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N. J. CONSTITUTIONAL CONVENTION OF 1966

First Hearing

before

COMMITTEE ON APPORTIONMENT OF THE LEGISLATURE

New Jersey State Library

held at

RUTGERS UNIVERSITY

The State University of New Jersey

New Brunswick, New Jersey

April 14, 1966

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STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1966

COMMITTEE ON APPORTIONMENT OF THE LEGISLATURE

April 14, 1966

(The hearing began at 2:10 P.M.)

CHAIRMAN WESLEY L. LANCE: The meeting will come to order, please. Will the Committee Members please take their seats.

Good afternoon, ladies and gentlemen. This is the first meeting of the Apportionment Committee of the 1966 Constitutional Convention.

My name is Wesley L. Lance. I am one of the two Co-Chairmen, being a Republican Delegate. The other Co-Chairman is Senator Keegan of Passaic County, A Democrat Delegate, who will chair the meeting next week.

Senator Keegan, will you please stand for recognition.

(Applause)

This Committee consists of 32 members, a little more than a jury and more than a mob, - 16 Democrats and 16 Republicans.

I am going to introduce the Republican members who are present: Senator Farley, please stand; Senator Dumont; Mr. Schreiber of Union; Mr. Cawley, also of Union; Mr. Thatcher of Camden; Mr. Evers of Passaic; Mr. Novins of Ocean; Assemblyman Maraziti of Morris; former Assemblyman Kimmelman of Essex; Assemblyman Woodcock of Bergen; Senator Hunt of Gloucester; Senator Woolfenden of Sussex; and Mr.

Roth of Hudson. Are there any other Republican Delegates who are members of this Committee?

(Silence)

Co-Chairman Keegan, would you like to introduce your Delegates.

CO-CHAIRMAN JOSEPH M. KEEGAN: Thank you very much, Senator.

The first member on our list of membership here from the so-called "Panel A" is Joel R. Jacobson, Essex County; John B. Duff, Essex County; John J. Reilly, Monmouth County; Karl Metzger; Robert J. Inglima; Walter Duane Lockard; Alfred H. Lupton, III; Isadore Glauberman; Mr. Cotton is not available today; Sanford L. Hollander; William L. Roach, Jr.; Irving E. Shaffer; Neil F. Deighan, Jr.; David J. Goldberg - is Davis here? (Silence) Saul Orkin.

Contrary to popular rumor, we can start without David J. Goldberg.

MR. LANCE: Without the Lt. Governor?

Any Delegate who wants to address a question to the witnesses is pleased asked to grab the nearest mike.

To the best of my knowledge, we have only two groups here today to testify, so if either group would like to take longer than the magic 15 minutes, Senator Keegan and I agreed that we won't be bound by these artificial time limits today.

The first group which desires to make a presentation is the New Jersey League of Women Voters which has been

so active in so many different topics of government for a long period of years.

Will each speaker give his or her name and address and, for the record, what group he or she represents.

M A R Y L O U I S E N U E L S E N: I am Mary Louise Nuelsen, President of the League of Women Voters of New Jersey. Our address is 460 Bloomfield Avenue, Montclair. I represent 92 local Leagues and 9500 members and I appreciate the opportunity to appear before this Committee.

In April of last year, the League's State Convention adopted for study the following item: "Study and work for an equitable system of representation in New Jersey that will be in accord with Federal and State Court decisions." By the end of January of this year, the Leagues throughout the State had reached agreement on several criteria for judging any proposed apportionment plan.

The Leagues arrived at a consensus that the New Jersey Legislature should be a bicameral body of approximately its current size, that is, the size of the temporary legislature. A twenty-nine member Senate and a sixty member Assembly are large enough to provide the manpower necessary for successful committee work. At the same time, these bodies are small enough for deliberation. Any decrease in the membership of the Legislature would mean much larger constituencies and would thus deprive the people of good representation. At this time it does seem to us unlikely that a greatly enlarged Legislature could be considered because, Gentlemen, without a broad base tax, the revenue

is simply not available for a new State House nor for enlarging the present one, nor even a new desk for you anywhere.

The League supports single member districts in the Assembly and multi-member districts in the Senate because we believe such a combination would provide the most equitable kind of representation. Our feeling is that every voter should be represented directly and personally by having single-member districts in the larger house so that there would be representation of local interests and minority groups. At the same time, the smaller body would be representative of broader regional concerns. To this end, it was felt that Senators could be elected at-large from senatorial districts which would probably coincide with county lines.

At-large elections in the Senate are manageable because the most populous county, Essex, elects only four Senators and a voter can get to know and make intelligent choices among eight candidates, or so, if he makes a real effort.

On the other hand, it is almost impossible for a voter to remember the names, much less to know the faces and records of the large number of candidates running for the Assembly in that same county.

After such an at-large election, the voter is again frustrated for he does not have one specific assemblyman to whom he can funnel his requests and on whom he can focus his complaints, and his praise, we would hope, from

time to time. Nor can he usually hope to be known to such a delegation in which each man has a constituency nine times as large as we think reasonable.

All districts should be compact, contiguous, and substantially equal in population as determined by the Federal census. The New Jersey Constitution now provides for the use of the Federal census in apportioning the Assembly and we believe this method should be continued and also extended to the apportioning of the Senate. The census data may not be absolutely correct, but it is official, objective, free and respected. The goal of apportionment is equality, and though some deviation is necessary we feel it should never exceed, and seldom reach, 15%.

Our hope is that such a large deviation might occur only in a district which is, for example, growing so rapidly in relation to others that an initial 15% over-representation would keep it within the permissible deviation for the next 10 years.

There was widespread sentiment for maintaining municipal boundaries when drawing district lines. The attitude on county lines was that they are worthy of retention if feasible but not at the expense of population equality.

Finally, we believe the New Jersey Constitution should provide for reapportionment every 10 years following the publication of the Federal census. The Constitution should also provide that such reapportionment be completed within

a specified time and that, in the event of a suit, original jurisdiction be vested in the New Jersey Supreme Court. It is obvious we have avoided mentioning who should be responsible for reapportionment and this reflects lack of agreement on the part of our 92 Leagues. They were evenly split, half placing primary responsibility for reapportionment with the Legislature, the other half with the Governor.

We thank you for this early opportunity to be heard and we would be delighted to reply to questions, and I have here Mrs. Ackermann and Mrs. Gordon who have studied this matter in some depth.

CHAIRMAN: Former Assemblyman Kimmelman.

MR. IRWIN I. KIMMELMAN: I would like to ask the members of the League, what is their justification for espousing multi-member districts as opposed to single-member districts?

MISS NEULSEN: Just in the Senate, the multi-member districts.

MR. KIMMELMAN: The question was, the justification, the reason for multi-member as opposed to single-member in the Senate.

MRS. DAVID ACKERMANN: The reason that occurs to me right now, and I know this was a strong factor, is that it was felt that all single-member districts - well, we didn't want this 2 to 1 relationship. For instance, we didn't want the Senators to be representing a small group as perhaps two Assemblyman would represent. The thought is that they should have a wider, less parochial, viewpoint, more of a regional

approach to the problems.

MR. KIMMELMAN: Wouldn't you agree, the fact that a Senator's term might be double that of an Assemblyman, - in other words, 4 years as opposed to 2 - wouldn't you agree that the mere fact that a Senator would be in office for 4 years would tend to give him a broader outlook?

MRS. ACKERMANN: I agree. I don't know whether the League --

MRS. LEWIS GORDON: I think the Leagues in general agreed that a 4 year term for a Senator was desirable and I would tend to agree that this would give the wider approach to problems, the four year term.

MR. WILLIAM L. ROACH, JR.: The League recommends that the present size of the Legislature be maintained. This would presumably mean that no geographical area with much less than 1/60 of the State's population would be entitled to individual representation. Five smaller counties have much less than 1/60 of the State's total population. Does this mean that the League recommends that these small counties be combined with adjacent areas in both houses of the Legislature?

MRS. GORDON: Well, the League didn't really decide this as part of their position but I think it's obvious that this would have to be - it would have to combine counties in order to get the equitable representation.

CHAIRMAN: Mrs. Gordon, did the League figure out how big the Assembly would have to be in order to give even the smallest county one seat?

MRS. GORDON: No.

MRS. ACKERMANN: Obviously it would be 115 or 120 depending on your representation.

CHAIRMAN: Will you speak into the microphone.

MRS. ACKERMANN: I would assume it would have to be well over 100 to represent every county and keep equal representation. I don't think we had specific feelings in the League against enlarging the body as much as against reducing it. Or am I wrong in that?

MRS. GORDON: I think you're wrong. I think the general sentiment was that approximately 30 and 60 was a good number, as it was.

CHAIRMAN: Professor Duff.

MR. JOHN B. DUFF: I would like to post the obverse of Mr. Kimmelman's question: What justification the League has for recommending single-member districts in the Assembly. I assume the League is acquainted with the horrifying examples of single-member districting in the 19th Century and the contents of the Supreme Court decision that ordered the Assembly to be elected at-large because of these terrible problems.

And, secondly, I would also like the League to answer if they think a good objection to a larger Assembly is the fact that we don't have a broad base tax? Aren't you really getting into another kind of political question that isn't before this Convention?

I do think that an increased Legislature - I should state that's one of my proposals submitted before the Con-

vention - should be considered by the League so as to give every area of the State personal representation.

CHAIRMAN: What's the Professor's question?

MR. DUFF: I ask the question why single-member districts in the Assembly and, second, is this the best reason you have for not increasing the size of the Assembly, the absence of a broad base tax.

MRS. GORDON: I'm sorry about the reference to the broad base tax. We weren't trying to get really into a haggle on this but we felt, since the League seems to have spent most of its time recently being concerned with a broad base tax, that we would just make a little joke to bring it also into this.

No, it doesn't really have anything to do with the Constitutional Convention.

So far as single-member districts go, yes, New Jersey has had difficulty with this in the past. It was the feeling that single-member districts are good, are to be desired in one house and, with proper constitutional safeguards in terms of what the district should look like, etc., also with the Supreme Court having original jurisdiction, should there be a suit, that the excesses of gerrymandering, etc. could be avoided in using single-member districts.

MR. DUFF: You still haven't answered, though. Do you have a real objection to increasing the size of the Legislature? The only reason given in the statement was the absence of a broad base tax. Do you have any other fundamental reason for opposing an increase in the size of the

Assembly or, as the case might be, a one-house Legislature?

MRS. GORDON: Well, as our Leagues throughout the State studied it and their reports came back to the State League, they did not say why they did not wish to enlarge it, all they said was that they felt that the present size was adequate and manageable and that you could do a good job with this size. So it's not a question of having any objection, it's a question that the Leagues, on the other hand, put it that they thought the present size was good.

CHAIRMAN: Assemblyman Maraziti.

MR. JOSEPH J. MARAZITI: Has the League worked out any specific plan for the Assembly set-up?

MRS. ACKERMANN: No.

MR. MARAZITI: And I take it there is no specific plan for the Senate.

MRS. ACKERMANN: No. The League didn't look for a specific plan. To ask 93 Leagues to agree on a specific plan would have been difficult unless you presented them a plan and said yes or no. But to ask each one to create a plan would have have been impossible. Therefore, what we were looking for was criteria to apply to a plan.

MR. MARAZITI: Do I understand from a previous comment that you feel there would be less possibility of gerrymandering if there were single-member districts?

MRS. GORDON: No, I don't think so. I think most people would agree, if you have fixed districts to which you just allocate numbers of people that this is the best way to completely prevent gerrymandering. I was saying,

if we had proper constitutional safeguards we could avoid the kind of gerrymandering that went on previously in New Jersey when we did have single-member districts.

MR. MARAZITI: By a "fixed district," do you mean a district determined by some other method than the county line?

MRS. GORDON: Not necessarily. I think the Committee for Fair Representation, their plan, for example, combines counties, not always but in some cases it provides a fixed district to which you allocate seats.

MR. MARAZITI: Yes. But would you say or are you able to give us an opinion as to whether there would be less gerrymandering possible using the county unit, the 21 counties, than there would be if you had, say, 60 Assembly districts?

Has the League considered the question of gerrymandering there? In other words, would you say there would be less gerrymandering using the counties or --

MRS. GORDON: Well, our position has been that we should try to retain county lines wherever this is feasible but that we don't want to say that we must keep county lines and sacrifice equality of representation, but that we recognize that the counties provide a good basis from which to begin.

MR. MARAZITI: In other words, the League was interested also in the adoption of a plan that would eliminate gerrymandering as much as possible.

MRS. GORDON: Certainly. And, of course, we feel that

municipalities - retaining municipal lines and not cutting them unless the municipalities are entitled to more than one --

MR. MARAZITI: That would tend to eliminate gerrymandering to some extent.

MRS. GORDON: Right.

MR. MARAZITI: And wouldn't you say that there would be less gerrymandering by using the county line than by using separate districts.

MRS. GORDON: Well, if you just start with the State of New Jersey and decide randomly that you are going to start a certain assembly district some place, yes, this provides all kinds of opportunities for gerrymandering.

MR. MARAZITI: Thank you.

MR. ROBERT J. INGLIMA: I am Robert Inglima, Bergen County. I wanted to address a question to the ladies which presupposes what I understand to be true that, of course, you are in favor of a bicameral form of legislature and, without watering down my own position which is strongly in favor of unicameralism, on that particular question of differential between the Senate and the Assembly, as you proposed it, I wonder if the ladies of the League considered some of the practical problems which have apparently come into play in the larger counties where you have a number of Senators representing the one county which actually comes down to one basic problem. You have a situation where, for example in Bergen County you have 4 Senators representing the entire County; you have a basic

jurisdictional question, I would say, as to just which Senator is to be consulted on which specific problem by which people in which particular area. You have a situation with a duplication of effort, in many cases. And, basically, you have a tremendous job which each Senator must, in turn, discharge, taking into account the natural tendency toward duplication.

Now, I am just wondering how much of this was taken into consideration by the League in formulating the position that the Senate should be elected on an at-large basis.

MRS. GORDON: Well, here again, exactly what the individual Leagues were thinking as they were formulating this idea is difficult for me to say. I would say that they felt that when you are talking about 9 Assemblymen in Essex as opposed to 4 Senators, - I think they felt that 4 people would be manageable and 9 just was not. And it was a question of degree rather than anything else.

MR. INGLIMA: Well if I may just ask one other question, Senator.

Doesn't this - and once again maybe I'm bringing in stumping for the unicameralism as I will be prone to do, - but doesn't this concept that we should have a Senate at-large so as to give the Senators the possibility of having a broader outlook rather than a provincial outlook - doesn't this somewhat fly in the face of the analogy itself, the Federal analogy which was made that this concept,which is followed in the Federal government,

of having 2 Senators representing the entire State with a number of Representatives representing specifically populated districts, that this does not obtain on the State level, so that indeed this should not be a concept which should be decisive in our determination. In other words, the question of a broad outlook rather than the provincial outlook.

Is that question hard for you to follow?

MRS. GORDON: Yes. We certainly agree that the Federal analogy should not be carried over to the State level.

MISS NUELSEN: I think you've made your point.

MR. INGLIMA: Thank you.

CHAIRMAN: Any other questions?

Give your name.

MR. JAMES M. CAWLEY: I am James Cawley, Union County.

I would like to know if the League of Women Voters has a minority report also coming out of the League of Women Voters to this particular Convention.

MISS NUELSEN: Well, yes. All the Leagues in reporting concensus, if they have a substantial minority opinion to report, do so. And this is taking into consideration as we view these reports.

You might be interested to know that there was considerable interest shown - I think by 22 Leagues, or something like that, - in unicameralism.

CHAIRMAN: Any other questions?

