POLINARD, Jerry Latour, 1940-
AN ANALYSIS OF THE INTER- AND INTRA-PARTY
CONFLICT IN THE ARIZONA STATE LEGISLATIVE
REDISTRICTING EXPERIENCE OF 1966.

University of Arizona, Ph.D., 1970
Political Science, general

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AN ANALYSIS OF THE INTER- AND INTRA-PARTY
CONFLICT IN THE ARIZONA STATE LEGISLATIVE
REDISTRICTING EXPERIENCE OF 1966

by

Jerry Latour Polinard

A Dissertation Submitted to the Faculty of the
DEPARTMENT OF GOVERNMENT
In Partial Fulfillment of the Requirements
For the Degree of
DOCTOR OF PHILOSOPHY
In the Graduate College
THE UNIVERSITY OF ARIZONA

1970
I hereby recommend that this dissertation prepared under my direction by Jerry Latour Polinard entitled An Analysis of the Inter- and Intra-party Conflict in the Arizona State Legislative Redistricting Experience of 1966 be accepted as fulfilling the dissertation requirement of the degree of Doctor of Philosophy.

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After inspection of the final copy of the dissertation, the following members of the Final Examination Committee concur in its approval and recommend its acceptance:

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SIGNED: Jerry L. Smith
This study is an examination of the political process. It did not begin as such. Initially, I perceived the inquiry in much narrower terms. The idea for the project began in the spring of 1966, when I was invited to participate in the redistricting of Pima County. I realized that here was an opportunity to witness in depth the relationship between judicial decision-making and political party activity.

As the study developed, however, I was treated to a much broader view of Political Science, and the richness of this discipline became more apparent to me than before. Political theory, political parties, the legislative, executive, judicial and electoral processes became interrelated foci of inquiry as the dissertation progressed.

The activism and conflict of the political process made the development of this study a rewarding experience, indeed. I must admit to one regret. Someone with the unique intellect of a Harold Lasswell and the writing skill of a Theodore White could capture the excitement of the political process on paper. Unfortunately for those who read this work, I possess neither of these attributes. And so I selfishly confess that I have gained much more from this inquiry than any who will read it.
Many people have contributed to this work and I am in their debt. Professors David Bingham and Conrad Joyner of The University of Arizona opened doors to the Democratic and Republican Parties that otherwise would have remained closed. The Institute of Government Research at The University of Arizona provided a financial grant in the spring, 1966, which measurably facilitated my inquiry.

I gladly acknowledge an intellectual debt owed to Professors Clifford M. Lytle and Currin V. Shields of The University of Arizona and the late Professor Emeritus John M. Gaus of Harvard University. Each of these men was instrumental in providing me with an awareness of the value of academic inquiry; theirs is a gift I shall never cherish lightly.

Finally, I must acknowledge the incredible patience of my wife, Nell. Without her understanding, I would never have completed this study.
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ABSTRACT

Arizona is the sixth largest state in the union. Its population is concentrated primarily in two counties: Maricopa (Phoenix) and Pima (Tucson). When the United States Supreme Court announced Baker v. Carr in 1962, Arizona's urban concentration, coupled with its constitutional provisions relating to legislative reapportionment, had made Arizona the epitome of a malapportioned state.

Litigation was initiated to correct Arizona's malapportionment in 1964 (Klahr v. Fannin, later changed to Klahr v. Goddard). In 1965, responding to the encouragement of a three-judge district court, the Arizona Legislature attempted unsuccessfully to reapportion itself in conformity to the one man, one vote doctrine. Following the legislative failure, the district court acted and reapportioned both houses prior to the 1966 general elections. The court further invited the parties to the suit to submit proposals subdistricting Maricopa and Pima Counties.

Acting through the litigants, the Republican and Democratic Parties attempted to agree on common subdistricting proposals for the two most populous counties. They were successful in Maricopa County, but failed to agree in Pima County.
This study is an analysis of Arizona's 1966 reapportionment experience. The area of inquiry is an examination of the interrelationship between the judicial process, the legislative process, and the Republican and Democratic Parties in Arizona. Emphasis is attended to the inter- and intra-party bargaining processes between the political parties and their attempts to subdistrict Maricopa and Pima Counties.

The inquiry is divided into two parts. First, the legislative and judicial background of reapportionment in the United States is examined. The emphasis here is on the use of population as an apportionment standard. It is concluded that the application of the equal population principle to reapportionment formulas has been the function of recent judicial decisions rather than of legislative enactments.

Second, the 1966 Arizona reapportionment conflict is analyzed. Arizona's political background and its relationship to the state's reapportionment problems are examined. Then, the legislative activity and the judicial proceedings relating to the 1966 problem are studied. In the legislature the adverse impact of partisanship on the majority coalition then controlling Arizona's legislature is explored. Contributing to the inability of the majority coalition to resolve the reapportionment controversy was an urban-rural schism which crystallized during the reapportionment debates.
The judicial proceedings also were significant. If deviation from the one man, one vote concept was to be justified, it would be in Arizona. The vast expanse of lightly-populated territory, the peculiar water problems of each county, and the location of much of the state's economic resources in sparsely-settled regions contributed to the arguments that Arizona's malapportionment should be tolerated. That the district court was not persuaded by these contentions indicates that unique geographical characteristics may not be used to justify a state's deviation from the one man, one vote principle.

Finally, the attempts by the political parties to reach an accord in subdistricting Maricopa and Pima Counties are analyzed. The impact of decentralization on the party organizations is suggested as a primary influence of their activities, and the relationship between "expertise" and "formal party actors" involved in the compromise proceedings is explored.

It is concluded that the legislative process, the judicial process and the political parties did interrelate in Arizona's reapportionment exercise of 1966. It would seem also that the nature of these relationships was determined primarily by the judicial actors in the conflict.
CHAPTER 1

INTRODUCTION

There is a television commercial which portrays hundreds of people raining from the sky and spilling into the skyline of a typical metropolis. A narrator informs the viewer that the United States is in the midst of a population explosion, and that most of the figures falling from the sky will make their homes in metropolitan and urban America. The narrator goes on to caution the viewer against the dangers of air pollution; but he might easily have issued a caveat against the dangers of malapportionment.

If the animated figures had been real, and if they had been falling into metropolitan and urban areas, they would find that from a political standpoint they had been shortchanged. In most states the urbanite may share his legislative representative with twice as many neighbors as does his rural counterpart. Stated another way, the value of the city-dweller's vote may be half that of the rural resident's. This is the crux of the reapportionment conflict in the United States.
General Comment

Apportionment and its political suitmates, reapportionment, malapportionment, and redistricting,\(^1\) are important parts of representative government.\(^2\) In any form of representative government the establishment and maintenance of a responsible and responsive government will depend largely on the apportionment basis utilized. Apportionment in some form is an absolute requirement in any representative government.

The essential function of a representative is, literally, "to present again"; to stand in the place of one or a group which cannot themselves stand in the representative assembly.\(^3\) The representative's performance of this function is related to his treatment of two basic issues of representation: the focus of representation, i.e., what or who does he represent; and the style of representation,

1. Apportionment is defined here as the assigning of representative seats to selected constituencies. Reapportionment is the reassigning of these seats. Malapportionment is the deviation of an apportionment from the established legal and theoretical guidelines. Redistricting is the drawing of new boundaries for reapportioned constituencies.


i.e., is the representative a "free agent" in the Burkean sense, exercising his judgment rather than that of his constituents, or does the representative make his decisions on the basis of his constituency's wishes, mirroring its sentiments on public issues. These different conceptions are important factors to be considered when one approaches the problems of apportionment; each of these conceptions, and combinations thereof, has been used to initiate various schemes for allocating representatives to constituencies.

An apportionment system is a respecter of persons; no apportionment system is neutral. The criteria on which an apportionment system is based will always reflect a value commitment. Indeed, many of the values held in any representative government will be institutionalized in that government's apportionment system.

In a representative democracy certain values inhere in the form of the accepted characteristics of representative democracy. Four characteristics are necessary to a

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6. de Grazia, op. cit., p. 20.

theoretical construct of a representative democracy. These are: popular sovereignty, political equality, majority rule and popular consultation.\(^8\)

Popular sovereignty is the principle that political authority should be located in those over whom it is exercised. Political equality requires that each member of the community has an equal opportunity to participate in its decision-making process. Majority rule requires that the political decisions of a community accord with the wishes of a majority of those taking part in the decision-making process. Popular consultation demands that the laws of a community be made by a representative assembly chosen by the political community through an electoral process where there are free choices among alternatives.\(^9\)

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9. This discussion of the values of a representative democracy is meant only to describe briefly the basic concepts inherent to a theory of democracy and should in no way obscure the complexity of these concepts. A discussion of the complexity of democratic theory, however, is beyond the scope of this essay.
These are the basic values of a representative democracy. They are values inextricably bound to the ballot. A democratic government must gain its strengths and suffer its weaknesses through the effectiveness with which the people exercise their franchise. Throughout the history of the United States, the evolutionary pattern of the governmental process has been to reflect closer the will of the people. This has been done most often through an extension of the franchise. Much thought, political and social, has been devoted to the question of to whom should the franchise be granted. Until recently, however, less attention has been devoted to the basic democratic premise that one man's vote entitles him to representation in the councils of government equal to that of others.

The active involvement of the judiciary in the area of legislative apportionment has focused attention on the question of apportionment values in the United States. The essence of the conflict over values may be summed up in the form of a question: shall the power to select representatives whose function is formally to legislate or not to legislate be shared equally by the enfranchised members of the community?\(^{10}\)

The reply of the United States Supreme Court, as articulated through a series of decisions beginning with the

\[\text{10. Krastin, op. cit., p. 549.}\]
ruling, Baker v. Carr, and its progeny, has become the watchword of the apportionment conflict as well as a succinct confirmation of the democratic values stated above: one man equals one vote.

**Apportionment Criteria**

The fundamental problem in devising a system of apportionment concerns criteria. What criterion should be used as a basis for the apportionment? The criteria underlying an apportionment system may be divided into five categories: territorial surveys, governmental boundaries, official bodies, functional divisions of the population, and free population alignments.

Territorial surveys are commonly used as criterion for apportionment. "Artificial" areas are devised, and their populations serve as constituents. The territorial survey is frequently advocated by the democrat as an apportionment criterion. To meet the requirements of the democrat, constituencies are created by dividing the population.


of the community into contiguous districts composed of equal population or equal numbers of voters.  

All apportionment systems include apportionment by governmental boundaries. A political unit, e.g., nation, state or county, forms the boundaries within which the constituency is located. Frequently, one or both houses of a state legislature will apportion seats according to the county boundaries within the state. Even where the major apportionment criterion is the territorial survey, a bow frequently is made in the direction of governmental boundaries by guaranteeing to each county at least one representative regardless of the size of the county's population.

In early American history apportionment was based on official bodies. Before the ratification of the Seventeenth Amendment, United States Senators were selected by the state legislators. Theoretically, the President's constituency is not the people of the United States, but rather another official body, the electoral college.

A fourth criterion of apportionment is the functional division of the population. These are non-territorial groups of citizens who share common social and economic interests. An example of apportionment based on functional divisions is that of allocating representatives

13. Ibid., p. 20.
to a constituency on the basis of direct taxes paid. Another example would be the practice, until recently, in England of allowing the English universities to be represented by their own districts.

Apportionment based on free population alignments is basic to systems of proportional representation. The voters themselves are allowed to choose their constituency according to whatever their motive for voting. This permits the representation of any group that obtains the necessary number of votes equivalent to the total district vote divided by the number of seats to be filled.

Each of the above mentioned criteria have been utilized in the United States. The most common criterion in this country is a combination of the territorial survey with government boundaries.\(^\text{15}\)

The Political Nature of Apportionment

Apportionment is a "political thicket." Apportionment values involve tenets of legal and political theory, but above all, these are political values. Simply stated, the control of the decision-making process of a community may depend on the apportionment system employed.

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These are not revolutionary statements; the political nature of the apportionment conflict has escaped neither recognition nor examination.\textsuperscript{16} Charles Shull stated over a decade ago that "trite and banal as it may seem, the process of the apportionment of the members of the American state legislatures has political and partisan implications simply because these positions are representative and also elective."\textsuperscript{17}

Robert McKay has noted the importance of partisan politics in the apportionment arena,\textsuperscript{18} and more than one major work has focused on the non-legal aspects of reapportionment.\textsuperscript{19} Professor Jo Desha Lucas has observed that "the contest is not between people living in one area or another; it is between Democrats and Republicans,"\textsuperscript{20} and in a later

\begin{footnotesize}
\begin{enumerate}
\item[16.] However, the recognition of the political aspects of apportionment is relatively recent. See Gordon Baker's comment in his The Reapportionment Revolution: Representation, Political Power and the Supreme Court (New York: Random House, 1966), p. 154.
\item[18.] McKay, op. cit., p. 53.
\end{enumerate}
\end{footnotesize}
comment, "the process by which (the reapportionment decisions) are implemented may aptly be called 'law in search of politics.'"^{21}

Despite the increasing focus of research on the political nature of apportionment, there remain many gaps in our knowledge of this area. The roles of political parties in the reapportionment conflict constitute one of these gaps.^{22} One reason for the lack of inquiry in this area may be the lack of access to information. As Ivan Hinderaker and Laughlin Waters suggest, the political nature of this process may require secrecy.^{23} Also, there have been few cases where the involvement of political parties could be isolated for inquiry. Frequently, party action is manifested through another agent, e.g., the state legislature. Regardless, the relationship of the public law of reapportionment to the political parties which are so directly affected by the issues involved in apportionment has been a neglected focus for study. This research project is addressed to such a study.


22. It is instructive to note the absence of political parties in Jewell's role analysis of the actors in apportionment conflicts. See Jewell, op. cit., pp. 26-36.

Scope: Arizona Reapportionment, 1966

In February, 1966, a three-judge district court rendered a decision reapportioning the Arizona State Legislature. 24 With respect to the two most populous counties in Arizona, Maricopa (Phoenix) and Pima (Tucson), the court, declining to redistrict the counties itself, invited the parties to the suit to submit redistricting proposals. The court noted its hope that the parties to the suit might be able to agree on one plan for each county, thus removing from the court the burden of choosing from alternate plans.

Representatives for both the plaintiff 25 and the defendants 26 met in both counties in accordance with the court's suggestion. In each case the representatives for the plaintiff also represented the Republican Party and those for the defendants, the Democratic Party.

The area of inquiry in this study is an analysis of the Arizona State Legislature's reapportionment experience of 1966. The focus of inquiry is on the relationship between the judicial process, the legislative process and the

24. Klahr v. Goddard, 250 F. Supp. 537 (D. Arizona, 1966). The congressional districts of Arizona were also redistricted in the decision.

25. Mr. Gary Peter Klahr, a Phoenix resident, who filed the initial suit while attending the University of Arizona College of Law in Tucson.

26. Samuel P. Goddard, Governor of the State of Arizona, and Wesley Bolin, Secretary of State of the State of Arizona, were named as defendants.
partisan process of political party activity. Emphasis is
turned to the attempts to compromise between the Demo­
cratic and Republican parties in redistricting Maricopa and
Pima Counties. The temporal focus of the study is the
spring of 1966.

This inquiry accents the study of Maricopa and Pima
Counties for two reasons. First, of the fourteen counties
redistricted by the court in February, 1966, only Maricopa
and Pima Counties were authorized to further subdistrict.
Second, as a result of their involvement in the subdis­
tricting of these two counties, the Democratic and Republi­
can parties afforded the inquirer the rare opportunity to
isolate and study party activism within and between the two
parties.

Reapportionment is a means of political control.
Taking as a major research statement the contention that
political parties are seeking political power through
electoral control and, therefore, will be actively involved
in the utilization of reapportionment as a means to that
end, important questions are inherent in the inquiry.

Using the Arizona experience as a vehicle, what can
be said concerning the relationship between the judiciary,
legislature and party structure of a state as they address
a common problem? What are the variables which influence a
judicial body when effecting a policy decision? Given the
federated nature of the American political party system, what is the effect of decentralized organization on the roles performed by the different organizational units of each party in attempting to compromise with the other party?

This study attempts to add to our knowledge concerning the process of state legislative reapportionment. The primary concern is two-fold. First, to examine the legal background, and the resulting public law, of the reapportionment conflict. Second, to discuss the proceedings and problems of a specific reapportionment exercise in order to gain a better understanding of the interrelationship of the courts, the legislature and party politics.

Methodology

The approach to this project is primarily descriptive. The methodology employed is varied. First, the major participants in the conflict were interviewed. The average interview ran forty-five minutes. The interviews were open-ended, no notes were taken during the interview, and all quotations are derived from notes made immediately following the interview. For obvious reasons, the interviewees were guaranteed anonymity if they desired.

Second, with respect to the compromise efforts made in Pima County, the writer acted in the role of participant-observer. In Pima County the writer aided in the drafting
of the redistricting proposals of the Pima County Democratic Party. 27

Third, use was made of such original source materials as the transcripts of the court proceedings, the legislative minutes, the briefs for the two parties to the suit, and the maps used by the participants. Secondary source materials include the works cited above and relevant newspaper and journal articles.

27. In the fifty-two interviews conducted by the writer, the writer's party affiliation and role in the Pima County conflict were revealed only twice, each time to a Democrat in Maricopa County. No perceptible change in the responses of these two interviewees was noted. In Pima County, of course, the Democrats interviewed were aware of the writer's role; again, no perceptible change was noted in their responses.
CHAPTER 2

THE HISTORICAL APPORTIONMENT PARADOX:
YES! NO! MAYBE!

Conflict over America's legislative apportionments is not peculiar to the mid-twentieth century. The genesis of the contemporary apportionment struggle is in the history of representative government in the United States. The lessons of this history are unclear. If one seeks the historical bases of this nation's apportionment process, the diligent inquirer can find evidence for both population and non-population factors.

Witness the comment of Mr. Justice William O. Douglas: "The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote."

"One person, one vote," the principle of political equality: for the democrat, Mr. Justice Douglas' assertion has merit. A document which suggests the equality of all men from their creation is, it would seem, a ringing affirmation of political equality; and the Fifteenth, Seventeenth,

and Nineteenth Amendments (as well as the Twenty-fourth Amendment, ratified since Mr. Justice Douglas delivered his remarks) have been purposeful in removing the barriers to equal representation in the United States.

Indeed, perhaps the most obvious trend in American political history has been the increasing recognition of man's parity before the councils of government. Today, the principle of political equality is developing rapidly in practice as well as theory. In a political sense, each member of a community may soon count for one and not more than one. ²

Yet, listen to the words of Mr. Justice Felix Frankfurter in dissent;

The notion that representation proportioned to the geographic spread of population is "the basic principle of representative government," is, to put it bluntly, not true. However desirable and however desired by some among the great political thinkers and framers of our government, it has never been generally practiced, today or in the past. It was not the English system, it was not the colonial system, it was not the system chosen for the national government by the Constitution, it was not the system exclusively or even predominantly

practiced by the States at the time of the adoption of the fourteenth amendment, it is not predominantly practiced by the States today.\(^3\)

No vast historical insight is required to accept the thrust of Mr. Justice Frankfurter's comments. The crux of today's reapportionment revolution is that representation proportioned according to the "geographic spread of the population" has not been implemented consistently.

True, the Declaration of Independence is unequivocal in its claim that all men are created equal, but it must be remembered that Thomas Jefferson wrote of an equality Orwellian in character. Some of Jefferson's men are more equal than others. So it has been in the history of representative government in America.

Thus, the American reapportionment heritage is paradoxical. While the principle of political equality has been embraced frequently in word, too often the deed has given the lie. Necessary to any analysis of a reapportionment conflict is an understanding of how this paradox developed. A brief examination of America's apportionment history is appropriate.

**The Colonial Experience**

The English heritage of the American colonies was apparent in the methods of colonial representation. The

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formative years of the American colonies occurred during a century in which the English ideas of representation were radically modified. At the beginning of the seventeenth century, the Crown was supreme. By mid-century the Crown had been banished temporarily, and by the beginning of the eighteenth century, Parliament was supreme. 4

Not surprisingly, then, American colonial representation resembled the English system. Modeling their representative assemblies on the English pattern, the colonists employed such land units as towns and counties for bases of apportionment. The isolation of the early settlements, the independence of the communities and the similarity to each other in their make-up invited representation by geographical subdivisions rather than by population. 5

The colonists, however, were quicker to accept population as a basis for apportionment than the mother country. The absence of nobility, diffused ownership of property, a small population and a religious heritage with egalitarian implications helped create a climate receptive to equal representation. 6


6. Alfred de Grazia, op. cit., pp. 53, 60-67. See also, Royce Hanson, The Political Thicket: Reapportionment
As early as 1635, Massachusetts apportioned representation on a basis which closely related to population. Rhode Island did likewise. Still, the practice varied from colony to colony, and the concept of political equality by no means enjoyed wide acceptance. Nowhere was there a uniform pattern of representation related to population. For the most part, delegates to legislative bodies during the colonial period represented towns and counties, not numbers of people.

The apportionment problem which would plague twentieth century America was evident already. The pre-revolutionary discord over the lack of colonial representation in Parliament was matched by an increasing conflict over unequal representation within the colonies. As the colonies expanded to the west, the demands of the western-most counties for equal representation grew as strong as the efforts of the tidewater settlements to resist such action.

"From the valley of the Susquehanna to that of the Savannah . . . the settlers of the back country [were] deprived of due political rights by unjust discrimination in

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the matter of representation." In almost every colony the struggle between "east and west, tidewater and uplands" produced the embryo of today's reapportionment conflict.

The colonies soon established an apportionment pattern which would transcend the revolutionary period. The New England colonies apportioned most often on the basis of towns. In the Middle Atlantic region the county was the basic unit of apportionment. The Southern colonies, more malapportioned than the other regions, used both towns and counties as bases for representation.

