority in a supervisor's district, the county has no obligation to put the cities in one district."**<sup>172</sup> Although Holland now does not recall having made such a statement, he does admit that he didn't consider "whether splitting the black and Asian communities could constitute intentional

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<sup>170</sup>Basing his opinion on data from legalization requests to the Immigration and Naturalization Service in Monterey County, demographer Peter A. Morrison suggests that the proportion of current noncitizens among voting-age Latinos is approximately 20-25%. Morrison to David Coplen, June 9, 1992.

<sup>171</sup>LDR told the Board in a public meeting that the citizenship rate for Latinos in Monterey county in 1980 had been about 60%, and suggested that the 70% of the population of a district might have to be Latino to provide a high probability that Latinos would control it. LDR also distributed to the Board data on population and registered voters among Latinos in the neighboring town of Watsonville. 61% of the population, but only 26% of the registered voters there were Latino. Notes for Presentation, LDR to Supervisors, June 11, 1991, and Jeanne G. Gobalet to Marc Del Piero, June 20, 1991, both in 1991 Submission, Exhibit 60.

<sup>172</sup>Calvin Demmon, "Redistricting Approved," *MH*, April 8, 1992, p. 1A. An almost exactly similar paraphrase appears in the Board's official minutes of the April 7 meeting, in 1991 County Submission, Exhibit 69.

discrimination under Section 2 of the Voting Rights Act," and that in his memos to the Board on redistricting, he did not mention either the Fourteenth Amendment or *Garza*.<sup>173</sup> Board members Karas, Perkins, and Shipnuck recall Holland's advice as being that it was not illegal to fragment a minority community that could not constitute a majority of the people in a supervisor's district.<sup>174</sup> In accordance with Holland's explanations, the Board adopted Resolution 91-552, which stated that "No other minority [except Latinos], on the basis of race, ethnicity, or language is sufficiently large or geographically compact to constitute a significant majority in a single supervisorial district," and in the part of its Section 5 submission that discusses fragmentation, the County totally ignored African-Americans and Asian/Pacific Islanders.<sup>175</sup> Given a choice of legal advice, Board members followed that which allowed them to fragment minority communities if they wished to do so.<sup>176</sup>

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<sup>173</sup>Holland Deposition Transcript, June 12, 1992, pp. 12-16, quote from Mr. McDermott's question on p. 16. Coincidentally, Deputy County Counsel Leroy W. Blankenship exhibited the same strange memory loss when asked the same question. Attempts to probe further were forestalled by instructions not to answer. Blankenship Deposition Transcript, June 12, 1992, pp. 13-15, 32-34. The documentary evidence that Holland and Blankenship did not mention *Garza*, the Fourteenth Amendment, or intentional discrimination remains uncontroverted.

<sup>174</sup>Karas Deposition Transcript, pp. 40-41; Perkins Deposition Transcript, pp. 55, 59; Shipnuck Deposition Transcript, p. 62.

<sup>175</sup>1991 County Submission, pp. 25, 34.

<sup>176</sup>In later legal documents, the County Counsel's office continues to stress its view that minorities that cannot form a majority of a district can be fragmented, and it fails to come to terms with *Garza*. In Seaside and Marina, Leroy Blankenship contends in an April 15, 1992 letter to Gerald W. Jones of the Voting Section of the Justice Department, "none of the racial or ethnic minority groups has sufficient population to form an effective voting majority in a single supervisorial district."

91. Two decisions taken toward the beginning of the process had more symbolic than real importance. Instead of having County staff draw maps in accordance with the supervisors' wishes, the Board spent \$43,000 to hire a small outside consulting firm. LDR, which consisted primarily of two demographers, drew more than 40 different plans and worked diligently to inform the supervisors and the public and to carry out the wishes of the Supervisors, with each of whom they met privately at least three times. In the end, however, the basic concepts behind the three most important maps (G5-P2.5, the "November plan;" C6, the Raza plan; and C-12, the Seaside-Marina plan) came from outside the Board and outside LDR.<sup>177</sup>

92. The other decision was the Board's refusal to form a citizen advisory group or Boundary Commission.<sup>178</sup> This failed 3-2, with the liberals, Shipnuck and Karas, in dissent, setting a pattern that was not broken until the following Spring.<sup>179</sup> In fact, even though Perkins worried that the Boundary Commission would be a creature of "special interest groups,"<sup>180</sup> and Strasser Kauffman unaccountably "feared the

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<sup>177</sup>1991 County Submission, Exhibit 40.

<sup>178</sup>Details of the proposal are in Sam P. Karas to Board, in 1991 County Submission, Exhibit 60.

<sup>179</sup>It is significant that among the public speakers addressing the Board in favor of a Boundary Commission was Jackie Craghead, a plaintiff in this case. Black participation in the process was an issue very early. Board of Supervisors Minutes, June 25, 1991, in 1991 County Submission, Exhibit 60.

<sup>180</sup>Of course, interested groups did press for representation. Thus, Alonzo Gonzalez, President of the Mid-County Council of LULAC, wrote Supervisor Perkins an ingratiating letter asking that he or LULAC's "designated representative" be appointed to the proposed boundary committee. Gonzalez to Perkins, May 16, 1991, in 1991 County Submission, Exhibit 60.

committee would create animosity by excluding groups other than Hispanics,"<sup>181</sup> it would probably have been merely a sham. As Karas remarked, according to the *Coast Weekly*, "the advisory committee was essentially protection against a Voting Rights Act lawsuit."<sup>182</sup> Likewise, in a letter to Del Piero urging him to vote for a Commission, Karas warned that "failure to provide such an advisory committee could lead to possible litigation by community organizations."<sup>183</sup>

93. The public meetings held in each supervisorial district, usually with at least one supervisor present, focused mainly on the Raza plan.<sup>184</sup> Everywhere, Latinos appeared and almost unanimously endorsed C-6 and its refinements. Outside of public meetings, LDR met with Raza -- but not with representatives of the black or Asian

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<sup>181</sup>Perkins Deposition Transcript, p. 86; Marty Burleson, "Rejection of redistricting panel angers Hispanics," *SC*, June 26, 1991. No one proposed to pack the committee with Latinos, and, of course, Strasser Kauffman could appoint anyone that she wished. With a district that was sure to be at least 40% Latino, Perkins had to use code-words. With an overwhelmingly Anglo district, Strasser Kauffman could afford to vent her ethnic opinions straight.

<sup>182</sup>"Politics of Drawing," *Coast Weekly*, June 27, 1991. Roya Camp of the *SC* quoted Karas slightly differently: "I think you run a greater risk of a lawsuit if you don't set up a countywide advisory committee." Camp, "County considers redistrict panel," June 24, 1991, P. 1B. Jesse Sanchez of Raza told a Board meeting that week that "convening a citizens committee would insulate the board from charges that the district lines were being drawn to protect incumbents." Calvin Demmon, "Redistricting plan of Latinos rejected," *MH*, June 26, 1991.

<sup>183</sup>Karas to Del Piero, June 17, 1981, in 1991 County Submission, Exhibit 60.

<sup>184</sup>Memos to the Board by either Shelley Lapkoff or Jeanne Gobalet reporting on these meetings are in the 1991 County Submission, Exhibit 39.

communities.<sup>185</sup>

94. But African-Americans and representatives of the cities of Seaside and Marina were also active public and private participants, and from the beginning of the hearing process, they endorsed plans that kept the two cities together. In a Sept. 14, 1991 hearing in Monterey, Supervisors Karas and Strasser Kauffman heard Dennis Potter, the Seaside Community Development Director, and a Rev. McWaters, whom Lapkoff describes as "unofficially representing the Black community," endorse Plan C-1, which combined Seaside, Marina, all of Fort Ord, and Marina's "sphere of influence" into the Fourth District. Plan C-2a, which some in the audience also said was acceptable, differed from C-1 in that it transferred the unincorporated part of Fort Ord to the Fifth District and moved the Fourth deeper into the city of Monterey.<sup>186</sup> McWaters specifically favored C-1 or C-2a, in Lapkoff's words, "because [they] kept the Black population intact."<sup>187</sup> At a Sept. 26 meeting in Marina, Supervisors Karas and Perkins were present when Marina Mayor Edith Johnsen asked them to keep the Fort Ord and non-Fort Ord sections of Marina together in the same district and indicated that the city government favored several plans, among them C-1. Two speakers at this meeting

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<sup>185</sup>Lapkoff Deposition Transcript, pp. 69-70.

<sup>186</sup>Maps and associated ethnic statistics are in papers generated by LDR and provided by the County. Charts showing descriptive ethnic statistics for C-1 and C-2A are dated July 8 and 9, 1991.

<sup>187</sup>Lapkoff to Supervisors, Sept. 22, 1991, in 1991 County Submission, Exhibit 39.

explicitly favored combining Marina and Seaside into a single district.<sup>188</sup> Drafted by LDR and available in the second week in July, C-1 created a district that was 21% black, 15% Asian/Pacific Islander, and only 50% Anglo; while C-2a was 19% black, 15% Asian/Pacific Islander, and 52% Anglo. Both plans created two districts that were 63-64% Latino in population, as well. Lapkoff also discussed the concentration of blacks and Asians in one district with Strasser Kauffman and perhaps Del Piero.<sup>189</sup> At a public meeting chaired by Shipnuck in Salinas on Oct. 15, as Shipnuck reported to the other Supervisors, Mayor Johnsen "also states that most of the plans in some way neutralize the influence of African-American and Asian/Pacific Islander populations by splitting Marina and Seaside either from each other or from portions of their Fort Ord incorporated area."<sup>190</sup> It was not true, as some later charged, that Marina and Seaside and black leaders had been inactive in the process until late in October, 1991, or that, until the last minute, the Board had no option before it that united the two cities in one district.<sup>191</sup> In fact, more than three months before the supervisors initially voted on a plan, LDR drew up plans that joined the two cities in District Four;

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<sup>188</sup>Lapkoff to Supervisors, Sept. 27, 1991, in 1991 County Submission, Exhibit 39. Johnsen told Karas the same thing privately. Johnsen Deposition Transcript, pp. 40-43.

<sup>189</sup>Lapkoff Deposition Transcript, pp. 99-102.

