STATE OF NEW JERSEY

N.J. CONSTITUTIONAL CONVENTION OF 1966

Third Hearing

before

COMMITTEE ON APPORTIONMENT OF THE LEGISLATURE

Testimony of:

Honorable Clifford P. Case
United States Senate

held at

RUTGERS UNIVERSITY

The State University of New Jersey

New Brunswick, New Jersey

April 28, 1966

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CHAIRMAN JOSEPH M. KEEGAN: Delegates, ladies and gentlemen, if we can have your attention, please.

This is a meeting of the Apportionment Committee. It will be a public meeting, a public hearing.

Senator Lance and myself are Co-Chairmen of the Apportionment Committee.

Actually we are waiting for, obviously, the presence and appearance of Senator Case.

There had been two people scheduled to be here this afternoon, one, Senator Case, and the other a representative of the Political Science Institute of Rutgers University. We are informed that it is impossible for their representative to be here this afternoon. Senator Lance and I will make some other arrangements, so far as he is concerned.

As you know, this is a public hearing. There are certain ground rules. Certainly there is no limitation, so far as the Senator is concerned in his presentation. There is the one limitation that the Delegate members of the Apportionment Committee, if they have questions to address to the Senator, please come forward to the microphones which are connected to the recording equipment and the member of the Committee

will identify himself and then ask his question.

Now we will have to wait a few minutes. We understand that the good Senator has, of course, made quite a few commitments for the day. From what I can gather, he started at 9 o'clock this morning in Atlantic City but where he has gone since then, we don't know.

The smoking lamp is lit, for those of you who are interested, while we are waiting for Senator Case.

To all members of the Committee - I notice there are some from both panels here - Senator Lance and I have just gone over some tentative plans for next week and you may rely upon it that there will be a joint meeting or plenary session of the Apportionment Committee next week, Thursday, at approximately 4 o'clock. Senator Lance and I will get together on the time again.

Those of you on Panel A, of course, know your meeting times are Monday at 6 o'clock in Trenton, as arranged, and then next Thursday you will be meeting again before the plenary session at 4 o'clock.

DELEGATE: What about this afternoon?

CHAIRMAN KEEGAN: This afternoon, no. As I understand, there are meetings following this of various leadership segments of the Convention and there will be no plenary meeting, if that is your question.

(Short waiting period)

CHAIRMAN KEEGAN: Ladies and gentlemen, for the record, this is a public hearing of the Apportionment Committee.

As some of you know, my name is Keegan. I am Co-Chairman, with Senator Wesley Lance, of the Apportionment Committee.

Anyone who is going to speak better keep in mind the acoustics here. These microphones are not set up for an amplifying system. These microphones are going into the recording equipment.

Now, the ground rules are, of course, very simple. Senator Lance will give them to you shortly.

The members of the public who are here, of course, are very welcome. We appreciate your interest in coming. All Delegates, also, are indeed welcome.

We would point out, though, for the purposes of our public hearing, that the questions, if any, will be accepted from members of the Apportionment Committee. Those members of the Committee who have questions to direct, either to the Chair - the meeting will be presided over by Senator Lance - if you will come to the microphones which are placed here and identify yourself for the record and then give your question.

The business of the Apportionment Committee, with this public hearing, will be finished so far as today is concerned.

As you know, members of Panel A, we have a meeting scheduled for Monday.

Further than that, I have conferred with Senator Lance and there will be a plenary meeting of the entire Committee on next Thursday at 4 o'clock, following all of the other meetings that we know you Delegate members of the Apportionment Committee have to attend.

I understand that there are, again, other meetings so we will not be able to have a full meeting of the Committee here this afternoon following this.

May I present now to you my Co-Chairman and Fellow Delegate, Senator Lance.

CHAIRMAN WESLEY L. LANCE: My name is Wesley L. Lance. I am one of the two Co-Chairmen of the Apportionment Committee. I represent Panel B. This Committee is purely bipartisan and nonpartisan. Just by coincidence it happens that Panel A is all Democrats and Panel B is all Republicans, so that everybody gets the score card straight.

It's my extreme pleasure to introduce to you at this time United States Senator Clifford Case.

(Applause)

C L I F F O R D P. C A S E: Chairman Lance, Chairman Keegan, Delegates, ladies and gentlemen: It's a very great pleasure and a very great honor to be permitted to appear before this Committee.

This is my first experience in connection with a Constitutional Convention, and it gives me, I think, quite an appropriate feeling of awe. Most of you guys, individually,

I know pretty well and, with great respect to all of you, you don't awe me. I like you. But there is a touch of the majesty of American Constitutional Law here, that you will pardon me for just remarking upon, and I am most appreciative of the chance to present briefly my views really on just one point.