(silence)

I have a question. As to the 1966 estimated population for the various counties, have you ladies made any conclusion as to, one, their accuracy and, two, the desirability of using them for our present reapportionment?

MRS. ACKERMANN: I think we do have a stand on the use of the census. And since this is the only census figure now available -- oh, as to accuracy we recognize that they are not 100% accurate. I think there is something like 2 1/2% error, or something, usually. But we don't think you can get any better figures. You can get later ones, of course, but, you know, for the long term, to put into the Constitution our stand is that you should use census figures.

CHAIRMAN: Any other questions? If not we will thank the representatives from the New Jersey League of Women Voters.

MISS NUELSEN: Thank you.

CHAIRMAN: Joseph Harrison.

J O S E P H H A R R I S O N: My name is Joseph Harrison and I appear here as Co-Chairman with Professor Alpheus T. Mason, the other Co-Chairman on the Faculty of Princeton University, of the New Jersey Committee for Fair Representation, also as Editor of the New Jersey Law Journal and, thirdly, let's say, as a citizen.

I have been asked to announce by Bill Kohm that the parts that I will read have been made available for the Press, I believe, and he will distribute them. Bill asked me to make this announcement.

Now, first, I think you ought to know something about the New Jersey Committee for Fair Representation. The Committee - in the course of the last six months of 1964 the New Jersey Committee for Fair Representation was formed. The Committee for Fair Representation consisted of a group of political scientists and attorneys concerned about the issue of fair representation and it was moved to act by the sometimes intemperate response to the decision of the United States Supreme Court in Reynolds v. Sims in June, 1964.

The various members of the Committee, particularly the political scientists who consisted of members of the faculties of Princeton University, Rutgers, Seton Hall, Drew and Upsala, wrote a number of short papers on various aspects of New Jersey's reapportionment situation and discussed them at length at numerous meetings.

Out of that research and deliberation came a set of recommendations submitted to the Legislative Reapportionment and Congressional Redistricting Planning Commission, chaired by the Honorable Robert B. Meyner. Arguments in support of those recommendations are set forth below in the brief statements offering the reasoning of the Committee.

Now I will just summarize what the report sets forth. I propose to leave a copy of the report with this Committee for the official record of the Convention and will read one part of the report which I think may be of particular interest at this session, to wit, that

part dealing with the multi-member and single-member districts. (For complete report - see page 60.)

I will read any of the other parts of the report as may pertain to any question that may be raised. And from the questions I've heard up to now, I think there are some - I won't presume to say these are definitive and positive answers but certainly they shed light on a lot of the questions that have been asked here.

Now to summarize what this report recommends: In the first place, the Committee firmly supports the decision of the Supreme Court in the Baker v. Carr and Reynolds v. Sims and related cases, and it desires to assist in any way it can to bring about an equitable reapportionment of the New Jersey Legislature and of Congressional Districts.

The first paper discusses the history of the "One Man, One Vote" principle, demonstrating its roots in our traditions and illustrating the evolution of judicial doctrine concerning it.

The Committee suggests the retention of a bicameral legislature, and favors a system of fixed multi-member districts for the Senate with single member districts drawn from the counties for the Assembly. It urges the use of population as the basis for drawing all districts, and suggests that deviation in districts be held to no more than 15 to 20 per cent, depending upon the method of districting used.

It proposes that the Senate be enlarged to 30 members and the Assembly kept at 60.

So far as possible the drawing of districts should be done with an eye to growth trends, hopefully to diminish inequalities due to unequal growth of population.

The Committee opposes systems of weighted or fractional voting, and makes suggestions for ways to handle future reapportionment so as to facilitate action in a reasonable time and so as to minimize gerrymandering.

Finally, the Committee states its opposition to the tying together of state legislative and congressional districts.

On the subject of multi-member and single-member districts, the Committee reported as follows:

Study has shown that there are advantages and disadvantages to both systems. The Committee feels that under a bicameral system we can have the advantages of both systems. The Committee recommends to the Commission that the upper or smaller chamber be composed of fixed districts to each of which several members are apportioned and elected at large and that the lower or larger house be based on single-member districts.

Only a few things can be said about this question without fear of contradiction. One is that multi-member districts are far more common than most observers believe them to be. In the fifty states in 1962, 3,179 lower house members were elected from single-member districts, while 2,704 represented multi-member districts. In upper houses about one-sixth of the representatives were elected from multi-member districts. Multi-member districts made up

of counties or other areas with permanently fixed boundaries inhibits gerrymandering. The necessity for frequent adjustments of boundaries of single-member districts, on the other hand, offers many opportunities for gerrymandering and is difficult to guard against.

By the same token, the winner-take-all effect of the multi-member districts favors the majority party in a given area. In New Jersey's experience in the General Assembly, for example, the one-party complexion of the multi-member delegation has been broken only twice. On the other side of the coin, however, is the fact that given districts of equal population and the relatively even distribution of the voters among the parties of each district it would be possible for a shade more than 26 per cent of the electorate to elect a majority of the state legislature.

There are some other statements that can be made about this problem which are in the probable or "it stands to reason" classes of certainty. For example, multi-member districts favor the political organizations existing in New Jersey and would tend to perpetuate machine power where it exists. This is so because of the winner-take-all effect and the necessity in most instances of fighting the entire organization. Some people believe that enlightened individuals will be more likely to run for public office from single-member districts because they do not have to buck the entire county organization.

A make-weight factor of incalculable, literally

incalculable, value is that in larger multi-member districts the candidates would hardly be able to remember the names of their running mates; a fortiori the voters would be hard put to distinguish the candidates or make intelligent choices.

Propositions which run more to feeling than argument and seem not susceptible to empirical proof or demonstration are:

1. For single-member districts: the legislator elected from a single-member district is closer to his district and more likely to do a good job in representing it. Where one man has the responsibility for the representation of a district, he is likely to feel more important in his job and attempt to discharge his responsibilities at a higher level. A single-member district system may encourage the preservation of the two-party system by allowing for minority representation within counties or other major areas.

2. The argument for multi-member districts: with equal relevance, it is asserted that the legislator elected from a multi-member district takes the broad view and is not so likely to be parochial in his approach to state problems. Some observers believe that multi-member representatives will be more likely to reflect a metropolitan point of view. They especially warn against a return to the old ward representation system which they argue would result in a legislature made up of party hacks from safe districts, controlled by party organizations.

In New Jersey, there appears to be a constitutional problem in the way of single-member districting. The New Jersey Constitution, 1947, Article IV, Section 3, paragraph 1, states: "The General Assembly shall be composed of members elected biennially by the legally qualified voters of the counties . . ." This language appears to say that the county constitutes the districts for members of the General Assembly. Several cases apparently support this conclusion. The election of Assemblymen from single-member districts within a county was held to violate the State Constitution in State v. Wrightson, 56 N. J.L. 126, and Smith v. Baker, 74 N.J.L. 591, 1906. The Wrightson case was 1893. This objection, this constitutional objection can, of course, be remedied by a new constitutional provision with which, I believe, you ladies and gentlemen are concerned.

There appears to be no federal rule on the subject. Dictum in Lucas v. Colorado characterized elections at large within counties as one of "the most undesirable features" of the Colorado apportionment plan, but added: "We do not intimate that apportionment schemes which provide for the at-large election of a number of legislators from a county, or any political subdivision, are constitutionally defective." The Court reaffirmed this in its decision in a Georgia case handed down January 18, 1965.

Now this concludes the Committee's argument on the subject of multi-member or single-member districts. The consensus of the Committee was that it be or that we have a combination - the multi-member districts for the Senate

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and single-member districts for the Assembly.

Now I would like to read just from one part of an editorial which appears in the New Jersey Law Journal. I will present for the record of the Convention for this Committee four issues of the New Jersey Law Journal which ran editorials on the subject of Legislative Reapportionment. (See P. 83) There is a precedent for such presentation. Mr. Justice Brennan, who is also a member of our Board, in 1947 presented the editorials that appeared in the Journal with respect to judicial revisions, and we hope that these editorials may be of some value to you in your deliberations.

In our issue of January 13, the second editorial entitled "The Reapportionment Convention - Choices of Approach" a number of approaches were mentioned and the one that also met the consensus of our Editorial Board, of course they are all Lawyers, - I dare say the members of the Bar who are members of this Convention will recognize the Associate Editors, at least, as being lawyers of distinction, and this was our consensus:

"There is, of course, another choice which combines the advantage of the two different approaches and minimizes their difficulties. That choice would consist of (a) an amendment specifying a formula, standards and the like; (b) provision for placing authority in some independent agency to select a specific reapportionment plan on each occasion when reapportionment becomes necessary after the first occasion, either directly or as a backstop in case the then legislature and Governor are unable to enact new

reapportionment legislation within a specific time; and (c) a schedule specifying the particular plan to take effect automatically for the first new legislature to be elected in November, 1967."

Now, I would like to expand a little on this paragraph that I've just read to you.

The Convention is constituted of an equal number of Republicans and Democrats. Politically, it is evenly divided.

The Legislature, at the present time, is overwhelmingly or predominantly dominated, of course, by one party.

With respect to the most immediate election, the next election, say 1967, it would appear fairly obvious to anyone who isn't particularly involved in or concerned with partisan politics that the Convention would be most likely to come up with or to produce a fair system of representation.

With that as a basis, since you are evenly divided, the next consideration will be, "Well, what thereafter?"

I should say before I go to the next step, for that reason - and this I will say is a personal feeling of my own - for that reason it would be in order, it seems to me, in order to attain the objective of a fair system of representation, that the Convention certainly provides the basic guideline of legislative representation for the future. That could be an article right in the Constitution.

Another article, of course, could be the apportionment

in the future.

The report of the Committee recommends, of course, that every time the census is taken, when we know what the population is, that there be an examination of the districts and a reapportionment, if necessary.

And then, in order to effect what should appear to be a fairly obvious situation, the greater likelihood of getting a fair system of representation from this Convention, as presently constituted, - then to have a schedule which would set forth the districts and the detailed system of representation to be effective for the election in 1967 and thereafter, after the 1967 election, each party has to merit the confidence and support of the people and whoever is in the Legislature at that time would reapportion or would do any reapportioning that became necessary because I think that I'm convinced, from the experts, that basically reapportionment should be a legislative function where you can get the legislature to carry out its duty. And it's because legislatures in the past have not carried out their duties that the courts have had to act, both the United States Supreme Court and our own Supreme Court. And other methods have been suggested, such as commissions appointed by the court in the event there is any deadlock within a legislature or between the legislature and the Governor.

Basically we do feel - I certainly feel and our Committee feels and I think the majority of our Editorial Board feels that it basically is a legislative job to

reapportion.

Now, this is all the time I wish to take on my own. If there are any questions, I will try to refer to the report.

Now, I will say that what I've read is the consensus of the Committee and the mere fact that I'm presenting this report doesn't mean that I wrote it because I didn't. It was written by some experts --

CHAIRMAN: Other experts.

MR. HARRISON: It was thoroughly considered and I wouldn't even make claim to that, Senator, thank you. But I will do the best I can to recall our discussions and the arguments presented on any of the topics that are involved in the problems of your Convention.

CHAIRMAN: Thank you, Mr. Harrison.

Joel Jacobson.

MR. JOEL R. JACOBSON: Mr. Harrison, you state in your testimony that in a multi-member district the winner-take-all theory was broken just twice. Do you happen to have the citations of those two instances?

MR. HARRISON: I don't have them right handy, Mr. Jacobson, I can get them for you.

MR. JACOBSON: Well I was going to suggest that the research was not exact because, while I've done no research on it, while you were talking I just jotted down from memory 9 instances within the last few years where this winner-take-all theory had been violated. I would suggest that the incidents were as follow: There were

3 elections in Union County, 2 for the Assembly and 1 for the Senate, where both now Senator Stamler and now Senator Hughes ran on opposing tickets and were successfully elected, that's 3 different times, twice in the Assembly and once in the Senate. In Essex County there were 2 elections within recent years in which former Senator Sarcone appeared in the delegation once in the Assembly as a member of the Majority and once in the Assembly as a member of the Minority.

In Monmouth County, within recent years, Assemblyman McGann was elected as a Minority member of the Republican Delegation.

In Bergen County, to date, Assemblyman Woodcock sits as a Minority member of a Majority delegation. And in Camden County there have been 2 elections - the 2 figures that come to my mind are former Assemblymen McCord and Bigley who sat as members of the Camden County delegation and today Assemblyman Dickey and Assemblyman Horn are both from different parties sitting in the delegation.

I would submit that perhaps this is a refutation of the theory that winner-take-all seems to be the pattern.

MR. HARRISON: Well, I'll tell you, you mentioned Union County and some of these other counties. I think their election took place in either '65 or the latter part of '64. Is that right? Union County was certainly last year, wasn't it?

See, this report really goes back to last year. So, so far as any statistical figures of that sort, they would be just a statistical item, just as you suggest they

might be changed because they post-date the report. But I think the arguments, the basic arguments, still apply.

MR. JAMES M. CAWLEY: I was wondering, Joe, whether the Committee has a formula in which their particular plans can come into being on a permanent basis.

MR. HARRISON: As some of these expert witnesses in some of these utility cases say when they come up with a tough question - I'm glad you asked that question. But I'm really glad you asked it because we do happen to have - the Committee did consider and have prepared a detailed plan for representation. The plan was originally supposed to be illustrative of how the guidelines and the criteria, as agreed upon by the Committee, could be practically, from the point of view of reasonable possibility, implemented. And I have here a map which indicates a group of 30 senatorial districts which are in red, with county lines observed. The counties, whole counties, were grouped in order to preserve the county lines according to their population with the deviation percentages that I've indicated. And, similarly, districts - ~~single~~ member districts of the Assembly, 60 of them, have been delineated and have actually been spelled out as to what the population would show for each of them, and the proposal is workable.

Now at the time this was drawn we didn't want to come to any of the bodies there and say, this is it, this is the program. We recognize there's a more limited sense of practical and political practicality too, and we weren't trying to tell you just the precise line but we do have a

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plan which was drawn up on a non-partisan basis, on a scholarly basis of showing what you could have.

CHAIRMAN: We've been asking people who are presenting plans to leave their specific details with us. Now, can you leave with us whatever details you have for the record? Tell us what they consist of.

MR. HARRISON: Well, I would be glad to leave with you the summmary of the proposed Senate and General Assembly Districts, and I do have some maps on a smaller scale. This is the only one I have but I think it could be reproduced, Senator. (See page 88)

CHAIRMAN: The staff can reproduce this very easily.

MR. HARRISON: If they can, fine. And these maps, of course, I'll leave with you.

CHAIRMAN: Let me ask you some questions.

Are you finished with your formal presentation?

MR. HARRISON: Yes, sir.

CHAIRMAN: You have 60 separate single-member Assembly districts, is that correct?

MR. HARRISON: I beg your pardon.

CHAIRMAN: You have 60 single-member Assembly districts?

MR. HARRISON: Yes, sir.

CHAIRMAN: Now, did any of those districts go out of county lines?

MR. HARRISON: No, sir, my best recollection is that they didn't.

CHAIRMAN: Except you would have to take some of

the smaller counties and combine them with a larger one. I'm sure you had to do that.

MR. HARRISON: Yes.

CHAIRMAN: In other words, you can't have a 60 member Assembly and have Cape May standing alone.

MR. HARRISON: That's right.

CHAIRMAN: But taking say the largest county of Essex, how many Assemblymen did you allocate to it?

MR. HARRISON: To Essex? We allocated - I say "we" - this study allocates to Essex I think 9 members. Just a second.

MR. CAWLEY: It's on the map, the bottom right-hand corner of the map.

MR. HARRISON: Nine.

CHAIRMAN: Now the 9 sub-districts of Essex, does any one of them break the county line?