<sup>190</sup>Shipnuck to Supervisors, Oct. 15, 1991, in Exhibit 45E, 1991 County Submission.

<sup>191</sup>Strasser Kauffman Declaration, pp. 5-7 ignores C-1, C-2a, many statements in public meetings that were presented to her in summary form, and her own private conversations with Lapkoff and others.

and more than a month before the vote, community members and civic leaders of Seaside and Marina informed three supervisors directly and the other supervisors indirectly (through LDR's memos) that they favored C-1 or similar plans. The Supervisors had been presented with an alternative to splitting Seaside and Marina long before they had to make a decision; they knew the ethnic consequences of that choice, because LDR gave them the statistics; and they knew that public voices in the two cities favored that arrangement. With foresight and deliberation, they rejected that choice and ignored those voices.

95. There were more than 40 plans and variations considered -- eight basic ones lettered A to H, and refinements numbered A-1, A-2, C6-C, etc. There were also a variety of special lines for the Monterey Peninsula, which took on the names P-1, P-2, etc. LDR's responsibility in drawing maps was primarily ministerial. Before the demographers consulted individually with the Supervisors, they had not even composed tentative plans in their own minds. But reflecting the importance that the Supervisors attached to reapportionment -- their political careers were at stake -- LDR "got high priority when we saw the Supervisors and they gave us their attention. I think they looked at all of the maps that we drew."<sup>192</sup>

96. The "B" plans, which "were what everyone expected the new boundaries to look

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<sup>192</sup>Lapkoff Deposition Transcript, pp. 17-18, 127.

like" in midsummer, drew one very strong Latino district, and were patterned after the VOTE configuration for the Third District in 1981.<sup>193</sup> All the "C" maps created two heavily Latino districts, one in Salinas and one extending the current Third District north into Alisal. C-6 and its successors, drawn by Joaquin Avila for Raza and refined by LDR,<sup>194</sup> drew two districts in which the proportion of Latinos in the population exceeded 60%. The more heavily Latino district, usually designated District 1, so that its incumbent was Del Piero, instead of Shipnuck, was essentially a Salinas city district.<sup>195</sup> The other, designated District 3, took in the previous Third District, less Marina and part of Fort Ord, and added part of eastern Salinas, curving around north of Salinas to take in Castroville and other Latino communities in the North County area. The "G" maps, drawn at the request of Del Piero and Perkins,<sup>196</sup> stuck the homes of several potential Supervisorial candidates in Shipnuck's, rather than Del Piero's or Perkins's districts,<sup>197</sup> packed the major Latino areas into Shipnuck's district, and

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<sup>193</sup>Lapkoff Deposition Transcript, pp. 95-97.

<sup>194</sup>Calvin Demmon, "Latino leaders work to repair redistricting map," *MH*, Sept. 4, 1991; Roy Camp, "Voting plan by Hispanics runs into controversy," *SC*, Sept. 4, 1991.

<sup>195</sup>Calvin Demmon, "Latinos offer redistricting plan for Board of Supervisors," *MH*, Aug. 14, 1991.

<sup>196</sup>Calvin Demmon, "County reapportionment plan hits snag," *MH*, Oct. 16, 1991.

<sup>197</sup>When Lapkoff let Del Piero know that Shipnuck was charging that he had deliberately drawn the lines in the G plans so as to cut out potential opponents, Del Piero "scream[ed]" at Lapkoff over the phone. But he refused to consider other lines in Salinas that would have put those people into his district. Lapkoff Deposition Transcript, pp. 82-84.

stacked the rest of the Latinos so that they did not represent current threats to other sitting supervisors. G5, the core map for the "November Plan," large parts of which were based on the earlier G series, was submitted just five days before the Board adopted a plan by a former mayor of King City and two other Anglo activists.<sup>198</sup> C-12 was crafted largely by the Seaside Planning Department, with some assistance from people in the Marina city government. None of the refined maps was created until the public comment sessions were finished, and the most important of them were all produced at very close to the last moment. As Shipnuck noted, "The redistricting process began in May, and only six new maps appeared between May and October, including the one submitted by the Raza group. But lo and behold, as we reach into October we have seven maps magically appear in the last two weeks."<sup>199</sup> It is misleading to suggest that because C-12 was produced late in the game, it could not be considered fully. *Every* major plan was produced or changed late in the game.

97. As the November 1 deadline for Board adoption of a plan approached, Raza made a bid for a third vote.<sup>200</sup> Karas and Shipnuck were publicly committed to backing a Raza plan. Since Del Piero's district was to be swallowed up in any Raza scheme, he

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<sup>198</sup>Calvin Demmon, "Remapping back on board agenda," *MH*, Nov. 3, 1991.

<sup>199</sup>Calvin Demmon, "County reapportionment plan hits snag," *MH*, Oct. 16, 1991.

<sup>200</sup>If the Board took no action by Nov. 1, the task would fall to a three person commission composed of the County District Attorney, the County Assessor, and the County Clerk. County Counsel to Supervisors, Feb. 19, 1991, in Exhibit 60, 1991 County Submission.

was unalterably opposed. Relations between Strasser Kauffman and Raza were frosty. But Perkins was new to the Board, and Raza hoped that by cutting Castroville out of their proposed Third District and diminishing its Latino population percentage from 63% to 58%, they could coax Perkins into an endorsement. It was a foolish hope. Although there were reports that Perkins might support the compromise, it represented at best a slow death for his political career and for the power of the South County Anglo constituency to which he felt obligated, and he never made any commitment to support it.<sup>201</sup> The day after the Raza compromise plan was made public, the Board voted, 3-2, to tentatively adopt plan G5-P2. As they had since the beginning of the redistricting process, Del Piero, Perkins, and Strasser Kauffman lined up against Karas and Shipnuck. G5-P2 placed Shipnuck, not Del Piero, in the heavily Latino district and, in an echo of Peters's 1981 trick, cut the affluent Anglo subdivision of Oak Hill in half to remove the home of Del Piero's only announced opponent from his district.<sup>202</sup> It raised the Latino population percentage in District 3 to a purely symbolic 51%,

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<sup>201</sup>Calvin Demmon, "Latino leaders offer supervisors redistricting compromise plan," *MH*, Oct. 22, 1991, p. 5A; Demmon, "Latinos file suit to overturn reapportionment plan," *ibid.*, Nov. 1, 1991; Roy Camp, "Raza backs redistricting plan," *SC*, Oct. 22, 1991, p. 1B.

<sup>202</sup>After protest letters from two homeowners' associations that stated, in the words of reporter Marty Burlison of the *SC*, that "residents want to remain in a north county district, not a Salinas-dominated, Hispanic-majority district," the Board shamefacedly put all of the unincorporated community into the same district. To do so, the Board had to violate its Nov. 1 deadline for having a final plan, something it refused to do for Raza or for Seaside and Marina, despite a passionate appeal from Jackie Craghead. Roy Camp, "Supervisors won't restart redistricting," *SC*, Nov. 6, 1991, p. 1C, col. 5-6. In striking contrast to the way in which the Board treated the coastal cities and their racially mixed citizenry, the *Californian's* headline captured the way in which the Board responded to Oak Hills: "Oak Hills to get board's attention," *SC*, Nov. 4, 1991, p. 1B, col. 2-5.

which probably reflected a voter registration proportion of no more than 30%<sup>203</sup> and left Perkins quite safe from a Latino electoral challenge. It placed two aspiring Salinas city councilwomen in Shipnuck's district, not Del Piero's or Perkins's. It switched part of Fort Ord from the Third to the Fifth District and left Strasser Kauffman with only the Navy Postgraduate School section of Monterey, which, she noted, was a transient, nonvoting population.<sup>204</sup> And it continued the split of Marina from Seaside, this time tacking Marina not onto the Third, but onto the Fifth District.<sup>205</sup> The Fourth District was 9% black and 10% Asian/Pacific Islander; the Fifth had 10% of each.<sup>206</sup> Both minorities were quite neatly split in half.

98. Not only did G-5 sever Marina from Seaside. It placed part of Marina's sphere of influence and the Fort Ord portion of Marina in District 1, the rest of Marina and the Fort Ord portion of Seaside, as well as the unincorporated part of Fort Ord in District 5, and the rest of Seaside in District 4. The cities and their ethnic populations were trifurcated. As the later protests in North County emphasized, it was widely

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<sup>203</sup>Calvin Demmon, "Favored G-4 redistricting plan revealed," *MH*, Oct. 15, 1991.

<sup>204</sup>1991 County Submission, Exhibit 44; Lapko ff Deposition Transcript, pp. 62-63.

<sup>205</sup>Roya Camp, "Law suit looms over voting plan," *SC*, Oct. 23, 1991; "Redistricting must strive for fairness," *ibid.*, Oct. 24, 1991; Calvin Demmon, "Supervisors OK district maps by 3-2 vote," *MH*, Oct. 23, 1991; "Description of districts as approved by Supervisors," *ibid.*, Oct 23, 1991; Demmon, "Remapping error forces hearing," *ibid.*, Nov. 1, 1991; "Third district lines up to Justice Department," *KCR*, Oct. 23, 1991.

<sup>206</sup>1991 County Submission, Exhibit 54.

understood in Monterey County that splitting up an area diminished its political power. A letter from a citizen of Pebble Beach to Karas, which appears in the County's 1991 submission to the Department of Justice, underlines the point. Referring to the 1981 redistricting, Robert B. Whitegiver wrote: "In what may be one of the most flagrant cases of gerrymandering on record, we have been divided between two supervisorial districts so that each section [of Pebble Beach] represents less than 6% of the voting population in each district."<sup>207</sup> Because G5-P2 trifurcated Salinas again, as the 1971 lines had, the Salinas City Council voted unanimously to send a protest letter to the Department of Justice. "City officials," the *Californian* noted, "say that [the split] will dilute Salinas' clout."<sup>208</sup> Finally, Pebble Beach, Salinas, Marina, and Seaside could agree on something.