Through legislative bodies, and through the executive branch, and most of all perhaps through the courts, we in this Country have taken giant strides over the years toward full implementation of the Fourteenth Amendment to the Federal Constitution.

And, of course, as we all know, among other provisions of that Amendment is the requirement that no state shall "deny to any person within its jurisdiction the equal protection of the laws."

This Convention has been called to take another step to implement that Amendment for the voters of our State. And what the Convention must decide is how best to assure the most effective representation for each citizen within the "one man, one vote" principle as decreed by the courts.

Now this "one man, one vote" principle generally, I think, is interpreted as a reaffirmation - to me this is one of its aspects - of the basic principle of majority rule in a democracy. But, by the same token, it doesn't mean that minorities have no rights. As a matter of fact, the "one man, one vote" principle is also a reaffirmation of the rights of the minority.

Within a democracy, the majority must protect the

rights of the minority. And the most effective protection of the minority, or one of the most effective protections that a minority can be given within the "one man, one vote" principle is if the minority will be represented in the State Legislature according to its numbers and has an opportunity to present its views to that body so those views can be reflected in the decisions of the majority.

It is for these reasons that I strongly urge this Convention, and this Committee first, to establish single-member districts for each State Senator and each Assemblyman to be elected to our State Legislature.

The alternative, the at-large election of representatives from multi-member districts, opens the door, I think, to situations which at the extreme could lead to a tyranny of the majority on the one hand or to a frustration of the majority rule on the other.

For example, if all our State Senators and Assemblymen were elected at large from a single-member district comprising the whole State, a minority of 49 per cent, literally millions of people, would be left without a voice in the Legislature. This possibility decreases in direct ratio to the increase in the number of districts established for representation in both the Senate and Assembly of our State.

That this isn't just a theoretical possibility is demonstrated by what happened last year in three counties, Bergen, Essex and Passaic. The average of the votes cast for Republican candidates for the State

Senate in those three counties totaled about 321,000 while the average of the votes cast for Democratic candidates totaled 377,000. But the Democrats sent 10 Senators to the Legislature from the three counties while the Republicans sent none, they are not represented.

In races for the Assembly, the story was very much the same, with the average for Republican Assembly candidates totaling about 314,000 and for the Democratic candidates about 365,000. But the Republicans wound up with only one Assemblyman to 19 for the Democrats. Obviously, I think quite obviously, the Republicans are not represented in the current Legislature from those counties in accordance with their numbers in the total population, for their votes cast at the election.

This works both ways, of course. Democrats in Ocean and Monmouth counties can feel equally aggrieved. In both of these counties Republicans won all the State Senate and Assembly seats although the average Democratic vote for State Senator and Assemblyman totaled about 79,000 while the average Republican vote for the same offices was about 97,000.

The possibility of frustration of majority rule also can be seen in these examples. In either case, the loser, that is to say the losing party, in the counties involved could win all the other counties by such a margin that would give them a statewide majority of the votes and still not be able to pick enough legislative seats to control the State Senate or the State Assembly. Then you have a frustration of the

majority by this at-large operation or principle.

In either of these situations, our system would not be truly representative. State legislative districts, in my opinion, would help to provide a truly representative system.

And then there are still other reasons why single-member districts would be advantageous, in fact much more advantageous. Each legislator would have a specific constituency for whose particular interests and particular concerns he and he alone would be responsible in the body in which he represents that constituency. The interests and concerns of various sections of the State too would be given legitimate representation.

This system would create voting districts, or could easily create voting districts small enough to make representation more effective than it now is in many of our more heavily populated areas. Each constituent would have a specific representative to whom he could turn and this representative would have or could have the same close relationship with his constituents that is now enjoyed by representatives from a very few of our smaller counties under our current system. And this, my friends, is a very important matter. Just because I happen to believe, and have believed, in the "one man, one vote" principle doesn't mean that I, in any way, undervalue the importance of the individual citizen knowing so far as he can his representatives in the State Legislature. I do believe in this deeply. And it's

because I think it's possible to accomplish this under the "one man, one vote" system, even more effectively than has been true except in our smallest counties, up to now, that I strongly urge this Committee to recommend and the Convention to adopt and propose to the people of this State, next November, a Constitution in which this is accomplished.

There would be less possibility that the choice of all or most of our State legislative candidates within a multi-member district might be dominated by one or two concentrations of population, whether in a city or in one or two counties that might be included in a district.

Our goal must be to assure the most effective representation of the greatest number of people at every level of government. And it seems to me clear, the more I think about it, that the district system is a vital instrument to that end. And, ladies and gentlemen, the time to do the job, the whole job, is now.