MR. HARRISON: No, sir.

CHAIRMAN: Bergen?

MR. HARRISON: Now, I have a study here which can answer you very specifically and very directly. I'm quite certain that we preserved county lines. I don't think we crossed any county line.

CHAIRMAN: In your opinion then that was also true in Bergen?

MR. HARRISON: I would say so.

CHAIRMAN: And Hudson?

MR. HARRISON: Yes, sir.

CHAIRMAN: Union? I'm taking the largest counties.

MR. HARRISON: Yes, sir.

CHAIRMAN: Now you say Essex got 9 Assemblymen. Who made that decision? What formula? Or was that a formula or was that discretionary?

MR. HARRISON: Well, we were guided by the basic element of population. And I think if you take it on a population basis that's what it comes out to.

CHAIRMAN: Well, it's not that easy. You must use some sort of a formula and I presume you used the formula of equal proportion or some other well-known formula.

MR. HARRISON: If you take Essex and divide it up as nearly as you can and still stay within the boundary of the county, and taking that population, the population of Essex and relate it to the population of the State you come up with the 9 for the total Assembly representation for Essex. Now you understand that this is merely a demonstrative sort of proposition.

CHAIRMAN: Well, Mr. Harrison, it's my guess that whoever did that paper used the formula of equal proportion in allocating the 60 Assembly seats, but I don't know. And for the record, would you write us a letter and tell us what formula was used for allocating the 60 Assembly seats.

Senator Farley.

MR. FRANK S. FARLEY: Mr. Harrison, in your recommendations you suggested that future apportionment should be by the Legislature. Is that correct?

MR. HARRISON: In the first instance, yes.

MR. FARLEY: In the event that they fail to reapportion then you refer it to the court. Is that correct?

MR. HARRISON: A court or a commission, whatever you decide.

MR. FARLEY: Or a commission. Is that correct?

MR. HARRISON: Yes.

MR. FARLEY: Now, do you have any time limitation on the Legislature, whether it should be 6 months or a year or 2 years or 2 weeks?

MR. HARRISON: That's a matter of discretion. Six months I think was some of the discussion but this is a matter that I would certainly leave to the Convention.

MR. FARLEY: Have you any guidelines, first, as to the Legislature and, secondly, if perchance the court or a commission, have you any guideline that it's to be non-partisan; likewise, whether there be any small county representation? Are any of these recommendations in your report?

MR. HARRISON: I didn't hear the --

MR. FARLEY: Have you any guidelines in your recommendations to this body, first, the time element concerning the Legislature; number two, if perchance they could not agree and the Supreme Court appoints a commission, as you have recommended, whether it should be bi-partisan; and, likewise, is there any representation involving small counties if perchance a commission were appointed by the Supreme Court?

MR. HARRISON: No, I'm sorry, Senator, these are important details and we recognize that they are important but I don't recall that we came to that -- May I read what we say on that, Senator?

MR. FARLEY: Go right ahead.

MR. HARRISON: Reapportionment by some non-legislative agency. A few states have transferred the responsibility for reapportionment to a non-legislative agency. The Massachusetts Constitution, for example, between 1836 and 1857 directed that the job be done by the governor and council; Maryland had a similar provision between 1867 and 1950; Missouri in 1945 provided that the secretary of state should apportion its house of representatives. In some cases a commission has been named to carry out the reapportionment. In Ohio the commission is made up of the governor, auditor, and secretary of state; in Arkansas of the governor, secretary of state, and attorney general; in Missouri the governor appoints the commission from lists submitted by the two major parties; and in Alaska the governor appoints a five-man commission which is geographically representative to provide a plan which he may alter.

In general terms, where the reapportionment has involved distribution to fixed-boundary constituencies, there has been less reluctance to turn the job over to an executive official or commission. Only in rare cases has the responsibility been assigned to a non-legislative agency when the reapportionment involves districting. The reasons are not difficult to find. In a distributive type

of apportionment the rules may be fixed in advance quite precisely, and all that the non-legislative agency must do is apply these rules. The task becomes strictly mechanical. However, where districting is involved, the reapportionment task requires the exercise of judgment, and judgment opens the door to gerrymandering. If an attempt is made to circumvent this difficulty by appointing a bi-partisan commission, the result may be simply a stalemate.

MR. FARLEY: Mr. Harrison, as a result of your reading that opinion, are you supplementing your recommendation to this Convention that all of those various suggestions be followed or analyzed or digested? Is that your recommendation?

MR. HARRISON: Yes. And, personally, might I point out that the Missouri plan appears to meet with what you may have in mind, Senator. In Missouri, you will recall, the governor appoints the commission from lists submitted by the two major parties. And then a combination of that would be Alaska's system. In Alaska the governor appoints a five-man commission which is geographically representative. I think that's something else you will have to consider.

MR. FARLEY: Mr. Harrison, does your Committee have any thoughts relative to the content of the ballot, as to any particular plan, A, B, C?

MR. HARRISON: No, we don't.

MR. FARLEY: Any definite, concrete language that

should emanate as a result of this Convention?

MR. HARRISON: We do not.

MR. FARLEY: No recommendations whatsoever?

MR. HARRISON: No, sir.

MR. FARLEY: Thank you very kindly.

CHAIRMAN: Is there somebody from the A Panel? We're alternating.

MR. INGLIMA: Mr. Harrison, I just wanted to ask whether your concept here of the multi-member and the single-member district, at-large as opposed to single member, in the Senate and Assembly, respectively, presupposes, of course, the existence of a bicameral legislature, - if this is not a fair assumption. Is that correct?

MR. HARRISON: Yes, sir.

MR. INGLIMA: If you had considered the possibility, what would be the opinion or consensus of the Committee on Fair Representation if instead of the bicameral legislature we had a unicameral legislature? Would it be for the at-large representation or would it be for the single-member district type breakdown?

MR. HARRISON: Since we really agreed - I recall the discussions we had on the bicameral and unicameral. In the first place, there wasn't too much thought given to unicameral, basically because we thought what was being done, aside from that, was a sufficient wrench from the old system and that just to get a fair system of representation even with the two houses, especially at

the time we organized the meeting, would be a giant step forward in self-government. But I believe, and this is just my opinion based on having presided at these meetings and from the discussions, that if there were to be a unicameral -- well, I want to be fair about this and not give my own opinion as that of the Committee -- I think there would be some division as to whether there should be at-large or district. I would personally favor the district if I were driven to that choice.

MR. INGLIMA: What I was trying to drive at actually was whether or not - you had mentioned, for example, pros and cons on either side, --

MR. HARRISON: That's right.

MR. INGLIMA: -- at-large as opposed to single-member districts. Whether or not there was an actual consensus as to which of the two forms were more desirable. For example, what had actually happened here, if you didn't assume that there were going to be two houses and then say, well, in case there are two houses we'll adopt both practices, one practice in one house and one practice in the other. If you were faced with only one house, which is actually the most desirable in the view of the Committee on Fair Representation?

MR. HARRISON: I don't think I can go beyond what I have said. I will just say this further, which may not answer your question directly but it bears on the reason why I can, that is that I think the consensus of our Committee was that the bicameral system was preferable,

and that having the two different systems on different bases of election, that is, single-member Assembly districts and multi-member Senate districts, offered a good composite of representation. So we just didn't go into the hypothesis of a unicameral legislature to the extent that your question goes.

CHAIRMAN: Senator Dumont.

MR. WAYNE DUMONT: Mr. Harrison, in this plan you have in two instances senate districts of 5 counties each. And in each of those 2 districts, the 6th and the 9th that you recommended, there are 2 counties, of course, in each case that would be much larger in population than the other 3. Now, isn't it possible for the largest 2 of the groups of 5 counties to get together and elect all 3 senators in the 6th district, and all 4 in the 9th district?

MR. HARRISON: Which ones are you talking about?

MR. DUMONT: For example, take Morris and Somerset in the 6th district, with the fact that they have the population which would certainly far override Hunterdon, Sussex and Warren together. They could, if they wanted to, elect all three senators, could they not, from those two counties? The same with Burlington and Camden, in the other district.

MR. HARRISON: Well, assuming that a great majority of one party were in the counties. I suppose that could be so at any given time.

MR. DUMONT: Well, do you consider that fair

representation for the rest of the counties in the district? Your committee is labeled as one on fair representation.

MR. HARRISON: Well, you are not looking for perfection I'm sure, Senator, you are too practical a man for that. You could get criticisms of that sort, I think; if you make the hypothesis and the premise that anyone wishes to make, you can come out and show that any plan might be unfair if say the whole population would be entirely - of any one county or any one district - say that the whole population would be all one party. We know that there are minority groups, political minorities I'm talking about, in every county, and political majorities, and these sizes vary, populations change both in number as well as political complexion.

MR. DUMONT: All right. Now you've recommended multi-member districts in the Senate and single-member districts in the Assembly. Was that because your Committee could not come to a conclusion as to one viewpoint or the other, or you wanted to combine, as a compromise, the advantages of both systems by having one house one way and the other house the other way?

MR. HARRISON: No, no. There's a much more meritorious reason, Senator.

MR. DUMONT: Well I'd like to hear it.

MR. HARRISON: I know you are familiar with every county in the State and I am sure you are familiar with my own county of Essex.

SENATOR DUMONT: Right.

MR. HARRISON: And you know also in Essex we have the urban area and we have the suburban area.

MR. DUMONT: Yes.

MR. HARRISON: And the people in Newark certainly have problems that are pressing which call for governmental action of one sort, and this is their great concern. The people in the suburbs have other problems. The problem of transportation isn't the problem of the City of Newark, for instance. And the people in the suburbs may sometimes have other points of view. Whereas the urban population may require a program that calls for the expenditure of large sums, the people in the suburbs generally may have interests that would like to keep taxes down and so on.

Now, in our democracy it seems to me that every segment, where you have a considerable number of people, is entitled to representation of their point of view. And you would have the people from one portion of Essex having a certain point of view and the people from another portion of the County of Essex having another. Each of them, in order to be satisfied citizens, satisfied that they are getting representation, I think would be better satisfied if they knew they had a representative in one of the houses who really represented their point of view.

Now, you just can't have a legislature, it seems to me, in which you are just going to have a group of representatives each of them being advocates for one little segment of the population. Therefore, in order to get a better form of representation and have a broader

point of view and try to get an area of accommodation between the needs and the desires and the wants of the various interests and types of population within a county, you have your senators elected at large, and it's for that reason that - well, that I was finally persuaded by the discussions in our Committee that this is a basic reason for retaining the bicameral system.

MR. DUMONT: Well, don't you think you can achieve the same objective by having each senator represent approximately twice as many people as each assemblyman - you are assigning assemblymen to a district - and, therefore, a somewhat larger geographical area than each assemblyman.

MR. HARRISON: Well, I'll tell you and you won't misunderstand me, Senator, because I have a very high regard for you, but honestly I think it's a little bit of equivocation when we get into that. I think then the next thing is, well, if you are going to have the senators come from -- let's take Newark, let's be very practical - if you are going to have one senator from Newark and one from the suburbs then what's the difference? What's the difference between having 4 assemblymen from Newark and 5 assemblymen or 4 assemblymen --

MR. DUMONT: Well, as Assemblyman Kimmelman pointed out when he was questioning Miss Nuelsen, I believe, the Senate term is twice as long as the Assembly term, isn't it? or don't you propose that?

MR. HARRISON: That doesn't go to the merits of representation. What difference does it make if you have

one senator representing the urban interests for four years and another senator representing the suburban interests for four years, or you stagger the time? I just don't see the pertinence to the basic theory of the broader point of view of one house against the other.

MR. DUMONT: Well, all right. You and I disagree on that. Having been there a while I can see the pertinence of it.

Now, the other question is this: You say that if the Legislature cannot agree on plans by the 1st of July after the Federal decennial census has been promulgated, I presume, or the governor vetoes the plan, you would then go to a bi-partisan commission of five members. Now was it your feeling to have five so that you would have an odd number of votes - because, obviously, if you have five, you are going to be bi-partisan but you are going to be weighted among the partisans in one direction. Isn't that true?

MR. HARRISON: Of course, it's true. Your arithmetic is --

MR. DUMONT: Then wouldn't it be better, as a matter of fact, to have the Democrat and Republican State Chairmen name an equal number of people each if you are going to really have a bi-partisan commission?

MR. HARRISON: That's fine.

MR. DUMONT: You have no objection to that.

MR. HARRISON: I personally have no objection but the experts point out that what that's liable to lead to

is just another standoff. I mean, you will just get the same standoff that you've got in the legislature in the first instance, won't you?

MR. DUMONT: Then perhaps it would be better just to leave it to the court and not have the court name the commission either. It's going to go back there anyway.

MR. HARRISON: That might well be but we just don't want to get the court involved in it, if we can help it, in the future. I mean, they've been in it by force of somebody not doing their job.

MR. DUMONT: But your recommendation does involve it to some extent because they're going to name the five people. Right?

MR. HARRISON: Well, actually we are not dogmatic on that point. If the legislature can pass a statute naming the commission, that would probably be preferable, so far as I'm concerned.

MR. DUMONT: Thank you.

MR. HARRISON: In advance, of course, Senator, you understand that. I mean, this would be done in advance of any deadlock.

MR. DUMONT: Yes, I understand.

MR. DUFF: Mr. Harrison, the report of the Committee on Fair Representation discusses the size of the legislature and recommends retention of an assembly of 60 members. It also, however, observes that the 60 member assemblies established in 1844, when the State had a population of 372,000 people and each assemblyman

represented approximately 6700 people. Now each assemblyman is representing 100,000 people. By 1980 if the assembly or a unicameral legislature stays at 60 people, each assemblyman or each legislator would be representing 150,000 people.

MR. HARRISON: Right.

MR. DUFF: We now have, according to your own figures and other figures, one of the smallest legislatures in the United States. Only Hawaii with 76 legislators, Nevada with 64, Alaska with 60, and Delaware with 52, and Nebraska with 43, have smaller legislatures than New Jersey, combining both houses. Yet the Committee on Fair Representation doesn't favor an increase in the size of the lower house - you have come out for bicameral so I can use it in your context.

I was wondering, considering that the population is going to increase and considering that you have recommended that the Constitutional Convention take into account the fact of the population growth, would it be more feasible and preserve the tradition of representation throughout the State and by county to increase the size of the lower house to a figure of about 100, 110 or 112 - in fact, I suggest 112 because this is the basis of the present Constitutional Convention and also happens to be, incidentally, the median size of all lower houses of legislatures throughout the United States.

I would like to get your opinion on why you are so firm on a 60 member assembly.

MR. HARRISON: Well, let me read the one paragraph on that and then I'll go further. We say: James Bryce pointed to the fact that the size of state legislatures has varied so from one part of the country to another, and offered this explanation: "In the New England States local feeling was and is intensely strong, and every little town wanted to have its member. In the West and South, local divisions have had less natural life; in fact, they are artificial divisions rather than genuine communities that arose spontaneously. Hence the same reason did not exist in the West and South for having a large Assembly; while the distrust of representatives, the desire to have as few of them as possible and pay them as little as possible, have been especially strong motives in the West and South, as also in New York and Pennsylvania, and have caused a restriction of members.

The Constitution of the State of New Jersey - well, we know what the Constitution size is in this present Assembly.

On the merits, it seems to me, it depends on what this Convention really feels is an efficient working number. I think you have had examples of some of the small states with 200 or 250 representatives where each town - I forget what it is, way up in New England - now they don't pay them as much as we pay our legislators here. Now, if you are going to have the same dignity and the same salary and expect the same amount of work from 112 as you do from 60, well, it's a matter of

judgment but from the point of having a good working, efficient governing body, it seems to me that 60 for the one house and 30 for the other is a very good number.