99. The triumphant G-5 plan had first been proposed on Oct. 17. Within three days of the Board's tentative approval of G5-P2, Seaside and Marina officials, with Karas's and LDR's aid, had drafted C-12 and presented it to the Board. In C-12, African-Americans constituted 20% of District Four's population, and Asian/Pacific Islanders, 16%. The principal difference between C-1 and C-12 was that C-12 put the home of each incumbent supervisor in a separate district, instead of pairing Del Piero and Shipnuck in District 1, and Karas and Strasser Kauffman in District 5. Unlike

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<sup>207</sup>Whitegiver to Karas, May 15, 1991, in Exhibit 60, 1991 County Submission. The split in Pebble Beach under the plans that the Board adopted in 1991 and 1992 was the same as that in 1981.

<sup>208</sup>"City Council Action, Nov. 12," *SC*, Nov. 13, 1991, p. 3C, col. 4-6.

C-1, which had been drafted by LDR, reportedly without outside advice, C-12 explicitly represented an attempt by Seaside and Marina to attract votes on the Board by accommodating the interests of the individual Supervisors, as well as by forming a coalition with Raza by incorporating subtle elements of C-6.<sup>209</sup> Karas had told both Marina Mayor Johnsen and Seaside Mayor McClair that he could not support C-1 because the Fourth District in that plan did not contain his home. Although there had been no formal agreement with Raza, leaders of Seaside and Marina had discussed C-12 and similar approaches with Jesse Sanchez during October, and Sanchez felt that with some relatively minor changes, C-12 would be acceptable to Raza.<sup>210</sup> Thus, only details divided the three minority groups.

100. Nonetheless, on October 29, after Shelley Lapkoff had had to suffer through a phone call from Strasser Kauffman, who, as Lapkoff understated it, expressed her "displeasure that demographers had developed a new plan," the same 3-2 majority brushed C-12 aside unceremoniously and reaffirmed its support for G5-P2.<sup>211</sup> The *Monterey Herald* editorialized that "political self-preservation by certain supervisors

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<sup>209</sup>1991 County Submission, Exhibit 54; Lapkoff Deposition Transcript, pp. 110-111, 116.

<sup>210</sup>Sanchez Deposition Transcript, June 11, 1992, pp. 19-25; Johnsen Deposition Transcript, pp. 40-41, 52-55; Charles E. McNeely Declaration, May 29, 1992.

<sup>211</sup>Calvin Demmon, "Controversial plans for redistricting OK'd," *MH*, Oct. 30, 1991. 1991 County Submission, Exhibit 58, entry for Oct. 26; Shipnuck Deposition Transcript, p. 25; Karas Deposition Transcript, p. 29. Strasser Kauffman also relayed her displeasure to Lapkoff through Gobalet and County Administrative Officer Ed Morishita. Lapkoff Deposition Transcript, pp. 88-89.

ruled out [Raza's] compromise. Politics should not have played a decisive role in this process, but that is what happened. The fault lies with a majority of the board, and the die was cast early."<sup>212</sup> The *Salinas Californian* declared that during public hearings on redistricting, the supervisors "embarrassed themselves and their constituents repeatedly" with "displays of pettiness, race queasiness and lust for political self-preservation at all cost."<sup>213</sup> Sanchez labeled the plan "outrageous. It's something that's unhealthy, not only for Latinos, but for Salinas, Marina, Monterey, Seaside, for everybody." Karas called the majority's aims "self-preservation." Shipnuck, more bitter, said the majority's action "raises the specter of racism."<sup>214</sup>

101. The stinging protest to the Justice Department that Shipnuck drafted and Karas endorsed blasted G5-P2.5<sup>215</sup> because it "violates Section 2 in its treatment of the Latino and African American protected minorities in our county and it also unnecessarily

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<sup>212</sup>"A mess of maps," *MH*, Oct. 27, 1991.

<sup>213</sup>"Supervisors must earn votes," *SC*, Nov. 4, 1991, p. 4A.

<sup>214</sup>Roya Camp, "County districts approved," *SC*, Oct. 30, 1991, p. 1B, col. 6; Calvin Demmon, "County district plan stirs criticism," *MH*, Oct. 27, 1991. As with other harsh statements from that period, Shipnuck, in the face of the current litigation, tries to qualify her remark, contending that it only means that some Latinos might have a perception that they were being deliberately mistreated, and that their anger might cause a white backlash. Shipnuck Deposition Transcript, p. 51. Shipnuck undermines her own credibility.

<sup>215</sup>The reunification of Oak Hills, which the County treated as a "mistake" for legal purposes, added another bureaucratic decimal point to the designation of the final plan and required a final vote, past the Nov. 1 deadline, on Nov. 19.

divides other communities of interest."<sup>216</sup> Although after this litigation began, Shipnuck maintained that all she meant to say about the fragmentation of the black and Asian/Pacific Islander communities was that "the Voting Rights Act could be better served in its intent if minority communities were whole," she took no such equivocal line in her Nov. 21, 1991 comment letter to the Justice Department. Now, she maintains that the Voting Rights Act "does not *require* putting Seaside and Marina together."<sup>217</sup> Then, she wrote that "Combining the cities of Seaside and Marina not only makes sense from the standpoint of geographic cohesiveness and community of interest, but also would create a supervisorial district with a minority impact close to 40%. This would be far more in keeping with the *requirement of the Voting Rights Act* than the proposed districts in G5-P2.5 which range from 14% African American/Asian Pacific Islander in Districts 1 and 5 to 19% in District 4. In contrast the current District 4 already stands at over 21% . . . G5-P2.5 dilutes the voting strength of African Americans and Asian Pacific Islanders by dividing the ethnically cohesive communities of Seaside and Marina into three supervisorial districts."<sup>218</sup> No doubt Shipnuck's sharply argued and brilliantly detailed comment letter played a role in convincing the Justice Department to withhold its approval from G5-P2.5.

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<sup>216</sup>1991 County Submission, Exhibit 45.

<sup>217</sup>Shipnuck Deposition Transcript, pp. 38-41, quote at p. 41. Italics added. Karas still maintains that G5-P2.5 violated Section 2 by splitting the black community. Karas Deposition Transcript, p. 21.

<sup>218</sup>1991 County Submission, Exhibit 45, pp. 5, 9-10. Italics added.

102. A comprehensive comment letter by Joaquin Avila, added to the Shipnuck-Karas protest and letters of criticism from the Salinas City Council and Seaside Mayor Lance McClair, convinced the Justice Department, on Feb. 10, 1992, to ask the County to provide more information. Faced with an additional delay and a likely rejection of G5-P2.5, the County put off the scheduled June primary for three Board seats.<sup>219</sup>

Along with pressure came a fortuitous opportunity. In early January, Gov. Pete Wilson appointed Marc Del Piero to the State Water Board, leaving the First District seat open. Raza pressed the candidacy of Juan Martinez, believing that Wilson might find the appointment of a Latino activist politically attractive. After a three-month delay that cost North County any influence in the negotiations over a new redistricting plan, Wilson chose an Anglo, Judy Pennycook, for the post.<sup>220</sup>

103. At first, Strasser Kauffman and Perkins merely offered Raza a renumbering of the districts, making the 66% Latino district District 1, on the condition that Raza would drop its voting rights suit. Seeing few gains and smelling a larger victory, Raza refused.<sup>221</sup> Raza member David Serena derided Perkins's proposal as "a

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<sup>219</sup>"June supervisor elections delayed," *KCR*, Feb. 12, 1992.

<sup>220</sup>The two frontrunners for the Governor's favor were Pennycook and Marc Del Piero's uncle, the former Salinas mayor Russ Jeffreys. Martinez was never interviewed. Everett Messick, "Two hopefuls interviewed for Del Piero's seat," *MH*, Feb. 11, 1992, p. C1, col. 2-5; "The governor's choice," *ibid.*, Feb. 16, 1992, p. 2C, col. 1; "Appoint someone," *ibid.*, March 26, 1992, p. 14A, col. 1; Calvin Demmon, "Surprise move clouds remap compromise," *ibid.*, April 3, 1992, p. 1A, col. 5-6.

<sup>221</sup>Calvin Demmons, "2 supervisors offer olive branch on redistricting," *MH*, Jan. 16, 1992. At a Jan. 20, 1992 lunch, Sanchez threatened to run a specific Latino candidate against Perkins if he did not vote for the Raza plan, and Perkins, "tremendously shocked," turned "abrasive . . . very

divide-and-conquer approach. It's a hook with no bait."<sup>222</sup> At this point, allegedly to make peace among her colleagues, Strasser Kauffman in effect renounced her alliance with Perkins and, joined by County Counsel Holland, began to negotiate with Raza in secret. As Shipnuck and Karas watched from the sidelines, Strasser Kauffman got Raza to reduce the Latino population percentage of Perkins's district by an insignificant 1% over their previous plan, and to make other small changes.<sup>223</sup> LDR played no role in the maneuvering, merely carrying out strict instructions from the County Counsel's office.<sup>224</sup> Although Shipnuck and Karas later declared that they supported C-12 and would have voted for it if it had been presented,<sup>225</sup> they made no effort during this crucial period -- or afterwards -- to convince Strasser Kauffman or Raza to endorse it or any other plan that did not fragment the African-American and Asian/Pacific Islander communities.<sup>226</sup> They never offered C-12 or any variation of it

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argumentative." Johnsen Deposition Transcript, pp. 60-64.

<sup>222</sup>Roya Camp, "Redistricting proposal gets cold shoulder," *SC*, Jan. 17, 1992, p. 1C, col. 5-6.

<sup>223</sup>Calvin Demmon, "Latino group, county agree on remapping," *MH*, March 21, 1992; Demmon, "Supervisors OK 'compromise' plan for new district boundaries," *ibid.*, March 25, 1992, p. 1-A; 1991 County Submission, Exhibit 69; Sam Karas Deposition Transcript, p. 32; Carolyn Rice, "Remapping Accord Headed for Okay Despite Protests," *The Weekly Sun*, March 26, 1992.

<sup>224</sup>Lapkoff Deposition Transcript, p. 123.

<sup>225</sup>During settlement negotiations in July and August, 1992, Perkins told Edith Johnsen that he was the only Supervisor to favor C-12 in private meetings. Johnsen Deposition Transcript, pp. 66-67.

<sup>226</sup>Karas Deposition Transcript, pp. 24-25; Shipnuck Deposition Transcript, p. 44.

as a formal motion at any time in 1991 or 1992. When Strasser Kauffman told Karas in the Spring of 1992 that she would not accept any changes except to produce a second strong Latino district, neither Karas nor Shipnuck asked why or protested.<sup>227</sup> The "liberals" meekly went along in April with what they had vividly denounced in November.