Change, however, was in the offing. The demands of the Western counties could not be ignored long. The decade preceding the American Revolution was marked by the assertion of the "democratic, individualistic settlers of the hill and inland regions." On the eve of the colonial transition to statehood, the principle of political equality was an increasing part of colonial political thought.

The States

The response of the original thirteen states and their successors to the movement for more equal representation was evident, but not overwhelming. The new state

9. Ibid., p. 115.
10. Ibid., p. 11.
11. de Grazia, op. cit., pp. 50-112.
constitutions frequently incorporated the principle of political equality. Population was not the universal basis for apportionment, but it was a common criterion used by the original states. Only Delaware, New Jersey and North Carolina rejected population in both houses of their state legislatures as a basis for apportionment. And even in the states where population was not used as an apportionment basis, the population differentials were not markedly disproportionate to the population distribution.

Further, the Northwest Ordinance of 1787 provided for apportionment on a population basis. The states formed out of the Northwest Territory followed the territorial lead and used population as the primary apportionment standard for their legislatures.

The nineteenth century witnessed the continuance, and the reversal, of the trend to equal representation. Congressional statutes establishing new territories usually duplicated the apportionment provisions of the Northwest Ordinance. Until the post-Civil War period, most new states provided for apportionment based largely on population, and, in part a reaction to the Jacksonian period, many older

states revised their existing apportionment practices to conform more closely to the principle of political equality.

There were, however, two sides to the apportionment coin. The paradox mentioned above\textsuperscript{15} was becoming evident. In early and mid-nineteenth century, lip service was paid to the principle of political equality, but actual practice indicated that apportionment by population seldom went unqualified.

Some writers in the apportionment area have suggested that, on the basis of the nineteenth century movement to political equality, population as an apportionment basis has been the norm, rather than the exception. The present apportionment conflict is viewed as a departure from traditional American practice, and the Supreme Court's reapportionment decisions are but reaffirmations of a long-standing principle of American politics.\textsuperscript{16}

The intellectual underpinnings for this position are based on the statistics prepared by the United States Advisory Commission on Intergovernmental Relations.\textsuperscript{17} The Advisory Commission concluded that "the original constitutions of 36 states required that representation be based

\textsuperscript{15} See p. 17.
\textsuperscript{16} See, for example, Baker, \textit{op. cit.}, pp. 14-22; Hanson, \textit{op. cit.}, pp. 4-17; and McKay, \textit{op. cit.}, pp. 9-98.
\textsuperscript{17} Advisory Commission, \textit{op. cit.}, pp. 10-11.
completely, or almost so, on population," and that "of the 20 states joining the union after ratification of the constitution and prior to the Civil War, only two, Vermont and Florida, provided otherwise."¹⁸ In addition, Dean McKay, using the Advisory Commission's report as his source, has suggested that from 1790 to 1889 no state joined the union whose original constitution did not use population as the apportionment basis for both houses of the legislature.¹⁹

Professor Robert Dixon has taken exception to these figures, and the conclusion based on them. His evidence is persuasive.²⁰ Dixon's examination of the states' original constitutions casts doubt on the validity of the Advisory Commission's conclusions.²¹ He concludes that only twenty-one states apportioned both houses on a predominantly population basis, and, indeed, it is possible to argue that only twelve states had apportionments on an unqualified population standard.

Further analysis indicates that while the Congress specified population as the apportionment criterion in the

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²¹. See below, Table 2-1, p. 24.
Table 2-1

Formal Apportionment Formulas of State Legislatures in Original Constitutions

<table>
<thead>
<tr>
<th>Basis of Representation</th>
<th>Upper House</th>
<th>Lower House</th>
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<tbody>
<tr>
<td><strong>A. Political Subdivision or Mixed Population--</strong> Geologic Principle</td>
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<tr>
<td>1. Representation Based on Geographic Units without Regard to Population</td>
<td>Ariz.</td>
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<td>Conn.</td>
<td>Del.</td>
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<td></td>
<td>Del. R.I.</td>
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<td>La. Va.</td>
<td>N.C.</td>
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<td></td>
<td>Mont.</td>
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<tr>
<td>a. Equal Representation for Each County</td>
<td>Del. N.J.</td>
<td>Del. N.C. a</td>
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<td></td>
<td>Mont. N.C.</td>
<td>N.J.</td>
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<tr>
<td>b. Representation Based on Geographic Units other than Counties (including districts</td>
<td>Conn.</td>
<td>Conn.</td>
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<td>initially devised according to population but fixed in Constitution)</td>
<td>La.</td>
<td>N.C. a</td>
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<td>R.I. Va.</td>
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<td>Md. S.C.</td>
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<td></td>
<td>Idaho Tenn.</td>
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<td>Iowa Texas</td>
<td>HI Okla.</td>
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<td></td>
<td>Maine W.V.</td>
<td>Iowa R.I.</td>
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Political Subdivisions:

a. Minimum Limits, e.g., rule that no unit may have less than one representative
   - Idaho, Texas, HI, Okla.
   - Iowa, Utah, Idaho, Ore.
   - Ky., Wyo.
   - Maine, W.V.
   - Mass.
   - Mich.
   - Ky.
   - Maine

b. Maximum Limits, e.g., rule that no unit may have more than designated number of representatives
   - Mass.
   - Maine
   - Okla.
   - R.I.

- Alabama, Mo., Cal.
- Ark., N.D., Colo.
- Cal., Okla., Idaho
- Colo., Ore., Iowa
- Fla., Tenn., Mont.
- Idaho, Texas, N.D.
- Iowa, Utah, Ore.
- Maine, W.V.
- Mich.
- Wyo.
- Miss.

- Ky.
- Ala.
- Mich.
- Ariz.
- N.M.
- Idaho.
- Wyo.
- Miss.
- Mich.
- Fla.
- Mo.
- HI.
- Idaho.
- Utah.
- Kans.
- W.V.
- Ky.

B. Population Principle, Substantially Unqualified

1. Representation to be Apportioned on Population Basis with Apparently Minor Limitations
   - AK, N.H.
   - AK, W.V.
   - Minn., Wash.
   - Neb., Wisc.
   - Neb., Wisc.
   - S.C.

2. Representation Based on Population
   - Ill.
   - Ill.
   - N.Y.
   - Ind.
   - Ind.
   - Ohio
   - Kans.
   - Ky.
   - Penn.
combined with minimum diffusion rules

B. Population Principle, Substantially Unqualified

1. Representation to be Apportioned on Population Basis with Apparently Minor Limitations

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2. Representation Based on Population

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ITEM B TOTALS

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<td>(33 incl A3c)</td>
<td>(28 incl A3c)</td>
</tr>
</tbody>
</table>

a. Two representatives for each county and one representative for each town.

b. Some states may be classified either A2 or A3, depending on the weight given to special constitutional formulae. The distinction may not be vital, however, because the primary thrust of both A2 and A3 is toward geographic diffusion, not representation strictly by population.

c. Some states charted in this category have special formulae not easily classifiable but weighted more to population principle than geographic diffusion.

d. Only forty-seven upper legislative houses (thirty-three in A and fourteen in B) are listed because the first constitutions of Georgia, Pennsylvania, and Vermont provided for unicameral legislatures.

Northwest Ordinance, and in most succeeding territorial enactments, the actual apportionment practices of the territories and ensuing states departed from this change.

The discrepancies between Professor Dixon's conclusions and those of the Advisory Commission are less the result of intellectual interpretation than of the time period in which the interpretations were made. The Commission's work was done before the 1964 reapportionment decisions. The Commission did not anticipate the strict application of the population principle made by the 1964 Court. Consequently, an analysis made in 1962 of the states' original apportionment clauses probably would define the population principle so as to allow greater deviations than those tolerated by the 1964 Court.\(^{22}\)

Thus, from the latter part of the eighteenth century to the latter part of the nineteenth century, population was frequently part of a state's apportionment formula, but rarely without qualification. Most states had an apportionment bag of mixed tricks: population plus recognition of political subdivision in at least one house of the state legislature.

It is difficult, then, to conclude that population as the sole basis for apportionment was the standard, even the goal of nineteenth century representative government.

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\(^{22}\) Dixon, *op. cit.*, pp. 77-79.
The concept that representatives should share equal constituencies is a contemporary judicial requirement; whether it is a definite part of the American representative tradition is unclear.

No such confusion exists with regard to apportionment practices from the latter part of the nineteenth century to present. However desirable the goal of equal representation may have been in the eighteenth and nineteenth centuries, it was quashed in the political realities of the 1900's.

The shift began in 1889 when Montana, preparing for statehood, drafted a constitution providing for apportionment in the lower house based on population, while the upper chamber was apportioned according to one senator for each county, regardless of the county's population. The apportionments of the Montana territory, and of the constitutional convention charged with drafting the state constitution, had been based on population. The delegates to the convention, however, opted for the "little federal system."

Montana was the harbinger. Population as the sole, or even primary apportionment basis, began to disappear. New states duplicated the Montana example, and older states began to change their constitutional provisions relating to apportionment. The "little federal" principle soon pervaded the process of state legislative apportionment.
The change in apportionment procedures was largely the consequence of two related attitudes. First, there was an increasing mistrust of the newly-formed urban majorities. Second, many rural legislators recognized that they would soon be apportioned out of their legislative seats if the apportionments continued to conform to existing population trends. Understandably, they greeted this prospect with little enthusiasm.

These attitudes were the result of the migration by America's populace to the cities, considered by geographers to be one of the four major population movements in American history.

When most states entered the union, the United States was a nation of farmers, not shopkeepers. It was hardly surprising that the rural populations gained control of the state legislative assemblies.

The political geography of the nation, however, began to change. In 1850, five out of every six voters were down on the farm. At the turn of the century, a definite shift from the barns to the boulevards was becoming evident. In 1930, there were 191 cities with more than fifty thousand people; by 1960, there were 333 cities of this size. The 1960 census revealed two significant trends: the national population is growing apace, but faster than this total

23. McKay, op. cit., p. 27.
growth is the trend of migration from the rural to the urban areas.24

Despite this trend toward urban living, or more probably because of it, the rural minorities began to cling to their control of the state legislatures.

Three methods usually were employed to extend the minority domination of the state legislatures.25 First, many states ignored constitutional provisions requiring periodic reapportionment (or if the legislators did reapportion, they re-enacted the existing distribution of seats). Second, some state legislatures amended their state constitutions so as to remove the provisions requiring periodic reapportionment. Third, many older state constitutions became obsolete, as the state's population outgrew the constitutional provisions limiting the size of the state legislature.

The results are well known. Malapportioned state legislatures not only became the rule; there were no exceptions. Malapportioned state legislatures became the hallmark of twentieth century representative government in America.


25. Hanson, op. cit., pp. 15-16.
The Congress

The reapportionment problems at the national level are confined to the House of Representatives. The Senate is malapportioned deliberately in recognition of state sovereignty. This action was taken in the implementation of the Connecticut Compromise, whereby the constitutional framers resolved the conflict between the large and small states over the bases of representation.

The Connecticut Compromise provided equal representation in the Senate joined with representation according to population in the House of Representatives. The compromise was a pragmatic solution to a basic political problem and did not in itself embody any philosophy of representation.26

The House would be composed of members apportioned among the several states according to their respective numbers. . . . The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct.27

The Connecticut Compromise was not easily reached. Despite the anti-democratic bias evidenced by part of the


27. U.S., Constitution, Art. 1, sec. 2, cl. 3, as amended by the Fourteenth Amendment, sec. 2.
Convention's membership, some of the more prominent members were opposed to representation apportioned on any basis other than population. James Madison continually attacked the concept of representation apportioned according to states, and even aristocratic Alexander Hamilton voiced his support of the equal population principle.

The Constitution does not require that congressional districts be of equal size, or indeed, even that there be congressional districts. One might argue logically that if states are the basis for apportionment in the Senate, and if each state counts for one and no more than one, then it follows that people being the apportionment basis in the House of Representatives, each person should count for one and no more than one.

Logic, however, does not dictate to history and historically Congress has failed to institutionalize the principle of political equality in its apportionment processes.


30. Ibid., I, pp. 286, 465-466; III, pp. 620-621. The most complete analysis of congressional representation and the federal convention is in Appendix B To the Brief for the United States as Amicus Curiae Maryland Committee for Fair Representation v. Tawes, No. 29, October, 1963, Supreme Court of the United States.
The House, as established by the Constitution, was composed of sixty-five members. After the 1790 census, the House enlarged itself. Acting on the constitutional provision which establishes 30,000 as the legal limitation of the size of a congressional constituency, Congress authorized a total House membership of 105, under a ratio of one representative for every 33,000 persons. All fractions were ignored. This act established the earliest method of congressional apportionment: the method of rejected fractions.

The method of rejected fractions was used in the apportionment acts of 1802, 1811, 1822 and 1832, all of which enlarged the House of Representatives. By 1840, the House was composed of 240 members, apportioned on a ratio of one per 47,700 people.

31. This was no haphazard figure. The unicameral legislature under the Articles of Confederation had ninety-one members (seven per state). Under the new plan, twenty-six of these members were allotted to the Senate (two per state), which left a House of sixty-five.


34. 2 Stat. 128 (1802); 2 Stat. 609 (1811); 3 Stat. 651 (1822); and 4 Stat. 516 (1832).

An important move toward bringing congressional apportionment into closer conformity to population ratios occurred in 1842. Until 1842, some states elected their congressmen at-large. Congress, confining its apportionment activities to simply informing the respective states of the size of their congressional delegations, had not indicated any disapproval of this practice (although some states had petitioned for a constitutional amendment requiring congressional districts).

The Apportionment Act of 1842 altered this practice. It stipulated that representatives should "be elected by districts, composed of contiguous territory, equal in number to the number of Representatives to which said State may be entitled, no one district electing more than one Representative." There was some controversy over whether Congress could direct the states in the manner of electing congressmen, and therefore alter existing state practices. The argument was resolved in favor of Congress, and it now appears that Congress may pass any law relating to congressional districts that a state legislature may pass. 

36. 5 Stat. 491 (1842).

The Apportionment Act of 1842 also departed from the method of rejected fractions and provided "one additional representative for each State having a fraction greater than one moiety of the said ratio." On the basis of this act, the membership of the House was reduced to 223.

Beginning with the 1850 census report, Congress employed a process of apportionment known as "the Vinton method." The Vinton method was utilized in the apportionments from 1850 through 1900, during which time the size of the House increased to 386.

In 1911, the House membership was fixed at 433 (subsequently raised to 435 with the admission of Arizona and New Mexico to statehood), and a new method of computation, the method of major fractions, was employed.

Following the 1920 census, the Congress failed to reapportion as a result of questions raised concerning the accuracy of the census figures. While there was some

38. 5 Stat. 491 (1842).
40. 9 Stat. 432 (1850); 10 Stat. 25 (1852); 12 Stat. 353 (1862); 17 Stat. 28 (1872); 22 Stat. 5 (1882); 26 Stat. 735 (1891); and 31 Stat. 733 (1901).
41. 37 Stat. 13 (1911).
controversy over Congress's actions, it was concluded that Congress had discretionary power in the area of apportionment and could not be ordered to reapportion. 43

To avoid a recurrence of the failure to reapportion, Congress passed an act which provided for automatic apportionment. 44 The 1929 Act basically provided that if Congress failed to enact a new reapportionment provision after each census, the reapportionment provisions of the preceding enactment would continue in effect. Modifications in the size of state delegations would be made by a report submitted to the Congress by the President. 45 This procedure continues today.

Congressional apportionment, as did state apportionment, flirted with the principle of political equality, but never seriously became engaged. Congress's attitude toward equal representation historically has been inconsistent.

In 1850, the requirement that congressmen be elected from districts was eliminated. In 1862, the provision was


44. 46 Stat. 21 (1929).

45. This legislation was altered in 1940 by remedial legislation so as to adjust for the impact of the Twentieth Amendment. The 1940 Act (54 Stat. 162) was modified further in 1941 (55 Stat. 761) by a requirement that the method of equal proportions be used in the apportionment formula.
restored, requiring also that the districts be contiguous. In 1872, Congress required that the districts contain "as nearly as practicable an equal number of inhabitants," a stipulation which was duplicated after the 1880 and 1890 census.

In 1901, Congress further required that the districts be composed of compact territory. Since the 1911 Act, however, all apportionment acts have failed to require what Professor Andrew Hacker has called the "trinity of equitable representation: districts that are contiguous, compact and of equal size." Repeated attempts by Congress-man Emanuel Celler to restore these provisions have failed.

Thus, the House of Representatives and the state legislatures, traveling somewhat separate paths, arrived at the same destination. The malapportionment of the state legislatures was duplicated by that of the national Congress.

Three distinct groups directly affected by the malapportionment began to emerge. There were the less populous areas which were overrepresented and hoped to continue so. And there were two dissident groups: the urban

46. 17 Stat. 28 (1872).
populations and the suburban populations, both of which found their strength at the polls diluted by the numerical imbalance within the legislative assemblies.

As the stigma of malapportionment continued to spread, citizens from the two dissident groups began to seek relief, often without success. Obviously, the groups seeking more equal representation invoked little empathy and less corrective action from the malapportioned legislatures. The state executive usually was reluctant to interfere in what was considered a legislative issue, and, even if a governor might be favorably disposed to action, his powers frequently bordered on impotency. Constitutional conventions, initiative and referendum measures were available, but had not proved effective in the past.

Finally, the citizens solicited relief from the branch of government which Alexis de Tocqueville had suggested more than a century before as the ultimate arbiter of political issues. "Scarcely any political question arises in the United States," the astute Frenchman observed, "that is not resolved sooner or later into a judicial question."

The question as to what place the principle of political equality should occupy in our theory of representative government was submitted for judicial resolution.
"Nothing can be more fallacious than to found our political calculations on arithmetical principles."\(^1\) James Madison's remark is singularly relevant to the contemporary reapportionment controversy. The acceptance and application of the one man, one vote principle has been a common theme throughout America's political history, but only recently has the attempt been made to implement the mathematical implications of the principle. For the first time we are beginning to interpret the concept of political equality so that it means exactly what it says: one man should equal one vote.

The relationship between the principle of political equality and reapportionment has been defined primarily by the federal courts. This was not always so. Judicial involvement in the area of reapportionment is a recent development. Historically, the courts have remained aloof from reapportionment conflicts, leaving the resolution of reapportionment problems to the elected agencies of

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government. Now, however, the courts act directly in apportionment controversies, determining both the procedures by which apportionment plans are designed, and, indeed, the apportionment plans themselves.

The area of inquiry in this chapter is an examination of the judicial involvement in the reapportionment controversy.\(^2\)

**Pre-1962 Judicial Activity**

The *laissez-faire* attitude of the federal courts toward reapportionment litigation was largely the result of *Colegrove v. Green*.\(^3\) Prior to *Colegrove*, the Supreme Court had acted on reapportionment litigation without hesitation, and had given no indication that apportionment was without the jurisdiction of the judiciary.

In 1932, the first major congressional districting suits, *Smiley v. Holm*\(^4\) and *Wood v. Broom*,\(^5\) came to the high

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5. 287 U.S. 1 (1932).
court. Both suits involved congressional districting plans resulting from the 1930 census. In Smiley the Court accepted a suit tendered by a Minnesota "citizen, elector and taxpayer," challenging the existing Minnesota congressional districts on the grounds that the redistricting bill had been vetoed by the governor. The veto had not been overridden. The suit also alleged that the redistricting act violated the standards of compactness, contiguity and population equality established in the 1911 Federal Reapportionment Act.

The Supreme Court held that the Minnesota reapportionment was void because the governor had refused to approve the bill. The Court concluded that its decision left Minnesota without valid congressional districts, and, therefore, the Minnesota congressional delegation would have to be elected at-large. The Court did not reach the challenge to the 1911 Act.

The standing of the 1911 Act was determined finally in Wood. Here the Court ruled that the 1911 Act was no longer viable, having been replaced by the Apportionment Act of 1929. Thus, the requirements of compactness, population equality established in the 1911 Federal Reapportionment Act.

contiguity and equal population, all part of the 1911 Act, were erased.\textsuperscript{7}

These decisions did not treat the issue of justiciability and should not be viewed as rulings on the "wisdom or permissibility of judicial entry into the political thicket of reapportionment. . . ."\textsuperscript{8} Rather, the 1932 decisions indicate only that the Supreme Court recognized jurisdiction over the subject matter. This issue was to be re-examined in 1946.

**Colegrove v. Green**

Colegrove was the cornerstone of the judicial attitude toward reapportionment from 1946 to 1962. The case arose from a suit challenging the 1901 congressional districting act of Illinois and seeking an injunction against the conducting of the November, 1946 elections. The Court, by a vote of four to three, disclaimed any authority to remedy Illinois' failure to redistrict since 1901.

Justice Felix Frankfurter delivered the plurality opinion for the Court. Joined by Justices Stanley Reed and


\textsuperscript{8} "Wesberry v. Sanders: Deep in the Thicket," op. cit., p. 1079.
Harold Burton, Justice Frankfurter held that the Court lacked jurisdiction over reapportionment cases, an area he believed to be exclusively within the realm of congressional or executive authority. Justice Frankfurter went further and also denied the justiciability of reapportionment litigation. Invoking the political question doctrine, Justice Frankfurter talked of reapportionment in terms now familiar to students of constitutional law:

We are of the opinion that the appellants ask of this Court what is beyond its competence to grant. . . . [Redistricting is] of a peculiarly political nature and therefore not meet for judicial determination. . . .

Nothing is clearer than that this controversy concerns matters that bring courts into immediate and active relations with party contests. From the determination of such issues this Court has traditionally held aloof. It is hostile to a democratic system to involve the judiciary in the politics of the people. . . .

Courts ought not to enter this political thicket. . . .