MR. DUFF: But why? You haven't given me any fundamental reason.

MR. HARRISON: Well, I'll put it this way, I'll just put it this way without staking everything on 60 and 30, I just can't see any reason why there should be any more than 60 and 30.

MR. DUFF: Well, what possible reason?

MR. HARRISON: I mean, the ultimate representation is, I believe, the old Greek system of a giant town meeting, every man is there and every man votes, that sort of democracy. Now, we have come to depend on representative democracy in this country and this is a matter where I suppose each member of the Convention might have his own views but we feel very strongly - these men who made these studies felt strongly that the 60 representatives for the Assembly and 30 for the Senate - it has worked, it is working now, there is no reason why it shouldn't work now, and I don't see how increasing it would enhance its efficiency but we do know it would increase the cost and it would make agreements more difficult too, I suppose.

MR. DUFF: Isn't the cost a relatively minor thing? Eagleton Institute has shown that the State of New Jersey is 48th out of 50 states in the cost of its legislature. I mean, this is really an infinitesimal

saving. The cost for the New Jersey Legislature is about 1% of the cost of the State government here. We are not talking of a great deal of money.

The point that I was trying to make is that more legislators would be closer to the people. Now, if you have one assemblyman for five or six counties, four or five counties in South Jersey, the people are not going to be at all close to them. It's going to be like the position of the United States Senator. More people are likely to contact their Congressman, he seems closer than the United States Senator because he seems to represent the State as a whole and, perhaps justly so, takes more of a national interest. But you have an upper house provided in your plan for people who can take less parochial viewpoints of problems. We do need people, I think,that can respond directly to individual areas, to the smaller counties. And we do have a division here such as existed in New England. There are differences between South Jersey and Central Jersey and North Jersey that have to be taken into consideration. And I think rather than keeping a tradition - if we keep a tradition of local representation - and the only way we can do that is by increasing the size of the Legislature. It seems to me that most of the support for the 60 member legislature is sort of a traditional thing. People think in terms of a small assembly and that you couldn't seat 112 people in there. Naturally it would mean a bigger State House to

accommodate them but I think this is something that should be seriously considered by the Convention.

MR. HARRISON: Well, one thing that I might say with respect to that is, even with the present Assembly there is disparity in the Assembly between the numbers from North Jersey and the numbers from South Jersey, I take it. But I believe the only things that really need changing are those on which there have been some complaints on which there has been some reason for it.

Now, I have heard of no complaint by the people from South Jersey on their representation in the Assembly or their difficulty to get to the Assemblyman. Now, it may be up to now and under the present Constitution it's on the population basis but should the population of this State double or increase to any substantial size, I can see your point.

MR. DUFF: Well, it is going to increase to 9 million, according to the U. S. Census projection, by 1980, and that's a substantial increase, that's an increase from 6 million to 9 million, an increase of 50%.

MR. HARRISON: That's two censuses away, isn't it?

MR. DUFF: Well, it's 13 years away from this election that we are working on. That's not an awful long period of time as constitutions go.

Well, I just thought I would get your reaction.

CHAIRMAN: Senator Hunt.

MR. JOHN E. HUNT: Mr. Harrison, I'm Senator Hunt from Gloucester County. I would like to ask you a few

questions, having looked at what purports to be a copy of a map you have drawn insofar as senatorial districts are concerned. I notice that in the southern part of the State you have grouped together the counties of Burlington, Camden, Cumberland, Gloucester and Salem, which by the 1960 census have a figure between 907,000 and 910,000 people, and you allot to that four senators. Yet in the county of Essex with 900,000 people, proportionately the same amount, you give five.

How does your Committee reconcile this?

MR. HARRISON: Well, in the first place, on any question with respect to the map, I'll try to answer it but as I tried to emphasize at the very outset, we did not present this as even necessarily a recommendation that this was it. You understand that. This was what we felt was an implementation of the criteria and guidelines that we have set forth.

Now, I do know that we discussed this South Jersey thing but because of the sparse population there in the various counties it presented some difficulties. I would say that the reason for it basically was the population disparity.

MR. HUNT: Mr. Harrison, taking into account this particular grouping of counties, I would think that you would necessarily recognize the fact that this is more than the allotted population for two congressional districts under the present setup. Is that correct?

MR. HARRISON: I'll take your word for it, Senator.

MR. HUNT: Having just come out of an election with three counties, representing a population of about one congressional district, this recent monstrosity of an election that we've been through, I wondered if your Committee had given any thought to the harmonious relationship, so far as ways of living are concerned, for a Senator who comes from the County of Burlington to be running from Bordentown to Dennis Township on the Delaware Bay where the primary industry is oysters and clams. I wondered if you had given any thought as to what the Senator from Burlington County might say to a clam digger from the lower end of Cumberland County and vice versa on occupational hazards, you might say.

MR. HARRISON: We did consider that. I recall a discussion of it.

MR. HUNT: Did you come up with a homogeneous concoction?

MR. HARRISON: No, it's a tough one. I mean, just think of what Mr. Dumont and Mr. Hughes, Senator Dumont and Governor Hughes had to go through. Just think of what you will have to go through if you have senators elected at large.

MR. HUNT: I realize that.

MR. HARRISON: You know, I had a little some experience with even just one congressional candidate - not that I ran for it but I was associated with a campaign - from one end of the district to the other end of the district. I mean, you can get worn out. I know you have

a problem.

MR. HUNT: I would hate, living in about the center of this mess, to have to run from Bordentown to the apex of the Delaware Bay, if I decide to run again. But I am wondering what we have in common, what a Senator would have in common taking into consideration the complexities and the ways of life of the respective people in the counties. I wonder if your Committee has taken that into consideration when you have the County of Burlington adjoining the County of Ocean which have basically much the same problems except the sea coast.

MR. HARRISON: Well, we had to get it somewhere. You know there isn't just too much difference between Burlington and Camden than there is between Essex Fells and Newark, if you know that part of the State.

MR. HUNT: Oh, I'm well acquainted with it.

MR. HARRISON: You know that. So that you have these - and this is the very reason that we feel you should run so you will have the point of view of the Burlington farmers as well as the Camden dwellers when you are in the Senate, that is.

MR. HUNT: You then say, sir, that this is a real good plan for a gentleman who has a saw mill in the middle of the Burlington County pines to become acquainted with the complexities of an oyster schooner on the first day of May, the planting season.

MR. HARRISON: Well, if he's going to represent him, somewhere along the line he better know what his

problem is. Whether to have the oyster man come to him or he go to the oyster man is a matter of practicality. This is what a senator is for.

MR. HUNT: In your conception, a senator should be able to represent two congressional districts?

MR. HARRISON: It depends on the size of the senatorial district and the size of -- it depends on what the arithmetic is, Senator.

MR. HUNT: Well,907,000 people, by the 1960 census, in this one conglomoration of counties which today would be more than 2 congressional districts. Do you think a senator should be required - what is your logic in thinking that a senator should be required to run for election in two full congressional districts and more?

MR. HARRISON: Well, are you satisfied that those two congressional districts are properly districted?

MR. HUNT: Oh, no. I think we have the largest congressional districts in these United States, in the first congressional, sir, over 585,000 people. We think it should be reduced to 400,000. But that's the reason I asked you why you think a senator should run in more than two congressional districts, populationwise.

MR. HARRISON: You mean that the senatorial district would cut across those two congressional districts. You don't mean they would include two congressional districts.

MR. HUNT: In your plan here, sir, a senator would be representing more than two full congressional districts,

populationwise.

MR. HARRISON: Including the 500,000 one?

MR. HUNT: Yes, certainly. You have 907,000 people grouped here and you are expecting a senator to run for election in two full congressional districts whereas a congressman only has to run in his own.

MR. HARRISON: Well, let's see now. How many senators do you have there? We have 4 senators.

MR. HUNT: That's right. And all four have to run at large, according to your plan.

MR. HARRISON: That is right. And I think the basic principle, so far as I'm concerned, in discussing the merits of this, the basic principle of a broad base point of view surmounts whatever physical difficulties are involved, even though it's two congressional districts.

MR. HUNT: Have you ever tried campaigning in three counties?

MR. HARRISON: Yes. In what capacity? Not as a candidate but with a candidate.

MR. HUNT: Or just drive someone around in three counties during a campaign?

MR. HARRISON: The whole State, once. It's a tough job.

MR. HUNT: You're right.

MR. HARRISON: And the job must be worth it because so many people seek it.

MR. HUNT: I am just trying to determine the logic behind this grouping.

MR. HARRISON: Well the logic behind it was, in the first place, we tried to apportion the State as fairly as possible, populationwise, and to fit them into a pattern of 30 senators.

MR. HUNT: So, where you have 905,000 people in Essex you give them five senators, and where you have more than 900,000 in this particular grouping you have given four. What is your logic and thinking on that?

MR. HARRISON: With the growth possibilities involved and various other factors, this is what they came up with. You see, when you get down to trying to alter that in that area, this isn't an easy job. The easy thing about any plan - and I'll venture to make this prediction with all humility and deference to this Convention - the easiest thing about any plan is going to be to criticize it. What you say is a valid criticism and the reason for it is that you do the best you can to approach the basic concepts of fair apportionment.

Now there you get a borderline case where you are going to get something that will be inequal for a while and then we hope that in future reapportionment maybe conditions will warrant an adjustment. It's not easy, Senator, I recognize this. You got it on a 5 to 4. It was a close thing. If we made any other - if the Committee that came up with this drew the line elsewhere you would get some other disproportion. It's not easy.

MR. HUNT: Thank you, sir.

CHAIRMAN: Mr. Harrison has another meeting and he

should leave by four o'clock. If there are a couple of questions, it's the A Panel's turn, if they desire.

Mr. Novins, Ocean County.

MR. ROBERT J. NOVINS: Mr. Harrison, I understand that your fundamental concept is that we should maintain county lines and also maintain the 60-30 relationship in the Senate and Assembly. Based on that, could you tell me whether or not your Committee devised any formula which would take care of the fluctuation of the population in any of the presently existing counties?

MR. HARRISON: I believe they did. I am quite sure that this would account for a consideration of the point that you are making, of fluctuations and reasonable expectancies of growth - one of the considerations in the effort to draw lines for senatorial districts.

MR. NOVINS: Would that still remain within the court's purview of variation of 15%?

MR. HARRISON: As near to that as is reasonably possible.

MR. NOVINS: Well, what would happen in the event of an influx of 50% or 100% between censuses within a county, which is not only possible but which is actually happening.

MR. HARRISON: What county are you from, Senator?

MR. NOVINS: Ocean. There will be an increase of 100%. There was an increase of 100% between '50 and '60 and there will be another increase of 100% in the next ten years.

New Jersey State Library

MR. HARRISON: I have an answer for you but I just don't want to offend my friends in Cape May County and I don't think I'll give it to you. So, if you don't mind, let me pass that one.

MR. NOVINS: But is there such a formula which was devised by the Committee to take care of such an occurrence?

MR. HARRISON: A formula? A specific formula at this time?

MR. NOVINS: Yes.

MR. HARRISON: Well, no, because you just can't tell with any precision just where the population is going to go. I know the Regional Plan Association and others can make these projections but for these purposes we do the best we can with the information we have at hand.

MR. NOVINS: I'm not asking, sir, whether or not specifically you are taking into consideration any counties but is there a general formula that will maintain county lines or still keep it at 60 and 30 despite the influx or variation in population.

MR. HARRISON: Well, within the percentage of the deviation allowance, I believe you can make a close approximation within the deviations allowable, 15 to 20%.

MR. NOVINS: Thank you, sir.

CHAIRMAN: Assemblyman Kimmelman.

MR. KIMMELMAN: Mr. Harrison, did your Committee consider, and I realize you are not a formal judicial body, but did your Committee consider whether the present

temporary legislature complies with the "One Man - One Vote" rule and is in effect "Constitutional."

MR. HARRISON: Assemblyman Kimmelman, we didn't.

MR. KIMMELMAN: Well, as a lawyer --

MR. HARRISON: We haven't met since November.

MR. KIMMELMAN: As a lawyer of some repute, wouldn't you agree with me that the present temporary legislature is unconstitutional by not complying with the "One Man-One Vote" rule?

MR. HARRISON: Well, I hesitate to give an answer on that because I just hadn't considered it in the detail that I would like to in order to give you an answer, Mr. Kimmelman.

MR. KIMMELMAN: Hunterdon County has 1 Assemblyman; Somerset County, with three times the population, has 1 Assemblyman. Would you say that complies with the "One Man - One Vote" rule?

MR. HARRISON: Mathematically it doesn't, no.

MR. KIMMELMAN: And you, of course, are familiar with the Supreme Court's most recent pronouncement in the Jackman v. Bodine Case where the Supreme Court accepted the temporary Senate but they did, did they not, express some misgivings over it?

MR. HARRISON: Yes.

MR. KIMMELMAN: In the opinion.

MR. HARRISON: Yes.

MR. KIMMELMAN: And would you agree with me that this bi-partisan Convention is the only body presently

constituted in the State of New Jersey which complies with the "One Man - One Vote" rule? Wouldn't you agree with that?

MR. HARRISON: Yes, sir.

MR. KIMMELMAN: And I assume those facts entered into your determination when you suggested that at least for the 1967 election this Convention, rather than the Legislature, should draw the schedule.

MR. HARRISON: Oh, absolutely. I hope I made that very clear.

MR. KIMMELMAN: You do agree that that is the reason for it?

MR. HARRISON: My basic reason for it is that this is an evenly divided body. Each side is fairly represented and fully represented. And, with that sort of a constituency it is definitely best capable of coming forward with a fair system of representation.

MR. KIMMELMAN: And that this body is the only body in the State of New Jersey which presently meets the "One Man - One Vote" test?

MR. HARRISON: Well, won't you be satisfied if I say that this body meets the "One Man - One Vote" test?

MR. KIMMELMAN: I'll accept that, sir.

CHAIRMAN: On this question, page 84 of the Meyner Committee's Report shows the apportionment of the Assembly as now constituted. And an examination of those deviations shows that they are both, one, violent and, two,

numerous. The deviations are violent in that in some instances they go as high as 52%. And you said what was permissible, Mr. Harrison, as to deviation?

MR. HARRISON: 15 to 20%.

CHAIRMAN: There are at least 7 or 8 deviations of the 21 counties that are well over 15% in both directions.

One more question and then I think Mr. Harrison has to go. Make it a short one.

MR. MARAZITI: Mr. Harrison, I call your attention to the map and in particular to tentative district number 6, which consists of Hunterdon, Morris, Somerset, Sussex and Warren, to which your Committee has assigned three senators at large.

Now, I understand the approximate area of the State of New Jersey is about 8,000 square miles and this area that I have mentioned seems to be about one-fourth of the State, which would make it approximately 2,000 square miles. This means, does it not, that it would be necessary for each of the three senators, each one, to campaign in that area and to represent that area?

My question to you is, do you consider this to be an efficient method of representation in the Senate, considering that it covers about one-fourth of the area of the State of New Jersey?

MR. HARRISON: Well, if you look at the counties incorporated, Mr. Maraziti, you will find that they certainly are probably the most homogeneous group of

counties you can get anywhere in the State.

MR. MARAZITI: Yes, but that point of view --

MR. HARRISON: Now, the size, it may be 2,000 square miles but you've got some of the best vacation land in the country in that 2,000 square miles, haven't you?

MR. MARAZITI: The best what?

MR. HARRISON: I say that's a beautiful area and contains some of the best vacation spots, lakes and mountains.

MR. MARAZITI: That may be so.

MR. HARRISON: And also they have some good highways.