This means one more thing, I think, that I would just like to leave with you, that the Convention should propose a regular procedure, one as nearly automatic as possible, to provide for future reapportionment, as population and as other changes warrant. The need for this procedure, I think, is demonstrated by the fact that the legislative structure of our State has not kept pace with the many changes since it was adopted in 1844.

I again, gentlemen, express to you, and through you to your Committee and this Convention, my deep appreciation

of the privilege of appearing before you and also my sensibility of the honor that's involved. And I am at your disposal for questioning.

MR. LANCE: Thank you very much, Senator Case.

We have a rather large audience here today and the members of the Apportionment Committee are scattered widely.

If any member of the Apportionment Committee has a question to ask Senator Case, will you come forward to these two microphones, speak into both of them, and tell us your name and the county from which you come.

MR. JAMES M. CAWLEY: Senator, I am James Cawley, Delegate from Union County and a member of the Apportionment Committee.

You mentioned the word "constituent," Senator, and I'm concerned with what you mean by your constituents. Do you mean population that exists in a particular district, or do you mean the voters? Are you talking about voters or population when you talk about constituents under the "one man, one vote" concept?

MR. CASE: I'm sorry. I don't think I understand your question yet. Could you restate it?

MR. CAWLEY: Sure. You used the word "constituent" in your presentation. And I just wanted to know who the constituents were you were talking about. Are you talking about the people that live in the particular district or are you talking about the registered voters in that particular district?

MR. CASE: I'm talking about - when I say "constituent," I'm talking about the people that you are supposed to represent and that means all the people resident in a particular district, I expect. And I don't use the word "resident" in any technical sense, I mean the people who are there, the people under your particular care, and these represent everyone in the district, it seems to me.

MR. SANFORD L. HOLLANDER: Sanford Hollander from Sussex County.

Senator, you said the tyranny of the majority decreases as the number of districts increases. First, have you any idea in mind how many districts you think we should have in --

MR. WAYNE DUMONT: We can't hear back here, would you turn the microphones around?

MR. LANCE: Will the Delegate who has a question come up front and state the question to the whole group. These microphones are not loud speakers, they are merely hooked up to the tape recorder.

MR. HOLLANDER: Senator Case said, in his initial presentation, that the tyranny of the majority decreases as the number of districts increase.

My first question would be, if he had in his mind how many districts he feels would be necessary in order to minimize the tyranny of the majority; and, secondly, whether he has considered a unicameral legislature in this regard.

MR. CASE: Well, may I speak to the second question first.

I haven't given the question of a unicameral legislature a great deal of consideration. I suppose probably because I've gotten used to the bicameral legislature and I just thought that everybody else was pretty well used to it and that it was kind of a part of our heritage in the State and that there was no particular reason to change it. But I still think, even under the "one-man, one vote" principle it has a number of very real values.

On the basis of everything I know now, I would certainly cast my vote on the side of continuing a bicameral system, not on the basis of any deep ideological reason but just because, well, this is ours and I think a great part of politics is tradition, and this means what people are used to and have gotten used to operating under. And I think this is a matter of real importance. So I would think, unless I were in the Convention and had argument on the other side that was persuasive, I would stick with the one that we have. But I haven't given it deep consideration or study.

As to the size of the districts, or the number of districts, either for the Senate or for the Assembly, I don't have any fixed view. I was a member of the Assembly when it had 60 members and 60 seems like the given number to me. If you can work it out in that, I think it would be great.

I knew a Senate that had 21 members when I was a member of the Assembly. Now you have 29. I think or I would be inclined to think, and not think there is any magic in an arbitrary number, that something of the same relative size and something of the same ratio between the two bodies was good.

I was and, if it were not slightly academic, still would be an ardent protagonist of Senator Lance's - what was it 1 --

MR. LANCE: 1 - 2 - 4.

MR. CASE: 1 - 2 - 4 system. I think this would be just great. But that wasn't the purpose that I came here particularly to testify on today.

MR. LANCE: Delegate Joel Jacobson of Essex.

MR. JOEL R. JACOBSON: Senator, you make in your statement two major points, the espousal of the "one man, one vote" principle and the creation of single-member districts.

In my home town of Newark, there is one ward that has a larger population than some states that elect two U. S. Senators. And my question is, inasmuch as you come from a legislative body which is not based upon the principle of "one man, one vote" and which elects at-large, not single-member districts, is the criteria that you offer for effective representation valid for New Jersey but invalid for the United States Senate?

MR. LANCE: Joel, you sound like Lance two years

ago.

