

8-2019

Joaquin Ávila: Voting Rights Gladiator

Barbara Y. Philips

University of Mississippi School of Law, barbara.philips89@gmail.com

Follow this and additional works at: <https://digitalcommons.law.seattleu.edu/sjsj>



Part of the [Civil Rights and Discrimination Commons](#), [Constitutional Law Commons](#), and the [Election Law Commons](#)

Recommended Citation

Philips, Barbara Y. (2019) "Joaquin Ávila: Voting Rights Gladiator," *Seattle Journal for Social Justice*: Vol. 18: Iss. 1, Article 8.

Available at: <https://digitalcommons.law.seattleu.edu/sjsj/vol18/iss1/8>

This Article is brought to you for free and open access by the Student Publications and Programs at Seattle University School of Law Digital Commons. It has been accepted for inclusion in Seattle Journal for Social Justice by an authorized editor of Seattle University School of Law Digital Commons.

JOAQUIN AVILA: VOTING RIGHTS GLADIATOR

Barbara Y. Philips

How to talk about this extraordinary man, Joaquin Avila, who embodied an encyclopedia of experience and knowledge about power, democracy, political participation, and the constitution? He was skilled at using the law, litigation, and legislation to achieve change. He began his journey of change in 1974 when he joined the Mexican American Legal Defense and Education Fund and continued his journey up until his death. He has a 43-page resume, and none of it is fluff.

I met Joaquin in 1978 when he was MALDEF's Director of Political Access Litigation based in San Antonio, and I was a staff attorney with the Voting Rights Project of the National Lawyers' Committee for Civil Rights Under Law. Much of what he accomplished in Texas—and it was a lot—can be attributed to his partnership and vision shared with Willie Velasquez and his South West Voter Registration Education Project. They were brothers and I would be remiss if I failed to mention his name here. I came to know Joaquin within the very small national voting rights bar. We regularly consulted with each other about our cases, sharing everything, and we remained life-long friends. We then worked together on the 1982 amendment and extension of the VRA. To understand what Joaquin accomplished in Texas, I encourage you to read his 1981 testimony before the Judiciary Committee of the House of Representatives. Joaquin's testimony illuminates the anti-democratic practices of political jurisdictions in Texas, the necessity of Sections two, five, and the bilingual provisions to ensure the right of Latino communities to participate fully in the political process and elect candidates of their choice. Beyond that testimony, Joaquin was instrumental as part of the small team of litigators who ensured that the Senate Report contained the specific language that would permit us to advance democracy through litigation.

Joaquin went on to become President and General Counsel of MALDEF. Upon leaving that position, he began a private practice in California committed solely to voting rights litigation. The challenge of doing so was formidable. As noted by historian Earl Shorris, “[he] set out alone, with no institutional help, to overturn the work of more than a century of the most sophisticated racism ever employed in the U.S.”¹ Not only did he have local laws to contend with, but also the myth of California as a politically enlightened state.

Avila went from town to town, speaking at community meetings, explaining his willingness to sue the city government to demand fair representation under the VRA. All he needed was a plaintiff and whatever financial support, if any, the community could provide: if they couldn’t provide money, could they give him volunteers? He planned to win, to go through the state of California, city by city, town by town, political jurisdictions of every kind to overturn every unfair electoral system.

I joined him as co-counsel with the support of my San Francisco law firm, Rosen & Phillips, in voting rights litigation beginning with *Gomez v. City of Watsonville*,² the seminal case that brought to California what he had accomplished with years of litigation in Texas. This was the first voting rights case brought in California in decades and was intended to implement *Thornburg v. Gingles*,³ the Supreme Court’s 1986 decision we celebrated for its application of the newly amended VRA.

We learned a lot during the Watsonville trial. Even though the judge, a federal judge in the northern district of California, treated us like shit, and the opposing counsel opened each day with the statement, “Your Honor this is not Mississippi,” Joaquin’s demeanor in the courtroom never changed. It was humiliating to attend a convening of our generally merry band of national voting rights litigators and experts in San Antonio and try to explain how we

¹ EARL SHORRIS, *LATINOS: A BIOGRAPHY OF THE PEOPLE* 410 (1992).

² 863 F.2d 1407 (9th Cir. 1988).

³ 478 U.S. 30 (1986).

could have lost. Subsequently, the 9th Circuit recognized that California was, indeed, Mississippi, and handed Joaquin and the Mexican-American community the ruling upon which he would build subsequent litigation. To this day, Joaquin's oral argument in the 9th Circuit Court of Appeals stands out as a brilliant defense of democracy.

However, as the national voting rights bar continued to celebrate *Thornburg*, Joaquin was experiencing the limitations of that decision. The *Watsonville* case imposed an extreme financial burden upon plaintiffs and their attorneys in private practice. Further, potential defendants threatened potential plaintiffs with the prospect of being liable for defense attorneys' fees in the event the case was deemed "frivolous." Unfortunately, due to a politicized Department of Justice, enforcement of the VRA fell harshly upon the shoulders of the few litigators in the field with experience; Joaquin and I were the only two experienced voting rights litigators in private practice in California. While *Gingles* ameliorated the "intent" standard required to prove constitutional violations, it did not diminish the extreme expense for plaintiffs in pursuing vindication. The expense effectively barred access to the courts.

Joaquin's vision, strategic thinking, and profound understanding of the power of the right to vote resulted in the CVRA. The CVRA, signed into law in 2002, was not a response solely to a single court decision. The CVRA resulted from Joaquin's visionary, decades-long strategy to address basic equity issues of political access, educational opportunity and economic development on behalf of Latino communities. Knowing its origins will, I hope, enhance the opportunity for policy makers, litigators, scholars and activists to pursue innovative, effective, entrepreneurial approaches to addressing other seemingly intractable challenges to perfecting our democracy. The CVRA was a result of an innovative approach to access the courts—creating opportunities for effective exercise of the right to vote as fully participatory citizens and opportunities for the development of leadership and institutions within the Mexican-American community.

Joaquin saw that the U.S. needed a well-educated, economically developed and politically integrated Mexican-American community to maintain a competitive edge in an increasingly interdependent, global economy. The CVRA is an exquisite example of the convergence of the larger societal good with the interests of a minority community in securing its full participation as citizens. For Joaquin, the analysis was one of power and the Mexican-American community's rights to self-determination.

Finally, I want to close with five aspects of who Joaquin was that I wish all civil rights litigators would emulate. Joaquin made himself accountable to the communities he represented. His trial preparation engaged any member of the plaintiff class who wanted to participate. The trial itself left activists with new knowledge about power, political realities, and community leadership. Generosity and preparation were at the heart of all of his advocacy. He believed a good idea could come from anyone. Regarding this last trait, the *Watsonville* case was Denise Hulett's first voting rights trial. Our expert on racially polarized voting was Bernie Grofman, who had obtained god-like status because his analysis had been cited by the Supreme Court in the *Gingles* decision. But, as we were preparing him to testify the next day, Denise—this novice—thought there was a better way to create one of the exhibits. So, Joaquin listened, and we created the exhibit that Denise came up with, which turned out to be better after all! His intellectual rigor fueled exceptional creativity in using the law in pursuit of justice. I challenge the next generation of lawyers to follow Joaquin's example in the ongoing work of expanding who is included fully in "We the People."