The Court's majority was completed by Justice Wiley Rutledge's affirmative vote. The degree to which Justice Rutledge was in sympathy with the political question doctrine is amply demonstrated by his opinion in Colegrove v. Green.

9. The political question doctrine permits the Supreme Court to dismiss a case on the grounds that the question posed is of such a political nature as to be beyond legal, i.e., non-political, resolution. The doctrine is subject only to the discretion of the Court and supplies a useful "escape hatch" for those cases the Court thinks better decided at a more opportune moment, or, perhaps, not at all. See, Fritz W. Scharpf, "Judicial Review and the Political Question: A Functional Analysis," Yale Law Journal, LXXV (March, 1966), pp. 517-597.

Rutledge agreed with Justice Frankfurter is unclear. However, he disagreed sufficiently to deliver a concurring opinion noting his belief that the Court had jurisdiction over reapportionment litigation. Justice Rutledge believed that in this instance, such jurisdiction should not be exercised. He did not seem to accept Justice Frankfurter's assertion that reapportionment was a non-justiciable issue, but rather argued that the difficult issues posed by the suit required more time than was available (the November elections were imminent):

The shortness of time remaining makes it doubtful whether action could, or would, be taken in time to secure for petitioners the effective relief they seek. To force them to share an election at large might bring greater equality of voting rights. It would also deprive them and all other Illinois citizens of representation by districts which the prevailing policy of Congress commands. The cure sought may be worse than the disease.\[11\]

Justice Hugo Black was joined in dissent by Justices William Douglas and Frank Murphy. The dissent put forth the premises which would become law two decades later:

The assertion here is that the right to have their vote counted is abridged unless that vote is given approximately equal weight to that of other citizens. It is my judgment that the District Court has jurisdiction; that the complaint presented a justiciable case and controversy; and that appellants had standing to sue, since the facts alleged to show that they have been injured as individuals. Under these circumstances, and since there is no adequate legal remedy for depriving a citizen of his right to vote, equity can and should grant relief.\[11\]

\[11\] Ibid., pp. 565-566.
What is involved here is the right to vote guaranteed by the Federal Constitution. It has always been the rule that where a federally protected right has been invaded the federal courts will provide the remedy to rectify the wrong done. . . . 12

The impact of Colegrove became clear within five years. Although a majority of the Court had denied neither jurisdiction nor justiciability, the Supreme Court accepted Justice Frankfurter's dicta and decided not to enter the "political thicket." In MacDougall v. Green the Supreme Court affirmed a federal district court opinion that it lacked jurisdiction over reapportionment suits. 13 In South v. Peters, the nonjusticiability of reapportionment litigation was confirmed when the Court refused to litigate the constitutionality of Georgia's county-unit system. 14

Between 1950 and 1960, the Supreme Court continued to reinforce the negative attitude toward judicial intervention in reapportionment conflicts. Case after case challenging reapportionment acts received per curiam dismissals as the Court removed itself from the reapportionment controversy. 15

12. Ibid., pp. 568, 574.
15. For detailed examinations of the decisions delivered between Colegrove and Baker, see Stanley H. Friedelbaum, "Baker v. Carr: The New Doctrine of Judicial Intervention and Its Implications for American Federalism,"
To Baker v. Carr

The movement to Baker v. Carr was sudden. Unlike the evolution of the desegregation cases, there was little warning of the Court's decision to initiate the reapportionment revolution. In the interim between Colegrove and Baker, federal courts took exception to the judicial "hands off" policy only three times. In Dyer v. Kazuhisa Abe, a federal territorial court indicated it would act on the reapportionment of Hawaii if the legislature did not. In Minnesota, a district court warned that continued legislative inaction would result in a judicial response. In neither case did the lower court specify what action it would effect, and in each case judicial intervention was obviated by legislative action.

Perhaps the only harbinger of the impending change in judicial attitudes toward reapportionment was Gomillion v. Lightfoot, the racial gerrymander case. Here, the


Supreme Court, speaking through Justice Frankfurter, unanimously declared unconstitutional a state law disenfranchising Tuskegee, Alabama's blacks. The statute, which altered the shape of Tuskegee from a square to a twenty-eight sided figure, gerrymandered the districts so as to place the majority of the black population outside the city limits. This effectively prevented the black bloc vote from controlling the city elections.

Justice Frankfurter treated the decision as a racial discrimination action. He nullified the gerrymander on the basis of the Fifteenth Amendment, arguing that the Fifteenth Amendment's prohibition against racial discrimination in the area of voting had been abrogated.

One could hardly quarrel with Justice Frankfurter's assertion, but it is equally obvious that the decision involved a state redistricting action. Justice Charles Whittaker voted with the Court, but based his concurring opinion on the Fourteenth Amendment's equal protection clause.

The Court was ripe for a reapportionment case. It had just decided a case which, at least indirectly, related to the reapportionment issue. In addition, the Court itself had undergone a metamorphosis. Six judges now occupied the bench who had not been present in 1946. This was portent for change in judicial attitudes. And, in November, 1960,
one week following the announcement of Gomillion, the Court noted probable jurisdiction of a case challenging the state legislative reapportionment of Tennessee. Two years later, Baker v. Carr took its place beside Marbury v. Madison\(^{19}\) and McCulloch v. Maryland\(^{20}\) as one of the great landmark decisions in Supreme Court history. In 1962, the Court began to hack its way through the political thicket.

**Baker v. Carr**

The Tennessee state constitution requires that the General Assembly reapportion each house the year following each national census. No such action was taken from 1901 to 1962. In 1954 a group called the Tennessee Committee for Constitutional Reapportionment formed to challenge Tennessee's apportionment system in the courts.\(^{21}\)

This group initiated litigation in 1955. Action was brought in the Chancery Court in Davidson County (Nashville) alleging that the General Assembly was violating the state constitution. The Chancery Court held for the appellants but was reversed by the Tennessee Supreme Court. The state

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19. 1 Cr. 137 (1803).
20. 4 Wheat. 316 (1819).

supreme court ruled that to declare the 1901 Act unconstitutional would deprive the state of a legislature.\textsuperscript{22}

This decision exhausted the state remedies and the appellants, after obtaining finances from city governments and enlisting additional parties, turned to the federal courts for relief.\textsuperscript{23}

In May, 1959, the appellants initiated action in the District Court for the Middle District of Tennessee. The action was brought against appellees, the Tennessee Secretary of State, the Attorney General of Tennessee, the Tennessee Co-ordinator of Elections, and the members of the Tennessee State Board of Elections.

Basically, the complaint alleged that, under the existing apportionment, a minority of approximately thirty-seven percent of the voting population controlled twenty of the Tennessee Senate's thirty-three members, and a minority of forty percent of the voters controlled sixty-three of the House of Representatives' ninety-nine members. The complaint stated that, as a result of this inequality, the Tennessee General Assembly was not representative of the people. The appellants asserted that they suffered a debasement of their votes by virtue of the incorrect and

\textsuperscript{22} Kidd v. McCanless, 200 Tenn. 273, 292 S.W. 2d 40 (1956); appeal dismissed, 352 U.S. 920.

\textsuperscript{23} Cortner, \textit{op. cit.}, pp. 291-293.
arbitrary apportionment and thus were denied the due process and equal protection of the laws guaranteed by the Fourteenth Amendment of the National Constitution.

On August 10, 1959, a three-judge panel was convened. On February 4, 1960, without hearing testimony, the three-judge court entered an order dismissing the complaint on the grounds that the court had no jurisdiction over the subject matter and the complaint failed to state a claim upon which relief could be granted. The court's opinion asserted that the federal rule, as promulgated in Colegrove, was that the federal courts would not intervene in cases of this type.

In March, 1960, appellants filed an appeal with the United States Supreme Court and were given notice of probable jurisdiction in November, 1960. It is instructive to note that the Tennessee Legislature met with full knowledge of the Court's notice, yet took no action toward reapportionment.

The Supreme Court heard arguments in April, 1961, and again in October, 1961. The appellants contended that they had been denied equal voting rights granted by the Tennessee constitution and the Fourteenth Amendment to the National Constitution. The United States Solicitor General, Archibald Cox, entered the case as amicus curiae on the side of the appellants.24

24. The important role played by the Solicitor General in the early reapportionment decisions is described in ibid., pp. 298-304; and Dixon, op. cit., pp. 199-201, 250-260.
The case before the Court raised two fundamental constitutional questions. First, whether federal courts have jurisdiction to consider claims of denial of equal protection under the Fourteenth Amendment resulting from a malapportionment of state legislatures. Second, whether rights under the Fourteenth Amendment are violated by gross and unreasonable malapportionments of state legislatures and, thus, despite being fraught with political ramifications, provide a justiciable cause of action upon which appellants are entitled to relief. These questions were answered in the affirmative when, on March 26, 1962, the Supreme Court reversed and remanded the case back to the lower court.

Justice William Brennan delivered the opinion for the Court. There were concurring opinions from Justices Tom Clark, William Douglas and Potter Stewart. Justices Frankfurter and John Marshall Harlan, Jr., dissented. The six opinions numbered 165 pages and are no small indication of the importance attached to the decision. Because of the landmark quality of Baker, it would not be improper to examine the opinions in depth.

Justice Brennan examined the case from three viewpoints: the District Court's opinion and order of dismissal; the jurisdiction of the subject matter; and the justiciability of the case. Concerning the lower court's ruling, Justice Brennan commented that the dismissal did not reflect
doubt on the appellants' allegations, but rather on the Court's inability to correct the alleged violations. In establishing the Court's jurisdiction over the subject matter, Justice Brennan cited Smiley and Wood as previous reapportionment cases in which the Court had exercised jurisdiction. Justice Brennan rejected the claim that Colegrove denied jurisdiction to the Court.

... Appellees misconceive the holding of [Colegrove]. The holding was precisely contrary to their reading of it. Seven members of the Court participated in the decision. Unlike many other cases in this field which have assumed without discussion that there was jurisdiction, all three opinions filed in Colegrove discussed the question. Two of the opinions expressing the views of four of the Justices, a majority, flatly held that there was jurisdiction of the subject matter. ... 25

Having established jurisdiction, Justice Brennan turned to the justiciability of the suit. He denied the relevance of the political question doctrine to Baker, observing that the existence of a political right did not condemn a case under the political question doctrine:

... The mere fact that the suit seeks protection of a political right does not mean it presents a political question. Such an objection is "little more than a play on words." ...  
... We hold that this challenge to an apportionment presents no nonjusticiable "political question." 26

Justice Brennan further examined the possibility of the case falling under the political question doctrine by subjecting

26. Ibid., p. 209.
Baker to various characteristic "tests." He concluded that Baker did not possess the characteristics of a political question.27

Having thus freed Baker from the shackles of the political question doctrine, Justice Brennan held that the right claimed by the appellants was legitimate and, therefore, subject to judicial protection:

We conclude that a complaint's allegations of a denial of equal protection present a justiciable constitutional cause of action upon which appellants are entitled to a trial and a decision. The right asserted is within the reach of judicial protection under the Fourteenth Amendment.28

In a concurring opinion, Justice William Douglas stated that:

... The traditional test under the Equal Protection Clause has been whether a State has made "an invidious discrimination," as it does when it selects "a particular race or nationality for oppressive treatment." ... Universal equality is not the test; there is room for weighting.29

Justice Douglas agreed with Justice Clark in that, if the allegations of the appellants could be sustained, a case for relief would be valid. He observed that the Supreme Court had never expounded a doctrine whereby the protection of voting rights was beyond judicial cognizance. Justice Douglas concluded that relief accorded by the Supreme Court

27. Ibid., pp. 226-237.
28. Ibid., p. 237
29. Ibid., p. 244.
in Baker could be "fashioned in the light of well-known principles of equity."  

Justice Tom Clark also concurred. He believed that as no rational policy of apportionment had been used in Tennessee, the Court was within its jurisdictional boundaries in ruling on the case. Observing that Tennessee's apportionment was a "crazy quilt without rational basis," Justice Clark argued that, while mathematical equality among voters was not mandatory under the Equal Protection Clause of the Fourteenth Amendment, some rational design should be followed. He also noted that there was no relief available to the people of Tennessee outside the courts:

... The majority of the people of Tennessee have no "practical opportunities for exerting their political weight at the polls" to correct the existing "invidious discrimination." Tennessee has no initiative and referendum. I have searched diligently for other practical opportunities present under the law. I find none other than through the federal courts. The majority of the voters have been caught up in a legislative strait jacket. ...  

Although the courts were no "forums for political debate," Justice Clark believed that there were modes of effective judicial relief to be found in the court system if it became necessary for the courts to initiate apportionment proceedings.

30. Ibid., p. 250.

31. Ibid., pp. 258-258
Justice Potter Stewart's concurring opinion merely emphasized the limited scope of the decision. Justice Stewart noted that the merits of the case were not under consideration and that the proper place for the trial of the case was in the trial court, not before the bench of the nation's highest judicial body.

The dissent of Justice Felix Frankfurter is considered one of the more eloquent in modern Supreme Court history. Justice Frankfurter saw in the decision a disregard of the Court's well-known policy of judicial restraint, and a "massive repudiation" of past decisions. Justice Frankfurter contended that the case contained all the elements of a "political question," and believed that, in disregarding previous rulings—chiefly Colegrove, in which he delivered the plurality opinion—the Court jeopardized its position as the interpreter of the Constitution:

32. Ibid., p. 267.

Justice Frankfurter asserted that the Court was choosing between competing political theories. This it ought not to do:

32. Ibid., p. 267.
What is actually asked of the Court in this case is to choose among competing bases of representation—ultimately, really, among competing theories of political philosophy—in order to establish an appropriate frame of government for the State of Tennessee and thereby for all the States of the Union.

The notion that representation proportioned to the geographic spread of population is so universally accepted as a necessary element of equality between man and man that it must be taken to be the standard of a political equality preserved by the Fourteenth Amendment—that it is, in appellants' words "the basic principle of representative government"—is, to put it bluntly, not true. However desirable, and however desired by some among the great political thinkers and framers of our government, it has never been generally practiced, today or in the past.

Apportionment battles are overwhelmingly party or intra-party contests. It will add a virulent source of friction and tension in federal-state relations to embroil the federal judiciary in them.

It appeared obvious to Justice Frankfurter that the courts could not reapportion a state, thus leaving the courts, and the people, with no effective judicial remedies if the state legislatures did not choose to comply with the Court's decision. In Justice Frankfurter's judgment the subject matter of the case was replete with political controversy and, therefore, unfit for federal judicial action.

Justice John Marshall Harlan, Jr., also disagreed with the majority opinion, thus initiating the first of his dissents which would attempt to post "do not enter" signs

33. Ibid., pp. 300-301, 324.
along the apportionment path. Like Justice Frankfurter, Justice Harlan believed Colegrove to be binding. In his view it was not the Court's duty to arbitrate a state's internal political conflicts. Nor did a federal court have the power to interfere with the right of a state or fix the basis of representation in its own legislature: "In short, there is nothing in the Federal Constitution to prevent a State, acting not irrationally, from choosing any electoral legislative structure it thinks best suited to the interests, temper, and customs of its people. . . ." Justice Harlan saw no "invidious discrimination" in Tennessee's system of apportionment and believed that matters of such local nature were best left to local authorities.

Justice Harlan also took issue with the majority's opinion that, if the Court asserted its authority in the apportionment area, the malapportioned states would respond quickly and effectively with reapportionment action. He observed that such a ruling, based on those premises, had the appearance of a judicial experiment rather than a "solid piece of constitutional adjudication." 

In summary, the Court's decision established three basic points. First, individual voters have legal standing.
to bring suit in the courts to prevent dilution of their voting rights through state malapportionment. Second, the federal courts must consider such a voter claim and grant relief if the claim is sustained. Third, the judicial protection of voting rights concerning state malapportionment raises a question of constitutional right rather than a political question. The Supreme Court, in effect, brushed away the "political question" cobweb and recognized that when a vote has been diluted to the extent that it is no longer effective, that vote has been denied.36

1962-1969

Like many landmark decisions, Baker was broad in scope and left many questions unanswered. Unlike most landmark decisions, however, the attempts to answer these questions began immediately. Over a half-century passed from the time John Marshall assumed the authority of judicial review in Marbury to the next nullification of a congressional act. Similarly, fifteen years have passed since the Court ordered the integration of public schools, and schools remain segregated in the North and South alike. The substantive application of Baker, however, began within a year after its announcement. We turn now to an examination of the substantive reapportionment decisions.

36. The Baker ruling was extended to state court actions within a month of its announcement. See Scholle v. Hare, 369 U.S. 429 (1962).
Gray v. Sanders

The first judicial hint of Baker's portent occurred in the Court's announcement of Gray v. Sanders. The case arose out of a challenge to Georgia's county unit system of primary elections. Under this system, a candidate for office who received the highest number of popular votes in a county received all the unit votes of that county. The county's unit vote was determined by the number of representatives to which the county was entitled in the lower house of Georgia's General Assembly. The system was not unlike the electoral college utilized in presidential elections, except that the unit votes bore little resemblance to the county's population.

The Court held that the county-unit system deprived citizens of the equal protection of the laws as guaranteed by the Fourteenth Amendment. By declaring unconstitutional any unit system of county votes, the 8-1 ruling of the Court went further than the lower court ruling, which had indicated that some population disparity could be tolerated in a unit-vote system.

The decision was significant for two reasons. First, although Gray was not specifically a reapportionment case, although Gray was not specifically a reapportionment case,


38. Gray was the fifth judicial challenge against the county-unit system. The majority opinion of the Court, however, did not refer to any of the previous attempts, which had been denied on the basis of Colegrove.
the Court's decision obviously had portent for the reapportionment issue. On the surface, the Court had decided nothing more than that a candidate with the most popular votes should not be denied office because of his failure to achieve an artificial majority. It did not go unnoticed, however, that the Court had used the equal population principle to defeat an electoral system weighted in favor of one group solely on the basis of their geographic location. Justice William Douglas commented:

Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. 39

It would seem reasonable that, if the Fourteenth Amendment prohibited the favoring of rural over urban voters through a county-unit device, it would apply in like manner to any electoral scheme which extended similar favors.

Second, Gray coined the watchword of reapportionment litigation: one man, one vote. This was the first time the Court overturned a state law explicitly because it conflicted with the equal population principle. Again, Justice Douglas is speaking: "The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth and Nineteenth

Amendments can mean only one thing— one person, one vote.40

Similarly, in a joint concurring opinion, Justices Stewart and Clark noted: "Within a given constituency, there can be room for but a single constitutional rule— one voter, one vote.41

The Court moved inexorably toward a direct application of the equal population principle to the area of legislative apportionment.

Wesberry v. Sanders

The year 1964 marked the watershed year for reapportionment litigation. In the spring term the Court delivered reapportionment decisions whose importance could scarcely be exaggerated. In essence the Court ruled that the Constitution required the national House of Representatives and both houses of the state legislatures operate within the strictures of the one man, one vote concept.

In February, 1964, the Court announced Wesberry v. Sanders.42 The case arose out of a suit challenging the congressional districts of Georgia. By a 7-2 vote, the Court ruled that congressional districts must conform to the one

40. Ibid., p. 381.
41. Ibid., p. 382. An interesting sidelight to Gray is that it marked the first appearance before the Supreme Court of the new Attorney General, Robert Kennedy. As Dixon notes, the Kennedys outnumbered the Justices in the courtroom, 15-9. Dixon, op. cit., p. 173.
42. 376 U.S. 1 (1964).
man, one vote rule. The decision itself was not surprising. The trend of the Court toward the implementation of the equal protection principle already had been established, and the question of justiciability belonged to an earlier period. Only Justice Harlan continued to tilt at the judicial windmill of justiciability.

What was surprising was the legal peg upon which Justice Black, speaking for the majority, hung his law. Justice Black, joined by five other justices, nullified Georgia's congressional districting plan as a violation of Article I, section 2 of the Constitution. This constitutional provision had received little attention from the lower court, and, indeed, from the plaintiffs themselves. It was not emphasized during oral argument, and was virtually ignored by the defendants and the amicus curiae brief tendered by the Solicitor General of the United States.

Justice Black offered a lengthy historical argument to justify his position, attempting to interpret the notes of the Constitutional Convention, contemporary statements by the delegates to the Constitutional Convention, and the Federalist Papers, to support his analysis of Article I, section 2:


44. Dixon, op. cit., p. 183.
We hold that, construed in its historical context, the command of Art. I, section 2, that Representatives be chosen "by the People of the several States" means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's. . . . We do not believe that the Framers of the Constitution intended to permit the vote-diluting discrimination to be accomplished through the device of districts containing widely varied numbers of inhabitants. To say that a vote is worth more in one district than in another would not only run counter to our fundamental ideas of democratic government, it would cast aside the principle of a House of Representatives elected by the People, a principle tenaciously fought for and established at the Constitutional Convention. The history of the Constitution . . . reveals that those who framed the Constitution meant that, no matter what the mechanics of an election, whether statewide or by districts, it was population which was to be the basis of the House of Representatives.

It would defeat the principle solemnly embodied in the Great Compromise—equal representation in the House of equal numbers of people—for us to hold that, within the States, legislatures may draw the lines of congressional districts in such a way as to give some voters a greater voice in choosing a Congressman than others. The House of Representatives, the Convention agreed, was to represent the people as individuals, and on a basis of complete equality for each voter.

While it may not be possible to draw congressional districts with mathematical precision, that is no excuse for ignoring our Constitution's plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives. That is the high standard of justice and common sense which the Founders set for us.45

Justice Black's historical interpretation became the object of a stinging and forceful dissent by Justice Harlan. Justice Harlan effectively refuted Justice Black's historical contentions. Following this refutation, Justice Harlan took

45. Wesberry v. Sanders, 376 U.S. 1, 7-9, 14-17.
the position he had consistently maintained, and would continue to maintain, throughout the reapportionment revolution, i.e., the Court simply should not intervene in such a political matter:

I had not expected to witness the day when the Supreme Court of the United States would render a decision which casts grave doubt on the constitutionality of the composition of the House of Representatives. . . .