104. Before the plan was adopted on April 7, however, there were vigorous protests by black leaders and officials of Seaside and Marina against the cracking of the black and Asian/Pacific Islander communities in their cities.<sup>228</sup> They were excluded from any negotiation, Mayor Edith Johnsen of Marina declared. "There was a group of people meeting and conferring on the new plan but we had no part of those discussions and we weren't asked. We seem to have no influence on the outcome. We just don't have leverage in the process at all."<sup>229</sup> In a dramatic speech to the Board, Seaside Mayor Lance McClair denounced Sam Karas, a man whom he had long supported, and he threatened to sue, contending not only that the plan would "totally dilute efforts by the cities of Seaside and Marina to plan for the future of Fort Ord," but also that the plan "divides the major population base for Asian-American and black residents in

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<sup>227</sup>Karas Deposition Transcript, pp. 34-37; Shipnuck Deposition Transcript, p. 84.

<sup>228</sup>Johnsen had tried to make the same point at a Jan. 20, 1992 luncheon with Perkins and Sanchez, but she was generally ignored. Johnsen Deposition Transcript, pp. 60-64.

<sup>229</sup>Calvin Demmon, "Remap compromise draws fire," *MH*, March 24, 1992; Roya Camp, "Supervisors back Raza redistrict plan," *SC*, March 25, 1992.

Monterey County.<sup>230</sup> Perhaps even more bitterly, North County Anglos, whose largely unincorporated and extremely diverse suburban, coastal, and agricultural district had been split by the April 7 plan attacked the Board and launched a successful petition drive to place the April 7 plan on the November, 1992 ballot.<sup>231</sup> As a candidate for the former District 1 seat remarked icily, "This proposal sacrifices our rights so a law suit will be dropped, an Hispanic can be elected and Barbara can have a safe seat."<sup>232</sup> Although Shipnuck said that voting for the April 7 plan was "a very hard decision" for her, she acquiesced. It was left to Strasser Kauffman to dismiss the complaints of Seaside and Marina by patronizingly informing them that "many times it would be a great advantage to have more than one Supervisor representing a community or specific area."<sup>233</sup>

105. Although according to California law, if a petition is filed against an election

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<sup>230</sup>Joe Livernois, "McClair threatens remap lawsuit," *MH*, April 7, 1992, p. 1, col. 2-3; "Plan approved," *MH*, April 9, 1992; Carolyn Rice, "New Redistricting Plan OKayed; May Face Further Challenges," *The Weekly Sun*, April 9, 1992, p. 9; Lancelot C. McClair Deposition Transcript, p. 13.

<sup>231</sup>Everett Messick, "Drive begins tomorrow to repeal redistricting," *MH*, April 14, 1992; Maryn Pitt Derdevanis, "Blatant gerrymandering lives," *ibid.*, April 14, 1992.

<sup>232</sup>Carl Cieslikowski, "Seven Reasons Why This Plan Should Not Be Adopted," 1991 County Submission, Exhibit 69. More turgidly, neophyte Supervisor Judy Pennycook explained her negative vote: "It was really important to me that we make our county whole again, that we move to an area where we could see as a new solution rather than a compromise. To me when people come together in compromise fashion, they all end up feeling compromised." Pennycook Deposition Transcript, p. 17. If this statement reflects her future practice, it does not bode well either for clarity or comradeship on the Board.

<sup>233</sup>1991 County Submission, Exhibit 69.

ordinance, the Board *must* reconsider the ordinance,<sup>234</sup> no one on the Board -- significantly including Karas and Shipnuck -- took advantage of this mandate to reopen the question of discrimination against African-Americans and Asian/Pacific Islanders. In the face of a lawsuit charging discrimination against these groups, in the face of strong evidence that their counsel's legal advice on their freedom to fragment minority groups was incorrect, in the face of continued protest from these groups, as well as North County Anglos, no member of the Board approached Raza to see if it might accede to a new map that united Seaside and Marina. When told that Raza had, in fact, drawn such a map, Karas and Shipnuck were shocked.<sup>235</sup> Instead of negotiating with their usual allies and seeking a compromise to avoid litigation, the liberals hunkered down.

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<sup>234</sup>California Elections Code, Section 3753.

<sup>235</sup>Karas Deposition Transcript, p. 38; Shipnuck Deposition Transcript, pp. 83-84.

## VI. RACIALLY DISCRIMINATORY INTENT AND OTHER EXPLANATIONS

### A. THE BOARD AS A UNITARY ACTOR - AN ANIMATED MAP

106. Although nine different individuals served on the Monterey County Board of Supervisors during the 1981 and 1991 reapportionments, it is instructive to view their decisions as if they constituted a unitary actor. In the largest picture, how did minorities fare?

107. In the *Garza* case, I suggested that a visual metaphor best captured the pattern of discrimination - a split movie screen showing the geographical growth of the "Hispanic Core" of Los Angeles county on one side, and the diametrically opposed geographical expansion of the Third Supervisorial District, on the other. A similar metaphor will reveal the intrinsic design of the Monterey county redistrictings. Imagine a multi-colored map of Monterey county with light patches for areas populated by Anglos, brown patches for Latinos, and black-and-yellow patches for African-Americans and Asian/Pacific Islanders (to indicate the considerable intermixing of those two communities).<sup>236</sup> Computer enhancements of this imagined

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<sup>236</sup>In the English language, words for darker colors generally have bad connotations, while white and light are associated with virtue and intellect. Of course, I do not intend my imaginary map to have any such implications.

map indicate the gross topography of the county, the valleys, mountains, and seashore, while supervisorial district lines can be superimposed, depending on the plan considered.

108. In 1981, the light-brown inland Third District, instead of proceeding northwest to take in the darker brown area of Alisal, turns sharply west and grabs the partially black-and-yellow-striped coastal community of Marina from the First District. The white Fifth retreats south out of peninsular Pacific Grove and takes in the whole southern coast, but squeezes around north to grasp parts of Fort Ord. The Fourth shrinks, losing its southern inland tail, but moves south along the coast, encompassing the whiter territory of Pacific Grove, rather than north, towards striped Marina. No shaded portion of the map is joined to any other shaded portion by these motions. Instead, the boundaries between the dark parts of the map are maintained or merely shifted from one district to another.

109. Ten years later, the map as a whole is browner, and there are two final and many preliminary, uncompleted moves. In October, 1991, the Third District again fails to move northwest along the valley route, and it withdraws from Marina. The already umber Second District takes brown areas from the First, whose boundaries waver seemingly irrationally to exclude the homes of various potential opponents of incumbent Del Piero. The Fifth District abandons its half of Monterey, executing a neat flanking maneuver east and then north to absorb parts of variegated Fort Ord and

Marina. The Fourth adds no darker areas. Again, except for the deepening hue of the Second District, few of the more shaded areas are pulled together. Most, especially the black-and-yellow segments in Seaside and Marina, remain separated by district barriers, isolated by walls visible only on a political map.

110. In April, 1992 the First, Second, and Third Districts shift dramatically, but the Fourth and Fifth are nearly motionless. The Third brushes past Salinas on the east and turns due west to take in brown spots in the North County. The First and Second switch labels and some territory, making the First the darker, and the Second, the lighter of the two. Two districts are now olive, but the colorful parts of Seaside and Marina are still politically segregated from each other, as they have been, despite much shuffling, since Marina first began to grow to perceptible size in the early 1970s. While pressure from judicial decisions and the Justice Department have alleviated the political splits between brown areas, Marina has been successively tacked onto three different white districts, and the political crack between Marina and Seaside has withstood much movement of the political earth. The overall pattern of forcibly decreased discrimination against Latinos and continued fragmentation of African-Americans and Asian/Pacific Islanders could hardly be clearer. It is these patterns, these objective facts, obvious to all and repeatedly commented on in public and private, that must form the basis for any examination of the Board's intent.

111. Perhaps one extremely simple table will make clearest the contrast between what

did happen and what could have been accomplished. Since the population of Fort Ord is generally politically inactive and will soon shrink, and since those below 18 years of age are ineligible to vote, consider how District Four in plan C-12 stacks up against the same district in the April, 1992 plan. Under which plan would an observer or one deciding how to vote on a redistricting plan expect minorities to have more influence? (See Table 5.)

TABLE 5: ETHNIC PROPORTIONS IN THE FOURTH SUPERVISORIAL DISTRICT

Ethnic Group	IN C-12 AND THE APRIL, 1992 PLAN	
	C-12	April, 1992
<b>Anglo</b>	<b>52%</b>	<b>73%</b>
<b>Latino</b>	<b>12%</b>	<b>10%</b>
<b>Black</b>	<b>16%</b>	<b>8%</b>
<b>Asian/PI</b>	<b>20%</b>	<b>9%</b>
<b>Other</b>	<b>1%</b>	<b>0%</b>

**B. THE NINE INTENT FACTORS AND MONTEREY COUNTY**

**112. Previous research into redistricting and the most common models of political action lead us to expect that those who draw district boundaries will seek to protect their own interests, and that they will seek to disadvantage or nullify the influence of groups opposed to them. The Monterey County Supervisors manifestly fit the model. In 1981, Fifth District Supervisor Peters shed Pacific Grove to rid himself of a potent challenger; First District Supervisor Del Piero discarded Marina, the center of opposition to him in the 1980 election; Third**

District Supervisor Petrovic fought off moving into Alisal and gladly accepted Marina and the dead souls of parts of Fort Ord; and Fourth District Supervisor Moore whitened his district by adding Pacific Grove, instead of Marina. In October, 1991, Del Piero again employed crafty line-drawing to make his district safer; Third District Supervisor Perkins prolonged his political life by accepting only a symbolic increase in the Latino population in his district; Fifth District Supervisor Strasser Kauffman took in Marina, where she had political allies, and parts of Fort Ord, which were politically empty, and by supporting the lines that benefited Del Piero and damaged Second District Supervisor Shipnuck, Strasser Kauffman helped an ally on the Board and hurt an opponent. She also avoided taking all of Pebble Beach and Pacific Grove, with all the conflicts and potential opponents that existed there to complicate her life. By supporting the Raza plans, Democrats Shipnuck and Fourth District Supervisor Karas undermined the power of Republicans Del Piero and Perkins, and opened the way for a stable liberal Board majority in which they would be the senior members. In April, the correlation between political self-interest and Board voting patterns held fast, except that, with Del Piero gone and conflict among Board members seemingly unending, Strasser Kauffman grabbed the spotlight as she took on the uncharacteristic role of peacemaker. Throughout both reapportionments, African-Americans, Asian/Pacific Islanders, and, to a lesser extent, Latinos were shuffled around like so many puzzle pieces, according to the self-interest of the Anglos who were doing or ordering the line-drawing. Had there been no Voting