MR. CASE: Well, if I weren't quite well aware that Delegate Jacobson was talking with his tongue in his cheek, I'd be more concerned. But he and I happen to agree on the "one man, one vote" principle for the State and both of us know that it's a purely academic exercise to consider what would be good for the United States. If nothing else, the method of amending the Constitution requires concurrence of states which would be ravaged by this kind of change, and they would never take it, unless we had a revolution. And I know of no constitutional doctrine that overrides the Constitution, do you Senator?

There are historical reasons why we have the two Senators per state in the Senate of the United States. New Jersey had a good deal to do with it at the time. It seemed then to make sense. We've gotten to operate under it fairly well and it doesn't concern me so very much, especially since we can't do anything about it. And I think the best thing to do is to concentrate on what we can do something about and get that job done well.

CHAIRMAN LANCE: Delegate Schreiber of Union?

MR. SIDNEY M. SCHREIBER: Senator, my name is Sidney Schreiber and I'm from Union County.

I notice that in your talk to us you said nothing at all about county lines. I would like to hear, first, your view insofar as respecting county lines is concerned in any districting process, and, secondly, I should like to have your thoughts on who you would think would be

the best person or group of persons to draw these districts to which you have referred?

MR. CASE: I think it's quite desirable to preserve county lines, as far as they can be preserved, and I know of no reason why a system can't be worked out of apportionment that respects them completely. This doesn't mean that you won't have a difference between the number of votes from a county with 50,000 population and 1,200,000, and I think you should, but still I think the county can very well be taken into account, perhaps in every case.

Again, this is in accordance with my view of the development of our political institution. Counties are not sovereign bodies; on the other hand they are bodies of great importance, both historically and presently. And having served in the Legislature and having people refer to me as "the gentleman from Union," as given to you, and "the Senator from Atlantic," that has been said more often than "the gentleman from Union," even, for a longer period.

This is not a little thing. It's a part of the tradition, the whole ball of wax that goes to make up our institution.

I would hope that it would be possible to maintain county lines, very importantly, in a redistricting of the Legislature.

I think, and I hope, that this Convention will do the job. And it is my view that it was created - I haven't

read the document, I haven't studied it, I don't purport now to give a lawyer's opinion on the charter of the Convention but it was my impression, and I think the public believes this, that the Convention was expected to do the job and not toss it back to the Legislature or to any other body.

MR. SAUL ORKIN: Senator, I am Saul Orkin from your home county of Union.

In the closing moments of your remarks you advocated automatic future reapportionment. My question is, when you refer to automatic future reapportionment are you thinking of the Legislature or a Convention similar to this or a commission or the courts, perhaps, as being the vehicle through which automatic reapportionment in the future can be conducted?

MR. CASE: I haven't attempted to draw a specific blueprint of the mechanics but it would seem to me that a requirement in the Constitution that reapportionment be actively considered and dealt with every X years, whether it be ten or some multiple perhaps in relation to the ten year enumeration the Federal Government takes, or some other period, is a matter for the Convention to decide.

I would suppose possibly you could do many things. You could leave it to the Legislature first but if the Legislature didn't act then have an automatic provision for the calling of a Convention that could not be stopped by anybody, whether a governor or a legislative body or

one of the two branches of it or anybody else. I think just to have the procedure automatic. I don't know any way you can automatically do a good constitutional job except by having people do it, either in the Legislature or in convention.

MR. ORKIN: As a matter of preference, would you suggest that the Legislature be the place of first resort?

MR. CASE: I am legislative minded and, therefore, I guess this is the way my mind runs now. I would be open, not to persuasion but at least I would hear argument on the other side. I would be inclined to let the Legislature have the first crack at it.

MR. ORKIN: Thank you.

CHAIRMAN FARLEY: The gentleman from Atlantic.

MR. FRANK S. FARLEY: Senator Case, I am Farley from Atlantic.

You talked of "one man, one vote," and probably this is a supplement of your interpretation of that rule. I would like to ask a question and let you draw your own conclusion how to resolve the problem.

In the State of New Jersey, with which you are intimately conversant, I will take seven counties, Bergen, Essex, Hudson, Union, Passaic and Camden, - election by one party in those counties would control both houses.

Now for a hypothetical question that each of those respective counties win by a majority of 5,000 and the other remaining 14 counties give a total majority of 150,000, what have you to say relative to the "one man,

one vote" rule in that instance?

MR. CASE: I think that this demonstrates not that there is something wrong with the "one man, one vote" principle, Senator, but, as I indicated on that specific point in my testimony in chief, the absolute need under the "one man, one vote" principle of single-member districts.

MR. FARLEY: This further demonstrates your point, does it not, Senator?

MR. CASE: You are exactly right and I appreciate your underscoring this point so very well.