This Court, no less than all other branches of the Government, is bound by the Constitution. The Constitution does not confer on the Court blanket authority to step into every situation where the political branch may be thought to have fallen short. . . .

What is done today saps the political process. The promise of judicial intervention in matters of this sort cannot but encourage popular inertia in efforts for political reform through the political process, with the inevitable result that the process is itself weakened. By yielding to the demand for a judicial remedy in this instance, the Court in my view does a disservice both to itself and to the broader values of our system of government.46

Justice Harlan's dissent was sufficiently persuasive to enlist the agreement of Justice Steward, who accepted Justice Harlan's historical interpretation of Article I, section 2. Justice Stewart, however, continued to deny that reapportionment was nonjusticiable.

Justice Tom Clark also was convinced that Justice Black had erred in his reading of history. However, Justice Clark concurred with the majority, citing the Equal

46. Ibid., pp. 19, 48.
Protection Clause of the Fourteenth Amendment as controlling.\footnote{47}

**Reynolds v. Sims**

The Court's decision to use Article I, section 2 of the Constitution as the basis for the Wesberry ruling left the substantive reapportionment requirements of state legislatures unknown. Four months after the Wesberry decision was delivered, these requirements were clarified in Reynolds v. Sims.\footnote{48} On June 15 and June 22, the Court delivered what are known as the Reapportionment Decisions.\footnote{49}

Essentially, the Court decided that state legislatures were not immune from the constitutional requirement of

\footnote{47. For a detailed critique of Justice Black's historical analysis, see Alfred H. Kelly, "Clio and the Court: An Illicit Love Affair," in 1965 *Supreme Court Review* (Philip B. Kurland, editor, Chicago: University of Chicago Press, 1965).}

\footnote{48. 377 U.S. 533 (1964).}

equal population: one man would count for one vote in the state legislatures as well as in Washington, D.C.

Chief Justice Earl Warren spoke for the Court, lending the dignity of his office and his reputation to the decision. As expected, Justice Harlan dissented in all the cases.

Chief Justice Warren chose the Alabama case for the principle opinion which controlled the other decisions. The Warren opinion was striking for its clarity and eloquence. The Chief Justice addressed and answered three primary questions which had arisen from the previous reapportionment decisions. First, Chief Justice Warren laid to rest any doubt of the application of the one man, one vote principle to state legislatures. Treating the issue as a right to vote problem, he stated:

... History has seen a continuing expansion of the scope of the right of suffrage in this country. The right to vote freely for a candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.

50. It is not uncommon for the Chief Justice to write important decisions of his Court. There is irony, however, in Chief Justice Warren's decision to author the Reynolds opinion. As Governor of California, Warren opposed the application of the equal population principle to state senates. See Dixon, op. cit., pp. 264-265.

The right to vote is constitutionally protected by the Equal Protection Clause of the Fourteenth Amendment. Chief Justice Warren applied this clause to each house of a state legislature:

Legislators represent people, not trees or acres. Legislators are elected by voters, not forms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system.

... To the extent that a citizen's right to vote is debased, he is that much less a citizen. The fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote. ... The basic principle of representative government remains, and must remain, unchanged—the weight of a citizen's vote cannot be made to depend on where he lives. Population is, of necessity, the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies. ... The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races.

We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State. ... 52

Second, Chief Justice Warren disposed of the "little federal analogy." The states contended that, as the National

52. Ibid., pp. 562, 567-568.
Senate was apportioned on a non-population basis, the states should be granted the same privilege. The Court thought not. Chief Justice Warren argued that the original state constitutions had required population as an apportionment base for both houses, and that, regardless, the federal principle which justified the malapportioned National Senate was not operative at the state level:

... After considering the matter, the court below concluded that no conceivable analogy could be drawn between the federal scheme and the apportionment of seats in the Alabama Legislature under the proposed constitutional amendment. We agree with the District Court, and find the federal analogy inapposite and irrelevant to state legislative districting schemes. . . .

Political subdivisions of States—counties, cities, or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions. . . .

In summary, we can perceive no constitutional difference, with respect to the geographical distribution of state legislative representation, between the two houses of a bicameral state legislature.

Third, Lucas v. Colorado General Assembly, one of the reapportionment decisions, raised the important question of the role of popular referenda in apportionment exercises. In Colorado, the voters had chosen a plan which apportioned the Colorado legislature in such a manner that it deviated from


the one man, one vote principle. Unlike the preceding cases, the legislature had not been the cause of the malapportionment. The Court rejected the contention that such a plan should be tolerated because it is an expression of the will of the people. Civil rights are not dependant upon majority votes for their vitality. Chief Justice Warren struck down the apportionment plan for Colorado:

An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of a State's electorate, if the apportionment scheme adopted by the voters fails to measure up to the requirements of the Equal Protection Clause. Manifestly, the fact that an apportionment plan is adopted in a popular referendum is insufficient to sustain its constitutionality or to induce a court of equality to refuse to act. . . . A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose to do so. . . .

The Court also addressed, but did not answer, the question of what guidelines conformed to the equal population requirements of the Constitution. Rather, the Court indicated that the states would be allowed flexibility in designing equitable apportionment formulas, and that each state would be viewed as a separate entity.

. . . The Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable. 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 or precision is hardly a workable constitutional requirement.

... Lower courts can and assuredly will work out more concrete and specific standards for evaluating state legislative apportionment schemes in the context of actual litigation. For the present, we deem it expedient not to attempt to spell out any precise constitutional tests. ... Developing a body of doctrine on a case-by-case basis appears to us to provide the most satisfactory means of arriving at detailed constitutional requirements in the area of state legislative apportionment. ... 56

The Court also declined to specify what action the lower courts should effect in order to implement the Reapportionment Decisions. The Chief Justice noted:

We do not consider here the difficult question of the proper remedial devices which federal courts should utilize in state legislative apportionment cases. ... It is enough to say now that, once a State's legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan. ... 57

The charge that the Court was acting unwisely by litigating apportionment problems was consigned to oblivion by the Chief Justice:

We are told that the matter of apportioning representation in a state legislature is a complex and many-faceted one. We are advised that States can rationally consider factors other than population in apportioning legislative representation. We are admonished not to restrict the power of the States to impose differing views as to political philosophy on their citizens. We are cautioned about the dangers of entering into political thickets and mathematical


57. Ibid., p. 585.
Chief Justice Warren applied the Reynolds' principles to each of the remaining five cases. After briefly examining the fact situations of each case and noting the arguments advanced by counsel, the Chief Justice would reaffirm the decision just made: "In Reynolds v. Sims, decided also this date, we held that the Equal Protection Clause requires that seats in both houses of a bicameral state legislature must be apportioned substantially on a population basis." Then the Chief Justice would conclude that the apportionment being examined failed to conform to these standards and, therefore, must fall.

Justices Clark and Stewart were able to accept the majority's reasoning in the Alabama, Delaware, Virginia, and Maryland cases (although in the latter decision, Justice Stewart would have remanded to determine whether the Maryland apportionment did prevent "ultimate effective majority rule"). They dissented, however, to Court's opinion in the Colorado and New York cases. Justice Clark did not believe the New York or Colorado plans to be possessed of a "crazy quilt" of invidious discrimination, the standard by which he judged all apportionments. Justice Steward also was willing to grant

58. Ibid., p. 566.
the states the right to design their apportionments on bases other than population, so long as said apportionment was rational and did not permit "the systematic frustration of the will of a majority of the State." 59

Justice Harlan filed a lengthy dissent. One must sympathize with Justice Harlan. It is no doubt difficult for him to accept the fact that while his dissents are accurate historically, they are not persuasive legally. Perhaps Justice Harlan takes comfort in that he is continuing the tradition established by the senior Harlan, known for his great dissents. It must be small comfort, however; the younger Harlan's dissents, unlike those of his grandfather, are unlikely to become law in the future. The Court has institutionalized the one man, one vote principle to the extent that a reversal by a later Court seems highly improbable. A conservative on an activist court, Justice Harlan is unable to command a majority for his opinions.

In Reynolds v. Sims, Justice Harlan continued to defend his embattled position that the Court was where it ought not to be. His eloquence, if not his reasoning, matched that of the majority opinion:

The Court's elaboration of its new "constitutional" doctrine indicates how far--and how unwisely--it has strayed from the appropriate bounds of its authority. . . . It is difficult to imagine a more intolerable and inappropriate interference by the

59. Ibid., pp. 753-754.
judiciary with the independent legislatures of the States. . . .

Records such as these in the cases decided today are sure to be duplicated in most of the other States if they have not already. They present a jarring picture of courts threatening to take action in an area which they have no business entering, inevitably on the basis of political judgments which they are incompetent to make. . . .

. . . What is done today deepens my conviction that judicial entry into this realm is profoundly ill-advised and constitutionally impermissible. As I have said before, I believe that the vitality of our political system, on which in the last analysis all else depends, is weakened by reliance on the judiciary for political reform; in time a complacent body politic may result.

Finally, these decisions give support to a current mistaken view of the Constitution and the constitutional function of this Court. This view, in a nutshell, is that every major social ill in this country can find its cure in some constitutional "principle," and that this Court should "take the lead" in promoting reform when other branches of government fail to act. The Constitution is not a panacea for every blot upon the public welfare, nor should this Court, ordained as a judicial body, be thought of as a general haven for reform movements.

. . .

I dissent. . . . 60

Following the Reynolds decision, the Court retired from the reapportionment arena for a period, leaving the lower courts to search for acceptable standards.

Post-Reynolds

Although they are beyond the temporal scope of this study, two additional Supreme Court reapportionment decisions

60. Ibid., pp. 615-620, 624-625.
deserve mention. On April 1, 1968, the Court announced *Avery v. Midland*.\(^{61}\) Justice Byron White, speaking for the Court, applied the one man, one vote doctrine to local governing bodies: "We hold today only that the Constitution permits no substantial variation from equal population in drawing districts for units of local governments having general governmental powers over the entire geographical area served by the body. . . ."\(^{62}\) The scope of *Avery* is still to be determined, but it would seem appropriate to suggest that, barring a substantial change in the Court's personnel, the one man, one vote principle eventually will be extended to virtually all elective bodies.

On April 7, 1969, the Court announced *Kirkpatrick v. Preisler*.\(^ {63}\) Justice Brennan delivered the opinion of the Court. The Court rejected a Missouri congressional districting plan where the average deviation percentage was 1.6 percent. Admitting that the deviation percentages were minimal, Justice Brennan nonetheless held that:

> . . . The command of Article I, section 2, that States create congressional districts which provide equal representation for equal numbers of people permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown. . . . Unless population variances among

\(^{61}\) 390 U.S. 474 (1968).


\(^{63}\) 89 S.Ct. 1225 (1969).
congressional districts are shown to have resulted despite such effort, the State must justify each variance, no matter how small. . . .64

The Court noted that the Missouri General Assembly had rejected a redistricting proposal which provided for districts with smaller population variances than the plan which was accepted. Therefore, the population variances of the present proposal did not conform to the constitutional requirements.

Justice Harlan, joined by Justice Stewart, again took exception to the Court's ruling:

Whatever room remained under this Court's prior decisions for the free play of the political process in matters of reapportionment is now all but eliminated by today's Draconian judgments. Marching to the non-existant "command of Article I, section 2" of the Constitution, the Court now transforms a political slogan into a constitutional absolute. Straight indeed is the path of the righteous legislator. Slide rule in hand, he must avoid all thought of county lines, local traditions, politics, history, and economics, so as to achieve the magic formula: one man, one vote. . . .65

Conclusions

Perhaps one man, one vote is a "magic formula." Or perhaps it is a sound constitutional principle. What is interesting here is the development and application of that principle to America's political process.

Witness the Supreme Court, an institution unique in our political system, perhaps in all the world. It is a

64. Ibid., p. 1229.
65. Ibid., p. 1239.
non-elected policy maker in a country committed to the ideal that wherever there is authority in government, there also should be responsibility.

It is not just that the Supreme Court makes policy, but that it possesses, and sometimes exercises, the authority of an ultimate law-maker. And it is not just that the Justices are removed from popular control; but that the populous takes no umbrage at this removal.

This is due partially to the curious attitude manifested toward the judiciary in general, and the Supreme Court in particular, by the American people. It is a puzzling attitude. One senses that even those who called for the impeachment of Chief Justice Earl Warren would raise the same cry against any President who, in their eyes, began to tamper with the Court. The Court is believed to be immune from politics, although it is not. The Court is perceived as a body shed of prejudice, dispensing judgments immaculately conceived in the confines of a marble palace, although it does not. The "cult of the robe" still obtains; it is a powerful and pervasive influence on most Americans, and the politician or professor who attempts to instruct otherwise speaks to deaf ears.

For all this, and despite judicial protestations to the contrary, the Court makes policy. The public law of reapportionment is a striking example of judicial
policy-making, more so than most other landmark cases. It is not only what the Court did, but the way it did it that arrests the mind.

In Marbury v. Madison, the Court could trace (although it did not) the development of judicial review from the sixteenth century. Similarly, in Brown v. Board of Education, one could look back to the 1930's and watch the Court move with all deliberate speed to atone for the wrong done that day in 1896 when the "separate but equal" doctrine was enunciated in Plessy v. Ferguson.°° Judicial policy-making is usually marked by gradual developments; one speaks of the evolution of the desegregation decisions, or the evolution of judicial review, or the evolution of the commerce clause. Not so, however, with respect to legislative apportionment. Here it is the "reapportionment revolution." The term is not misused.

The reapportionment decisions were literally thrust upon the political scene. In 1962, the Court announced that it had jurisdiction over reapportionment litigation, that such litigation was justiciable, and that standing should be granted those attending such litigation.

By 1968, the public law of reapportionment had crystallized, requiring that congressional districts be apportioned on the equal population principle, that each

house of the state legislatures conform likewise, and that local governments also must recognize the protection offered by the Fourteenth Amendment against malapportionment. Even the smallest deviation from the equal population principle placed a burden upon the State to show why the deviation should be tolerated.

Soon, one may expect the Court to attack apportionments which gerrymander, even though they may conform to the one man, one vote concept as now interpreted. Soon, also, it is likely that the Court will extend the one man, one vote principle to all elective bodies, and perhaps, even designate the legitimate reapportioning agencies of government.

For the most part the Court has developed sound law. Justice Black's decision in *Wesberry* may have been formed from whole cloth, but when couched in terms of the right to vote, rather than a reading of history, the *Wesberry* decision appears to have constitutional sanction.

Clearly, if debasement of a person's vote is violative of the Constitution, then the violation exists whether the debasement occurs in a congressional election, or an election for county commissioners. It is difficult to argue that a person whose vote counts for less than his neighbor's is receiving the constitutional gift of equal protection.
The logical conclusion of the development of the one man, one vote concept is mathematical exactness. Mr. Justice Brennan makes sense when he says: "Equal representation for equal numbers of people is a principle designed to prevent debasement of voting power and diminution of access to elected representatives. Toleration of even small deviations detracts from these purposes. . . ."67

The impact of the Court's reapportionment actions began to sweep through the nation immediately following the announcement of Baker. With the coming of Wesberry and Reynolds, virtually every state in the nation was affected by the judicial wand. Arizona was no exception. We turn now to an examination of the Arizona reapportionment experience of 1966.

CHAPTER 4

THE ARIZONA EXPERIENCE: I.
PIONEERS, PINTOS AND POPULATION

There is a certain elan—almost an ethic—about Arizona which affects the state's politics. It is difficult to capture this feeling on paper, and to try illustrates one's ambition exceeding one's ability. Nonetheless, an attempt must be made, for the richness of Arizona politics cannot be understood apart from a "sense" of the state itself.

The Setting

Arizona is a dynamic state. Of the fifty states, Arizona ranks first or second in five leading indices of growth.\(^1\) It has the second largest rate of population growth and, geographically, is the sixth largest state in the Union. Arizona is also a young state, having joined the Nation in 1912. This youth has contributed to the state's political conservatism; there still lingers the feeling of the pioneer, the frontiersman who eschews aid from, and is suspicious of government.\(^2\)


2. This pioneer influence was exemplified by the City of Scottsdale, where anyone constructing a business in the downtown area was required to use a frontier motif.
Arizona's dynamic image is furthered by a young, rapidly growing population. From 1957 to 1967 Arizona's population growth was forty-five percent, a figure exceeded only by Nevada. From the immediate post-WW II period to 1968, the population increased from 616,000 to 1,690,000. By 1985 Arizona is expected to contain a population of almost three million people.

The most arresting characteristic of Arizona's population growth is its urban concentration. In 1940, thirty-five percent of the state's population was urban; today, the number exceeds seventy-five percent. And this population is located almost solely in two cities. Phoenix, the Nation's eighth-fastest growing city, contains a population of almost 600,000, and Tucson has almost 250,000 residents. No other Arizona city has more than 60,000 residents.

Geographically, Arizona is divided into three regions. Northern Arizona contains the Plateau Uplands, which include the Grand Canyon. A second region, the Central Highlands, is in the central and eastern sections of the state, and, like the Northern region, is forested heavily and endures distinct seasonal change. The summers are moderate and the snow-clad winters cold. The third region embraces Southern Arizona and

4. Ibid., p. 5.
5. Ibid., pp. 6-7.
is known as the Basin Lowland. It is very hot, arid and receives a minimum of rainfall. Almost eighty percent of Arizona's population resides in this region, and both Phoenix and Tucson are located here.

Thus, although Arizona's size qualifies it as one of the nation's largest states, the population is concentrated in one region. Rarely has the ecology of a state more directly related to the politics of that state's reapportionment. By the mid-1960's Arizona was the epitome of a mal-apportioned state. To paraphrase Chief Justice Earl Warren, Arizona's legislators represented trees and acres, not people.

**Government and Politics**

The structure of Arizona government is similar to many states. There is a plural executive, composed of a governor, secretary of state, auditor, attorney general, mine inspector, superintendent of public instruction, tax commission, and corporation commission. This pluralism breeds conflict as it is not uncommon for the executive officials to belong to different political parties.

The Arizona legislature is bicameral. In 1966, the legislature was composed of a twenty-eight member Senate (two


Senators from each county) and an eighty member House of Representatives. Arizona's legislative process is characterized by the existence of a majority-minority coalition in the House of Representatives. Exceptions to the ruling authority of the majority coalition are rare; Arizona legislative politics are coalition politics. The coalition is formed on bases which transcend partisan lines.8

The Arizona judicial system is composed of four levels of courts. All judges in Arizona occupy elective offices and are subject to recall.

Although Arizona's governmental structures resemble those of other states, Arizona politics do not. Arizona politics are as dynamic as the state. The Democrats and Republicans claim most of Arizona's voters, but there is often more conflict within the two major parties than between them. The flavor of the frontier has been retained, both in the rhetoric of the state's politics, where references to "pintos" and "agin" voters are common, and in the ideology of the individuals who represent the electors. Cary Hayden was sent to Congress in 1912 by Arizona's voters and remained until his retirement in 1968. Senator Barry Goldwater, Hayden's successor and the state's leading public figure, endorses a philosophy which relates closely to the pioneer ethic.

8. Ibid., pp. 22-30.
Arizona's political history may be divided into three periods: the pre-1950's, the 1950's, and the 1960's.

The pre-1950 period established Arizona as a stronghold of the Democratic Party. The Democratic domination of the territorial legislature remained unchecked when Arizona achieved statehood. Forty-one of the fifty-two delegates to the Arizona constitutional convention in 1910 were Democrats, and, in the first general election of 1911, the Democrats captured every statewide elective office.

With the exception of 1920, this pattern continued through the next decade. In 1920, the Republican Party won six of the seven statewide offices. This aberration was the result of a combination of factors. Tom Campbell, the Republican incumbent governor, was very popular and, undoubtedly, made no small contribution to the victory. In addition, the national trend in 1920 was to vote Republican, an influence made more effective by the large amount of publicity the Arizona press devoted to the national campaign. Thus, it is possible that some of Arizona's Republicans climbed to victory clutching the coattails of Warren G.

9. In 1916, it appeared that the Republican gubernatorial candidate, Thomas Campbell, had defeated George W. P. Hunt by thirty votes. The election was contested, however, and the state Supreme Court awarded the election to Hunt. Campbell bested Hunt in 1918 by 329 votes to become the first Republican to win a statewide office.

10. See the Arizona Daily Star, October and November, 1920.
Finally, the Democrats were warring among themselves and were unable to conduct a unified campaign. The result was a Republican victory, and Arizona returned to normalcy with a distinctly abnormal election.

The Republican upsurge was short-lived, and in the 1922 elections, the Democrats re-occupied every major statewide office. Although the Democrats continued to control Arizona politics, the Republicans offered respectable competition, losing the 1924 and 1926 gubernatorial elections by margins of less than one thousand votes. And in 1928, Republican John Phillips was elected governor. He would be the last Republican to occupy a statewide office for twenty-two years.

In 1930, the Republican Party in Arizona began experiencing a political depression equal to the economic depression then besetting the Nation. From 1930 to 1950 the Republicans ceased to influence Arizona politics. In 1942, the Republican Party could not persuade anyone to accept the Party's nomination for governor and was forced to conduct a write-in campaign. In 1944, the Republican nominee for governor withdrew from the race two weeks prior to the general election. In 1942 and 1944, no Republican was elected to either house of the Arizona legislature, and by

11. It should be noted that Campbell received more votes than did Harding in the 1920 election, thus partially qualifying the coattails explanation.
1944, the Democratic Party's voter registration fell just short of ninety percent.\textsuperscript{12}

The second historical period occurred during the 1950's and is a study of political regeneration. During this period, the Republican Party re-asserted itself as a potent political force in Arizona.