**Rights Act, there would have been many fewer constraints on discrimination, and incumbents would no doubt have felt even freer to fashion boundaries to insure their own reelections.**

**113. The historical context and basic demographic facts suggest that racial motives entered into the reapportionments in both decades. In the 1970s, black candidates had seriously contested several supervisorial races in Monterey county, particularly in 1976, and an increasing number of black politicians in Seaside and Asian-Americans in Marina were winning city offices, traditional stepping stones to supervisorships. Seaside had a black mayor, and Marina, a Japanese-American mayor in 1980. Together, Seaside and Marina would have contained nearly enough people to form a supervisorial district by themselves in 1980, and joining them would have merged electorates that were demonstrably willing to vote for politicians from minority groups. Since Latinos made up more than a quarter of the county's population in 1980 and since they were concentrated in the Salinas Valley, it would, of course, have been easy to draw a majority-Latino district then, and a Latino group asked for such a district, only to be ignored by quite openly self-interested Third District Supervisor Petrovic. A decade later, Latino political activity had burgeoned, along with the Latino percentage of the population and favorable court decisions, but the conservative majority on the Board gave Latinos only a shot at winning a district currently held by a white liberal. Under external pressure, and with one conservative seat**

**vacated, the Board compromised with Latinos, allowing them a chance at a conservative-held seat and an eventual opportunity (probably in 1998 or after) to take over the Salinas Valley position. Blacks and Asians, who had been shut out of supervisorial politics by the 1981 lines, got nothing in 1991 or 1992. In fact, the black proportion of the Fourth District, which had the largest concentration of African-Americans, actually fell, compared to the 1981 totals. The County Counsel told his bosses that they could cut up these two communities and still be in compliance with the Voting Rights Act, and they did just that.**

**114. The pattern of line-drawing, the subject of section VI.A. of this paper, and the number of minority group members elected to the Board -- zero -- also lend credence to the racially discriminatory intent thesis. The pattern of racially polarized voting and evidence that politicians recognized that pattern needs a bit more attention. Besides Table 1 above, the only formal statistical analysis of racially polarized voting in the county concerns Latino candidates. Appended to Joaquin Avila's February, 1992 Section 5 comment letter, the paper by Vernon Burton finds statistically significant polarization between Latinos, on the one hand, and Anglos, blacks, and Asian/Pacific Islanders, on the other, in every election that he considered. That the County Counsel's "eyeball correlation" of many of the same returns found no such relationships only demonstrates the**

**propensity of informal methods to yield the conclusions that people wish to see.**<sup>237</sup>

More corroborative of Burton's findings, and more obvious to politicians, is the fact that when the Salinas City Council and other local governmental bodies switched from at-large to district elections, Latinos were generally elected where the populations were largely Latino, while the majority-white, at-large electorates had voted for whites (and one Cuban) previously.

115. Except for Jack Simon's election to a Board of Fire Commissioners and the election of a black school trustee in a "very very low-key" North County contest in 1991,<sup>238</sup> no black candidate, so far as I can determine, has been elected to a local office in the county except in Seaside or Marina. Asian-American winners in Anglo areas are apparently just as few. Pearl Carey carried only Seaside in the 1976 runoff, and Jack Simon always ran better in black areas of Marina than in other parts of the First District outside of his home of Castroville. Both of the 1976 runoffs, as Table 1 shows, were racially polarized. The fact that no African-American or Asian/Pacific Islander ran for Supervisor during the 1980s, and that a Latino did only in 1990 is perhaps the best evidence for the widespread acceptance of the belief that minority

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<sup>237</sup>Douglas C. Holland Deposition Transcript, June 12, 1992, pp. 6-11. In 1991-92, the County did not even look at its own 1981 submission, which provided the basis for my Table 1, above, to determine whether there might have been racially polarized voting in Supervisorial elections involving blacks. It made no systematic study of racially polarized voting in elections involving Latino candidates. Blankenship Deposition Transcript, pp. 21-31.

<sup>238</sup>Roya Camp, "North county school candidates talk money," *SC*, Oct. 21, 1981, p. 2B, col. 1-6; Camp, "Political newcomers carry school race," *ibid*, Nov. 6, 1991, p. 1C, col. 5-6. The black candidate, Ellison Clark, edged a Latino incumbent.

candidates cannot win election in districts with large voting majorities of whites in Monterey County. In a memo to the Board on Oct. 22, 1991, County Counsel Holland noted that "Unless it can be reasonably predicted that the racial or ethnic majority will vote consistently to defeat the choices of a protected minority, it will be difficult for the minority group to show that the political process leading to nomination and election are not equally open to it."<sup>239</sup> Although Holland's office made no effort to determine whether there was, in fact, racially polarized voting against the choices of the black and Asian/Pacific Islander communities, the events of 1976 and the obviously prophylactic effect of the 1981 lines on black candidacies provided proof that it did not require a computer to see.

116. Since Monterey County Supervisors in this century have all been white, self-interest on their part is necessarily white interest. While Supervisors Karas and Shipnuck have cooperated with ethnic minority activists, while both endorsed and worked for the Raza redistricting plans throughout 1991-92, and while both have said they were willing to vote for C-12, neither formally proposed C-12 and neither pressed other supervisors to endorse it. Several of the other six supervisors who served before April, 1992 have records that are even less favorable to minorities. Moore's antagonistic statements toward minorities and his party switch, which paralleled the emergence of black politicians in the state's Democratic party provide evidence of his

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<sup>239</sup>Exhibit to Holland Declaration, June 25, 1992, pp. 2-3.

attitudes and behavior. The votes of all five of these Supervisors and Peters for redistricting plans that disadvantaged Latinos, as well as African-Americans and Asian/Pacific Islanders in 1981 and 1991 also reflect on the intent of the Supervisors in 1992. Strasser Kauffman clearly would have preferred to keep the November lines, splitting Seaside from Marina and holding the second Latino district to a politically meaningless 51% Latino population majority. Perkins and Del Piero's replacement, Judy Pennycook, continued to vote for the November plan. Moore, Peters, and Petrovic voted for an even more discriminatory plan in 1981.

117. The controversy over census-taking in 1990 served as both a symbolic and a very practical demonstration of the antagonism of the majority of the Board toward the poor and minorities. Two weeks before the national count of the homeless was to take place, the U.S. Census office in Monterey county had not hired a single field worker for the difficult job, and it had no centers to reach out to the Spanish-speaking population. As Latino activists and Salinas City Councilmembers pointed out, it was possible to get a Spanish-language census form only by filling out an English-language form first. In an attempt to attract the votes of her fellow Board members for a proposal to join the city of Salinas in funding extra workers for the census, Barbara Shipnuck appealed not to their sense of justice, but to their concern for the County's budget. "I am now concerned that a serious under-counting of the population could occur," she wrote in a report to the Board. "This would result in a substantial loss of federal and state dollars in the 1990s. . . . The money we spend in the short term will

come back to us a hundredfold over the next ten years." Nonetheless, Petrovic, Perkins, Del Piero, and Strasser Kauffman all voted against spending \$17,000 to make up for the deficiencies in the federal census effort -- an effort that had set up neighborhood assistance centers in overwhelmingly Anglo Monterey and Carmel, but not in any of the less affluent, more heavily immigrant areas of the county.<sup>240</sup> In an editorial entitled "We all will pay for the supervisors' short-sighted vote," the *Salinas Californian* derided the rationalizations offered by the supervisors who voted against the expenditure. "Supervisor Karin Strasser Kauffman said the centers would probably only come up with another 50 to 250 people. Where's she been? Others who have studied the effects estimate 11,000 people would probably be missed in Salinas alone." To Del Piero's refrain of governmental poverty, the paper replied: "But just a few weeks ago, Del Piero was one of the supervisors who thought the county had enough money to spend \$45,000 on cloud seeding, an enterprise that at best will increase rainfall 20% during the final month of the area's rain year."<sup>241</sup> A larger count of the population might increase state and federal funding for social services in Monterey County, which the County Supervisors would presumably otherwise favor -- but apparently not if it meant that minorities and the desperately poor would have more call on those services. None of these white supervisors, with the possible exceptions

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<sup>240</sup>Walter Neary, "Critics say local census is in trouble," "Census takers need address for homeless," *SC*, March 3, 1990, p. 1A, col. 5-6; Larry Parsons and Walter Neary, "City pledges \$17,940 for census - County turns down similar request to help with Hispanic count," *SC*, March 7, 1990, p. 1, col. 3-5.

<sup>241</sup>"We all will pay for the supervisors' short-sighted vote," *SC*, March 9, 1990, p. 8A, col. 1.

of Karas and Shipnuck, was willing to treat members of minority groups with the same concern and respect as they gave Anglos -- particularly themselves.