(Laughter)

MR. FARLEY: Now, Senator, while you are here, there have been many suggestions on how to determine the apportionment after 1970. Some have recommended the Legislature, some the Supreme Court, some the Secretary of the State, some by the State Chairman, and some by commission.

If perchance a commission is determined by this august body of 5 Republicans and 5 Democrats, and in view of the fact if you follow patterns of other states which basically call for the majority of 7, which I think is sound, 7 out of 10, would you think it advisable to have in each party of these 5 representatives 2 members from 5 or 7 of the smallest counties to prevent election at large?

In other words, you would have 2 Democrats and 2 Republicans out of the 10, being 4, to prevent the vote of 7, to make sure and insure that there would not

be a vote at large as far as the State of New Jersey is concerned.

Have you any reaction to that suggestion?

MR. CASE: I wish that I had a chance to think about it a little longer, Senator, before trying to comment on it. I've come to have the deepest respect for any suggestion you make but also an awareness that you represent a very fine and a very special part of the State, extremely well, and I would just want to think about it in the light of all sections and all parts of the State before I did comment on it. The fact that you make it entitles it to deep consideration, sir.

MR. FARLEY: Thank you, Senator, but I'm only trying to supplement your interpretation and your resolvement, so to speak, involving districting, as an insurance factor that 2 members of the Democrat Party and 2 members of the Republican Party, 4 out of 10, would prevent a vote of 7 to insure an election at large and to perpetuate your thought of districts. Do you follow me?

MR. FARLEY: Thank you. Well, Mr. Chairman, or Co-Chairmen, I would appreciate if it I might have an opportunity to ask the Reporter to send me a copy of the Senator's question so that I could ponder it and then perhaps answer it more effectively after I have had a chance to study it, sir.

MR. FARLEY: Thank you, Senator. We are grateful for your appearance.

MR. CASE: Thank you so much.

CHAIRMAN LANCE: Professor Duff, Delegate from Essex.

MR. JOHN B. DUFF: I am John Duff from Essex.

Senator, you spoke in favor of bicameralism as being well established in the State as a tradition and a national tradition. Isn't it also a fact that at-large elections have been established in a state tradition ever since the State was incorporated after the Revolution in the Senate, and for the last 75 years in the Assembly.

MR. CASE: Yes, sir.

MR. DUFF: Then I suggest that - you suggest, I should say, that the alternative to single-member districts in the State Senate and in the Assembly is multi-member districts. Wouldn't a good and reasonable compromise, such as imbued the spirit of the great Convention of 1787, be single-member districts in one house and multi-member districts in the other?

MR. CASE: Well, I can understand what you say and you are used to the election of members of the Assembly at-large in your county, and this is true in Bergen and my county of Union, Essex and other counties where there are more than one member of the Assembly.

I think that a good deal could have been said for it under the previous dispensation because then you had the power of these large counties able to counteract the power of the small counties to a

considerable degree. But I think what we are striving for now is not so much this kind of a rough balance of power as we are for justice, which we couldn't have under the old dispensation. We can, under this one. And I think a necessary concomitant of "one man, one vote," as applied to reducing the relative strength of the smaller counties, also requires breaking down of the big county control which is vested in perhaps one political organization or another or one dominant group in this county, or another, or one dominant center of population like one great city in the county with a lot of satelite suburbs. And I think, therefore, since we're moving from the old system to a new one, that we should go the whole way. I recognize that the Supreme Court has not spoken, I think, finally on this question but it indicated in somewhat comparable circumstances that it has allowed at-large representation at least in some states, or some counties, and so forth, or a mix of the two.

My thought is, if we're going to be fair, we are going to go beyond the Supreme Court's permissiveness here and try to adjust this absolutely, as near as we can do it under the "one man, one vote" principle. And this requires us to go all the way and have each constituency the same size.

MR. HARRIS Y. COTTON: Senator, I'm Harris Cotton from Gloucester County.

I realize, Senator, from your statements that primarily you came prepared to discuss single-member

districts and your thought, therefore, was devoted to that. However, you have made the point that although you haven't given it serious study you do favor bicameralism or a bicameral type legislature.

Now, because of the fact of who you are I feel that your opinion will have considerable influence both upon this Committee, the Convention and the public generally, and, therefore, I would like to make two points to you regarding unicameralism and have you, if you feel you are in a position to, make comment on that.

My first point is in regard to your suggestion that one of the most important things is the ability of the constituent to know his representative.

Now, in several of the small counties in the State, and under the plan you proposed you said that 60 seemed like a good number, - I assume you were referring to the Assembly - I would, therefore, presuppose that unless we had some great increase you would presuppose about 30 for the Senate, or something similar to the situation we have now.