There are several reasons for the Republican resurgence. Following WW II, industry and people began to immigrate to Arizona in large numbers. Table 4-1 indicates that prior to WW II the population growth had been at a moderate rate. During the 1940's, however, a fifty percent increase occurred, and the rapid growth has continued through the 1960's.

Unlike previous immigrants, the majority of people coming to Arizona during this period were from the Midwest and Northeast.\textsuperscript{13} Generally, Northeasterners and Midwesterners moving West are well educated, occupy white-collar jobs and tend to identify with the Republican Party in their voting habits.\textsuperscript{14} The political significance of these factors is obvious. Arizona began assimilating a high percentage of

\begin{itemize}
\item 12. Valley National Bank, \textit{op. cit.}, p. 46.
\end{itemize}
Table 4-1
Population Growth of Arizona

<table>
<thead>
<tr>
<th>Year</th>
<th>Residents</th>
<th>Year</th>
<th>Residents</th>
<th>Year</th>
<th>Residents</th>
</tr>
</thead>
<tbody>
<tr>
<td>1930</td>
<td>435,473</td>
<td>1950</td>
<td>749,587</td>
<td>1960</td>
<td>1,302,161</td>
</tr>
<tr>
<td>1940</td>
<td>499,261</td>
<td>1951</td>
<td>785,000</td>
<td>1961</td>
<td>1,406,200</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1952</td>
<td>842,000</td>
<td>1962</td>
<td>1,467,700</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1953</td>
<td>894,000</td>
<td>1963</td>
<td>1,520,500</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1954</td>
<td>933,000</td>
<td>1964</td>
<td>1,562,400</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1955</td>
<td>987,000</td>
<td>1965</td>
<td>1,585,600</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1956</td>
<td>1,053,000</td>
<td>1966</td>
<td>1,609,600</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1957</td>
<td>1,125,000</td>
<td>1967</td>
<td>1,647,500</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1958</td>
<td>1,193,000</td>
<td>1968</td>
<td>1,690,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1959</td>
<td>1,261,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


Republican immigrants. The trend continues today; pro-Republican states provide a large portion of Arizona's newcomers. 15

These immigrants frequently settled in Phoenix or Tucson. Consequently, unlike many non-Southern states, the Republican strength began to concentrate in urban rather than rural areas. 16 Augmenting the Republican urban strength has

15. The relationship between migration and Republican political strength is explored in more detail in Rod Wagner's "Migration: Basic or Adjunctive to Political Change?" unpublished seminar paper (University of Arizona, 1964), p. 4.

been the industrial growth of Phoenix and Tucson. Much of Arizona's new industry has been the type which requires formal training and white-collar workers, rather than the usual Democratic-oriented laboring force. This creates a strong middle class structure which also tends to vote Republican. The result has been that Republican candidates look to the urban centers for their voting strength.

The Republican comeback was aided by the disarray of the Democrats. From 1930 to the late 1940's, Arizona was definitely a one-party state. The Republicans ceased to contest many elections, especially those for local offices. With no one to organize against, Democratic party organization began to disintegrate. Factionalism became the rule, rather than the exception. The winner of the Democratic primary was assured of victory in the general election, thus focusing most of the political conflict on the primary elections. Factionalism within the Democratic Party left an imprint closely resembling V. O. Key, Jr.'s description of "multifaceted, discontinuous, kaleidoscopic, fluid and transient" politics.

Intra-party conflict characterized Democratic party politics in the 1950's. The Republican Party's weakness in

numbers became a strength: smaller numbers lend themselves to tight organization, larger numbers do not. The ability of the Republicans to avoid wearying and damaging internal clashes enabled them to contest the general election in a harmonious atmosphere, while the Democrats groped about in a haze of dissention.19

These variables translated into votes in 1950 and 1952 when the Republicans broke the political drought that had existed since 1928. Republican Howard Pyle was elected governor in 1950 (Barry Goldwater also won public office that year) and in 1952 Congressman John Rhodes joined Pyle and Goldwater at the victory table. Success bred success and the Republicans began to offer more candidates for election. Financing campaigns became easier and Republican Party registration began to increase.

The third historical period, the 1960's, witnessed the end of Arizona as a one-party state and the emergence of a viable two-party system. The Republicans not only began to contest more statewide elections, they began to win. Tables 4-2, 4-3, and 4-4 indicate the increasing strength of the Republican Party in Arizona.

19. In Arizona there is only an eight-week interim between the primaries and the general election. This leaves little time to bind the wounds incurred in a bitter primary. Democrats, to whom primary conflict seems endemic, rarely forgive and never forget. In Arizona the Democratic candidate who emerges victorious from the primary battle often finds his Party's members as hostile as the Republicans.
### Table 4-2

**Arizona Major Senate Offices: GOP Vote Percent, 1960-68**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Governor</td>
<td>57.8</td>
<td>53.8</td>
<td>46.8</td>
<td>54.8</td>
<td>59.3</td>
</tr>
<tr>
<td>Secretary of State</td>
<td>45.3</td>
<td>b</td>
<td>b</td>
<td>b</td>
<td>b</td>
</tr>
<tr>
<td>Attorney General</td>
<td>50.4</td>
<td>57.8</td>
<td>50.7</td>
<td>57.5</td>
<td>56.0</td>
</tr>
<tr>
<td>Mines Inspector</td>
<td>55.8</td>
<td>52.8</td>
<td>43.2</td>
<td>b</td>
<td>b</td>
</tr>
<tr>
<td>Treasurer</td>
<td>60.9</td>
<td>52.9</td>
<td>b</td>
<td>44.0</td>
<td>42.4</td>
</tr>
<tr>
<td>Tax Commission</td>
<td>64.2</td>
<td>No</td>
<td>70.4</td>
<td>29.2</td>
<td>b</td>
</tr>
<tr>
<td>Corporation Commission</td>
<td>57.0</td>
<td>b</td>
<td>46.4</td>
<td>46.1</td>
<td>42.5</td>
</tr>
<tr>
<td>Auditor</td>
<td>b</td>
<td>b</td>
<td>41.9</td>
<td>36.7</td>
<td>41.4</td>
</tr>
<tr>
<td>Supt of Public Instruction</td>
<td>c</td>
<td>58.5</td>
<td>50.1</td>
<td>43.0</td>
<td>41.7</td>
</tr>
</tbody>
</table>

- **Avg Margin of Percent of Victory (+) and Defeat (-), Contested Offices: GOP**
  - +7.7
  - +5.2
  - +6.0
  - +6.2
  - +7.7

  **Contested Offices:**

  **a. Redistricting before 1966 election (plan favored GOP).**
  - b. GOP lost uncontested.
  - c. GOP won uncontested.
  - d. Two seats.
  - e. Two seats; the lower seat was a four-man race, one GOP v. three "Democrats." GOP percent of vote was figured by running the Republican against the same two Democrats as the leading Democrat ran against in addition to the Republican:
    
    \[
    R = 126,263 \quad R\% = \frac{R\text{ vote}}{R + D_2 + D_3} \\
    D_1 = 101,966 \quad R + D_2 + D_3 \\
    D_2 = 83,855 \quad D_1\% = \frac{D_1\text{ vote}}{R + D_2 + D_3} \\
    D_3 = 29,313 \quad R + D_2 + D_3 
    \]

### Table 4-3
Vote for State Legislatures, 1960-68

<table>
<thead>
<tr>
<th>Year</th>
<th>% House Elected</th>
<th>HOUSE</th>
<th>% Seats Uncontested</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>GOP</td>
<td>DEM</td>
<td></td>
</tr>
<tr>
<td>1968</td>
<td>56.7</td>
<td>43.3</td>
<td>N = 60</td>
</tr>
<tr>
<td>1966&lt;sup&gt;a&lt;/sup&gt;</td>
<td>55.0</td>
<td>45.0</td>
<td></td>
</tr>
<tr>
<td>1964</td>
<td>42.5</td>
<td>57.5</td>
<td></td>
</tr>
<tr>
<td>1962</td>
<td>40.0</td>
<td>60.0</td>
<td>N = 80</td>
</tr>
<tr>
<td>1960</td>
<td>35.0</td>
<td>65.0</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>% Senate Elected</th>
<th>SENATE</th>
<th>% Seats Uncontested</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>GOP</td>
<td>DEM</td>
<td></td>
</tr>
<tr>
<td>1968</td>
<td>56.7</td>
<td>43.3</td>
<td>N = 30</td>
</tr>
<tr>
<td>1966&lt;sup&gt;a&lt;/sup&gt;</td>
<td>54.0</td>
<td>46.0</td>
<td></td>
</tr>
<tr>
<td>1964</td>
<td>7.0</td>
<td>93.0</td>
<td></td>
</tr>
<tr>
<td>1962</td>
<td>14.3</td>
<td>85.7</td>
<td>N = 28</td>
</tr>
<tr>
<td>1960</td>
<td>14.3</td>
<td>85.7</td>
<td></td>
</tr>
</tbody>
</table>

<sup>a</sup>. Federal court-ordered reapportionment (favoring GOP) prior to 1966 elections: Maricopa County to have 1/2 the seats in both Houses, Pima County to have 1/5 the seats in both Houses, each county to subdistrict into one Senator, two Representatives subdistricts, remaining Legislative Districts 1-6 have the following delegations: #1 (1S-2R), #2 (2S-4R), #3 (2S-4R), #4 (1S-2R), #5 (2S-4R), #6 (1S-2R), all elected at-large in two single-county districts (4 and 6) and four multicounty districts (1, 2, 3, 5).

Table 4-4

State and Federal Offices Elected or Incumbent: GOP, 1960-68

<table>
<thead>
<tr>
<th></th>
<th></th>
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<td>U.S. Rep., Dist 1 Dist 3</td>
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<td>Dist 3</td>
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<tr>
<td>U.S. Senator U.S. Senator</td>
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<td>U.S. Senator</td>
</tr>
</tbody>
</table>

With one exception the Republican Party continued to grow stronger with each election in the 1960's.\textsuperscript{20} By 1966, the Republicans were ready to lay claim to the role of Arizona's dominant political party.

In 1966, the Republicans won every statewide election it contested. For the first time in Arizona history: (1) the Republican Party controlled Arizona's congressional delegation to the House of Representatives; (2) an incumbent Democratic governor was defeated in his quest for re-election; (3) the Republican Party gained \textit{de jure} control of the state House of Representatives;\textsuperscript{21} and (4) the Republican Party became the majority party in the state Senate.\textsuperscript{22}

In 1968, the Republican takeover of state politics continued. The Republicans won six of the eight statewide offices they contested, failed to contest only one statewide race, and won one statewide race against no opposition. The Republican Party continued to control both Houses of the

\textsuperscript{20} In 1964, Arizona's Republican Party fell victim to the Democratic landslide of that year. Even Barry Goldwater, Arizona's only presidential nominee, barely carried his home state against Lyndon Johnson.

\textsuperscript{21} The Republicans had controlled the House previously through control of the coalition mentioned above, see p. 81.

state legislature, and the congressional delegation to Washington.\textsuperscript{23}

The Democratic Party's edge in voter registration continued to narrow. Table 4-5 indicates that from the Democratic apex in 1940 of 87.1 percent, the Republicans steadily eroded the margin, and by 1968, possessed almost fifty percent of Arizona's registered voters. The Republican gains are accented when the "pinto" Democratic vote\textsuperscript{24} is subtracted from the Democratic rolls.

The Republican advances of 1966 and 1968 are explained partially by the factors already discussed, i.e., continued Republican migration to Arizona, additional white-collar industry, and internal conflict in the Democratic Party.\textsuperscript{25} The most important catalyst, however, in the Republican Party's explosive leap forward was the legislative reapportionment of 1966. It is to the background of this reapportionment that we now turn.

\begin{itemize}
\item \textsuperscript{24} "Pinto" Democrats are Republicans in Democratic clothing. In the pre-1960 period many Republicans who migrated to Arizona registered as Democrats in order to participate in local elections, most of which were uncontested at that time by the Republican Party. Consequently, the percentage of registered Democrats is not an accurate indication of Democratic political strength in Arizona.
\item \textsuperscript{25} Note Rice's comments, Western Political Quarterly, op. cit., pp. 529, 531, 534.
\end{itemize}
### Table 4-5
Arizona Registration and Vote for Federal Officers, 1960-68

<table>
<thead>
<tr>
<th></th>
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<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>GOP</td>
<td>DEM</td>
<td>GOP</td>
<td>DEM</td>
<td>GOP</td>
</tr>
<tr>
<td>GOP-DEM percent of total registration</td>
<td>41.3</td>
<td>55.9</td>
<td>37.0</td>
<td>60.8</td>
<td>35.2</td>
</tr>
<tr>
<td>GOP-DEM percent of total presidential vote</td>
<td>54.8</td>
<td>35.0</td>
<td></td>
<td>50.4</td>
<td>49.5</td>
</tr>
<tr>
<td>GOP percent of vote for U.S. Senator</td>
<td>57.2</td>
<td>no election</td>
<td>51.4</td>
<td></td>
<td>45.1</td>
</tr>
<tr>
<td>GOP percent of vote, U.S. Rep., District 1</td>
<td>71.6</td>
<td>67.1</td>
<td>55.3</td>
<td>58.7</td>
<td>59.2</td>
</tr>
<tr>
<td>U.S. Rep., District 2</td>
<td>29.7</td>
<td>40.4</td>
<td>41.3</td>
<td>41.7</td>
<td>44.3</td>
</tr>
<tr>
<td>U.S. Rep., District 3</td>
<td>63.4</td>
<td>56.9</td>
<td>48.5</td>
<td>44.0</td>
<td></td>
</tr>
</tbody>
</table>

The Arizona Apportionment Tradition

The Constitutional Convention

The Arizona apportionment experience began with the convention charged with drafting the state's first constitution. The uneven geographic population distribution and the diversity of racial groups contributed to the problems of representation which were discussed at the convention.

The overriding issue at Arizona's constitutional convention was whether the principles of direct democracy, the initiative, referendum and recall, should be adopted. Thus, most of the conflict surrounding the convention's proceedings focused on the issue of direct democracy, rather than apportionment and districting. Further clouding the apportionment conflict in the convention were the inadequate reports on the convention's proceedings. Members were allowed to edit their remarks and "... it is impossible

26. Sizable ethnic populations are still common to Arizona. See Valley National Bank, op. cit., p. 11.

27. The most comprehensive examination of Arizona apportionment history is David A. Bingham's "Legislative Apportionment: the Arizona Experience," Arizona Review of Business and Public Administration, XI (October, 1962), pp. 1-22. Professor Bingham generously has made available to me his research notes in this area.

to follow the arguments made concerning many important decisions."^{29}

The constitutional convention was composed of fifty-two delegates from the thirteen Arizona counties. The Enabling Act provided for the delegates to be apportioned "... as nearly as may be, equitably among the several counties ... in accordance with the voting population."^{30}

The voting population of Arizona has always been significantly less than the actual population, and this caused some discord at the convention.^{31} Table 4-6 indicates the actual delegate strength of each county to the convention, and the delegate strength had the convention been apportioned according to population.

Under the leadership of George W. P. Hunt of Gila County, the convention began to draft the state constitution. The convention established two types of committees to facilitate its work. There were three procedural committees for conducting the convention, and twenty-one standing committees for the actual drafting of the document. The task of deciding upon the apportionment of the state legislature was assigned to the Committee on the Legislative Department,

^{29} Ibid., p. 27.


^{31} Van Petten, op. cit., p. 19.
Table 4-6
1910 Arizona Constitutional Convention:
County Populations, Territorial Delegate Vote
and Convention Delegate Strength

<table>
<thead>
<tr>
<th>County</th>
<th>Population</th>
<th>1908 Territorial Delegate Vote</th>
<th>Actual Delegate Strength</th>
<th>Delegate Strength Earned on Population Basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apache</td>
<td>9,196</td>
<td>567</td>
<td>1</td>
<td>2,340</td>
</tr>
<tr>
<td>Cochise</td>
<td>34,591</td>
<td>5,187</td>
<td>10</td>
<td>8,803</td>
</tr>
<tr>
<td>Coconino</td>
<td>8,130</td>
<td>1,006</td>
<td>2</td>
<td>2,069</td>
</tr>
<tr>
<td>Gila</td>
<td>16,348</td>
<td>2,217</td>
<td>5</td>
<td>4,159</td>
</tr>
<tr>
<td>Graham-Greenlee</td>
<td>23,999</td>
<td>2,753</td>
<td>5</td>
<td>6,106</td>
</tr>
<tr>
<td>Maricopa</td>
<td>34,488</td>
<td>4,633</td>
<td>9</td>
<td>8,776</td>
</tr>
<tr>
<td>Mohave</td>
<td>3,773</td>
<td>620</td>
<td>1</td>
<td>960</td>
</tr>
<tr>
<td>Navajo</td>
<td>11,471</td>
<td>724</td>
<td>2</td>
<td>2,919</td>
</tr>
<tr>
<td>Pima</td>
<td>22,818</td>
<td>2,556</td>
<td>5</td>
<td>5,806</td>
</tr>
<tr>
<td>Pinal</td>
<td>9,045</td>
<td>706</td>
<td>2</td>
<td>2,302</td>
</tr>
<tr>
<td>Santa Cruz</td>
<td>6,766</td>
<td>664</td>
<td>1</td>
<td>1,722</td>
</tr>
<tr>
<td>Yavapai</td>
<td>15,996</td>
<td>3,245</td>
<td>6</td>
<td>4,070</td>
</tr>
<tr>
<td>Yuma</td>
<td>7,733</td>
<td>1,306</td>
<td>3</td>
<td>1,968</td>
</tr>
</tbody>
</table>

Distribution of Power and Apportionment. The committee was composed of thirteen members, chaired by Mulford Winson of Yuma.\textsuperscript{32}

The apportionment of the state legislature was the most difficult problem for the committee,\textsuperscript{33} and the committee's final report was submitted only after several colorful and sometimes bitter debates. The committee adopted the county as the basis for apportionment in the Senate, making a small bow in the direction of population by granting the five most populous counties an additional senator each. Thus, the Senate would be composed of nineteen members: one from each county,\textsuperscript{34} and one additional senator from Cochise, Gila, Maricopa, Pima and Yavapai Counties. Attempts to alter the committee's recommendation in the Committee of the Whole failed.\textsuperscript{35}

\textsuperscript{32} The other members were: Lysander Cassidy (Maricopa); A. C. Baker (Maricopa); M. G. Cunniff (Yavapai); E. W. Coker (Pinal); Fred Colter (Apache); Thomas Feeney (Cochise); William Morgan (Navajo); C. M. Roberts (Cochise); Milt Simms (Graham); W. T. Webb (Graham); Jacob Weinberger (Gila); and Bracey Curtis (Santa Cruz). Note that Pima County was not represented on the committee.

\textsuperscript{33} Bingham, \textit{op. cit.}, p. 3.

\textsuperscript{34} Greenlee County was being formed out of Graham County, a fact of which the framers were aware. Therefore, they acted on the basis of fourteen rather than thirteen counties.

\textsuperscript{35} An interesting exchange between convention delegates over the Senate apportionment is cited by Bingham, \textit{op. cit.}, pp. 3-4.
The committee also recommended that the House be composed of thirty-five members with each county assigned a fixed membership. No provision for future apportionment was made. The fixed membership for each county was determined on the basis of voter population. This was not surprising. Voter population had been the apportionment basis for members of the territorial legislature, and the constitutional convention itself had been apportioned on this basis.\textsuperscript{36}

Again, attempts to alter the committee's recommendation failed. The Committee of the Whole approved the Apportionment Committee's report with most of the opposition coming from Maricopa and Pima County delegates who sought increased representation for their counties.\textsuperscript{37}

After the Committee of the Whole met, the convention quickly disposed of the apportionment problem. Attempts to reopen debate on the apportionment issue resulted in some interesting discussion, but very little else. Lamar Cobb (Graham County) asked for a resolution requesting the

\textsuperscript{36} Using this criterion the committee recommended that the following apportionment be made: Apache County, one representative; Cochise County, seven; Coconino County, one; Gila County, three; Graham County, two; Greenlee County, two; Maricopa County, six; Mohave County, one; Navajo County, one; Pima County, three; Pinal County, one; Santa Cruz County, one; Yavapai County, four; and Yuma County, two. This is the only time in the state's history that Maricopa County did not possess the largest delegation to the state House.

\textsuperscript{37} Bingham, \textit{op. cit.}, p. 4.
Congress to provide accurate census data on the county populations, excluding Indians not taxed. Cobb argued that, at the time of the Enabling Act, "... Congress did not ... have the population of the various counties of Arizona." A. F. Parsons (Cochise County) opposed such action and defended voting population as the apportionment base: "they [Congress] knew we had Indians and a number of people who would count as cholera plague victims and very little else, enumerated on the census."\(^{38}\) Cobb insisted on a roll call vote for his resolution and suffered the expected defeat.

It is interesting to note that the five largest counties (Cochise, Gila, Maricopa, Pima and Yavapai) had sufficient voting strength in the convention to dictate an apportionment formula which favored big county domination. Apparently, however, no attempt to do so was made. Why?

Professor Bingham offers some plausible explanations. It is possible that the existing apportionment patterns at the national level and those in other states influenced the delegates, many of whom were not originally from Arizona. Then, too, the larger counties did not possess very much in common, and, consequently, may not have identified with each other. Perhaps regional pride was involved, and the fear

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\(^{38}\) Complete Verbatim Report: Arizona Constitutional Convention, 1910, Session of November 24, 1910. No author or publisher.
of legislative dominance by one area of the state overrode whatever desire the large counties had to coalesce. 39

I would suggest the first explanation offered is most accurate. The historical shift away from population as the primary apportionment base had been underway for two decades, 40 and the delegates to Arizona's convention were aware of the processes used by other states. 41 The notion of both houses of a state legislature apportioned according to population possessed little currency at that time.