118. Although no one in Monterey County made the same sort of "smoking gun" remarks that one sometimes finds in the South in the 1950s and 60s, both the statements of County Counsel Douglas Holland and the Section 5 comments of Supervisor Barbara Shipnuck, which were endorsed by Supervisor Sam Karas, should be considered smoking guns of a sort. Ignoring *Garza*, the Fourteenth and Fifteenth Amendments, and the much more careful and nuanced statement of the State Attorney General's office, which he had been asked to comment on, Holland advised the Board that it was under no obligation not to split the African-American and Asian/Pacific Islander communities. He also told Board members that, although it was easy to create a much larger concentration of Latinos in the second Latino district than the November plan did, there was no necessity to do so -- all they had to do was cosmetically push the population total over 50%. These legally questionable, and, I believe, incorrect statements constituted an invitation to continue the fragmentation of minority communities, and the Board took that invitation. Shipnuck's brilliant critique of the Board's November plan, prepared without legal help -- after all, Shipnuck almost completed law school -- contradicted Holland's views and laid out a Section 2 case for all three minority groups -- blacks and Asian/Pacific Islanders, as well as Latinos. Since they voted for the November plan after hearing Shipnuck's remarks, first delivered at the Oct. 29, 1991 Board meeting, Del Piero, Perkins, and Strasser

Kauffman were fully aware that they were taking what was arguably a discriminatory action at that time. And if Shipnuck and Karas believed that the plan discriminated against blacks and Asian/Pacific Islanders in November, then when they voted for the April plan with the same configuration in Seaside and Marina, they must have believed that that facet of the plan was still discriminatory. Perhaps the April plan was not their first preference, but Shipnuck's comment letter proves that they preferred a discriminatory outcome to some alternative -- confronting Strasser Kauffman, swapping seats with Pennycook to try to get her vote, waiting for the Justice Department to refuse to preclear the November plan, thus strengthening the dissenters' hands, etc. Shipnuck's letter proves foresight and a willingness even on the part of the two liberals to vote for an outcome they knew to be discriminatory.

119. The Board's reapportionment procedures in 1981 were disorganized and poorly documented, while those in 1991-92 were disorganized, but fairly well documented. At the few hearings in 1981, the Board listened politely, but ignored Latinos and other citizens and got on with the business of incumbent protection, which necessarily disadvantaged non-whites. In 1991, they hired a conscientious consulting firm and then largely ignored their plans; refused to appoint a citizen advisory committee because Perkins and Strasser Kauffman, at least, were afraid that Raza would take it over; held a series of public hearings at which Raza was the chief participant and at which Marina asked not to be split and, at least towards the end of the fall, 1991 process, to be placed into a district with Seaside; voted for a plan that had objectives at

stark variance with the burden of comments during the public hearings, that had been fashioned by citizens off the Board five days before the tentative Board vote, and that citizens barely had a chance to comment on; reversed themselves in April after secret negotiations during which protesters from Seaside and Marina were kept uninformed; and adopted a new plan in the teeth of public criticism and without a public hearing until the adoption of the plan was a *fait accompli*. Although the County's Section 5 submissions detailed several criteria in both 1981 and 1991 that the Board supposedly followed, in fact the Board blatantly violated them in both instances, and in the more recent case, Board members could not remember adopting any such criteria and admitted not following them. Not only was the Board's process inconsistent, unprincipled, and unfair, but it in itself proves that minorities, particularly African-Americans and Asian/Pacific Islanders do not have an equal opportunity to participate in this crucial political process.

### C. AN EVALUATION OF POSSIBLE NONDISCRIMINATORY RATIONALES

120. Almost any boundary line, any districting scheme can be rationalized.<sup>242</sup> It is useful to consider three dimensions of proffered excuses: plausibility, importance, and justificatory power. If a reason offered is implausible on its face or if other actions of the person or government body clearly contradict it, then it should be ruled out at the beginning. An explanation may be plausible, but the evidence may then show that it was unimportant or at least not so important as to exclude other explanations. Finally, a purported reason for a decision may be both plausible and seemingly important, but it may not excuse a racially discriminatory action. Thus, in *Garza*, a desire to protect Anglo incumbents was held to be an insufficient excuse for discriminating against Latinos. How do the rationalizations that have been or could be offered for the Monterey county supervisorial district boundary lines that were drawn in 1981, 1991, and 1992 stack up against the discriminatory intent thesis?

121. The 1981 and 1991 guidelines that the Board formally established (see paragraphs 49 and 86, above) are typical of such documents: They are either impossibly vague, or the Board ignored them at will, or following them would not destigmatize the Board's actions. The 1981 and 1991 injunctions to preserve districts

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<sup>242</sup>The most familiar exception is the Tuskegee city limits drawn in the 1950s. See *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

as they were or not to move district lines so as to place a Supervisor out of his or her district or two Supervisors in the same district amount to directives to protect incumbents. In both years, the Board broke its adjuration against splitting cities. For instance, it bifurcated Monterey in 1981 and Marina in 1991 and trifurcated Salinas in 1991. Inland valley cities and coastal cities were deliberately intermixed in 1981 and minorities were deliberately fragmented in both 1981 and 1991-92, contrary to formal resolutions. Since the "rural/agricultural basis" of the First and Third Districts could be retained only by severing minority communities, that 1981 guideline hardly exonerated the Board from a charge of racial discrimination.

122. Two rationales later offered for including Marina in District Three, rather than District Four, in 1981 were threadbare. One, offered by Del Piero, was that it joined military personnel associated with Fort Ord with those in Fort Hunter Liggett and Camp Roberts.<sup>243</sup> But, of course, the largest concentration of military people was in Seaside and most of the rest of Fort Ord, which in 1981 were in the Fourth District. If one wanted to honor a military community of interest, one would have consolidated everyone in the Fourth District. Another rationale, set forth by Moore, as well as Del Piero, was that if the western section of Fort Ord were in Petrovic's district, Seaside and Marina could only have been joined by a strip consisting of an uninhabited

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<sup>243</sup>Del Piero Deposition Transcript, p. 75.

beachfront, which was unaesthetic.<sup>244</sup> This reasoning is deficient in three respects: If the boundary lines of the Third District were moved to include Alisal and exclude Fort Ord, no such problem would exist. Furthermore, even if joining Marina and Seaside might not look "pretty" on a map, their obvious social similarities made uniting them easy to justify to other supervisors or the public. In any event, the people who tacked Marina onto South County and zig-zagged through Monterey and Pebble Beach were hardly moved by aesthetics.

123. Another apology for District Three was that its shape through the November, 1991 plan was justified by the desire to preserve the power of the "agricultural interests in south County."<sup>245</sup> This pretext was used in an attempt to pardon a population variation of 62 to 1 before *Griffin I*, and one of 2.2 to 1 in *Griffin II*,<sup>246</sup> to excuse the addition of Marina and parts of Fort Ord, rather than Alisal, to the district in 1981; and to acquit the Board of any invidious motive in creating a bare Anglo population minority in the district in G5-P2. While basically plausible and probably important, this defense provides no justification. It amounts to saying that ethnic discrimination is acceptable in order to preserve Anglo incumbents and the right of the

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<sup>244</sup>Moore Deposition Transcript, pp. 20-21; Del Piero Deposition Transcript, pp. 76-77. This may not be independent information, for Del Piero may well have read or been briefed about Moore's deposition before having his own taken.

<sup>245</sup>"News article was a disservice," *KCR*, July 3, 1991.

<sup>246</sup>*Griffin I*, p. 320; *Griffin II*, p. 754.

Anglo grower community to continue to elect candidates of its choice.

124. In a memorandum to the Board of Supervisors before its members voted on a plan in October, 1991, County Counsel Holland offered what might be taken as an excuse for G5-P2. Although he cited neither data nor authority to buttress his opinion, he asserted that "it could be reasonably argued that a 70% Hispanic population may be necessary in order to ensure an effective majority within this area." Therefore -- although the district with the highest proportion in the plan under consideration was only 66% Latino -- he advised that it was not necessary to draw a second Latino district. Abandoning the "practical" rationale that he had invoked to justify packing Latinos, Holland then counseled the Board on what to do with the Third District: "In order to further enhance the County's position and to demonstrate that the new Districting Plan will not have a 'retrogression' in the position of members of the Hispanic minority group, it is recommended that the overall percentage of Hispanics in such a district be increased. It is further recommended that the white population of such district should constitute less than a majority within the district."<sup>247</sup> This is as pure an avowal of an intention to "stack" the members of a minority group into a district as one is likely to encounter. Both pieces of advice were discriminatory. Because the County had conducted no systematic investigation to support its contention that a 70% Latino population was necessary for that community to be able

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<sup>247</sup>Exhibit to Holland Declaration, June 25, 1992.

to elect a candidate of its choice, and because the more knowledgeable Raza group believed that a smaller percentage would suffice, Holland's memo invited the Board to waste Latino votes by packing more than enough to be politically potent into one district. Because he acknowledged that a bare population majority of Latinos would be politically inefficacious, Holland's prescription for stacking the Third District was deeply cynical, treating the Voting Rights Act not as a practical guard against discrimination, but as an empty formalism easily manipulable to protect the power of an Anglo incumbent. Far from a justification of the November plan, this advice should call into question the intentions behind any other actions that its author engaged in, such as his brokering of the April, 1992 plan and his continuing defense of that plan.

125. In his response to the Justice Department's Feb. 10, 1992 request for further information, Deputy County Counsel Lee Blankenship completely ignored the fragmentation of the African-American and Asian/Pacific Islander communities.<sup>248</sup> He concentrated, instead, on why the Raza plan for District Three was not adopted, making essentially four arguments: First, the district was too large. Second, combining North and South County in one district divided homogeneous areas and merged heterogeneous ones. Third, putting too many unincorporated areas into one district would unfairly increase the workload of that Supervisor. (Strasser Kauffman and her aide made the same argument to justify her accession of Marina, rather than

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<sup>248</sup>It is also strange that Blankenship should send a defense of the November plan to the Justice Department long after it had become clear that negotiations overseen by County Counsel Douglas Holland, as well as Supervisor Strasser Kauffman, had produced a plan that Raza could accept.

some unincorporated place.)<sup>249</sup> And fourth, Latinos in the proposed Raza district did not want to be combined.<sup>250</sup> None of these arguments bears weight.

126. As to the first argument, any district running up the relatively sparsely populated Salinas Valley was bound to be geographically extensive; the fact that U.S. 101 spanned most of the district meant that north-south travel times were probably comparable to those in the Fifth District, up and down the Big Sur coastline; since the 1981 lines sprawled to Marina, the district was not much less accessible than it had been; and, while the size of a district may be properly considered possibly discriminatory because it constitutes an impediment to the political chances of a disproportionately poor group, here it was Raza, not the Anglo growers or suburbanites that favored the plan. As to the second contention, Raza's Third District was actually more homogeneously agricultural than any map of the district since *Griffin II*.<sup>251</sup> As to the third or workload reason, it is hardly clear what sorts of places in Monterey county will cost the Supervisors the most time during the 1990s. The projected drastic drop in the size of the population in Marina<sup>252</sup> and the difficulty of

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<sup>249</sup>Sandra Margaret Smith Deposition Transcript, Aug. 8, 1992, pp. 18-20, 42; Lapkoff Deposition Transcript, p. 55.