Now, under this type of apportionment it would be necessary - and I am going to refer specifically to where I come from, Gloucester County, - to combine us with several other large counties - by large I mean large geographically and yet small in population - as we are now, for instance, with Gloucester, Atlantic and Cape May, making a very large district represented by

two senators.

Now, the point that I am making is that this type of arrangement, with the combining of counties and giving them a portion of a senator, I feel, at least, makes it most difficult for the constituent to really know or be able to get to see his senator.

My second point. You pointed out that something should be provided so that there would be automatic reapportionment in the future.

Now, with a unicameral legislature, composed of a body a little larger than a combination of the two houses, - I would suggest about 100 or 112 - almost by way of formula, as the census would change every ten years, the apportionment could be changed without the necessity of any redrawing of county lines, combining one with another, serving another worthy purpose that you stated in your presentation.

So I would ask you to comment, if you are in a position to, thinking about just those two points, whether you would foreclose our consideration of unicameralism to further two of these very important purposes that you stated.

Thank you very much, Senator.

MR. CASE: Thank you.

Well, surely I would not presume to foreclose or even suggest that you not consider seriously whether the Legislature should henceforth be of one or two chambers. I was only suggesting that I was used to a

two chamber one and I think I would vote now to keep it that way.

I think you can make arguments of the sort that you did - a larger legislative body obviously makes it possible to have smaller legislative districts. Just by definition this is so.

I am not one who thinks that you can do this job by a computer, though, really satisfactorily, because our institutions aren't just pure mechanically minded. We're not. I'm not happy even when they move my voting district from one place to another, even though it makes absolutely no difference except, you know, you have one committeeman or somebody else or an election board member. But this disturbs me a little bit. It disturbs me even more to be put in another ward in my home town. And I think the people are entitled to a great measure of continuity and stability in their state legislature, particularly, a very basic, perhaps almost the most basic institution of our political structure. And I would hope that it would be possible to combine the values of "one man, one vote" with as small districts as possible for the Assembly and particularly, obviously, again by definition, if the Senate is going to be half the size of the Assembly it's going to have twice as many constituents per Senator. This is just one of the facts of mathematics.

I would guess that, difficult as it is, it is going to be possible to accomplish all these things, not

perfectly, but the Supreme Court doesn't require nor does justice require absolute mathematical, complete perfection here. It's not possible to attain.

This is the first goal. All these other things have to be worked into it and I am certain that we can accomplish it and that this Convention will do so.

MR. WILLIAM L. ROACH, JR.: I am William Roach of Morris County.

Senator, you just stated it is not possible to attain mathematical equality. I'm going to quote from a section of the Proposed Bayh Amendment to the Constitution and ask you whether you agree that's good public policy:

"Section 2. Any state legislature which is apportioned on the basis of substantial equality of population may, when apportioning, make reasonable use of geographic and political subdivision factors, in addition to the factor of population."

Do you think that's good public policy, Senator?

MR. CASE: Well, as you know, I voted against the Dirksen Amendment which had been amended by acceptance of the Senator from Indiana's suggestion. It didn't, to me, - it improved it but it didn't make it acceptable. To me it led away from the provision of equality between people, not between acres, not between trees, not between cows, and not between anything but just between people. That I think is the real basis for justification of and, I think, the compulsion for the job that this Convention is set up to do now.

MR. ROACH: Then political subdivision does not justify any substantial departure from equality of population?

MR. CASE: Well, it depends on what you mean by substantial. I don't think it's impossible, if you make up your minds to do it, if you accept it and don't just say it's impossible because we don't want to do it or we're kicking against the bricks or what-not - I don't think it's impossible to achieve substantial equality under the "one man, one vote" thing, and pretty darn near complete recognition of such boundary lines as county boundary lines and, so far as possible, of municipal county lines within the counties.

Now you can't go all the way, obviously, but most states have worked out this kind of system. Take New York. The Assembly district is a well-known and accepted basic unit of representation. And this has been done without violation of the county spirit or even of the municipal arrangement. And I know this Constitutional Convention can do at least as well as anything they have done in other states.

MR. ROACH: Thank you, Senator.

MR. NEIL F. DEIGHAN, JR.: Senator, I'm Neil Deighan from Camden County.

In your testimony-in-chief you pointed out that it is possible that a minority of 49% of the people could be left without a voice in the Legislature. In other words, in an election at large throughout the

State to our Assembly it is possible that the one party would be left without any representation. This is predicated on the hypothesis that the election of the Senate and the Assembly is at large. However, we do not elect them in that fashion. Would that be correct, sir?

MR. CASE: Oh, no. I mean, of course we do not and no one proposes that. I only use this as an illustration of the evil in the at-large principle.

MR. DEIGHAN: I see. Well, in other words, this is in support of the single-member districts.

MR. CASE: That's right.