Assemblyman, as I indicated to, I think it was Senator Novins, in the first place, we are not pontificating on this; in the second place, whatever one you came up with, if you're satisfied with it, we're satisfied with it.

MR. MARAZITI: Well, would you say if that were broken down into smaller groupings, or if you increased the membership of the Senate so that each Senator would represent or come from an area that was less than this 2,000 square miles, that would make for more efficient representation?

MR. HARRISON: Not a bit. I'm sorry. Not a bit because the mere number of acres in themselves definitely is not significant.

MR. MARAZITI: In other words, a Senator can efficiently represent an area covered by approximately 2,000 square miles.

MR. HARRISON: Of the type represented by these five counties, very definitely.

CHAIRMAN: Mr. Harrison, it's 4 o'clock and we want to thank you very much. We recognize that the organization for which you speak has been in this particular area for a long time, well before Jackman v. Bodine was decided.

MR. HARRISON: Thank you very much.

CHAIRMAN: Are there any other witnesses? We believe there are not but, if there are, we will hear them.

Will the members of the Committee please stay for a moment.

This concludes the formal meeting or first hearing of the Apportionment Committee. The next meeting will be held at the same time and place, 2 P. M., Rutgers Gymnasium, next Thursday, April 21, 1966.

(Hearing concluded)

Statement submitted by Mr. Joseph Harrison, The New Jersey Committee for Fair Representation.

INTRODUCTION

In the course of the last six months of 1964 the New Jersey Committee for Fair Representation, a group of political scientists and attorneys concerned about the issue of fair representation and moved to act by the sometimes intemperate response to the decision of the Supreme Court in Reynolds v. Sims in June, 1964, wrote a number of short papers on various aspects of New Jersey's reapportionment situation and discussed them at length in numerous meetings. Out of that research and deliberation came a set of recommendations submitted to the Legislative Reapportionment and Congressional Redistricting Planning Commission, chaired by the Honorable Robert B. Meyner. Arguments in support of those recommendations are set forth below in brief statements offering the reasoning of the Committee.

The Committee firmly supports the decision of the Supreme Court in the Baker v. Carr and Reynolds v. Sims and related cases, and it desires to assist in any way it can to bring about an equitable reapportionment of the New Jersey Legislature and of Congressional Districts. The first paper discusses the history of the "One Man, One Vote" principle, demonstrating its roots in our traditions and illustrating the evolution of judicial doctrine concerning it. The Committee suggests the retention of a bicameral legislature, and favors a system of fixed multi-member districts for the Senate with single member districts drawn from the Counties for the Assembly. It urges the use of population for drawing all districts, and suggests that deviation in districts be held to no more than 15 to 20 per cent depending upon the method of districting used. It proposes that the Senate be enlarged to 30 members and the Assembly kept at 60. So far as possible the drawing of districts should be done with an eye to growth trends, hopefully to diminish inequalities due to unequal growth of population. The Committee opposes systems of weighted or fractional voting, and makes suggestions for ways to handle future reapportionment so as to facilitate action in a reasonable time and so as to minimize gerrymandering. Finally, the Committee states its opposition to the tieing together of state legislative and congressional districts.

I.

"ONE MAN, ONE VOTE"

> Really I think that the poorest he that is in England has a right to live as the richest he; and therefore truly, sir, I think it's clear that every man that is to live under a Government ought first by his own consent put himself under that Government; and I do not think that the poorest man in England is at all bound in a strict sense to that Government that he has not had a voice to put himself under.

So spoke Colonel Rainboro in the famous Putney Debates of 1647. In language less quaint, Thomas Jefferson boldly committed America to the proposition, still to be fully tested, that Government could be established on reason and consent rather than on coercion and force. Governments, Jefferson wrote, derive their "just powers from the consent of the governed." The judicial mandate, "one man, one vote", echoes these historic pronouncements.

Though widely proclaimed, this high-sounding principle has been more conspicuous in its breach than in its observance. The Fifteenth Amendment outlawing race and color in the determination of voting rights has long been ignored. Women were denied equality of suffrage until the Nineteenth Amendment. A citizen's right to representation has often turned on the location of his residence. With the flight from farm to city and the continuing failure of numerous states to reapportion or redistrict, thousands of Americans suffer under the conditions complained of prior to 1776 - "taxation without representation."

Baker v. Carr and its progeny rest on necessity; judicial action alone could fulfill the committment of 1776. For the urban majority, long under the yoke of rural minorities, the reapportionment decisions may have recalled Jefferson's famous lines: "Prudence will dictate that governments long established should not be changed for light and transient causes." Judicial action came only after a "long train of abuses and usurpations, pursuing invariably the same object."

Justic Holmes, deploring judicial enforcement of Spencer's Social Statistics as fundamental law, declared that the Constitution embodies no particular economic theory." In light of our ideological heritage, one wonders whether it contemplates a political theory. Voting, basic as it is, is only the last step in a long development. Certain Supreme Court Justices, including the most eminent, have suggested that any situation affecting adversely the functioning of the political process should be subjected to close judicial scrutiny. Justice Holmes declared that "the judge should not be too rigidly bound to the tenet of judicial self-restraint in cases involving civil liberties." Justice Brandeis traced the wide range accorded "freedom to think as you will and speak as you think" to those who won our independence, to men who believed "that this should be a

fundamental principle of American government." Justice Cardozo called freedom of speech "the Matrix, the indispensable condition of nearly every other form of freedom." "We protect the fundamental rights of minorities." Chief Justice Hughes declared, "in order to save democratic government from destroying itself."

In an obscure opinion of 1938, Justice Stone, who had been in the vanguard of the drive for judicial self-restraint, declared that he would not go so far as to say that legislation regulating the economy would never again be declared unconstitutional, but he did suggest that judicial power in this area would thereafter be narrowly circumscribed. Attached to this proposition was a three-paragraph footnote, adumbrating judicial guardianship of new values. When legislation, on its face, contravenes the specific prohibitions set out in the Bill of Rights, the usual presumption of constitutionality may be, Stone suggested, curtailed or even waived. The second paragraph claims for the Judiciary special responsibility where legislation restricting "those political processes which can ordinarily be expected to bring about repeal of undesirable legislation." The final paragraph hints of a special role for the Court as protector of minorities, helpless at the polls in the face of discriminatory or repressive legislation.

Since 1938, this footnote has furnished the Court with both a program and a rationale - a political theory - under which Supreme Court Justices assume a special responsibility toward those rights, processes and procedures that constitute the foundations of a free society.

As the Constitution came from the hands of the framers, it included no declaration of rights. Hamilton and Madison insisted none was needed. The whole constitution, they argued, constituted a bill of rights. Noting this omission, anti-federalists opposed ratification. George Mason's complaints were widely endorsed. Insisting that such a declaration of rights is what every people on earth is entitled to, Jefferson brought pressure on Madison. Needed was a detailed specification of standards of government conduct enforceable in courts. When Madison finally yielded, Jefferson wrote him, stressing the peculiar role judges would play: "In the arguments in favor of a declaration of rights, you omit one which has great weight with me, the legal check which it puts in the hands of the Judiciary." As a member of the first Congress, Madison repeated Jefferson's views:

If a bill of rights is incorporated into the Constitution independent tribunals of justice will consider themselves in a peculiar manner the guardian of those rights; they will be an impenetrable bulwark against every assumption of power in the legislative or executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights.

The anti-federalist campaign, though effective, was not completely successful. Gained were constitutional safeguards for individual liberty - speech, press, religion, right of assembly, and procedural guarantees for those accused of crime. The primary objective - constitutional protection for the states against federal encroachment - was lost. Achieved was a constitutional redundancy - the 10th Amendment.

The reaction of states rights advocates to this failure bordered on disgust. Instead of "substantial" provisions, they complained that Madison had proposed a few "milk and water amendments, such as liberty of conscience, a free press, and one or two general things already well secured." In 1790, the 10th Amendment was recognized for what it was - a gold brick. The states' failure in 1790 was compounded in 1863 by adoption of the 14th Amendment.

Since 1938, the Bill of Rights, nearly a forgotten appendage in 1789, has become the most important area for the operation of constitutional limitations. Nor is this all. Thanks to the 14th Amendment, rights formerly safeguarded from federal intrusion are now protected against arbitrary state action. The equal protection clause, once thought of as protecting only the rights of the Negro, is now the foundation of the judicial mandate, "one man, one vote."

"Our judges," Chief Justice Warren wrote in 1955, "are not monks or scientists, but participants in the living stream of our national life." In a long list of cases involving race relations, alleged subversive activities, and voting, the Warren Court has translated these convictions into judicial decisions.

The Declaration of Independence led to a new political order. The power shift destined to follow from the Reapportionment cases may produce results of comparable significance. In making government more responsive to the people, the Warren Court has changed the image of America at home and abroad. With certain notable exceptions, these path-breaking decisions are in line with the direction the Judiciary has been moving in since 1937. The Judiciary, the most oligarchical organ of the federal government, is now in the forefront, protecting the rights of individuals, minorities and majorities - advancing the cause of democracy, bringing us closer to the ideals embodied in the Declaration of Independence.

II.

UNICAMERALISM v. BICAMERALISM

We have reviewed the arguments concerning the advantages of bicameralism and unicameralism in state legislatures and finding no compelling reason for change, a majority of the Committee recommends the continuation of the bicameral organization of the New Jersey Legislature.

Much debate has been conducted over the last thirty years as to the respective merits of the unicameral (single chamber) legislature and the bicameral one. Neither unicameral or bicameral legislatures as they exist today are without merit or without fault - both have their advantages, both have their disadvantages. The solution of the question as to which form is superior, therefore, cannot be answered unequivocally. Following is a list of arguments and comments on the two forms.

BICAMERALISM

1. It is contended that bicameral legislatures permit broader representation of various population groupings and are not limited to population alone as the basis of representation. This can be accomplished by electing the members of the more numerous lower house from small constituencies and by electing the less numerous upper house from larger constituencies.

2. Shortly after the Constitution of the United States was adopted, Pennsylvania and Maryland, which had established unicameral legislatures during the colonial period, changed to bicameral legislatures. In 1791, Vermont came into the Union with a unicameral legislature but abandoned it in 1836 for the bicameral form. Since that time the only state-wide American experience with the unicameral form has been in Nebraska, which changed to a unicameral legislature in 1937. Bicameralism, except at the local level where it has almost disappeared, is firmly entrenched in the American governmental tradition.

3. Bicameralism has the advantage of permitting local and minority group representation in the larger house and representation of broader regional concerns in the smaller one.

4. Bicameralism also affords an opportunity for reconsideration of issues by different series of legislators, reducing somewhat the chances for ill-conceived legislation.

UNICAMERALISM

1. The major argument advanced by the proponents of the unicameral legislature is that unicameralism eliminates "passing the buck" between two houses. Clearer assignment of responsibility should follow, although by use of committees and "death by calendar" responsibility can be evaded or at least obscured, in any legislature. Nevertheless one chamber in a bicameral system may pass a bill confident and hopeful that it will surely be defeated by the other house. This form of evasion, unicameralism would prevent.

2. Another argument proposed by the unicameralists is that the smaller unicameral legislature is less easily corrupted and less susceptible to control by lobbies than the larger bicameral legislature. The causes of corruption and undue influence are deeper than

the size or structure of a legislature; no evidence that unicameralism would depress corruption has ever been presented. Indeed, it could be argued that a corrupter of a single chamber would have less difficulty simply because fewer legislators would have to be persuaded.

3. Finally, the unicameralists claim that the smaller unicameral legislature will save money because of having to pay fewer salaries. This is unconvincing, however, since legislative salaries constitute an extremely small portion of the total state budget.

III.

MULTI-MEMBER AND SINGLE-MEMBER DISTRICTS

> Study has shown that there are advantages and disadvantages to both systems. The Committee feels that under a bicameral system we can have the advantages of both systems. The Committee recommends to the Commission that the upper or smaller chamber be composed of fixed districts to each of which several members are apportioned and elected at large and that the lower or larger house be based on single-member districts.

Only a few things can be said about this question without fear of contradiction. One is that multi-member districts are far more common than most observers believe them to be. In the fifty states in 1962, 3,179 lower house members were elected from single-member districts, while 2,704 represented multi-member districts. In upper houses about one-sixth of the representatives were elected from multi-member districts.* Multi-member districts made up of counties or other areas with permanently fixed foundaries inhibits gerrymandering. The necessity for frequent adjustments of boundaries of single-member districts, on the other hand, offers many opportunities for gerrymandering and is difficult to guard against.

By the same token, the winner take all effect of the multi-member districts favors the majority party in a given area. In New Jersey's experience in the General Assembly, for example, the one-party complexion of the multi-member delegation has been broken only twice. On the other side of the coin, however, is the fact that given districts of equal population and the relatively even distribution of the voters among the parties of each district it would be possible for a shade more than 26 per cent of the electorate to elect a majority of the state legislature.

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* Paul T. David and Ralph Eisenberg, State Legislative Redistricting, (Chicago, Ill.: Public Administration Service 1962), p. 20, Table 2

There are some other statements that can be made about this problem which are in the probable or "it stands to reason" classes of certainty. For example, multi-member districts favor the political organizations existing in New Jersey and would tend to perpetuate machine power where it exists. This is so because of the winner take all effect and the necessity in most instances of fighting the entire organization. Some people believe that enlightened individuals will be more likely to run for public office from single-member districts because they do not have to buck the entire county organization.

A make-weight factor of incalculable (literally) value is that in larger multi-member districts the candidates would hardly be able to remember the names of their running mates; a fortiori the voters would be hard put to distinguish the candidates or make intelligent choices.

Propositions which run more to feeling than argument and seem not susceptible to empirical proof or demonstration are:

1. For single-member districts: the legislator elected from a single-member district is closer to his district and more likely to do a good job in representing it. Where one man has the responsibility for the representation of a district, he is likely to feel more important in his job and attempt to discharge his responsibilities at a higher level. A single-member district system may encourage the preservation of the two party system by allowing for minority representation within counties or other major areas.

2. For multi-member districts: with equal relevance, it is asserted that the legislator elected from a multi-member district takes the broad view and is not so likely to be parochial in his approach to state problems. Some observers believe that multi-member representatives will be more likely to reflect a metropolitan point of view. They especially warn against a return to the old ward representation system which they argue would result in a legislature made up of party hacks from safe districts, controlled by party organizations.

In New Jersey, there appears to be a constitutional problem in the way of single-member districting. The New Jersey Constitution, 1947, Article IV, Section 3, paragraph 1, state: "The General Assembly shall be composed of members elected biennially by the legally qualified voters of the counties...." This language appears to say that the county constitutes the districts for members of the General Assembly. Several cases apparently support this conclusion. The election of Assemblymen from single-member districts within a county was held to violate the state constitution in State v. Wrightson, 56 N.J.L. 126 (Sup. CT.1893) and Smith v. Baker, 74 N.J.L. 591 (E and A 1906). This, of course, can be altered by a new constitutional provision.

There appears to be no federal rule on the subject. Dictum in Lucas v. Colorado, 12 L. ed. 2d.644 ftnte.21, characterized elections at large within counties as one of "the most undesirable features" of the Colorado apportionment plan, but added: "We do not intimate that

apportionment schemes which provide for the at-large election of a number of legislators from a county, or any political subdivision, are constitutionally defective." The Court reaffirmed this in its decision in a Georgia case handed down January 18, 1965.

IV

THE APPROPRIATE BASIS FOR APPORTIONMENT

At first blush, considered from the Constitutional standpoint, the question is simply answered. Article I, Section 2 of the United States Constitution seems to set the rule for apportionment where representation is to be based on population by prescribing the counting of persons. The Fourteenth Amendment requires that "representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each State, excluding Indians, not taxed."