<sup>250</sup>Leroy Blankenship to Gerald W. Jones, April 3, 1992, in 1992 County Submission.

<sup>251</sup>Jesse G. Sanchez Deposition Transcript, June 11, 1992, p. 8.

<sup>252</sup>Johnsen Deposition Transcript, pp. 58-59. After the November plan was passed, Johnsen met with Strasser Kauffman to insure that the Supervisor knew "that we were not like Carmel . . . . We had bigger problems."

redeveloping Fort Ord, especially because of the Army's legacy of toxic pollution and the necessity to coordinate city, county, state, and federal governmental efforts, make it extremely dubious that Strasser Kauffman reduced her workload by taking in that city and part of Fort Ord.<sup>253</sup> In any event, it seems bizarre to justify an allegedly racially discriminatory plan on the ground that it allows a white Supervisor to work less hard.<sup>254</sup> The fourth apology has no factual basis. While some Latino names did appear on some North County petitions, Raza clearly forged and maintained a consensus among Latinos throughout the county, and there was no evidence of dissent within the South County or Alisal areas, as the Counsel's office claimed.<sup>255</sup>

127. Karas formally and Strasser Kauffman informally contended that splitting communities of interest increases their political power. "I believe that the division of Fort Ord, Seaside, and Marina, among several supervisorial districts, will ensure that minority concerns regarding the development of Fort Ord will receive more, not less attention."<sup>256</sup> Even if this novel view were not contradicted by common sense and

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<sup>253</sup>Del Piero thought that Strasser Kauffman may have wanted Marina because of the "challenge inasmuch as the post was closing." Del Piero Deposition Transcript, pp. 93-94.

<sup>254</sup>Although I do not mean to be rhetorically inflammatory, I might point out that a similar argument could be -- and was -- used to justify slavery.

<sup>255</sup>Sanchez Deposition Transcript, p. 12; LDR reports of public hearings in North Salinas, Pajaro, Soledad, and King City, in 1991 County Submission, Exhibit 39.

<sup>256</sup>Karas Declaration, June 23, 1992, p. 6.

statutory and case law, the fact that citizens throughout Monterey County reject it would be enough to render it implausible as a reason for the Supervisors' actions.

128. Both Supervisors and Raza leaders have suggested that Seaside and Marina are unconcerned with ethnic issues, but only really care about economics, especially the redevelopment of Fort Ord. As Jesse Sanchez put it, "the whole issue of black and Asian voting rights was being used to color over the true economic issue."<sup>257</sup> Another charge is that Marina had no desire to be combined with Seaside, but only wished to remain undivided itself.<sup>258</sup> These charges are both untrue and irrelevant. Marina, which was split from both its "sphere of influence" and the part of Fort Ord that lay within its corporate limits by the November and April plans, did primarily want to be kept whole, but its leaders also expressed support for plans joining it with Seaside and Fort Ord from the beginning of the hearing process.<sup>259</sup> They also raised the issues of splitting African-Americans and Asian/Pacific Islanders, along with the Fort Ord development issue, from the beginning. In any event, it is not the motives of the *cities* that matter, but those of the *Supervisors*.

129. An alternative to any explanation of any event is that the consequence explained

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<sup>257</sup>Sanchez Deposition Transcript, pp. 31-32.

<sup>258</sup>Shipnuck Declaration, June 23, 1992, p. 4.

<sup>259</sup>Johnsen Deposition Transcript, pp. 25-31.

was unintended. For Monterey County redistricting, the unintended consequence hypothesis shatters on the rock of foreknowledge. Statistics on the splits in the black, Asian, and Latino communities in each of the four 1981 plans and the forty 1991 plans, were available from the beginning. In 1981, everyone knew the ethnic composition of Alisal and Marina, and the Supervisors were unquestionably aware of recent election returns in all areas of their districts and almost certainly of areas that they might have to consider annexing. In 1991, plan C-1, which largely united Seaside and Marina, had been floated by LDR in July, and C-12 had been developed, with Karas's help, in October, before the final vote on G5-P2. Shipnuck's Oct. 29, 1991 speech criticized G5-P2 as discriminatory against blacks and Asians, and the Board has had all the time since then to vote to overturn that result. Seaside and Marina, once they found out what was going on in Spring, 1992, protested heatedly, giving as much publicity to the racial argument as they could. This suit itself could have been the occasion for a reversal. The districts drawn in 1981, 1991, and 1992 could not have been adopted in disregard or ignorance of their ethnic consequences.

130. Another possible version of an unintended consequence hypothesis is that the changes that the Board made were the product of the state and national requirements that each district have roughly equal population. Underpopulated districts of necessity had to add areas and overpopulated districts had to lose them, and changes in one district affected the others. Probably the principal example of such a rationale would

be Del Piero's discarding of Marina in 1981.<sup>260</sup> If Peters, then, insisted that Moore take Pacific Grove, Moore's district would be so large in population that it could not take Marina. The difficulty with this defense is that it ignores the fact that the Supervisors could always have chosen to move the puzzle pieces differently. Del Piero could have given up North Salinas and other areas, instead of Marina; Moore could have taken Marina, instead of Pacific Grove; Perkins could have acquired Alisal, instead of Marina. The consequences could not have been unintended, because the Supervisors could easily have chosen other actions with different consequences.

131. Another alternative hypothesis that is usually available is one of good intentions. It is difficult to imagine how to formulate such a hypothesis for the 1981 or November, 1991 redistrictings, characterized as they obviously were by efforts to insure that Latino voters would be able to elect no Supervisor or at most one Supervisor, pervaded by the most blatant moves to excise potential opponents from incumbents' districts, and featuring the unprincipled tacking of Marina onto two successive southern districts. In this case, the only possible version of a good intentions thesis applies to the April, 1992 plan. It spotlights the saintly Karas, the stalwart Shipnuck, and the practical Strasser Kauffman, and might be stated as follows:<sup>261</sup> Karas and Shipnuck favored C-12, but took the Raza plan because at least it gave Latinos two over-60%

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<sup>260</sup>Del Piero Deposition Transcript, pp. 22-26.

<sup>261</sup>See the June declarations of Shipnuck, pp. 3-4, Karas, pp. 3-4, and Strasser Kauffman, pp. 3-4.

population districts. They settled for the April plan because it was the best that they could get. Strasser Kauffman just wanted to break the deadlock on the Board, with Raza, and with the Justice Department with a minimum of fuss.

132. Even if we dismiss the fact that Karas ran more strongly in white Pacific Grove and Pebble Beach in 1984 than in multicultural Seaside, and the rumors that he was concerned about a challenge from Lance McClair, the black mayor of Seaside, he and Shipnuck at the very least preferred a plan that they believed to be discriminatory against blacks and Asians, the April plan, to some other alternative action that they could have taken. That is to say, even giving them every benefit of the doubt, their good intentions toward Latinos are clouded in their vote for the April 7 plan by their well-publicized understanding that the plan discriminated against blacks and Asians. In voting for a plan that contained a provision, the fragmentation of African-Americans and Asian/Pacific Islanders, of Marina and Seaside, that they had earlier vividly denounced as discriminatory, they knowingly contributed to a discriminatory result. Without the votes of both of them, the April plan would have failed.

133. As for Strasser Kauffman's good intentions, her first preference in April was still patently for the November plan, with its 51% secondary Latino district, as well as the

division of Seaside and Marina.<sup>262</sup> She acted only under pressure, and her action continued the Seaside/Marina split. Indeed, by stubbornly refusing to discuss reconsidering that fissure, she unnecessarily prolonged the controversy over redistricting in Monterey county, on and off the Board, by months, if not years. Strasser Kauffman does not fit the good intentions case, either.

134. As in most human actions, the Supervisors may have had mixed motives, other intentions. A variety of suggestions might fit under this rubric. In 1981, Moore may have wanted to avoid Marina not because of its minorities, but because of its opposition to putting on its territory a sewage plant that would primarily serve more southerly cities.<sup>263</sup> Petrovic may have wanted to save the money that he would have to spend on campaigning if he had to face serious opposition from an urban area.<sup>264</sup> No doubt Moore wished to avoid Marina for various reasons, but the fact that Carey ran fairly well against him, that Marina was heavily Democratic, when Moore had transmogrified himself into a Republican, and that the policies that he favored on the Board cut social services suggest that he wished to avoid adding more blacks to his

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<sup>262</sup>In her press release of March 20, 1992, Deposition Exhibit 1011, Strasser Kauffman declared that she was endorsing the new Raza plan despite the fact that "I remain satisfied with the current plan as adopted by the Board of Supervisors last October and November . . . . The modified plan which I am endorsing today is a little better than the submitted plan, not that the submitted plan is in any way inadequate . . . ."

<sup>263</sup>Moore Deposition Transcript, pp. 62-64.

<sup>264</sup>Moore Deposition Transcript, p. 31.

district. Additionally, if he fragmented a minority area to avoid electoral damage to himself, whatever the reason for the electoral damage, he was, according to Judge Kosinski's opinion in *Garza*, guilty of discrimination. The same reasoning holds for Petrovic.

135. In 1991-92, neither Perkins nor Del Piero may have cared about Seaside or Marina, though both at times represented Marina, but neither favored C-1 or C-12, the only two plans to unite the cities, neither proposed any other such plan, and both were obviously maneuvering for personal and ideological advantage during the reapportionment. Their other aims, in other words, were consonant with anti-black and -Asian consequences, of which they were well aware, and were necessarily entwined with anti-Latino consequences. Jesse Sanchez reported a suggestion that Strasser Kauffman voted for the October, 1991 plan, rather than the Raza plan because she was "a close political ally of Supervisor Marc Del Piero."<sup>265</sup> To the extent that such an alliance moved Strasser Kauffman, she was necessarily infected by Del Piero's and/or Perkins's motives. For if they had to disadvantage Latinos to be reelected, and if she voted for a plan that could only reelect them by disadvantaging Latinos, then she partook in the discrimination. Conversely, if Strasser Kauffman objected to any plan that joined Marina to Seaside in one district because of its corollary effect on her district, and Perkins and Del Piero needed her vote to protect their own seats, then *they*

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<sup>265</sup>Sanchez Deposition Transcript, pp. 11-12.

partook in *her* actions, which had necessarily discriminatory effects.