MR. DEIGHAN: Senator, I would like to, on a factual basis, - in the State of New York the Senate is broken into districts. They are single-member districts. And in the 1962 election in New York there were 33 Republicans elected and 25 Democrats. However, the over-all vote was that the Democrats received a majority and the Republicans received a minority. This was because the Republicans received an average vote - an average majority of 27,000 in their districts whereas the Democrats received - I'm sorry, it's just the opposite - the Democrats received a majority of 27,000 in their districts and the Republicans received a majority of 20,000.

Would you say, then, that factually it is possible under this system that the majority of the voters could have a minority of representation in the Legislature?

I suppose it's factually possible under any system that you met that this could happen. But that would be true in any conceivable situation in which you didn't have the whole population of the State meeting in town meeting. And what we are attempting to do is to arrive, as nearly as we can, at justice and a combination of other interests, such as the individual feeling he has touch with an individual legislator, and that sort of thing, as well, at the same time. And I think that the single-member district comes as close as possible to accomplishing this.

Now, as Senator Ozzard pointed out to me, your illustration of the New York result in 1962 was before reapportionment. And under reapportionment I am sure this could not happen without a very much more exaggerated kind of vote which, of course, can be anticipated by this Convention and taken into account, if any such circumstances are likely to exist here that would distort the results. I am sure the court would be quick to recognize the justice of an attempt to meet an actual danger of that sort. I don't at the moment think of a thing happening in that way in this State, but if there are situations which this Convention finds in its wisdom are likely to lead to that, I think you can make special provision for it.

But, in general, the smaller your districts, the fairer your representation, particularly under the "one man, one vote" system.

MR. DEIGHAN: Well, Senator, following it one step further, with the more numerous districts, which would be

required with a single-member district, is it not open to gerrymandering more than multi-member districts?

MR. CASE: I don't know. I think gerrymandering is very difficult to do. The more districts you have to gerrymander, I think the harder the job. That would be my opinion. But the courts, after all, would prevent this kind of thing. And it is just impossible for me to believe that this Convention, composed of an equal number of representatives of both parties, is going to even consider doing that sort of a job and, I'm sure, if it did, the courts would not permit it. But I just don't anticipate that result.

MR. DEIGHAN: Senator, I would like to point out that in New York State the Supreme Court refused to intervene in a situation where there was obviously gerrymandering.

MR. CASE: Well, I am not familiar with this. I am not going to make believe that I know all the facts about it, so I can't make the comment that should be made here to that point. I do know, of course, that the courts don't like to get into this. They will do their darnedest to stay out and I think they should. But in the case of an obvious error in a permanent legislative establishment, the courts will certainly prevent gerrymandering, I'm sure.

MR. DEIGHAN: Well, they have in Alabama when it was on a racial basis, but in New York, which is equally obvious with the silk stocking district, they refused to intervene.

And to follow through your suggestions about this Convention, I have no fears of this Convention on a non-

partisan basis, but I am concerned with the future of reapportionment, with gerrymandering and so many single-member districts to be divided.

MR. CASE: I would respect your viewpoint but I don't see any reason to fear gerrymandering in the future more than now. Frankly, this State just doesn't operate that way. And I think what you suggested underscores the desirability of having the Convention do the whole job and not leaving it to legislative action.

It is very difficult for a legislator to do this, or any politically constructed body to do this. It's almost impossible for it to be just. The pressures on political organizations are very, very great, perhaps too hard to resist, and that in itself, without regard to motive or anything else, I think is the real reason why, as I said at the outset, a political body of the highest majesty is the Convention of the people, this Convention and its successors should do this job.

MR. DEIGHAN: Senator, is it your view then that the future reapportionment should not be left to the Legislature?

MR. CASE: You mean, should be removed by the Constitution from the legislative power of amendment?

MR. DEIGHAN: Yes. I was following through your thought from before.

MR. CASE: I don't know that I would say that. I think if you establish that the basic way to fix your legislative apportionment is by this Convention initially

and by its successors that intervening injustices, perhaps, which require an action might very well be left to the amending process.

I haven't thought about this to the point where I would want necessarily to express a final opinion, but it seems to me that this might be quite possible to do.

MR. DEIGHAN: Thank you very much, Senator.

MR. WILLIAM V. MUSTO: Senator, at the outset may I congratulate you for having the courage and the dedication to come here today. We're grateful for that.

I don't mean to labor the point of a one-house or unicameral legislature, I realize --

MR. CASE: May I interrupt just for a second?

MR. MUSTO: Yes, sir.