In addition, it must be remembered that, according to the apportionment finally accepted by the convention, the five largest counties could control the legislature if they desired. Together they possessed ten of the nineteen Senate votes and twenty-three of the thirty-five House votes.

Post-Convention Changes

Between 1910 and 1953, Arizona's apportionment pattern was modified only twice. In the general election of 1918, the initiative was used to approve a constitutional amendment altering the House apportionment (the Senate's apportionment remained unchanged). The amendment provided that each county would be apportioned on the basis of votes cast in the last

preceding gubernatorial election. Each county would receive one representative for each 1500 votes "or major fraction thereof" cast in the election.

Reapportionment was to occur every two years following a gubernatorial election, and each county was to determine its own number of representatives. No county was to send fewer delegates than its pre-1918 allotment to the legislature. The amendment was ratified by a substantial margin, 17,564 for and 10,688 against.42

The general election of 1932 resulted in another modification of Arizona's apportionment process through the initiative procedure. Again, the Senate apportionment remained intact. The basis for the House apportionment was unchanged, but the requisite votes to entitle a county to additional representation were raised from 1500 to 2500. Unlike the 1918 amendment, a county's previous delegate strength could be reduced. Seven counties did suffer reduced delegations and the total House membership changed from sixty-four members to fifty-three. Again, the amendment was approved by a wide margin, 56,182 for and 29,806 against.43

The 1953 Amendment

Arizona's apportionment process was altered radically in 1953. In his initial message to the 1953 Legislature,

42. Bingham, op. cit., p. 6.
43. Idem.
Governor Howard Pyle requested an apportionment resolution which would limit the size of the House and establish a twenty-eight man Senate, apportioned on the basis of two senators per county, thereby "correcting a 40-year injustice to many of our counties."  

The motivation for the amendment in unclear. It may have been based on necessity; unless the size of the House was reduced, the physical facilities could no longer accommodate the membership.  

More likely, the move for the amendment was generated by political considerations. It is possible that the urban population concentrations of the post-WW II period were modifying the pre-war balance of power in the Senate. The pre-war control of the Senate by the major economic interests of the state—mining, cattle, utilities, agriculture, railroads and banks—was jeopardized, and, therefore, the 1953 reapportionment may have been designed to maintain control by the traditional political forces, most of which were located in less-populous counties.  

Also, the rapid development of industry in the population centers gave rise to fears of the industrial interests that organized labor might become a potential


45. Van Petten, op. cit., p. 92.
political force. Thus, a Senate which gave the small counties parity with the heavily populated areas could serve as a vehicle to dilute labor's political influence.

Finally, it has been suggested that Pyle's request for an apportionment bill was a legislative tactic to facilitate the passage of other bills. In order to obtain small-county support for other legislation, Governor Pyle offered a reapportioned Senate which would favor the small counties.46

The Governor's request was honored, and resolutions were introduced concurrently in the House and Senate. Both resolutions were approved by their respective chambers.

The House resolution died later in the Senate. The Senate resolution (SCR 1) was approved by the House in March, 1963. Although the House was ostensibly controlled by the Democrats, the actual governing coalition was controlled by the Republicans.47 In reality, then, the legislative proposals of a Republican governor were accepted by a Republican-controlled legislature. Following passage of the resolution, a referendum was scheduled for September 29, 1953.

The reapportionment conflict in the legislature had received little publicity. This changed, however, during the campaign before the special election. The amendment proposals were publicized widely as the date for the special


47. Ibid., pp. 8-10.
election neared. With the exception of the Tucson newspapers, most of the state's press advocated passage of the amendments. Especially active in its support was the state's most influential newspaper, the Arizona Republic. Understandably, the news media of the smaller counties generally supported the proposals.48

The voters accepted the reapportionment amendment by the narrow margin of 444 votes (30,157 for and 29,713 against). Only seventeen percent of the state's eligible voters went to the polls, far fewer than in the 1932 election.49

Of the state's five largest counties, three (Maricopa, Navajo and Pinal) supported the amendment. Navajo and Pinal stood to gain from its adoption as they each still had only one senator. Of the original "big five," only Maricopa approved the amendment, and then by less than a thousand votes. Still, this margin was decisive, an irony when one considers that the reapportionment amendment diluted the representation of the urban counties. As expected, the nine smaller counties approved the amendment.50

48. Ibid., pp. 10-11.
49. Professor Bingham suggests there may have been a "method in this madness" of a low turnout. Ibid., p. 6, n. 24. However, it is more probably that the national significance of the 1932 presidential election explains the heavier voter response.
The amendment's provisions (1) apportioned the Senate on the basis of two senators per county; (2) fixed the House membership at eighty; (3) guaranteed each county at least one representative in the House; (4) allowed each county one additional representative for each 3520 votes cast in the preceding gubernatorial election; and (5) required the Secretary of State to reapportion the House every four years.

The districts within counties were defined by the County Boards of Supervisors and were to be "as nearly as may be" of equal voting population.

As a result of the amendment, two reapportionment dates occurred before 1966. In 1958, no change was necessitated by the 1956 gubernatorial election. In 1962, Maricopa and Pima Counties increased their delegations (Maricopa was granted forty seats, one short of a majority), and Cochise, Gila, Graham and Greenlee Counties lost representation.

Congressional Districts

Although this study is concerned primarily with state legislative apportionment, a brief examination of congressional districting will add to the knowledge of Arizona's apportionment background.

51. If the result exceeded the fixed number of eighty, the unit 3520 is increased "by ten, or such multiple of ten as will reduce the number of Representatives to eighty." By 1962, the base unit was 6010.

52. For more complete analyses of Arizona's congressional districting, see Arizona Legislative Council, Report
As a territory, Arizona was granted one non-voting delegate to the national House of Representatives. This delegate was elected at-large. When Arizona was admitted to the Union, it still merited one representative. He continued to be chosen at-large.

In 1942, Arizona was granted an additional representative. Attempts by the state Senate to divide the state into two congressional districts were defeated in the House. Consequently, the 1942, 1944 and 1946 congressional elections were statewide.

In 1947, the Eighteenth Legislature eliminated the at-large scheme. A bill was introduced into the Senate dividing the state into two congressional districts. District 1 was composed of Maricopa County; District 2 of the remaining thirteen counties. In the event that an additional congressman was granted Arizona, the act provided for a "conditional" districting plan to take effect. Maricopa County would continue to comprise the first district. The second district would include Cochise, Pima, Pinal, Santa Cruz and Yuma Counties, and the remaining eight counties would make up the third district.  

The bill was accepted by the legislature, but vetoed by Governor Sidney Osborn. The Governor was an advocate of the at-large system. The legislature voted to override the veto and the bill became law in 1947. From 1947 to 1962 attempts were made to revise the bill, but none succeeded.

When Arizona received an additional representative in 1962, the conditional districting plan took effect.
CHAPTER 5

THE ARIZONA EXPERIENCE: II.

On the eve of Baker v. Carr's announcement to the public, Arizona's legislative and congressional districts, like those of almost every state in the Union, were malapportioned.1 By February, 1966, when Klahr v. Goddard was delivered, little had changed.2 The Arizona House and congressional apportionments had not been altered. The Arizona Senate had been reapportioned, but on a basis of sufficient deviation from the norm to cast doubt upon its constitutionality. The area of inquiry in this chapter is an examination of this four-year period and the failure of the legislature to resolve Arizona's reapportionment and redistricting problems.

Malapportionment in Arizona

Subtlety was not a characteristic of Arizona's malapportionment. The Arizona Senate was the nation's third


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worst apportioned Senate, and the congressional apportionment was not far behind. The Arizona House was apportioned more equitably than most, but a requirement that each county be guaranteed at least one representative prevented the lower chamber from conforming to the one man, one vote doctrine.

The state Senate was Arizona's most glaring example of malapportionment. Table 5-1 indicates that the population-variance ratio (PVR) in the Senate was 85.8:1, the electoral percentage was 12.8, and the maximum deviation percentage (MDP) ranged from +613 to -91.7. The


5. Congressional Record, loc. cit.

6. The population-variance ratio is determined by dividing the ratio of the least populous county (or district) into the most populous, with the resulting figure related to "1." A legislature perfectly apportioned to population would have a PVR of 1:1.

7. The electoral percentage is the smallest percentage of a state's population which could theoretically control a majority of the legislators. A legislature perfectly apportioned to population would have an electoral percentage of fifty-one.

8. The maximum deviation percentage is determined by dividing the state's population by the number of legislative districts, thereby obtaining a norm, and then calculating the percentage by which each district deviates from the norm. The PVR, electoral percentage and MDP are the most frequently used indices of malapportionment.
Table 5-1

Arizona's Malapportionment Prior to Klahr v. Goddard

<table>
<thead>
<tr>
<th>District</th>
<th>Population Variance Ratio</th>
<th>Electoral Percentage</th>
<th>Maximum Percent Deviation From Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senate (1962)</td>
<td>85.8:1</td>
<td>12.8</td>
<td>+613.0</td>
</tr>
<tr>
<td>Senate Following Passage of SB 11</td>
<td>7.1:1</td>
<td>40.0</td>
<td>+31.0</td>
</tr>
<tr>
<td>House</td>
<td>5.3:1</td>
<td>46.0</td>
<td>+87.0</td>
</tr>
<tr>
<td>Congressional Districts</td>
<td>3.3:1</td>
<td>24.5</td>
<td>+52.9</td>
</tr>
</tbody>
</table>

The major districting problem was posed by District 1 (Maricopa County) with a population of 663,510 and District 3 with a population of 198,236. District 2

Arizona's congressional districts also failed to meet the one man, one vote standards. Table 5-1 demonstrates that there was a PVR of 3.3 and a MDP of +52.9 and -54.3. Two of the three congressional districts exceeded fifteen percent deviation considered to be the acceptable norm at that time. The major districting problem was posed by District 1 (Maricopa County) with a population of 663,510 and District 3 with a population of 198,236. District 2

9. Following the 1965 special session, the Senate's PVR was 7.1, the electoral percentage 40.0, and the MDP ranged from +31.0 to -17.7. See Table 5-1.
Legislative Activity, 1962-1965

On January 11, 1965, Governor Sam Goddard addressed the Twenty-seventh Legislature in joint session:

... State government is in a process of great change in our nation. For good or ill, we would be foolish to pretend these changes will go away. ... To reapportion the legislature on a basis which will satisfy everyone and hurt no one would seem to be impossible. ... \(^{10}\)

The governor was prophetic. To reapportion at all seemed to be an impossible task. Despite the governor's caveat, many Arizona legislators did seem to pretend the changes would disappear. Attempts to reapportion the state from 1962 to 1965 failed.

The Reaction to Baker v. Carr

The reaction in Arizona to the Baker v. Carr\(^{11}\) decision was muted. The legislature had adjourned prior to the announcement of the decision and public comment from individual legislators was nil.\(^{12}\) The newspaper generally considered to be the most influential in the state, the

\(^{10}\) 369 U.S. 186 (1962).


\(^{12}\) By 1966, the legislators were more vocal in their reaction to the Court's decisions. With one exception, the legislators I interviewed stated their opposition to the reapportionment decisions. Senator John W. McLaughlin (D-Greenlee) noted his early opposition to the decisions, but said he had changed his mind because of "inefficient state government."
Arizona Republic, did not consider the decision important enough to merit the lead headline. The Arizona Republic expressed doubt that the case would affect Arizona.\(^\text{13}\) A later editorial in the same newspaper criticized the Court's apportionment role, commenting that "if Arizona voters don't like the apportionment in the Senate, they can change it."\(^\text{14}\)

Tucson's Arizona Daily Star also adopted a moderate posture. The newspaper commented that a reading of the decision failed "to disclose anything alarming in the implications of the majority decision." The Daily Star further suggested that "the greatest effect of this decision will be in the moral suasion that it will exert throughout the country in helping to correct obviously prolonged inequalities in redistricting."\(^\text{15}\)

Senator Barry Goldwater termed the decision "proper," and both Morris Udall and John Rhodes were quoted as believing the decision to have little relevance to Arizona.\(^\text{16}\)

Although some commentators predicted that Arizona's Senate would be affected by the ruling, most observers depreciated the relevance of the decision to Arizona, and

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almost all agreed that whatever impact the decision might have would be a long time in coming.

The legislature's reaction to the Court's involvement in reapportionment is exemplified by the activities in the first regular session of the Twenty-sixth Legislature. The session began January 14, 1963, and was the first meeting of the legislature since the announcement of *Baker v. Carr*. Although the decision's import was still a current topic in both the lay and scholarly press, the Arizona Legislature gave no indication of concern.

Governor Paul Fannin did not refer to the decision in his legislative message, and not one bill, resolution or memorial relating to reapportionment or redistricting was introduced into either house during the session.

There are two explanations for the legislature's lack of response to the reapportionment decision. First, the legislature was involved with a major tax program. Governor Fannin devoted virtually his complete legislative message to this subject. 17 Second, the *Baker* decision had provided little in the way of substantive constitutional law, and it is probably that the legislators still viewed the decision's application to Arizona as remote.

The Reaction to Wesberry v. Sanders

The beginning of the second regular session of the Twenty-sixth Legislature brought little change. Governor Fannin indicated more than fifteen different areas of concern with which he wanted the legislature to work; reapportionment was not one of them. For the first month of the session no reapportionment or redistricting legislation was initiated in either house. Then, on February 17, 1964, the United States Supreme Court delivered the Wesberry v. Sanders decision, requiring that congressional districts conform to the one man, one vote principle.

The reaction of Arizona's legislature to the Wesberry case was more pronounced than when the Baker decision had been delivered. Senate majority leader, Harold Giss (D-Yuma), immediately committed the legislature to action: "We must, absolutely must, take action this year. The Supreme Court has spoken, and we have a responsibility to fulfill. We will remain in session until the redistricting problem is solved, even if we must work past the regular adjournment date." The President of the Senate, Clarence L. Carpenter (D-Gila) agreed with Giss, and the House

leaders stated that redistricting bills already were being drafted.  

    Despite Giss' comments, little apportionment activity occurred in either house. Only one apportionment bill (SB 274) was introduced into the Senate, and it died in committees.  

    The Senate did successfully adopt a resolution (SR 3) requesting the Arizona Legislative Council make a study of congressional districting. The resolution was introduced the last day of the session, and accepted on a roll call vote the same day.  

    The House was more active. Four bills were introduced in an effort to equalize the state's congressional districts.  

    None were able to gain the status of law, although one, HB 328, passed through both houses before being lost in conference committee.  

    For the second consecutive session, Arizona's legislators had been unable to produce a reapportionment or redistricting law. The legislative failure is attributed to four factors. When the Court delivered the Wesberry

23. Ibid., pp. 755, 756.  
24. The four bills were: HB 261, HB 328, HB 358 and HB 367.
decision, Arizona's legislature had completed one-third of its session; it was growing too late to initiate major legislation. Second, despite Giss' prediction of an extended session, the fact that 1964 was an election year, with filing deadlines to meet and campaigns to wage, militated against the representatives working into the summer. Third, the Wesberry decision's import was not clear and the reapportionment guidelines established by the case unknown. Finally, many legislators still believed the Court would be lenient in applying the decision to the states, and that Arizona would be unaffected.

The legislature adjourned on April 15, 1964. Twelve days later, Gary Peter Klahr's challenge to Arizona's apportionment added Arizona's name to the growing list of states involved in apportionment litigation.

The Reaction to Reynolds v. Sims

Klahr filed his suit on April 27, asking that the congressional and senatorial districts be reapportioned before the 1964 general elections. The three-judge District Court postponed any action pending the United States Supreme Court's decisions on several reapportionment cases then before the Court. The United States Supreme Court

announced these decisions on June 14, extending the one man, one vote concept to state legislatures.26

The reaction of Arizona's legislators was immediate. Senator Carpenter first denounced the Court's decisions, contending that Arizona "might as well have one house and forget it."27 The next day, however, Senator Carpenter joined with Senator Giss in suggesting that the case might not affect Arizona. Senator Giss argued that "where we have a constitutional provision put in by the people on the makeup of the Senate, there is a vast difference from states where the legislature has just enacted a statute."28

Senator H. S. (Hi) Corbett (R-Pima) charged that the decision would "destroy our system of checks and balances." Senator Corbett assumed that each county would retain at least one Senate seat and then calculated that on that basis the Arizona Senate would be increased to 180 members.29

Senator Robert Morrow (D-Mohave) also was critical of the decisions, evoking a fear of large-county domination

28. Arizona Republic, June 16, 1964. Senator Carpenter also argued that as the Arizona Senate was structured similar to the United States Senate, there was a possibility that Arizona would escape the application of the rulings.
which would be repeated by many Senators within the next two years. He branded the decision as a

... tragedy for the counties and districts with smaller populations. ... The effect of this decision will transfer to a small area of the state the control of our laws, natural resources and basic economies.

The rest of the state will be placed at the mercy of a small area which ... will ruthlessly exploit for their own advantage tax-wise.

Wilderness areas will be thrust upon us and our water sources will be gobbled up. ... 30

The notion that the Court's decisions might not apply to Arizona was more a hope than a prediction. Governor Fannin indicated that the question was not whether Arizona would have to reapportion, but when, 31 and the Arizona Republic editorialized:

... [I]t would be a mistake to place the entire blame [for Arizona's reapportionment problems] on the Supreme Court. The Arizona Senate has known for some time that it would have to reapportion its districts ... but both Congressman Senner [Arizona's representative from the Third District] and the Senators from the small counties wanted one more free ride. 32

On June 20, 1964, Senator Carpenter and House Speaker William Barkley (D-Maricopa) met with Governor Fannin and requested that he appoint a "blue-ribbon citizens committee" to study possible apportionment solutions. Governor Fannin acceded to the request and named a fifteen-member panel to

32. Ibid., June 17, 1964.
study the reapportionment question and report before the beginning of the next legislative session.

On June 25, 1964, the three-judge District Court postponed action on Klahr's suit until after the legislature had had an opportunity to act. The District Court stated it would take no action until thirty days after the 1965 legislature had adjourned. Thus, the 1964 elections would be conducted on the basis of the existing apportionment, and the legislators would be given one more opportunity to avoid court action. For the Senators from the rural counties, the 1964 elections would constitute the vehicle for "one more free ride."

The Blue-ribbon Committee

The Twenty-seventh Legislature would not convene before January 11, 1965. Shortly after the District Court issued its June 25 stay order, the Governor's blue-ribbon committee began regular meetings, terminating with its report and recommendations in December, 1964.

The blue-ribbon committee, officially known as the Governor's Committee on Legislative Reapportionment, held plenary meetings in Phoenix on July 27, October 16, November 13 and December 21. 33 All meetings were public with the

33. The members of the committee were: Dr. Heinz R. Hink, Chairman; Dr. John D. Lyons, Vice-Chairman; Representative Isabel Burgess (R-Maricopa); Mr. Richard Fennemore; Mr. William C. Frey; Mr. James B. Greenwood; Mr. Wayne E. Legg;
press invited. A large part of the committee's work was done by the subcommittees on Agenda, Legal and Constitution Principles, Population and Districting, Actions of Other States, and on specific aspects of reapportionment and redistricting in each of Arizona's congressional districts. Subcommittee meetings occurred between August and December in Flagstaff, Phoenix and Tucson.

On December 21, the committee submitted four recommendations. The first recommendation suggested voter registration rather than population as the basis for apportionment. This recommendation was made in part to allow an extension of the existing reapportionment provisions, according to which the House was reapportioned every four years. The committee also expressed the belief that the Constitution "intends that those should have the protection of legislative representation who claim their constitutional right by registering to vote."  

The committee's second recommendation moved beyond the area of legislative reapportionment and suggested a

Dr. Lewis J. McDonald; Mr. Samuel H. Morris; Mr. James B. Rolle; Senator C. B. Smith (D-Nogales); Mr. William A. Stanfield; Mr. Robert S. Tullar; Mr. Dudley W. Windes; and Mr. Harold J. Wolfinger. Governor Fannin, Senator Carpenter and Representative W. B. Barkley were ex officio members.

34. Report of the Governor's Committee on Legislative Reapportionment, State of Arizona, no author or publisher, pp. 3-11.

35. Ibid., p. 3.
solution to the congressional districting problem. Leaving District 2 untouched, the committee recommended that the integrity of county lines as district boundaries be compromised by dividing Maricopa County so as to equalize the population of Districts 1 and 3.  

The third recommendation concerned the size of the state legislature. The committee favored retention of the bicameral system and suggested that the House be made up of eighty-one members and the Senate, twenty-seven. The apportionment would allocate nine single-member senatorial and twenty-seven single-member legislative districts to each of Arizona's three congressional districts. Each senatorial district was to consist of three legislative districts. The committee noted that attempts to preserve Arizona's counties as basic units of representation had failed because of the vast differences in registered voters and population between the counties. In a prophetic statement, the committee predicted that any apportionment plan guaranteeing each county at least one seat in either chamber would be condemned by the courts.  