136. Other actions of Del Piero and Perkins lend weight to this account of their motives. Both voted against the census outreach effort and neither ever favored a plan endorsed by Raza. Far from being free of racially discriminatory intentions, they could not survive long politically with any other intentions.

137. Strasser Kauffman and, to a lesser extent, Karas may also have had other intentions. This case could have been settled at any time after March, 1992 if Strasser Kauffman and Karas had been willing to accept a different alignment of boundaries on the Monterey Peninsula. Instead, Strasser Kauffman announced publicly and privately that "if the board comes up with major revisions in the proposed [April 7, 1992] plan, she'll vote against it."<sup>266</sup> Why was Strasser Kauffman so adamant? Why did she later assert, in the face of overwhelming public evidence, that the issue of combining Seaside and Marina and therefore of changing the configuration of the Fifth District on the Monterey Peninsula, "never came up"?<sup>267</sup>

138. Strasser Kauffman declared that she opposed C-12 so vehemently in October,

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<sup>266</sup>Calvin Demmon, "Action on county districts delayed," *MH*, April 1, 1992, p. 1, col. 1. Raza's understanding once Del Piero resigned and Strasser Kauffman began to negotiate was that "we were not to make any changes . . . of any lines in the areas that would affect the Monterey Peninsula in her district." Sanchez Deposition Transcript, pp. 25-26, 48-52.

<sup>267</sup>Strasser Kauffman Deposition Transcript, pp. 34-37.

1991 for two reasons: It came up too late in the process for the Board to act on it formally before Nov. 1, and it was drawn up at the insistence of only one supervisor, rather than under the direction of the whole Board.<sup>268</sup> But as pointed out earlier, C-1 and C-2a, which were similar, except for moving the lines of the Fourth District to encompass Karas's house, had been on offer since July. The Board did not adopt the final G5-P2.5 plan until Nov. 19, anyway, so it could have either considered C-12 directly or adopted it as an amendment to G5-P2; or it could perhaps have suspended its rules by some sort of emergency resolution and passed C-12 in less than the usual time. Less than two weeks before C-12 was proposed, LDR had drawn three new maps at the request of only one Supervisor -- Kauffman, herself.<sup>269</sup> And G5 had not been drawn up at the behest of the whole Board, but only of two Supervisors. Strasser Kauffman's explanation of why she opposed C-12 in October and November is thus inconsistent with the facts or misleading, and it therefore lacks plausibility.

139. What of her apology for not considering C-12 in the Spring of 1992? Strasser Kauffman declared that "I felt that if the Board of Supervisors were to reopen discussions on other facets of the November 1991 plan, the divisive, lengthy, time-consuming, and expensive process that had paralyzed the County and the Board

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<sup>268</sup>Strasser Kauffman Declaration, June 24, 1992, pp. 6-7.

<sup>269</sup>Calvin Demmon, "Remapping job troubles county," *MH*, Oct. 13, 1991.

of Supervisors would not get resolved.<sup>270</sup> Since Karas, Shipnuck, and Raza had all said that they were willing to support C-12 with perhaps slight modifications, the only impediment to an acceptance to the plan was Strasser Kauffman herself. If the process were messy and prolonged, it would not be other people's fault, but hers. Strasser Kauffman's excuse, then, leaves the question just where it was previously: Why did *she* oppose tampering with the P-2 part of the November or April plans?

140. Undoubtedly, Strasser Kauffman had less to fear in her Carmel-based, overwhelmingly white, Republican, and environmentalist district from a challenger from decasse, multicultural, development-hungry Marina than from one from Pebble Beach or Pacific Grove, where issues of development and zoning were very divisive.

Indeed, Shipnuck thought that the fact that a rumored Fifth District challenger came from Pebble Beach was one of the reasons that Strasser Kauffman opposed any different lines on the Monterey Peninsula.<sup>271</sup> Neither Strasser Kauffman nor Karas wanted a district that contained all of Pebble Beach and Pacific Grove.<sup>272</sup> The mild-mannered Karas told Lapkoff that "He would prefer not to have Pebble Beach. . . . He did say that a district of Seaside, Marina and Fort Ord would be great from his perspective," but that Strasser Kauffman would oppose it because, she

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<sup>270</sup>Strasser Kauffman Declaration, June 24, 1992, p. 4.

<sup>271</sup>Johnsen Deposition Transcript, pp. 75-76.

<sup>272</sup>Del Piero Deposition Transcript, pp. 88-89.

had told him, "she didn't want Pebble Beach." Strasser Kauffman, characteristically more forceful, informed the demographer that "she would not take the northern part of Pebble Beach. . . . Evidently she believed it, and I believe Supervisor Karas believed that to be a very difficult area to be a Supervisor of because there are competing interests and it's a lot of work."<sup>273</sup> Even Strasser Kauffman's aide, Sandra Smith admitted that her boss preferred that Pebble Beach be split. The Pebble Beach Company, a major campaign contributor to Supervisors, has "development proposals before the Board of Supervisors every so often and they have a lot of influence with other supervisors so she kind of needed all the help she could get with Pebble Beach."<sup>274</sup> Of course, the Supervisors knew the areas and the people there well. For instance, a controversy over a roadway that the Pebble Beach Company wanted to build near Pacific Grove dragged on for at least six years and attracted a highly opinionated and strongly divided audience of a hundred from both communities to a hearing on whether it should remain open space.<sup>275</sup>

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<sup>273</sup>Lapko ff Deposition Transcript, pp. 19-22. Other unnamed Supervisors also mentioned Strasser Kauffman's aversion to Pebble Beach. *Ibid.*, pp. 41-42.

<sup>274</sup>Smith Deposition Transcript, pp. 21,23. She mentioned that the Company wanted to eliminate the public from its golf courses in 1991, and that in 1992 it was proposing to build a new golf course in a pristine canyon and to add 350 housing units. The Company's every move was controversial with surrounding homeowners.

<sup>275</sup>Calvin Demmon, "Pebble Beach-Pacific Grove dispute to be reargued," *MH*, March 12, 1992, p. 3C, col. 1-4; Demmon, "Proposed roadway in Pebble Beach stirs controversy," *ibid*, March 13, 1992, p. 9A, col. 1-3.

141. It was not so much that Strasser Kauffman she wanted to go to Marina, according to this view, as that she didn't want to go anyplace else -- especially to the rest of Pebble Beach. When Lapkoff and Strasser Kauffman discussed plans that concentrated blacks and Asians, Strasser Kauffman "knew that that would require her District to have all of Pebble Beach and none of Fort Ord, and she was not in favor of that plan."<sup>276</sup> Again, whether her reason was workload or protection of incumbency, it fails to palliate her action, which she was repeatedly told would result in the fragmentation of the African-American and Asian/Pacific Islander communities.

142. Perhaps as a devotee of slow growth, Strasser Kauffman just wanted to hinder the rapid replacement of Fort Ord by housing tracts and mini-malls, and thought she could do so more effectively if she were Marina's representative. If so, this would arouse considerable opposition to her in Marina, would be inconsistent with the "reduced workload" explanation offered by her aide, and would fan the flames of controversy in County government that she claimed to want to douse. It is, in other words, inconsistent with both her self-interest and with her own explanations of her actions. In any event, a "good" environmentalist motive would not outweigh a "bad" racial one, and as just argued, she willed the fragmentation of these racial communities.

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<sup>276</sup>Lapko ff Deposition Transcript, pp. 56-57.

143. Finally, in the face of a voting rights lawsuit, all of the 1991-92 Supervisors and their counsel predictably paraded their allegedly nondiscriminatory intentions. Despite the fact that it only created one possibly winnable Latino district, when it could have set up two, Del Piero declared that the November, 1991 plan was merely "a best case effort on the part of the three of us who were voting to try and meet not only the letter but the spirit of the Voting Rights Act as it related to the Hispanic population."<sup>277</sup> (It is notable that he ignores African-Americans and Asian/Pacific Islanders.) Strasser Kauffman's only objective during the reapportionment, she asserted, was "to meet the obligations of the law under the Voting Rights Act."<sup>278</sup> Although bitterly opposed to Strasser Kauffman on most issues, including reapportionment, Shipnuck subscribed to the same rhetorical ideal: "[M]y objective was to ensure that the Board adopt a community-based plan that would at least meet the legal requirements of the Voting Rights Act."<sup>279</sup> In their June, 1992 declarations, the four Supervisors who had been in office throughout the 1991-92 reapportionment process, in unlikely chorus, repeated with very slight variations the following oath of nondiscriminatory intent:

"Throughout the redistricting process, I have never voted for any plan because it was designed to protect my incumbency from a challenge or prospective challenge by any minority candidate or prospective candidate. I have also not voted for any redistricting

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<sup>277</sup>Del Piero Deposition Transcript, p. 110.

<sup>278</sup>Strasser Kauffman Deposition Transcript, p. 23.

<sup>279</sup>Shipnuck Declaration, p. 3.

plan with intent to discriminate against, or dilute the vote of African-American, Asian-American and/or Hispanic-American residents of the County. I have not voted against or failed to support any plan because that plan would benefit a minority group or threaten my chances of re-election."<sup>280</sup> The formulaic repetition of assertions of purity at this time, so at odds with the actions and other statements of the same people, are sufficiently implausible that they should be given no weight whatsoever. If chanting not-guilty slogans automatically exculpated people, no one would ever prove intent.

144. None of the opposing hypotheses or rationales about the boundaries that the Board drew between Seaside and Marina in 1981 and 1991-92 can be argued more logically or on better evidence than the racial intent thesis. In one way or another, it can be contended, I think convincingly, that each member of the Board voted for the lines he or she did partly out of a racially discriminatory intent.

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<sup>280</sup>This particular version is in Strasser Kauffman's Declaration, pp. 8-9. There is almost exactly the same legalistic wording in those of Karas, pp. 6-7, Shipnuck, pp. 6-7, and Perkins, p. 5.