Admittedly some ambiguity is introduced by the sentence immediately following, which describes the steps to be taken in case any male inhabitants of the state, otherwise eligible, are denied the right to vote, in which case the basis "of representation therein shall be reduced in the proportion which the number of male citizens twenty-one years of age in such States."

The New Jersey Constitution is to the same effect: "The members of the General Assembly shall be apportioned among the several counties as nearly as may be according to the number of their inhabitants...." (New Jersey Constitution, 1947, Article IV, Section 3, paragraph 1)

But the standard of Reynolds v. Sims has apparently introduced further ambiguity. The Court said:

> We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral legislature must be apportioned on a population basis. Simply stated, as individual's right to vote for state legislators is constitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State.

In the companion opinions the standard becomes apportionment "substantially on a population basis." Does this mean simply inhabitants or citizens, or voters?

Representation by inhabitants is cost-free, the necessary counting operation being performed by the United States Census at stated intervals. It, too, has the advantage of simplicity. Representation by population or inhabitants is a crude way of giving representation to all. All deserve some representation in the system,

even children, the incompetents, and the aliens. The legislature chosen on the basis of inhabitants represents the interests of all, even though they may not vote.

The use of the total number of inhabitants as reported by the Bureau of Census has certain drawbacks - the data are reported only every ten years; the changes in population distribution between these decennial censuses cannot be reflected immediately in an apportionment plan. Secondly, there are errors in the census; on a nationwide basis the estimated undercount is about 1.7 to 2.0 per cent. In New Jersey, there is evidence the figures should be somewhat higher. Thirdly, the use of total number of inhabitants includes people who do not participate in the electoral process - children, aliens, institutionalized individuals, etc.

However, there are several reasons why it seems desirable to use total inhabitants as reported by the Bureau of Census.

A. Probably most important is that while the data may not be absolutely precise, it is official, objective, and respected. For the most part, only the population specialists quarrel with the Census Bureau about accuracy.

B. There is also a tradition of using total number of inhabitants as the apportionment basis in New Jersey. These are the figures which have been used within existing constitutional provisions for present and past apportionments of the General Assembly.

C. To suggest some modified population bases, such as citizens, would open a pandora's box of difficulties. Moreover, such use could create substantial cost. New York, for example, spent approximately $288,000 in 1950 and $395,000 in 1960 for a special census taken of citizen population. (Report to Governor Nelson A. Rockefeller by the Citizens Committee on Reapportionment, page 13.)

D. The alternative of using registered voters or votes cast at an election while it would reflect growth patterns between censuses would be subject to debate concerning which election to select.

E. The use of voters is also open to manipulative possibilities in terms of the election selected and may be unfair in view of the unequal distribution of individuals qualified to vote in various portions of the state.

F. Finally, it may be argued that a legislator should represent all the people of his district, not only those who vote. And if he should represent all of them, it seems logical that his district should contain the same number of individuals as any other district.

V.

DEGREE OF POPULATION EQUALITY DESIRED

Where districting occurs, the largest possible deviation should be between 15 and 20 per cent, depending upon the method of districting ultimately used.

Chief Justice Warren in Reynolds v. Sims stated:

> We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness of precision is hardly a workable requirement.

He went on to list as justifications for deviation somewhat from the "substantially equal" rule the following objectives:

1. To maintain the integrity and voice of political subdivisions.

2. To provide for compact districts of contiguous territory.

Both of these factors, in Warren's view, can be justified as measures to prevent the gerrymandering of district, while the first has an independent claim for recognition, since:

> Local government entities are frequently charged with various responsibilities incident to the operation of state government. In many states much of the legislature's activity involves the enactment of so-called local legislation, directed only to the concerns of particular subdivisions.

To these reasons cited by the Chief Justice for not requiring population equality among districts may be added the following:

3. If the U.S. Bureau of the Census data on number of inhabitants is to be used, these data themselves are not precisely accurate. For example, the nationwide error due to undercounting of population has been estimated at about 1.7 to 2.0 per cent with some evidence that errors of this sort are a bit higher in New Jersey. In addition, other errors of various types may occur in the census data.*

4. Even if the census information were precise, there is a substantial time lag between the date on which the inhabitants of an area are counted (April 1 of the census year) and the date when this population count may be reflected in legislative representation. For example, after the 1950 census the New Jersey results were not available until late in 1951, and were not officially certified to the Governor until February 1952.** This meant that elections under a

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* Don F. Heisel, Parameters of Aging, New Brunswick, N.J.: Urban Studies Center, Rutgers, the State University, publication forthcoming.

** New Jersey Legislative Reapportionment (Trenton, N.J.; Law and Legislative Reference Bureau, Division of State Library, Archives and History, New Jersey State Department of Education, November 1947), p.33.

reapportionment plan based upon certified data could not be held until 1953 and the legislators elected at that time could not take office until January, 1954, three years and nine months after the population had been counted. During all of this time, the population distributions were changing. Even under ideal conditions, the population distribution in New Jersey cannot be reflected in legislative representation in less than one year and nine months after the count is made.

5. In addition to the time lag involved in implementing an apportionment, there is the consideration that the apportionment plan provides for representation over a substantial time period - usually ten years. A set of districts which are precisely equal at the beginning of the period may be quite unequal long before the end of the period. To give great weight to the achievement of precisely equal constituencies under such circumstances may be unrealistic.

All of these factors are appropriate reasons for not requiring precisely equal legislative districts. The question remains, however, how "equal" should "substantially equal" districts be?

Opinions and practice have varied in connection with the maximum relative deviation which may be permitted. Illinois, as early as 1870, adopted a constitutional provision requiring that no senatorial or representative district might be created having less than 4/5 of a representative ratio;* this is the equivalent of a minus 20 per cent deviation. No restriction was placed upon the maximum size of the district. Missouri permits, at most, a 25 per cent relative deviation, either plus or minus, from the average district size.** In 1951, a committee of the American Political Science Association recommended that no congressional district be permitted to deviate more than 15 per cent from the average.*** In recent years, bills have been introduced into Congress stipulating 10, 15, or 20 per cent as the maximum permissible deviation for Congressional districts; none has been enacted as yet. In connection with a similar problem in local government, New Jersey's Optional Municipal Charter Act of 1950 provides that no municipal ward may differ in population by more than ten per cent from any other ward.**** This is far more stringent than a plus or minus 10 per cent deviation from the average.

The use of a stated maximum deviation to control inequality among districts has the drawback of rigidity. Given a limit of 15 per cent, a 14.9 per cent district is satisfactory, while a 15.1 per cent district would be ruled invalid. In addition, the use of a rigidly fixed maximum deviation may tend to hamper the use of at least one factor specified by the Supreme Court as a control on gerrymandering - the maintenance of political subdivisions as legislative district boundaries.

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* Constitution of Illinois (1870), Article IV, Section 6.

** Constitution of Missouri (1945), Article III, Section 7.

*** "The Reapportionment of Congress," Am. Pol. Sci. Rev., XLV (1951)

**** N.J.S.A. 40:69A-200.

Two states have adopted a somewhat different approach. New York, in 1895, provided that no district may "contain a greater excess in population over an adjoining district...than the population of a town or block adjoining such district."* The Oklahoma Constitution contains provisions which are very similar to the New York requirements.** These provisions are quite restrictive and very difficult to implement.

The factors that will probably govern a decision on the degree of equality required include:

A. The type of apportionment used. If districting is used, with new boundaries being drawn at every reapportionment, a rather high degree of equality may be achieved. On the other hand, if the type of apportionment involves the distribution of seats among fixed-boundary constituencies - either to avoid gerrymandering or to preserve the identity of political subdivisions - some relatively wide deviations may be inevitable

B. The emphasis placed upon maintaining the identity of political subdivisions. If it is considered highly important to maintain counties and municipalities as whole entities within legislative constituencies, the degree of population equality will be lower than if districts may be drawn which cut across political subdivision boundaries.

C. The nature of population growth. If all areas of the state were growing at approximately the same rate, there would be no difficulty in keeping constituencies equal. The extent to which different parts of the state vary in growth rates will have an inverse effect upon the degree of population equality which should be sought.

D. The number of constituencies. As the number of constituencies is increased, the tendency will be to create constituencies which are growing at radically different rates, thus making the achievement of substantial equality over a period of time more difficult.

VI

SIZE OF THE LEGISLATURE

The Committee approves of a 60 member General Assembly and a 30 member Senate, believing that a legislature of this size would be able to carry out its work efficiently and utilize a viable committee system.

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* Constitution of New York (1895) Article III, Secs. 4 & 5 as amended November 3, 1931.

ORIGIN OF PRESENT SIZE, 21-60: The size of the Assembly has not changed since 1844, and the Senate has stood at 21 since Union County was established in 1857. The population of New Jersey in the 1840's was 372,859 and now is 6,066,782 (1960 census).

COMPARISON WITH OTHER STATES: New Jersey ranks 7th in population among the 50 states, but 45th in the size of its legislature. "Only Hawaii with 76 legislators, Nevada with 64, Alaska with 60, Delaware with 52 and Nebraska with 43 have fewer than New Jersey's 81 members."*

Senates vary in size from 17 members in Delaware and Nevada to 67 in Minnesota, with an average of 37; lower houses range from 35 in Delaware to 400 in New Hampshire, with an average of approximately 120. "Curiously enough, the four largest lower houses are found in the New England States of New Hampshire (400), Vermont (246), Massachusetts (240), and Connecticut (294), a fact to be attributed in part at least to a tendency to give representation to every town, however small in population. The combined membership of these four chambers comprises more than 1/5 of the total membership of the (fifty) lower houses."**

James Bryce pointed to the fact that the size of state legislatures has varied so from one part of the country to another, and offered this explanation: "In the New England States local feeling was and is intensely strong, and every little town wanted to have its members. In the West and South, local divisions have had less natural life; in fact, they are artificial divisions rather than genuine communities that arose spontaneously. Hence the same reason did not exist in the West and South for having a large Assembly; while the distrust of representatives, the desire to have as few of them as possible and pay them as little as possible, have been especially strong motives in the West and South, as also in New York and Pennsylvania, and have caused a restriction of members.***

The Constitution of the State of New Jersey limits the size of the Assembly to 60, and specifies that each county shall have one Senator: "The members of the General Assembly shall be apportioned among the several counties as nearly as may be according to their inhabitants, but each county shall at all times be entitled to one member and the whole number of members shall never exceed sixty."****

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* Eagleton Institute, The New Jersey Legislature, (1963) p. 4

** C. F. Snider, American State and Local Government (1950) (with figures updated) p. 166.

*** The American Commonwealth (1893) Vol I, p. 487.

**** Art. IV., Sec. III, Par. 1

Comparison of the size of New Jersey's Legislature to that of other States of somewhat similar populations

	Rank in Population	Population (1960)	Area (sq.mi.)	House Size	Senate Size	Ratio of Two Houses
Ohio	5	9,706,397	40,972	139	38	3-1
Texas	6	9,579,677	262,840	150	31	5-1
Mich.	7	7,823,194	57,019	110	34	3-1
N.J.	8	6,066,782	7,521	60	21	3-1
Mass.	9	5,148,578	7,867	240	40	6-1
Fla.	10	4,951,560	54,252	95	38	2-1
Ind.	11	4,662,498	36,185	100	50	2-1
N. Car.	12	4,556,155	49,067	120	50	2-1
Mo.	13	4,319,813	69,138	157	34	4-1

ARGUMENTS ON SIZE: Claims and counterclaims about the virtues of large versus small legislatures are more often made than supported with convincing reasoning or evidence. The Federalist contains a famous defense of small legislative bodies and most present day observers likewise favor smaller size. Were the state's population vastly larger an increase in size might be appropriate in order to prevent constituencies from being unmanageably large. Also, if there were wide territorial expanses and dispersal of population a larger lower house might be in order, but New Jersey's small size does not present that problem. The New Jersey Senate, however, is rather small to handle the work load to be expected in a state with six million residents and a complicated set of governmental tasks. If a committee system is to be used to best advantage - and thorough committee work is essential to good legislative procedures - more than 21 Senators would seem to be needed, especially in view of the fact that majority party control of committees may force a heavy workload on slightly more than half the members. A moderate increase in the size of the Senate would be in good order.

A good case can, therefore, be made for keeping the Assembly at 60 and increasing the size of the Senate to 30.

1. In the light of the foregoing considerations, there seems to be little justification for increasing the size of the Assembly. It comes well within the figures generally accepted for representation of populations, which normally are considered adequate even up to 300,000.

2. An increase in the size of the Senate does seem indicated via the foregoing arguments. Especially convincing in this regard are the work loads of the Senators in representing their constituents and in serving on key committees without the possibility of adequate staffing.

3. The tradition in New Jersey, and many other states, has been that of a 3-1 ratio between size of the lower house and the upper; there seems to be little else to recommend that split. With a 2-1 ratio (60-30 as recommended in this first proposal), New Jersey

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would be in line with the following states which have approximately a 2-1 rather than a 3-1 ratio between the two houses:

Alaska	40-20	Minnesota	135-67
California	80-40	Montana	94-56
Colorado	65-35	New Mexico	66-32
Delaware	35-17	Oregon	60-30
Hawaii	51-25	Rhode Island	100-44
Idaho	59-44	S. Dakota	75-35
Indiana	100-50	Washington	99-49
Iowa	108-50	Wyoming	56-27

4. Also, some 29 states have Senates of approximately 30 members.

VII.

ALLOWANCE FOR POPULATION GROWTH TRENDS

The Committee recommends that those who draw the district lines should provide that the fast growing areas always be below the norm and the slow growing areas above it.

If population is used as the basis of apportionment, should any consideration be given to growth trends? The normal practice for reapportioning a state legislature is to use the latest federal decennial census figures. There is no evidence that population growth trends have ever been used as a standard for legislative apportionment. Traditional procedure, however, may not be an answer. Since population growth makes reapportionment necessary, it seems logical that some provision ought to be included in the apportionment plan which would allow for this growth.

The basic rationale for taking growth trends into consideration is that decennial population figures tend to overrepresent static areas and to underrepresent fast growing areas. Two major reasons have been presented to support the argument for making allowance for population growth:

1. If a constituency grows at a rate substantially raster or slower than the rest of the state, reapportionment may become desirable within a short time.

Consideration of the growth characteristics of the state at the time the constituencies are established may prolong the effective life of an apportionment plan.

This problem seems especially relevant in a fast growing state like New Jersey. The latest figures of the New Jersey Division of Regional Planning (December 1964) project a population increase for the state of three million by 1980. The Division's report predicted that by 1980 the northern part of the state would be fully developed within 25 miles of the George Washington Bridge.

If the customary procedure of ten-year intervals is followed, at last three reapportionments will be necessary in order to allow for this anticipated growth. There will be, moreover, population changes annually in every district, and some of these could be extreme, either up or down.

The real question is how far the refinement of population movements is to be carried out in giving effect to the "one man, one vote" doctrine? This is not an easy one to answer. Even on the basis of a decennial census there will be a time lag of perhaps three years. As one observer has indicated:

> A major goal of an apportionment plan should be to preserve the greatest possible degree of population equality throughout the ten-year period, not merely at the beginning or at a date many months before the beginning of the period. The optimum point of population equality should be reached midway between the census years if growth is considered steady. However, a time lag occurs between the population count and the seating of representatives from constituencies formed in a reapportionment based upon the population count. The time lag has been found, in the great majority of cases, to be approximately three years. It seems reasonable, therefore, to aim for a point of minimum population deviation three years beyond the census mid decade or eight years after each census. In an apportionment plan which is ideal from the viewpoint of population growth trends, each constituency would have an estimated deviation of zero at a point eight years after the last census.