The fourth recommendation concerned the procedure of reapportionment. As county lines would not have to conform to legislative or senatorial districts, the committee  

36. Ibid., pp. 5-6.  
37. Ibid., pp. 7-8.
recommended that the function of redistricting be taken from the county Boards of Supervisors and transferred to a state Board of Electors. This twelve-member board would be appointed by the governor with the advice and consent of the Senate, for staggered terms of office. Four members were to come from each congressional district. No more than two members from each congressional district could belong to the same political party. 38

The committee reached its conclusions with little conflict, and the report was tendered to the Governor in December, 1964. The report aroused little comment from either the press or the politicians. There was some criticism of the committee's recommendation that voter registration be substituted for population as the apportionment basis, but otherwise the report was received largely in silence. The committee was satisfied it had fulfilled its charge. 39

One month prior to the blue-ribbon committee's adjournment, the research staff of the Arizona Legislative Council had completed its report on congressional districting requested by SR 3. 40 After a brief introductory analysis of

38. Ibid., p. 10.

39. Interview with Dr. Heinz Hink, Professor of Government, Arizona State University, Tempe, Arizona, June 17, 1966.

40. See above, p. 115.
the reapportionment decisions, the staff presented fourteen "suggestions" for congressional redistricting. The fourteen plans were accompanied by detailed statistical summaries and by maps displaying the boundaries proposed for Arizona, Maricopa County and Phoenix.41

Thus, as the Twenty-seventh Legislature convened in Phoenix in January, 1965, two separate reports on Arizona's apportionment problems had been prepared with suggested remedies. Neither report would have any visible impact.

The Twenty-seventh Legislature, First Regular Session

Governor Sam Goddard's opening address to the first regular session of the Twenty-seventh Legislature ranked apportionment second among the state's immediate problems. Recognizing the complexity of the problem, Governor Goddard concluded his remarks on reapportionment by noting that

. . . the task [of reapportioning and redistricting] shall be tedious and difficult; it cannot properly be considered along with the myriad of pressing matters you must also decide. Therefore, I presently intend calling a special session immediately following your regular deliberations to consider reapportionment.42

Despite the governor's announcement, both houses initiated apportionment legislation during the regular session.


session. Senator Robert Morrow introduced SB 12 on the second day of the session. The bill was designed to establish the boundaries of Arizona's three congressional districts. The bill was reported with a favorable recommendation by the original committees (thus becoming the first Senate reapportionment bill since the 1950's to go beyond the original committee structure). The bill, however, failed to pass the Rules Committee. 43

Senator Morrow submitted another redistricting bill (SB 261) on March 16. Morrow urged the bill's adoption, arguing that with the enactment of SB 261, and five other bills (all of which he had introduced), "we can go home now, without a Special Session, secure in knowing we have subscribed to the Supreme Court edict, of rational determination and non-invidious discrimination, regardless of the opinions of many of us to the contrary." 44 The Senate was not persuaded and SB 361 died in the original committees.

Three Senate concurrent resolutions were offered in the first session, one of which would have divided Arizona into two states, thus providing the rural counties with a...

43. Ibid., pp. 31, 37, 476, 486.

44. Ibid., pp. 371-372. Senator Morrow also introduced several bills tangential to the reapportionment issue. None were reported out by the original committees. The bills were: SB 175, SB 176, SB 184, and SB 200. See Ibid., pp. 191, 192, 284, and 229.
separate legislature. None of the resolutions were adopted.\(^{45}\)

In other reapportionment activity, the Senate received a communication from the Arizona Cattle Feeders Association. The Association notified the Senate of its adoption of a resolution alerting the Congress, Arizona State Legislature, and citizens of Arizona "to the dangers inherent in [the reapportionment decisions]" and requesting a constitutional amendment to preserve the existing structure.\(^{46}\)

Apportionment legislation in the House fared somewhat better than in the Senate. On January 13, Representative Burgess and forty-three others submitted HB 2, a bill prescribing congressional districts. The bill passed through the original committees and was accepted by the House.\(^{47}\) The bill was sent to the Senate, but failed to get beyond the committee structure.\(^{48}\) One other redistricting bill and two concurrent resolutions were introduced into the House. None were accepted.\(^{49}\)

\(^{45}\) Ibid., pp. 67, 73, and 146. The concurrent resolutions were SCR 6, SCR 7, and SCR 10.

\(^{46}\) Ibid., pp. 176-177.

\(^{47}\) Journal of the House, Twenty-seventh Legislature, op. cit., pp. 46, 57, 92, 130, 135, 144, 145, 148, and 150.


\(^{49}\) Journal of the House, Twenty-seventh Legislature, op. cit., pp. 263, 131, 136, 279, 326. The bill was HB 262, the concurrent resolutions, HCR 12 and HCR 18.
The legislature was successful in one effort relating to reapportionment. On January 14, fifty-one legislators introduced a concurrent memorial requesting Congress to call a constitutional convention for the purpose of amending the Constitution to allow the states to apportion one house of their legislatures as they pleased. HCM 1 quickly moved through the House, and was passed on January 20. The Senate adopted a memorial on January 22, and Governor Goddard signed it on February 2. The memorial was forwarded to Washington where it joined similar memorials initiated by a number of other states.

**The Redistricting and Reapportioning Study Committee**

In the closing days of the Twenty-seventh Legislature's first regular session, the House and Senate began to prepare for the special session on redistricting and reapportionment. Anticipating the governor's call for the fall, 1965, House Speaker Jack Gilbert wrote the President of the Senate, Clarence Carpenter, suggesting that they appoint a joint committee of five representatives from each house to prepare the staff work prior to the special session.51

50. Ibid., pp. 56, 64, 70, 75-76. Journal of the Senate, Twenty-seventh Legislature, op. cit., pp. 55, 56, 57, 87.

Senator Carpenter agreed and the respective houses named their members to the joint committee, which became known as the Redistricting and Reapportioning Study Committee. The study committee began meeting on April 28, 1965.

The study committee was a harbinger; its problems would be evident in the special session to follow. During the first meeting, the study committee chose Senator John McLaughlin as Chairman, and Representative Isabel Burgess as Vice-Chairman, but agreed on very little else.

Conflict occurred over the role of advisors to the committee. Senator Morrow did not want advisors making policy for the committee. Senator John Conlan (R-Maricopa) also expressed concern that the two attorneys invited to appear before the study committee, Philip Haggerty and John P. Frank, might lobby for a particular apportionment plan. Haggerty, the assistant attorney general, and Frank were attorneys for the state in the Klahr litigation. A suggestion to invite experts from other states also met opposition, and the study committee decided to take no immediate action concerning advisors.

52. House members were: Mrs. Isabel Burgess (R-Maricopa), Mr. Jack Brown (D-Apache), Mrs. Etta Mae Hutchinson (D-Pima), Mr. Delos Ellworth (R-Maricopa), and Mr. William Jacquin (R-Pima). Mr. LaVerne Welker (D-Maricopa) and Mr. C. L. Slane (D-Yuma) were named as alternates. The Senate members were: John W. McLaughlin (D-Greenlee), Robert Morrow (D-Mohave), Harold Giss (D-Yuma), John Conlan (R-Maricopa) and David H. Palmer (D-Yavapai).

Discussion concerning problems relating more directly to the study committee's tasks contributed to the first meeting's discord. The study committee failed to decide whether redistricting or reapportionment would be its primary consideration, whether county integrity would be preserved in drawing district boundaries, and whether census population or voter registration would be the legal basis for apportionment. 54

The study committee decided to resolve these problems at the next meeting, and then disagreed for an extended period of time as to when that meeting should be held. 55

The second meeting witnessed the appearance of those people under consideration by the study committee for advisory roles. The members still could not agree on the need for advisors and again a decision was postponed.

Congressman George Senner, Democratic representative from District 3, also addressed the study committee. Congressman Senner proposed a redistricting plan which he estimated would provide him with a Democratic plurality of 16,000 votes. Senner's proposal would have placed the


55. Similar problems had bothered the blue-ribbon committee and the Legislative Council. Although the study committee was aware of the reports of these two groups, it did little more than acknowledge their existence. See Arizona Daily Star, April 29, 1965.
county and state building complex and surrounding urban area into his predominantly rural district. Senator Conlan questioned this, and Senner replied that "the County and State house did not vote— they were composed of cement— not people. . . ."56

This exchange provided the only excitement in the meeting, and the study committee again adjourned without making any decisions.

The next two meetings continued to focus on the question of retaining advisors. The study committee finally resolved the matter on May 7, and agreed to use the services of Professors Heinz Hink and Edwin Thomas, of Arizona State University, and David Bingham, of The University of Arizona.

The study committee also accepted a motion to disregard the fifteen percent deviation from population thought to be permissible by the courts, and draw the district boundaries as close to equal population as possible.57


57. Minutes, op. cit., May 7, 1965, p. 2. This marked the first of nine meetings which Senator Giss would miss due to illness. As majority leader, Senator Giss exerted influence in the upper chamber, and Senator Conlan suggested that his absence allowed the younger senators greater "freedom of action" on the study committee. Interview, Senator John Conlan, Phoenix, Arizona, June 15, 1966. Senator Robert Hathaway (D-Santa Cruz) replaced Giss on the committee.
On May 10, the study committee began work on reapportionment and redistricting plans. Three proposals were accepted as starting points from which the committee would develop an acceptable plan. Senator Morrow suggested a legislature of twenty-seven senators and eighty-one representatives, stating that if the study committee would consider his proposal, he would refrain from introducing additional plans. Representative Hutcheson submitted a proposal for forty senators and eighty representatives, and Senator Giss offered a plan which provided for twenty-eight senators and eighty-four representatives. The study committee discussed these three proposals for the next three meetings without making any significant decisions.

During the period, the question of whether to use population or voter registration as the apportionment basis was continually discussed, and in the June 2 meeting, the study committee apparently agreed to proceed on a population basis.  

58. Minutes, op. cit., May 10, 1965, p. 2. It was an idle pledge; Morrow, who "introduced more maps than Rand McNally," would submit eight proposals before the study committee concluded its activities.

59. Of future significance was a congressional districting proposal, later dubbed the "compromise" plan, submitted by Morrow. The plan provided for deviation percentages of less than one percent, thus conforming much closer to the one man, one vote concept than any other proposal. See below, p. 134.
However, the issue was joined again during the June 21 meeting, and no conclusion could be reached.

On June 24, the conflict was resolved. Both House and Senate members agreed that population should be the apportionment criterion. As the study committee's staffs had almost completed maps using both population and voter registration, they were instructed to finish those in progress, and then use only population.

The study committee met again on August 2; the importance of this meeting would transcend the study committee's existence. The study committee had been concentrating on the issue of Senate reapportionment; congressional redistricting would be discussed later. Little mention had been made of the House reapportionment needs. Vice-Chairman Burgess invited Philip Haggerty, assistant attorney general, to appear before the committee and advise them on the legal position of the House apportionment.

Haggerty noted that the apportionment of only three counties was "out of balance," none of which were "terribly serious." He suggested that since there were no serious complaints about the House apportionment, "it was well within the realm of possibility that the Courts would allow Arizona

61. Ibid., June 21, 1965, p. 3.
to only reapportion the Senate and redistrict the congressional seats." The study committee was satisfied and laid to rest the issue of House reapportionment.

The first substantive committee action on reapportionment occurred on August 3. Chairman McLaughlin announced that Senator Conlan and he had a "consensus" plan to put before the study committee. The plan provided for a twenty-eight member Senate, fourteen of whom would come from Maricopa County, and allegedly made it possible for the farming-ranching-mining counties to elect thirteen senators. Although the study committee had decided earlier on population as the apportionment basis, the "consensus" plan did not follow a fixed formula (both McLaughlin and Conlan favored voter registration).

The study committee accepted the "consensus" plan unanimously. Only Senator Morrow objected. He said he would agree to the plan if the other Senate committee members

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63. Ibid., August 2, 1965, pp. 5-6.
64. Ibid., August 3, 1965, p. 4.
65. Ibid., August 3, 1965, p. 1. Maricopa County would receive fourteen senators; Pima and Santa Cruz, six; Coconino-Mohave, one; Apache-Greenlee, one; Graham-Gila, one; and the other five counties, one each.
66. The two senators agreed to submit one plan after discovering they had been working on similar proposals. The strategy was to lend the plan a bi-partisan flavor and to "get the show on the road." Interviews, Senator John W. McLaughlin, Phoenix, Arizona, April 21, 1966, and Senator John Conlan, Phoenix, Arizona, June 15, 1966.
favored it, but he thought that his resolution calling for at-large elections was more attractive.\(^{67}\) The study committee, however, believed the at-large plan would be unacceptable to the courts.\(^{68}\)

The study committee then addressed the problem of congressional redistricting. Plans were submitted from the Senate clerical staff and from Mr. John Hooston, project co-ordinator for a Senate study committee. The former were criticized for their failure to observe the integrity of county boundaries, and the latter for their failure to protect the incumbent congressmen.\(^{69}\) The study committee did not act on any of the suggestions.

Hope dimmed for a congressional districting plan acceptable to both House and Senate members following the August 26 meeting. During this meeting, congressional districting plans were submitted by Professors Bingham and Hink, Mr. Hooston, Senator David Palmer (D-Yavapai), and Senator Morrow.\(^{70}\)

Conflict over the plans ensued between those members who wanted to divide Maricopa County three ways, and those

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\(^{67}\) Minutes, op. cit., August 3, 1965, p. 3.

\(^{68}\) Interview, Senator John McLaughlin, Phoenix, Arizona, April 21, 1966.

\(^{69}\) Minutes, op. cit., August 3, 1965, pp. 5-6.

\(^{70}\) Senator Morrow also submitted an essay entitled "Supposing," designed "to sway the committee" to accept at-large elections. Ibid., August 26, 1965, pp. 3-5.
who opposed dividing the county more than two ways. The conflict turned on a House-Senate axis. A motion to reject any proposal that divided Maricopa County more than two ways was accepted by the House committee, but rejected by the Senate committee. The study committee then recessed in order for the senators and representatives to meet separately.

When the study committee reconvened, the Senate committee announced its acceptance of Senator Morrow's earlier proposal, known as the "compromise" bill. The "compromise" bill removed 189,507 persons from District 1 and placed them, and Yuma County, into District 3. It also shifted 39,898 persons from District 1 into District 2. The three congressional districts then contained 434,105, 434,078, and 433,978 persons respectively. This was extremely close to the norm of 434,054. The senators stated they would not compromise on their decision.71

The House members reported they had voted to accept Professor Hink's proposal (labeled Plan C) which, unlike Morrow's plan, divided Maricopa County only two ways. The plan joined 242,000 people of western Maricopa County to the present District 3 and left District 2 untouched. The House members also adopted a "no-compromise" position.72

71. Ibid., August 26, 1965, p. 11. See above, p. 130, fn 59.

72. Idem. The House-Senate conflict over the division of Maricopa County is analyzed below, see pp. 156-161.
When it became apparent that neither group would modify their position, the study committee adjourned.

On August 27, the study committee considered plans for reapportioning Maricopa and Pima Counties. Professor Bingham, Senator Morrow, and Representatives Jacquin and Hutcheson submitted proposals for Pima County.

Conflict flared briefly between Professor Bingham and Representative Ellsworth over the relevance of politics to the study committee's work. Professor Bingham observed that his proposal for Pima County guaranteed the Democrats four safe seats as opposed to three by the Jacquin-Hutcheson proposal. Representative Ellsworth expressed his disapproval that politics were being introduced into the proceedings, and Bingham retorted that "there is no way to escape the political factors involved." 73

Following a brief debate, the study committee unanimously accepted the Jacquin-Hutcheson proposal for redistricting Pima County. 74 Senator Conlan's redistricting plan for Maricopa County was accepted without debate.

On September 9, Senator Giss returned to the proceedings and indicated his fear that the "consensus" plan


74. Minutes, op. cit., August 27, 1965, p. 4. This proposal was the basis for the "J&H" Plan, later accepted by the three-judge District Court. Bingham's public acceptance of the study committee's decision would handicap him in the Pima County redistricting conflict in February, 1966.
adopted by the study committee would be rejected by the courts. Giss also made known his opposition to Morrow's "compromise" bill, which the Senate committee had adopted on August 26. He successfully amended the proposal so that District 2 was not altered.

Then, Senate and House members again attempted to agree on a congressional districting proposal. Senator Conlan moved that the Senate committee accept Professor Hink's Plan C, already agreed to by the House. The motion was defeated.

Following a brief recess, Senator Giss moved successfully that the Senate committee adopt a modification of Senator Palmer's proposal made August 26. Senator Palmer's plan provided District 1 with 452,917 persons, District 2 with 440,415, and District 3, to which 210,593 persons had been added from Maricopa County, with 408,829. Under Giss' modification, District 2 would remain unchanged, while District 3's population would be reduced by approximately 6000 people, which would be added to District 1.

The House Committee still refused to alter their position. Vice-Chairman Burgess indicated the House members were not opposed to the population totals of the Palmer plan, but were disturbed by the boundary lines. The meeting adjourned without further action.

75. See Minutes, op. cit., August 26, 1965, pp. 7-9. Also see above, p. 133.
The study committee met for the last time on September 10. No progress was made and a motion to adjourn was entertained. The study committee quit on the same note of discord that had characterized its meetings: the motion to adjourn failed to receive unanimous approval.

The Special Session

On September 7, Governor Sam Goddard announced that the special session on reapportionment and redistricting would begin on September 13. It would be the fourth special session of the year.

Attempts by the legislative leaders to postpone the special session until November failed after Goddard was advised by a federal court judge that there should be no delay. Gary Peter Klahr also stated he would not consent to the delay.76

Governor Goddard opened the session on September 13. The proclamation calling the special session extended the legislature's charge to "... the Congressional Districts of the State of Arizona ... [and to] ... both Houses of

76. Tucson Daily Citizen, September 7, 1965. Klahr's statement came as a surprise as he had informed the study committee earlier that, pending approval from his attorneys, he would accept the delay as long as the reapportionment problem was settled before the next regular session of state legislature. See Minutes, op. cit., August 27, 1965, p. 6.
the Arizona Legislature. . . ."77 In his message to the legislature, however, Governor Goddard narrowed the apportionment tasks to the two houses. After noting that the "winds of change" were blowing strongly in state government, Governor Goddard stated that: "... since periodic reapportionment of the House has been recently accomplished and such action is regularly contemplated, I do not believe that the Court's concern lies in this direction."78

Unexpectedly, Governor Goddard then requested the weary legislators to use the special session to enact a bonding proposal, ratify an amendment to the United States Constitution, and correct the state income tax tables.

It is hardly surprising that the special session was "stillborn." The failure of the session was anticipated; many observers predicted it would be known more for its brevity than accomplishments. The representatives were tired. Two special studies and one four-month attempt by a joint study committee had produced little in substance and there was no reason to expect success now.

The representatives were also angry. They were being asked to legislate when they did not want to, and some were being asked to reapportion themselves out of a job.

78. Ibid., pp. 6-7.
In addition, a special statewide bonding election was scheduled for October 19, and the legislators wanted to be out campaigning.

Finally, Arizona law limited the salary a legislator could receive, and many representatives were nearing the maximum allowable. One senator, Ben Arnold (D-Pinal), had already reached the limit and would receive no salary for the special session.

Put bluntly, much was demanded of the special session, but little was expected. The expectations were fulfilled.

During the special session, the Senate entertained twelve bills, one memorial, one resolution and six concurrent resolutions relating to apportionment and redistricting. Only one measure would receive approval from both houses.

Legislative attempts in the lower chamber fared even worse. House members introduced seven bills, one memorial, one resolution, one joint resolution and five concurrent resolutions. None would survive the special session.

The significant actions of the special session are examined below.

The two focal problems facing the special session were those which had confronted the study committee: congressional districting and senate reapportionment. Although the House was malapportioned, Philip Haggerty's advice to the
study committee and Governor Goddard's comments in his opening message had given the legislators false hope that the House apportionment would be acceptable to the courts. Consequently, a "head in the sand" posture was adopted with regard to the lower chamber's malapportionment.

The leaders of the two houses agreed that the House would concentrate on the congressional districts and the Senate would attempt to rectify its own apportionment wrongs.

Accordingly, Representative Isabell Burgess and seven other members of the House introduced HB 1 on the second day of the session. In what House Majority Leader John Haugh (R-Pima) described as "the opening gambit in this warfare," HB 1 allowed District 2 to remain intact while shifting 230,000 residents of northwest Maricopa County into District 3.

On September 17, the House adopted the bill, 42-25, and sent it to the Senate. The opposing votes were cast by Democrats in the minority coalition, who contended that the bill was designed to place enough Republican voters in District 3 to defeat Congressman George Senner. Most observers agreed that the bill was unacceptable to the Senate, as it was essentially the same Plan C adopted by the House

committee and rejected by the Senate committee during the joint study committee meetings in September. 80

The Senate moved more slowly on the problem of the upper chamber's reapportionment. The issue was being confronted, but not resolved. The essential conflict focused on Maricopa County's potential domination of the Senate. Julius Klagge, Director of the Legislative Reference Council, described the senator's problem: "The Senators knew the amount of fruit would be the same, but they couldn't get used to the thought that fifty percent of it would be oranges." 81

By the end of the first week, several reapportionment bills had been introduced into the Senate. Most had been discussed by the joint study committee and, therefore, were familiar to the senators. The "consensus" plan was thought by most observers to have the best chance of passage. 82

The second week of the special session opened with a strong attack on the Supreme Court in the Senate. Senator Earle Cook (D-Mohave) stated that "while . . . the Supreme Court has the power to take our voice in government away, it does not in any matter have the right." 83 Senator Cook then

80. See above, p. 134.
82. See above, pp. 132-133.
urged adoption of a resolution condemning the Supreme Court's apportionment actions and charging that the Court "has by its precipitate action thrust the orderly operation of State Legislatures into chaos." 84 Senator Cook later declared his intention not to vote for any apportionment plan and was joined in his boycott by Senator C. B. Smith (D-Santa Cruz). 85

Partisan conflict became more evident during the second week. HB 1 arrived in the Senate the same day Senator Cook attacked the Supreme Court, and was referred to committees the following day. In the Suffrage and Elections Committee, Senator Sol Ahee (D-Pima) successfully amended HB 1 to place more people in District 3, a move designed to strengthen the Democrats' position in that district. Ahee also amended the Pima County senatorial districts in the "consensus" plan so that the Democratic Party benefitted.