MR. CASE: You remind me of a story that I heard when I first ran for the Senate about a fellow who committed a murder down South and they caught him and tried him and sentenced him to be hanged, and as he stood on the scaffold the sheriff said to him, "You have 5 minutes in which to address this audience on any subject you want to talk about." The man said, "No, thank you, I have no use for the time, though I understand my rights." Then a guy in the back of the crowd got up and said, "If you don't mind, I would like to use his 5 minutes to speak on behalf of my candidacy for the United States Senate." The sheriff said, "Well, it's all right with me but how about the condemned man?" He looked up at the man on the scaffold who said, "It's all right with me,

Sheriff, but if you don't mind, let's get the hanging over with first and then let him talk."

(Laughter)

MR. MUSTO: Maybe I ought to quit now.

But, Senator, I won't belabor this point. I realize you haven't had the --

MR. CASE: I haven't had the chance to hear you as some of your colleagues have.

MR. MUSTO: That's right. And because of that I'll try to simplify the question and leave it with you. You may not want to answer it because you might want time to think about it.

MR. CASE: Right. I assume this really isn't so much of a question as it is an exposition.

MR. MUSTO: No. But today you stated your support for the single-member districts, preservation of county lines, and a small legislature.

MR. CASE: All this and heaven too.

MR. MUSTO: Well, this you stated. My question to you is, wouldn't this be much simpler and more expedient and probably better, so far as representation would be concerned, under a unicameral legislature?

MR. CASE: It would simpler to do initially, sure. But I don't think the product is good. That's my opinion.

MR. MUSTO: Well, that answer makes me ask you another one, now. Preservation of county lines. Isn't it obvious that under a unicameral legislature we could

easily preserve county lines? And that under a bicameral legislature you would find it more difficult to preserve county lines?

MR. CASE: Yes. This is purely a mathematical matter, of course. That is to say, the larger the body --

MR. MUSTO: Not if we keep in mind the principle that we want a legislature of a reasonable size, not a large size.

MR. CASE: Well, as I say, purely mathematically I think it would be easier to do this job in the first instance. But I do not believe it is beyond the statesmanship of this Convention to accomplish it under either a bicameral or unicameral system.

MR. MUSTO: Well, you would have a more reasonable size legislature. And again, I don't like to belabor the point on structure because this is really the Apportionment Committee, but the Senator did bring up his position on one or two houses, and the opinion of Senator Case is a valued one.

I'm only trying to point out that before you can really take a stand on one or two houses, you must have a good background of the unicameral legislature. And I'm only pointing out that county lines we want preserved and that upon consideration or reconsideration you can preserve county lines much more simply and efficiently under a one-house legislature. And that was why I posed that question.

MR. CASE: Well, I appreciate very much --

MR. MUSTO: I am sorry to engage in a debate here. I

apologize for that. I'm only here to establish that the points that you've made I think favor a unicameral legislature.

MR. CASE: Well, I really would disagree with you but --

MR. MUSTO: Well, if you disagree with me, I can argue with you.

MR. CASE: You know, the devil can quote scripture and vice versa. We'll leave it that way.

MR. MUSTO: Well, I won't belabor it except to say I agree with the Senator that there is much to say about single-member districts. I agree with him that preservation of county lines is most important. And I agree with him that a reasonable size legislature is extremely important, and that is a strong argument, in my opinion, for a unicameral legislature.

(Laughter.)

MR. JOHN J. REILLY: Senator, I'm John J. Reilly from Monmouth County.

Since I think it's fair for all of us, those of us who are familiar with politics, to believe that when allowing politicians to decide the fate of a legislative body that those who will be involved will have a tendency to safeguard their own particular districts. So, in order to avoid the possibility of this evil of gerrymandering, don't you think there might be merit in allowing one house, the lower house, to remain in district form and, to safeguard the possibility of not allowing gerrymandering completely, have a multi-member upper house

structure?

MR. CASE: I don't really think that that's a very strong argument, as it strikes me. I see the point you are making but, as Senator Ozzard here just suggested, I think the bigger the district, in a sense, the easier perhaps gerrymandering might be.

I don't think the danger of gerrymandering is the greatest problem because I do think that more and more the public will not stand for it, the courts will not stand for it. We're just developing a body of doctrine here which I think has been too long delayed, which I think is going to take full account of the evil of gerrymandering just as it has of other forms of mal-representation.

I see your point. I don't think it's important enough to counterbalance the merits of a single-member district.

CHAIRMAN LANCE: It is now 3:30. We have time for a few more questions. Are there any more questions?

(Silence)

All right. If not, Senator Case, we thank you very much.

As you know, I was originally not for "one man, one vote" but there is no prohibitionist like a reformed drunkard and now that it's here, I'm for it all the way.

MR. CASE: Thank you very much, Senator.

(Applause.)

(Hearing concluded)