It is difficult to conceive of a formula which would take such refinements into account. Perhaps the best that could be hoped for is to establish a norm for the district and provide that the fast growing areas always be below the norm and the slow growing areas above it. Further refinement would make the statistical problem a formidable one, and at the same time endanger the chances of legislative acceptance.

VIII.

WEIGHTED OR FRACTIONAL VOTING

> The Committee has reviewed arguments concerning weighted and fractional voting plans and recommends that both be rejected as less rational ways of reapportioning than the use of unit votes.

A system of weighted or fractional voting by legislators has never apparently been used in any American governmental context, so far as preliminary research has indicated. It has been proposed in three states (Washington, New Mexico, and New Jersey), but never applied.

In Washington the federal district court ordered the legislature to institute a system of weighted voting whereby each legislator would cast votes proportional to the population of his district, using the smallest districts as the unit and granting proportionally larger numbers of votes for legislators from larger districts. The court ordered this innovation until the legislature enacted a fair reapportionment law, but on reconsideration of the issue the court withdrew its decree, and allowed the usual voting system to remain, but ordered that no legislation except "housekeeping bills" be passed until a reapportionment bill was passed. In New Mexico the legislature enacted a weighted voting plan, but the court held it invalid as a violation of the state constitution which requires that a majority of the members of the house approve bills. In New Jersey the Supreme Court has held that a weighted voting system installed by a rules change in a single chamber (Senate) was invalid, but it did not rule on the validity of weighted voting per se. It is significant, however, that the New Jersey Constitution contains a provision similar to that in New Mexico which was the basis for rejection of weighted voting there.

A system of weighted voting has several flaws. It would result in underrepresentation of the more populous areas with respect to access of legislators by constituents, since manifestly one man cannot be as available to half a million constituents as another can be to fifty thousand. The system is furthermore vulnerable where committee functions are concerned. No matter whether the weighted votes are cast in the committee or single unit votes are used the system is unfair. In the first case, one individual might outvote the remainder of the committee making a mockery of the committee's work. In the other case the proportional weight of the large district legislator is denied in his committee role. If a caucus is used and legislators have but one vote to cast in caucus, particularly if the caucus decides whether legislation will be permitted to go to the floor for a vote, the system would abrogate the very prupose for which it was initiated since it would deny the opportunity to cast the weighted vote. Although the caucus is an "informal" agency, outside the law, it is nevertheless at the heart of the legislative process. Finally, weighted voting moves from the erroneous assumption that the legislative function is essentially the casting of votes on the floor. Since more important decisions - as to the content of laws and in reaching necessary compromises - are made off the floor of the legislature than on it, it follows that a weighted voting system is not a rational and possibly not a constitutional way to reapportion.

Weighted voting and fractional voting are not identical. Fractional voting involves the granting of less than a single vote to members from the smallest districts. One proposal would provide one member of the Assembly for each 100,000 residents of a county, and a fractional vote for members from counties with less than 100,000 population (5 counties). Although fractional voting does not distort legislative operations as much as the more extreme forms of weighted voting, most of the disadvantages of that system apply to fractional voting as well. Difficulties in operation of a committee system

might be anticipated, and overrepresentation in the caucus would result if single votes were cast there. It is a system of representing districts not people and would give an advantage to the smallest districts since their legislators would have equal influence in the legislature in all matters except the casting of votes.

IX.

PREVENTION OF GERRYMANDERING

The Committee recommends the following criteria:

1. Each district shall consist of compact and contiguous territory.

2. No district may deviate from the norm by more than 15-20 per cent, depending upon the method of districting ultimately used.

3. Except where a municipality crosses county lines, no municipality may be divided unless it contains more than one representative ratio or unless this may be necessary to avoid impermissible deviations.

4. Where a municipality does contain more than one representative ratio, it must be divided into at least as many parts as it contains full representative ratios but it can be split into no more than the number of those full representative ratios plus one.

Gerrymandering, or "the art of political cartography," is a term often associated with the drawing of legislative district lines so as to maximize the effective voting power of one political party. The practice may be criticized on at least two counts:

1. Gerrymandering tends to ignore the community of interests of the residents of particular cities, counties, and regions.

2. It has a spillover effect on other arenas of political conflict tending to exacerbate partisan feelings and promote other efforts to "rig the rules of the game" for partisan advantage.

On the national level, Congress has tried to minimize the partisan distortion of congressional districts by inserting restrictive phrases into apportionment acts. The law of 1842 stipulated that districts should be composed of "contiguous" territory; that of 1872 stated that districts should contain "as nearly as practicable an equal number of inhabitants;" that of 1901 added a requirement that districts be composed of "compact" as well as contiguous territory. The 1929 apportionment act dropped all three requirements.

On the state level, the prevention of gerrymandering has normally been sought through constitutional rather than statutory restrictions. The phrases listed above are the ones generally found - in the

legislative article of the state's constitution, or else in a separate article dealing with congressional as well as state districts. Variations from the standard approach include:

1. The addition of modifying phrases such as "convenient, contiguous territory" (Minnesota); "as compact as possible" (Rhode Island); "as colpact as may be" (Montana). Some of these modifiers (e.g. that in the Montana Constitution) appear to weaken the original phrase.

2. The substitution of a quotient system for the population phrase listed above. The Missouri reapportionment commission, for example, "shall reapportion the senators by dividing the population of the state by the number thirty-four (no. of Senators), and the population of no district shall vary from the quotient by more than 1/4 thereof."

3. The inclusion of other constitutional restrictions, to wit:

a. That district lines follow the boundaries of existing political units. The county is the unit which usually cannot be disturbed (except for the formation of intra-county districts). Typical is the Wisconsin Constitution, which stipulates that legislative districts shall be bounded by "county, precinct, town, or ward lines."

b. That socio-economic areas be respected by the districting agency. Thus, the Alaska Constitution states that each district shall contain as "nearly as practicable a relatively integrated socio-economic area."

The prevention of gerrymandering also involves a consideration of the districting agency - a topic covered in another memorandum. It would appear that a decision as to that agency is basic to a final decision on constitutional hedges against gerrymandering. If the legislature is the districting agency, one might tend to support more elaborate and rigid constitutional provisions, and provide for judicial review of the redistricting plan. If a non-partisan "boundary commission" (like those of Great Britain) is found to be feasible, simpler constitutional language might well be in order, with additional instructions provided by statute of necessary. Constitutional clutter should be avoided if possible.

X.

PROVISIONS FOR FUTURE REAPPORTIONMENT

1. The Committee recommends that the Legislature should have an opportunity to reapportion by statute.

2. The Committee further recommends that if the Legislature fails to act by July 1 of the year following the census year, or if their plan is vetoed by the Governor, the Supreme Court of the State of New Jersey shall establish a 5-man bi-partisan reapportionment commission. The Commission must report by January 1 of the following year. Their apportionment plan would become effective upon order of the court.

The development of adequate provisions for future reapportionment is one of the most difficult problems involved in any apportionment plan. Two objectives must be sought:

1. To insure that some timely reapportionment action will be taken when pertinent population data becomes available.

2. To guard against the use of the reapportionment machinery for partisan purposes.

A number of patterns have been tried by various states:

REAPPORTIONMENT BY CONSTITUTIONAL AMENDMENT

In 1790, more than half of the legislative bodies in the United States could be reapportioned only by amending the state constitution. This situation quickly changed as the states began to accept the premise that more attention should be given on a periodic basis to the number of persons represented by each legislator. The percentage dropped steadily until 1930 when only 8% of the state legislative bodies were thus apportioned. From 1930 on, the proportion rose steadily until the recent apportionment cases were decided. By 1958 the percentage stood at 16%. The New Jersey Senate has always been within this group, although it may be argued that the Legislature did reapportion the Senate during the nineteenth century by creating new counties. The disadvantages of this method of reapportionment are its great rigidity and the lack of any standards for future use.

REAPPORTIONMENT BY THE LEGISLATURE

Since 1800, the most common method of reapportionment has been by the Legislature. In recent years about two-thirds of all state legislative bodies have been reapportioned in this manner. At one point, in 1900, 87% of the legislative bodies were required by their state constitutions to be reapportioned by the legislature.

This approach has the major disadvantage that it relies upon the development of a majority favorable to reapportionment action by the group of persons having the most intense personal interest in the results. The experience has been that under these circumstances:

1. It frequently is difficult to achieve any apportionment

2. If reapportionment is achieved, it is often a gerrymandered plan.

REAPPORTIONMENT BY SOME NON-LEGISLATIVE AGENCY

A few states have transferred the responsibility for reapportionment to a non-legislative agency. The Massachusetts Constitution, for example, between 1836 and 1857 directed that the job be done by the governor and council (1780, Articles of Amendment, Article XII, ratified November 14, 1836); Maryland had a similar provision between 1867

and 1950 (Constitution, 1867, Article III, Section 5); Missouri in 1945 provided that the secretary of state should apportion its house of representatives (Constitution, 1945, Article III, Section 2). In some cases, a commission has been named to carry out the reapportionment. In Ohio the commission is made up of the governor, auditor, and secretary of state (Constitution, 1851, Article XI, Section 11); in Arkansas of the governor, secretary of state, and attorney general (Constitution 1874, Article VIII, Section 1); in Missouri the governor appoints the commission from lists submitted by the two major parties (Constitution 1945, Article III, Section 7); and in Alaska the governor appoints a five-man commission which is geographically representative to provide a plan which he may alter (Constitution, 1958, Article VI, Sections 8-10).

In general terms, where the reapportionment has involved distribution to fixed-boundary constituencies, there has been less reluctance to turn the job over to an executive official or commission. Only in rare cases has the responsibility been assigned to a non-legislative agency when the reapportionment involves districting (e.g. Alaska). The reasons are not difficult to find. In a distributive type of apportionment the rules may be fixed in advance quite precisely, and all that the non-legislative agency must do is apply these rules. The task becomes strictly mechanical. However, where districting is involved, the reapportionment task requires the exercise of judgment, and judgment opens the door to gerrymandering. If an attempt is made to circumvent this difficulty by appointing a bi-partisan commission, the result may be simply a stalemate.

REAPPORTIONMENT BY THE LEGISLATURE WITH A BACK-STOP AGENCY

In recent years, a number of states have attempted to use a compromise in which the legislature retains the primary responsibility for apportionment, with a "back-stop" agency created to step in and do the job if the legislature fails. States which have tried this method include Missouri, California, South Dakota, Texas, Illinois, Michegan and Oregon. In all but the last named, the task has been assigned to a commission. In Oregon, the secretary of state was named as the "back-stop" agency.

This approach has the same drawbacks inherent in using a non-legislative agency as the primary reapportionment agent.

CONSTITUTIONAL AUTHORITY FOR JUDICIAL REVIEW OF APPORTIONMENT

A few states have provided specifically in their constitutions for state judicial review of apportionment plans. Since the decision of the United States Supreme Court in Baker v. Carr, these provisions appear unnecessary.

THREATS OF AT-LARGE ELECTION

In some cases, the threat of an at-large election has been proposed as a means for forcing the reapportionment agency, however consti-

tuted, to act. The results, as reported at a recent conference,* have not been encouraging:

A person from Illinois can hardly sit on a panel on this subject of apportionment without baring his soul about the evils of the "at-large" weapon to compel the legislature to reapportion itself. As you may know, a constitutional amendment adopted in Illinois in 1954 provided that if the General Assembly did not reapportion the House of Representatives, the matter was to be turned over to a bi-partisan commission. If the commission did not do the job, all members of the House would be elected at large. In the campaign for the amendment, the proponents stated that the legislature would act. Come 1963, the first year to put the new automatic weapon into use, the system broke down. The Democratic governor vetoed the Republican approved apportionment map. We did not worry, however, for surely the bipartisan commission would get the job done. But the commission ended in a stalemate - and the voters faced the task of electing 177 members from the 236 persons nominated by the two political parties. The separate orange ballot was said by some to make a "mockery of democracy." At this time, we do not know the cost of the election, the voters' reaction to the ballot or, more importantly, who won....

CONCLUSIONS

Where a distributive type of apportionment is used, the problem of reapportionment may be solved rather simply by assigning the task to a non-legislative official and specifying the raw data and the mathematical method which should be used. Presumably, the courts will not hesitate to force him to act or, if this is impossible, they may do the job for him. Moreover, there is little opportunity for gerrymandering such an apportionment plan.

When districting is used, no satisfactory solution appears to have been developed. The legislature may be reluctant to act at all, because of the interests of its own members; if party control is divided between the two houses, the same result may occur; if one party has control of both houses, the result may be a gerrymandered plan. A non-legislative reapportionment agency has similar problems. Very few, if any, individuals are non-political. Even if such a person could be found, he would quickly become politicized if he were assigned the responsibility for reapportioning the legislature. If a reapportionment commission is made bipartisan, this merely sets the stage for stalemate.

XI.

COMBINING CONGRESSIONAL AND LEGISLATIVE DISTRICTS

The Committee opposes any plan that would tie Senate and/or Assembly districts to the 15 Congressional districts in New Jersey.

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* Samuel K. Gove, "Reapportionment - What's Ahead in 1965" remarks prepared for the National Conference on Government, San Francisco, California, November 20, 1964.

Aside from a superficial neatness based on the coincidental 15-30-60 numerical relationship of the 1-2-4 plan, the plan has more disadvantages than advantages. The following comments are intended to call attention to the plan's shortcomings:

1. The proposed 1-2-4 Plan would further weaken the effectiveness and importance of counties as political entities. The use of Congressional districts as the basis for apportionment of the Legislature will substantially reduce the role of the counties in the representative system. Although a plan of Congressional districts may follow county boundaries in some parts of the state, there will always be some areas in which this is impossible and there is no guarantee that in the future any Congressional districts will follow county lines. Most aspects of political organization in New Jersey have been county based. The use of Congressional districts as the basis for legislative districts will require new political groupings and orientations to be developed after every census. The result will be a much less stable future for counties as presently constituted.

2. The application of the plan as described - with all representatives being elected from single-member districts - will tend to create a Legislature which is oriented more toward local problems than at present. Each Senator will represent approximately 200,000 persons and each Assemblyman about 100,000. At the present time, a majority of the Senators (11) each represent at least 220,000 persons, and 49 members of the Assembly have at least this many constituents. If all are to be elected from single-member districts, it may be more difficult for many legislators to rise above the provincial concerns of their own districts and take a statewide look at the problems affecting New Jersey.

3. By combining Congressional and legislative districts, the task of future apportionments is made quite difficult in at least two ways:

a. In changing each Congressional district, a total of seven incumbents will have to be considered. The more persons directly concerned with each shift in boundary lines, the more difficult it will be to reach a consensus as to how the lines should be changed.

b. The task of achieving equal districts is made more difficult by requiring that each pair of Assembly districts be circumscribed by a Senate district, and each pair of Senate districts by a Congressional district.

4. The use of movable districts for all three levels of representation compounds the problem of gerrymandering. Our history during the nineteenth century shows that New Jersey has not been immune to this malady, and there is little reason to believe that we have outgrown the temptation.

5. As it now stands, the 1-2-4 plan does not have any specific reapportionment provisions. While the courts are more willing to act than in the past, the normal avenues of litigation are far more swift, especially in bringing about a reapportionment where none has yet taken place.

New Jersey Law Journal

THURSDAY, JANUARY 6, 1966

THE REAPPORTIONMENT CONVENTION

I. LIMITATIONS OF SCOPE.

The Constitutional Convention to be held in March, 1966, promises to be one of the most important gatherings since July 2, 1776, when New Jersey's first constitution was adopted. In an effort to identify some of the more significant fundamentals, this editorial and those to follow will attempt to present pertinent considerations in a number of separate areas.

The first involves the question whether the Convention will be legally limited to proposing only such changes to the legislative article as are required to conform the apportionment of the legislature to federal standards laid down in Reynolds v. Sims and related cases.

The answer is that for all practical purposes the Convention will be so limited, and that it cannot propose other amendments or deal with other subjects.

The reason is that the 1947 Constitution does not itself authorize amendment to its provisions by the convention method. While the people may doubtless act by convention to adopt a new constitution or revise an old one, it has generally been recognized that this machinery, when not itself authorized by existing terms of the organic law, must first be authorized by the people themselves. Thus, to give a convention validity, there must ordinarily be a public referendum on the initial question whether a convention shall be called and authorized to act.

In the present situation, that question has not been and need not be put to the people. As our Supreme Court observed in Jackman v. Bodine, the failure of the present apportionment provisions to comply with federal standards leaves our constitution an unfinished document, delegating the legislative power to a legislature which has no valid, constitutional, de jure structure. To that extent, there would be no point in submitting to the people on referendum the initial question whether or not to act. The people have no choice on that initial question. Hence, the court ruled, there is "no need to submit to the people the question whether a convention should be called." 43 N.J. at 474-477.

Note, too, that on the fundamental issue of compliance with federal standards, the decision was limited to the quite narrow holding that the legislative article is invalid "insofar as it deals with the apportionment of the Legislature." 43 N.J. at 473. Hence, all other provisions of the Constitution, including all other provisions of the legislative article, remain valid and as to them there is no need for change in the sense there is for the apportionment provisions. To authorize a change in valid provisions by convention machinery would require the initial question to be put to the people.

That the scope of the convention is so limited, however, does not mean that it will have limited range within the defined subject area. On the contrary, there will be far-ranging variety of questions to thrash out in the course of deciding how to complete the legislative article. Some are suggested in the footnote at 43 N.J. 477. Others are mentioned in the reapportionment article in Scientific American for November, 1965. Additional areas will be listed in these columns in the course of this series of editorials.

New Jersey Law Journal

THURSDAY, JANUARY 13, 1966

THE REAPPORTIONMENT CONVENTION

II. CHOICES OF APPROACH

One of the questions which is bound to arise in the course of the impending Constitutional Convention is that of approach or direction. Specifically, should the proposed amendment express some kind of formula according to which the next and succeeding apportionments shall be made, or should it undertake the drawing of district lines, allocation of seats, and so on?

Each of these two different approaches has some inherent difficulties as well as some advantages. For example, it is obvious that any bare formula that might be devised could be satisfied by any one of a large number of specific plans even if it contains expressed standards for measuring such factors as compactness, contiguity, community of interest, and so on. It is only necessary to scan the hundreds of sketches showing various plans for district lines that were prepared during the effort to enact reapportionment legislation during the 1965 session to realize that a formula will have many correct answers. Hence, if this is what the Convention does, and no more, not much progress will have been made because the formula, if adopted on referendum, will then have to be implemented by legislation setting up specific districts; and the Legislature may have as much difficulty in reaching agreement on a specific plan as previous ones did.

On the other hand, if the Convention decides instead to draw an actual specific plan instead of a formula, then a new difficulty will be created in that a constitutional amendment will be needed to revise that specific plan when new population figures come in. This seems too cumbersome and difficult a mechanism.

There is, of course, another choice which combines the advantage of the two different approaches and minimizes their difficulties. That choice would consist of (a) an amendment specifying a formula, standards and the like; (b) provision for placing authority in some independent agency to select a specific reapportionment plan on each occasion when reapportionment becomes necessary after the first occasion, either directly or as a backstop in case the then legislature and Governor are unable to enact new reapportionment legislation within a specific time; and (c) a schedule specifying the particular plan to take effect automatically for the first new legislature to be elected in November, 1967.

This combination choice would avoid freezing a specific plan into the Constitution, and at the same time would not leave open and unsettled the selection of a specific plan for the new 1967 legislature. It would also avoid the risk of prolonged deadlock situations in the selection of future plans on successive reapportionments.

The approach is well within the framework of the enabling legislation for the Convention, as set out in ch. 43 of P.L. 1965. By the pertinent provisions, in sections 2, 19, 20 and 24, it is expressly intended that the proposal of the Convention go directly to the people on referendum without any intervening legislative action, and that the proposal provide how and when it is to take effect as well as that it shall take effect so as to apply to the November, 1967 election.

The schedule device has much to commend it, in that extensive detail applicable to the first new election to be held is not made a part of the Constitution itself; the need for it applies only to the single occasion. And, of course, there is ample precedent for its use, the last instance having been the schedule to the 1947 Constitution.

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III. CHOICES OF METHOD

In dealing with the subject of method of apportionment of a new legislature, this year's Constitutional Convention will have a wide variety of techniques from which to choose.

Section 2 of the enabling statute, ch. 43 of P.L. 1965 instructs the convention to give "due consideration to constituting a Legislature comprised of a Senate and a General Assembly." This doubtless expresses a leaning in favor of the continuation of the present system of a two-house legislative body. Yet, the subject of a unicameral body is not foreclosed from consideration. The concept of a unicameral legislature has made no particular headway in this country. Nebraska is the only state with a unicameral legislature at present. However, the reapportionment actions have created renewed interest in unicameralism throughout the country.

The most important aspect for consideration is the matter of how the constituencies are to be composed. Assuming that elections at large would be wholly impractical, some geographical division must be made for the purpose, whether tied in with existing political boundaries or not. The constituencies need not be equal in area of population, of course, so long as the representation in number of legislators fairly reflects the size of the constituency.

There are two basic types of apportionment which have been used and two forms of combinations of the basic types. One basic type is distribution of legislative seats within constituencies with fixed boundaries. Such a system is used now in our State Assembly and in the interim State Senate. Fixed districts are said to prevent gerrymandering and provide political stability. Such a system also makes simpler the task of reapportionment in future years.

The second basic type of apportionment involves districting the state into substantially equal size constituencies, each of which would have assigned to it a fixed and equal number of legislative seats. This type of apportionment is used for distribution of Congressional seats within the State. The principal advantages of districting include the ability to achieve more nearly equal representation because of the flexibility afforded in drawing district boundaries. Secondly, smaller, single member districts are believed desirable to provide better representation of local interests. However, districting opens the door to gerrymandering. Notwithstanding the adoption of various standards; such as the requirement of following municipal boundaries, that districts must be compact and contiguous, and others, the threat of gerrymandering cannot be wholly eliminated from an apportionment system based upon shifting boundary lines. However, if discretion in drawing district lines can be limited so as to reduce the possibility of gerrymandering, the advantages of districting may justify its use in whole or part in an apportionment plan.

Thirdly, the Convention may consider combinations of the two basic types of apportionment. In a one-level combination, both the boundaries of the constituencies and the number of seats may be varied to achieve equal representation. In a two-level combination, the legislative seats are distributed among fixed boundary constituencies and equal population districts then are drawn within these constituencies.

Obviously, there are no easy solutions to this complex problem. There are advantages and disadvantages to all of the methods of apportionment. In a state as compact and as densely populated as New Jersey, single member districts are attractive to those who wish to insure representation to the myriad of local interests. Yet, such a system breeds legislators with a limited, parochial point of view. Others would argue that many of the State's more difficult problems call for a considerably broader viewpoint. Subjects such as education, transportation, water supply, water and air pollution, taxation and so on, can be dealt with effectively by legislators who represent larger regions and more heterogeneous constituencies so as to afford them a broader point of view.

The object of any method of legislative apportionment and the purpose of this convention, regardless of the means used, is an effective, responsive legislature. Let us hope that narrow political interests shall not distract the delegates from that goal.

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IV. THE CONNECTICUT EXAMPLE

Connecticut has just completed ratification of constitutional amendments for reapportionment via a convention and referendum. For that reason alone, what was done there is worth a brief review and comment. Besides, Connecticut is quite like New Jersey in many respects, and has had many close ties over the years since Robert Treat and his companions came from Milford, Branford and Guilford nearly 300 years ago to settle at Newark.

Before the convention acted, the Connecticut legislature passed legislation reapportioning the two houses on a basis compatible with federal standards. The Convention consequently amended the Constitution by general provisions which leave the specific apportionment of legislatures to statutes, subject to the basic guideline or standard that Senate and House districts "shall be consistent with Federal Constitutional standards." This approach was felt to leave the basis of apportionment open to future legislative change on bases other than population alone in the light of new court rulings or the possible adoption of federal changes such as that proposed by the Dirksen amendment, and to leave the present statute unaffected.

While this approach may appear to have the virtue of flexibility to accommodate to unforeseeable changes without the need to again amend the Constitution, it really amounts to no more than deleting all provisions for legislative apportionment from the Constitution and leaving the matter entirely to statute. There are legal theories to support the validity of this technique, but it must not be overlooked that the current difficulties have come about almost entirely because of the failure of legislatures to act on reapportionment within the sphere delegated to them by traditional local constitutions. This failure to act can be traced almost entirely to the fact that malapportioned legislatures find it almost impossible to legislate some of their members out of office.

While its members were not unanimous on the point and while the extent of the division was not disclosed, our Supreme Court noted in the Jackman case that it would have serious doubts about the validity of a technique which put so little in the Constitution and so much in the hands of the legislature. Such an arrangement tends to provide legislatures with the means for perpetuating minority control with no effective remedy at the ballot box.

The Connecticut amendments do include provisions for mandatory reapportionment. These provisions call for reapportionment by the the legislature by March 1 of the year after each federal census. If it fails to act by that time, the Governor is empowered to name an 8-man bipartisan commission to do the job. If the commission fails to produce a plan by July 1, the Governor selects two Superior Court judges who in turn select a third member, and this 3-man panel is then obliged to produce a plan by October 1.

Historically, the most common method of reapportionment has been by the Legislature. In recent years about two-thirds of all state legislative bodies have been reapportioned in this manner. A few states have transferred the responsibility for reapportionment to a non-legislative agency. In some cases, the task is left to the executive branch of the state government, or to a commission appointed by the Governor. Where reapportionment involves distribution to fixed-boundary constituencies, there has been less reluctance to delegate the job to an executive official or commission. However, the responsibility rarely has been assigned to a non-legislative agency when reapportionment involves districting. This obviously is due to the exercise of greater judgment and discretion necessary in districting whereas the distribution of seats is substantially mechanical.

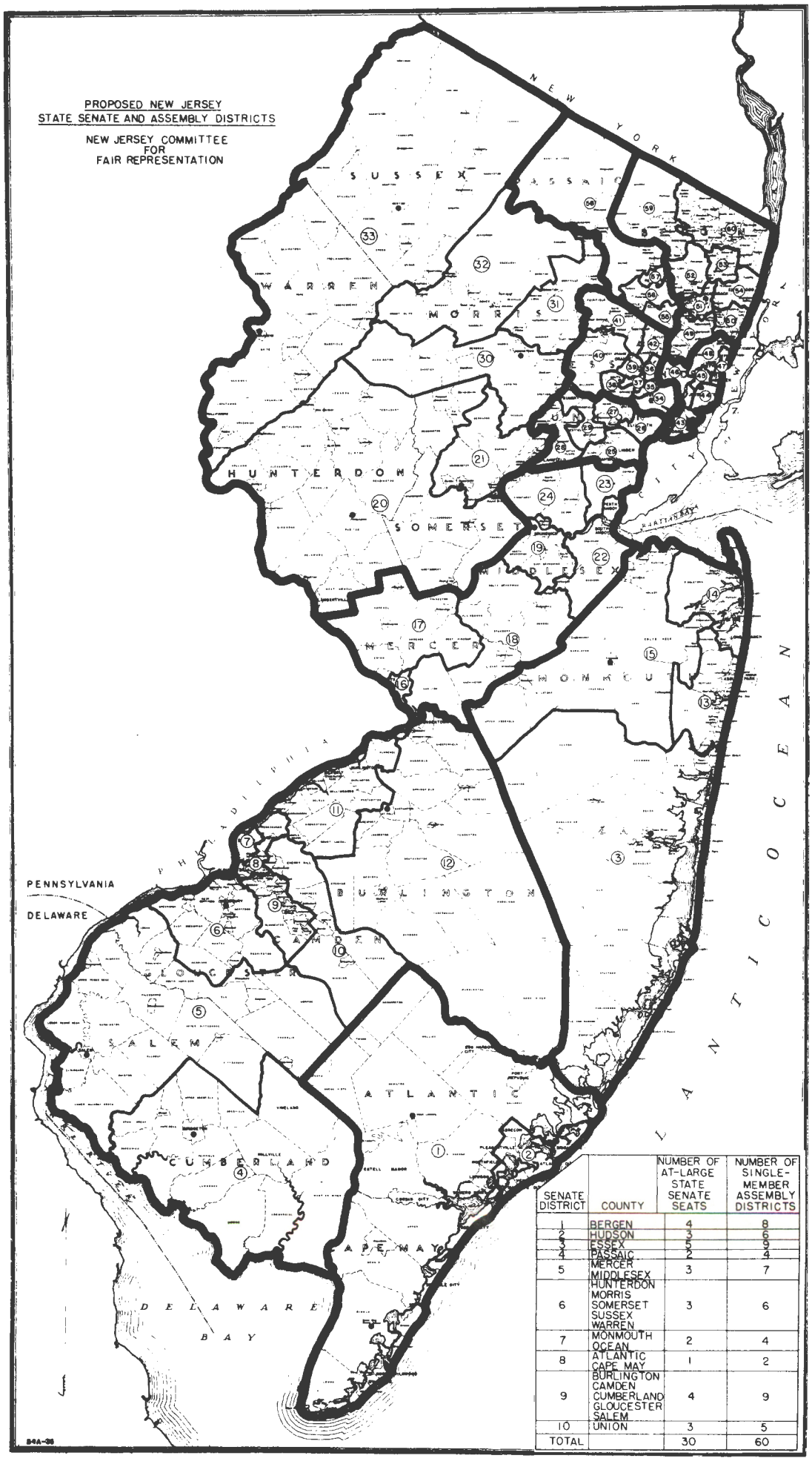
(Continued on next page)

A few states have specifically provided for state judicial review of reapportionment plans. Though the decision in Baker v. Carr makes such provisions theoretically unnecessary, they do avoid the burden of private litigants prosecuting an action through the courts to test the reapportionment plan proposed.

In recent years, a number of states have attempted utilizing the concept of a reapportionment commission as a "back-stop" agency created to step in and do the job if the legislature fails to to enact a reapportionment plan by an established dateline. This has the virtue of leaving the primary responsibility with the Legislature while preventing abuse by legislatures reluctant to act. This is basically, the system provided under the new Connecticut amendments. Other states which have tried this method include Missouri, California, South Dakota, Texas, Illinois, Michigan and Oregon.

The "back-stop" agency may be a commission appointed by the Governor, the Supreme Court, the Legislature or a combination of them. It may be elected, or, as in Oregon, it may be a designated official, such as the Secretary of State.

Whatever the system designated, the important thing is that the constitutional amendment ultimately passed contain a system for reapportionment no less than every ten years. Such method must include provisions to prevent legislative inertia from frustrating reapportionment in the future as it has in the past.



SENATE DISTRICT	COUNTY	NUMBER OF AT-LARGE STATE SENATE SEATS	NUMBER OF SINGLE-MEMBER ASSEMBLY DISTRICTS
1	BERGEN	4	8
2	HUDSON	3	6
3	ESSEX	3	5
4	PASSAIC	2	4
5	MERCER MIDDLESEX	3	7
6	HUNTERDON MORRIS SOMERSET SUSSEX WARREN	3	6
7	MONMOUTH OCEAN	2	4
8	ATLANTIC CAPE MAY	1	2
9	BURLINGTON CAMDEN CUMBERLAND GLOUCESTER SALEM	4	9
10	UNION	3	5
TOTAL		30	60