On September 23, the notion that District 2 should be left unchanged (an integral part of HB 1) was attacked in the Senate. Senator David Palmer (D-Navajo) delivered the longest and most colorful speech against District 2's integrity:

In storied literature one of the most graphic tales of debauchery is one written by an author named

84. Idem.

85. The refusal of Cook and Smith to participate was important. Both were members of the Senate Suffrage and Elections. Their boycott reduced the number of voting members on this committee to five, with four votes necessary to report a bill out of committee.
William Shakespeare. It is entitled "The Rape of Lucrece," wherein a woman of great integrity and virtue was fiendishly ravished. There is conceivably being planned an equal ravishment of the sacred rights and Constitutional privileges of a vast number of people who happen to live in what is now known as the Third Congressional District of Arizona.

... District Three must not be content to leave District Two (the Tucson district) alone, but District Three must insist that District Two share in a division of the population. ...

... I fear determination of the problem by a few State Senators is being confused by majority and minority feelings; by Republican and Democratic Party politics; and simple "cronyism," ...

... No plan submitted to the Legislature of this State which permits District Two to remain intact as it is should be acceptable to the people of the Third District, for if District Two remains intact, the people of District Three will give a Congressional representative to Maricopa County. ... 86

Senator William Huso (D-Navajo) also scored the plan to leave District 2 intact, arguing that District 2 had "transfixed both Houses with the fixation that their district must not be violated." 87 HB 1 obviously would have trouble negotiating the Senate.

As the second week of the special session closed, both houses witnessed increased activity. SB 11 was introduced, providing for a thirty-three member Senate. Senator McLaughlin, Chairman of the Suffrage and Elections Committee, reported HB 1 amended to the floor with a recommendation


that it pass. Senate Majority Leader Harold Giss announced that he had seventeen co-sponsors for a bill on Senate reapportionment that he would introduce on September 27.

In the House, Speaker Jack Gilbert (D-Cochise) made good a House pledge to act on Senate reapportionment if the Senate failed to produce an acceptable plan. HB 4, providing for a twenty-eight member Senate, was brought from committees with a favorable recommendation. 88

The acceptance of HB 4 focused attention on conflict between the two houses. Members of the Senate criticized the House for acting on Senate reapportionment before the Senate had completed its examination of the problem. The House leadership noted their opposition to the reapportionment bills which were under Senate consideration. 89

On Monday, September 27, Senator Giss and nineteen other members submitted SB 12 as a replacement for the "consensus" plan accepted by the Suffrage and Elections Committee earlier in the session. SB 12 provided for a thirty-member Senate with Maricopa County receiving ten senators and Pima County four. The plan obviously did not meet the one man, one vote requirement of the courts, but Senator Giss

88. Journal of the House, op. cit., Fourth Special Session, September 24, 1965, pp. 38-40. HB 4 was essentially the "consensus" plan accepted by the joint study committee.

expressed hope that the "court would appreciate the legislature trying to protect the political integrity of the counties." 90

Activity in the House was nil. With the passage of HB 4 the lower chamber awaited Senate action. Speaker Gilbert noted that the House had sent the Senate bills on both congressional districting and Senate reapportionment, and that "they [the senators] can come to grips with them if they are so disposed." 91

The Senate was not disposed. On September 28, the Suffrage and Elections Committee acted favorably on SB 12. However, Senator Glenn Blansett (D-Navajo), Chairman of the Counties and Municipalities Committee, refused to call his committee together to discuss SB 12. Blansett first wanted his own reapportionment bill considered. Giss, however, opposed Blansett's proposal of a thirty-member Senate, some of whom would run at-large, and refused to report it from his Judiciary Committee.

Giss and Blansett were unable to resolve their differences by September 29. Blansett's committee did report HB-1 to pass, and the Suffrage and Elections

91. Ibid., September 28, 1965.
Committee sent SB 11 to the calendar with a favorable recommendation.\(^{92}\)

Recognizing that the Senators were growing tired of remaining in Phoenix, Giss and Blansett compromised and agreed upon a thirty-three member Senate with Maricopa County receiving eleven Senators and Pima County five. The at-large provisions favored by Blansett were eliminated.

Blansett's committee amended SB 11 to conform to the Giss-Blansett compromise and reported the bill to the floor. Giss, however, was unable to move it from his committee as two members of his committee were absent. The Senate recessed for twenty-four hours while Giss located the missing two Senators (who were out of the state on official business).

The legislature began its third week of deliberation on October 4. Giss' committee, having located its errant members, quickly reported SB 11 to the floor. Two congressional districting measures were also sent to the floor.\(^{93}\)

The Senate accepted all three bills, which were signed and transmitted to the House. The remarks of the senators explaining their votes indicated that these bills


\(^{93}\) The two bills were SB 3 and HB 1. SB 3 was almost identical to HB 1. The Senate, however, wanted to be on record as having passed a congressional districting bill of its own.
were viewed primarily as vehicles to a compromise between the two houses.94

The Joint Conference Committee

As expected, the House rejected the Senate amendments to HB 1 and a House conference committee was appointed to meet with a similar committee from the Senate.95 SB 3 and SB 11 were sent to committees. Both houses then adjourned until October 8 to wait on the conference committees' reports.

The joint conference committee crystallized the basic conflicts which had obstructed the legislative attempts to resolve the reapportionment and redistricting problems. Partisan conflict, personal ambition, rural-urban discord and House-Senate dissention had been underlying currents during the study committee meetings. Now they broke to the surface. Representative Burgess characterized the conference committee

94. Journal of the Senate, op. cit., Fourth Special Session, October 4, 1965, pp. 81-87. Senator Boyd Tenney (R-Yavapai), attempting to preserve District 3's integrity, explained his vote against HB 1: "Quite often this [congressional districting] has been referred to as 'cutting up the pie.' In this case we are giving a complete pie to Maricopa County that is very appetizing. We are allowing District 2 to continue to enjoy the same pie they have enjoyed for several years and, if there is any pie going to the 3rd District, it is made of sour grapes and the baker has used salt instead of sugar. . . ."

95. The House members were: Burgess, Hutcheson, Jacquin, Jack Brown, and Archie Ryan. The Senate committee was composed of McLaughlin, Blansett, Morrow, Ed Kennedy and George Peck. The same conference committee would work on the reapportionment compromise, with the exception that Robert Stump would replace Ryan on the House committee.
meetings as "a ship without a rudder; it was like punching feather pillows."\textsuperscript{96}

The conference committee met for the first time on October 5. The House and Senate committees agreed to a "no bluff" pact whereby if one committee submitted a proposal which was accepted by the other, both would be bound by the proposal.\textsuperscript{97}

The conference committee members spent most of their next meeting blaming each other for Arizona's reapportionment woes. The Senate committee members announced their decision to take no action on congressional redistricting until the House acted on a Senate reapportionment bill. Senate members accused the House of trying "to set the ground rules" and argued their position was no more arbitrary than that of the lower chamber.

House members retorted that the senators were "afraid" to take any proposal back to the Senate for fear of defeat. Senate members then accused the House of "goofing off," and the representatives replied by charging the Senate with "stalling."\textsuperscript{98}

Following this bickering, several bills were submitted for the committee's consideration. Only a

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\textsuperscript{96} Interview, Phoenix, Arizona, May 31, 1966.

\textsuperscript{97} Arizona Daily Star, October 6, 1965.

suggestion by Wayne Warrington, Director of the Maricopa County Taxpayer's Association, received favorable attention. Warrington's plan established a thirty-member Senate and a ninety-member House, while at the same time realigning the congressional districts. The "3-30-90" plan attracted favorable comment because it protected the interests of the incumbent legislators more than the other proposals. 99

On October 7, the conference committee went into closed sessions in an attempt to break the existing deadlock. The Senate committee members agreed to consider both reapportionment and redistricting proposals. Senator Giss offered a "package" plan whereby the Senate would be composed of twenty-eight members, eleven from Maricopa County, five from Pima County, and one each from the remaining twelve counties. Thus, each county would receive at least one seat. The portion of the package relating to congressional districting modified HB 1, leaving District 2 intact and shifting part of western Maricopa County into District 3. The conference committee agreed to both proposals and submitted the bills to the legislature.

Then ensued the most hectic days of the special session. On October 8, the two houses convened to consider

99. Warrington's proposal was introduced as House Memorial 1 and received strong support from the majority coalition caucus of the House. This plan would be submitted later by Klahr during the trial as the plaintiff's redistricting and reapportioning proposal for Arizona. See below, Chapter 6.
the proposals of the joint conference committee. As anticipated, the Senate majority coalition remained united and indicated it would approve the compromise bills. Senate President, Clarence Carpenter, deferred a final vote pending House action.

The majority coalition in the House, however, began to waver and finally shattered along partisan lines over the congressional districting proposal.

Although the House committee members had agreed to the "package" deal, the Republicans in the lower chamber began to have second thoughts. Many believed that Representative Burgess had been "taken" as the congressional districting plan heavily favored the Democrats.

Burgess, who had supported the package plan in the joint conference committee, was persuaded to file a minority report. She was joined by Jacquin. The situation became more confusing when Burgess, as chairman of the House committee, moved the adoption of the committee's recommendations (to which she filed the minority report) and then voted against her successful motion.100

The compromise congressional districting plan then was brought to the floor for final passage, but failed to pass the House by a vote of 30-28 with twenty-two members

abstaining (forty-one votes were required for passage). A motion to reconsider the bill staved off defeat and the House adjourned. Majority Leader John Haugh anticipated that he could locate enough missing representatives to pass the measure the next day. Both chambers agreed that October 9 would be the last day of the special session.

By the next morning, both the redistricting and reapportionment proposals were given small chance of passage. The House Republicans were firm in their opposition to the redistricting measure, and Maricopa County's representatives, both Republicans and Democrats, indicated their displeasure with the small Maricopa County representation provided for in the reapportionment bill.

The House reconvened Saturday morning, October 9, and turned immediately to the reconsideration of HB 1. The House Republicans remained united against the bill, and it again failed to receive the necessary forty-one votes.101

The Senate reapportionment bill, SB 11, was brought to the floor, amended so that it was obviously unconstitutional, and sent to the Senate by a vote of 60-8. It was understood that the bill, providing for a thirty-one member

101. All members of the minority coalition present but one voted for the passage of the bill. Seven of the absentees were members of the minority coalition. Had only three of them been present and voted with the other minority members, the bill would have passed.
Senate, was being used solely as a means of re-establishing the joint conference committee.

The Senate rejected the House amendments and the joint conference committee convened for a final try at the redistricting and reapportionment problems.

It was 5:00 p.m. when the House and Senate committees reported to their respective chambers. The joint conference committee had been unable to overcome the partisan conflict over congressional districting. The joint conference committee recommended amending SB 3 to make it identical to HB 1, which the House already had rejected twice.

The joint conference committee also recommended a thirty-member Senate; this was SB 11 with Pinal County's representation reduced by one senator. Representative Burgess again filed a minority report.

The House attempted to act on the committee's congressional districting recommendation, but again House Republicans were successful in preventing its passage. As SB 3 was still in the original committees, it would have to be reported to the floor before it could be amended in accordance with the joint conference committee's recommendation.

In the Suffrage and Elections Committee, the vote was 7-6 to report the bill to the floor. Chairman Burgess, however, had not voted, and she could kill the measure by voting
to tie. She refused to do so "because too much work and time had been spent" in the special session. Criticism from fellow House Republicans was immediate.

Minutes later, SB 3 was defeated in the House Judiciary Committee, 6-4, with all six Republicans on the committee voting against the measure. Arizona's congressional districts would not be altered by the special session.

This action occurred shortly after 6:00 p.m. Many of the senators already had despaired of any affirmative action and had gone home. However, in order that the special session not be a total failure, the seventeen remaining senators agreed to accept SB 11, the bill used earlier to re-establish the joint conference committee. The bill provided for a thirty-one member Senate. Maricopa County would receive thirteen seats; Pima County, five; Pinal County, two; and the remaining eleven counties, one each. The Senate accepted the measure and the House agreed without debate. Shortly before 7:30 p.m., the fourth special session adjourned.

Aftermath

The special session was not without a bitter aftermath. Representative Burgess was criticized strongly by the Republican Party for her role in the proceedings. Many Republican legislators believed she had been naive to accept

the congressional districting proposal offered by the joint conference committee, and they were very upset when she refused to kill SB 3 in her committee.

The senators also attacked Burgess, accusing her of violating an agreement by both sides not to submit a minority report. Representative Burgess argues that it was made plain in the meetings that the House committee would not accept any decisions before reporting to the House membership.

Temperance was not the order of the day. In the Senate, Sol Ahee scored the House actions as "malicious and devious." Citing Burgess and Jacquin's minority report as a "double-cross," Ahee accused the "Haugh House" of speaking out of both sides of their mouthes and with "forked tongues." Claiming the House vote to be a "power grab unparalleled in Arizona political history," Ahee concluded: "Mr. President, this House action is the lowest form of political behavior the Legislature of Arizona has ever known. The record is here for the people of the State of Arizona to see. The political prostitution of the 'Haugh House' is apparent." 105

103. Interviews, Phoenix and Tempe, Arizona, April 21, April 28 and June 15, 1966, anonymity requested.

104. Interview, Phoenix, Arizona, May 31, 1966. Burgess said that the greatest abuse occurred because she refused to kill SB 3 in her committee. She told of being invited to speak before a meeting of conservatives and being viciously attacked as "unAmerican" for not defying the Court. The vilification was such that "I took a bath that night."

Ahee's remarks were labeled by Senator Conlan as "hogwash," and Representative Haugh refused to comment on what he termed "gutter remarks."

Perhaps the incident which epitomized the feelings, if not the actions, of the legislators occurred following the failure of the House Judiciary Committee to report SB 3. After a brief exchange of words, Representative Hutcheson, known to friend and foe as "Ma Hutch," physically attacked Senator Conlan. Conlan had attended the committee meeting as a "watchdog" to see who the Republican "sellouts" were.\(^\text{106}\)

Conlan, after receiving several clouts, made good his escape when Ma Hutch reached for a more formidable weapon in the form of a coathanger. Senator Conlan quit the House rapidly, with Hutcheson in pursuit, warning him that he returned at his own peril. Later, Conlan was informed that he was person\emph{a non grata} in the House.\(^\text{107}\)

**Conclusions**

Several problems militated against the success of the special session. In the area of Senate reapportionment most of the senators simply were unwilling to reapportion themselves out of their legislative seats. "The name of the

\(^{106}\) Interview, Phoenix, Arizona, June 15, 1966.

\(^{107}\) Idem. Senator Conlan claimed that Hutcheson always carried a blackjack in her purse and had attacked a reporter earlier. He disclaimed any responsibility for the incident.
game," one observer noted, "is one man, one vote, and the senators did not want to play the game." 108

Senator Morrow noted that the senators were not "lame ducks," but "adjudicated castaways" and most of the Senate agreed. 109 The senators were unwilling to commit political suicide; if they were to be reapportioned out of their jobs, many were determined to "let the courts do it." Senate President Clarence Carpenter harbored no illusions about the senators' feelings. Before the special session convened, he admitted, "we might as well face it, the majority of the members of this Senate don't believe in the Supreme Court ruling." 110

Another problem within the Senate was the fear of Maricopa County's political strength. Many Senators could not bring themselves to justify a Senate dominated by urban interests. Most of the senators stood adamant against any reapportionment plan which did not preserve county integrity.

In addition, many senators were representatives from counties where interests were located which might be adversely affected by the urban-controlled legislature. The interests which bear a large portion of the state's tax burden (mining, 108. Interview, Phoenix, Arizona, May 2, 1966, anonymity requested.


timber, etc.) are not located in the urban counties. "Would Maricopa pave its streets with gold and leave the rest of the state in the cold?" was a concern of the rurally-oriented senators.111

In the House early opposition to the Senate reapportionment bills formed along urban-rural lines. The representatives from Maricopa County were adamant that their county would have the "lion's share of representatives." When the House conference committee recommended acceptance of SB 11, granting Maricopa County only eleven senators, Maricopa representatives complained that the bill would "cut their throats." In a meeting of the Committee of the Whole, all but four of Maricopa County's representatives voted against acceptance of SB 11, and Speaker Haugh admitted that the bill could not pass in the face of Maricopa County's opposition.112

The House did approve a modified version of SB 11, increasing Maricopa's representation to thirteen of thirty-one senators. Obviously, Maricopa County's legislative position is hardly bettered by this bill. The willingness of the Maricopa County delegation to accept this measure can be explained two ways. First, the Maricopa County


representatives believed the bill would be rejected by the courts, and that Maricopa County would be treated more equitably by the judiciary than by the legislature.

Second, many representatives believed that too much time and effort had been expended to leave empty-handed. The Senate accepted the same bill for much the same reason. Like the House members, the senators realized that the plan had little chance of surviving judicial examination, but wanted to avoid a complete "stalemate."\textsuperscript{113}

In the area of congressional districting, the conflict was less complex, although no less difficult to resolve. The House Democrats and urban Senate Democrats wanted to protect Morris Udall's position in District 2. The House Republicans and Senator John Conlan (R-Maricopa) wanted to gain control of District 3, and thus control two of Arizona's three congressional districts.\textsuperscript{114} The rural senators were concerned that too many Maricopa County voters would be shifted to District 3, giving the urban county control of the congressional district and leaving the rural areas without congressional representation.

\textsuperscript{113} Interviews, Phoenix, Arizona, April 26, April 28, May 24 and May 31, 1966, anonymity requested.

\textsuperscript{114} Many observers believed Conlan to be motivated by aspirations for Congress ("His Italian [Machiavellian?] hand was everywhere."). Interviews, Phoenix, Arizona, April 26, May 19, May 23 and May 31, 1966, anonymity requested.
The only method to dilute Maricopa County's voting strength would be to divide it three ways, shifting part into District 3, but also part into District 2. This was unacceptable to the other two groups mentioned above.

The partisan tenor of the congressional districting conflict was introduced early by the passage of HB 1 on September 17. The bill shifted 230,000 northwest (mostly Republican) Maricopa County residents into District 3, while leaving District 2 unchanged. The addition of these Maricopa County voters would have been sufficient to provide them the balance of power in District 3, thereby ensuring a second Republican representative to the Congress. Of the thirty-five Republicans in the House, only one voted against the bill.115

When the Senate returned the bill to the House, it had been amended so that almost 200,000 residents from southwest (mostly Democrats) Maricopa County would be placed in District 3. The House Republicans refused to accept the modified bill, arguing that it was designed to protect Congressman Senner. For the first time that year, the House majority coalition split along partisan lines, and the Republicans were able to prevent the bill's adoption.116


Representative John Haugh (R-Pima), leader of the Republicans who bolted the majority coalition, noted that the failure to resolve the congressional districting problem was the result of both political parties "doing what comes naturally. The Democrats responded to the best interest of their party. It follows the Republicans would do the same thing."\footnote{117}

Thus, in disarray and some in defeat, the legislators repaired to their respective homes, leaving behind what one representative referred to as "a balled-up mess." Arizona's congressional districts remained untouched by legislative hands, and the most charitable comment one could make on the Senate reapportionment is that the upper chamber had been "re-malapportioned."

The ultimate outcome of the special session was never really in doubt. Midway through the session, a newspaper poll revealed that only two senators believed the congressional districts would be redrawn and only four held any hope for a successful reapportionment of the Senate.\footnote{118}

The legislators either were unable or unwilling to resolve the reapportionment and redistricting problems. The amended version of HB 1. As indicated earlier, SB 3, an identical measure, was defeated in the House Judiciary Committee, with the Republican members in the committee casting the decisive votes. See above, p. 153.

\footnote{117}{Arizona Republic}, October 10, 1965.  
\footnote{118}{Arizona Daily Star}, September 29, 1965.
special session had been unable to bend before the "winds of change" referred to by Governor Goddard at the beginning of the session.

And so, after two years of reapportionment and redistricting activity, all the Arizona Legislature could show for its labors was one Senate reapportionment bill, slightly amended, not so slightly unconstitutional. The legislators had been unable to obviate the need for judicial intervention. They had decided to take "one more free ride." Now Gary Peter Klahr would have his day in court.
Gary Peter Klahr's quest to reapportion and redistrict Arizona began April 27, 1964. Klahr filed suit, asking that Arizona's senatorial and congressional districts be remapped before the 1964 elections. Almost two years would elapse before Klahr's suit culminated in a substantive court decision. The area of inquiry in this chapter is an examination of the litigation of Klahr v. Goddard.¹

Pre-trial Proceedings

Gary Peter Klahr is a fascinating person, one of those individuals around whom controversy gravitates. Almost without exception, the individuals interviewed referred to Klahr as either a "genius" or "a brilliant person." Paradoxically, such comments were followed inevitably by the qualification that Klahr was "very unstable," "extreme," or "a nut." Klahr styles himself as a "consistent individualist," as distinguished from the "Berkeley beatnik" or


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"ivy-league college" type. "Practicality has always been the hallmark of my crusades. . . ."2

Klahr adopted reapportionment as one of his "white-collar crusades" following the Wesberry v. Sanders decision.3 After reading the Supreme Court's opinion, he decided that Arizona's congressional districts were vulnerable to a court suit.4 In his initial brief Klahr argued that, as a Maricopa County resident and voter, he was being denied equal representation under Article I of the U.S. Constitution, and equal protection of the laws under the Fourteenth Amendment. He cited figures verifying the population disparities between Arizona's congressional districts, as well as between the state Senatorial district. A three-judge district panel was

2. Klahr is understandably sensitive to the charges that he is unbalanced. During our interview, he continually and emphatically expressed his resentment at being labeled "a nut" or "extremist." Klahr possesses an eclectic mind which "leaps" from subject to subject suddenly. He is peripatetic when speaking and talks with startling rapidity. His was by far the most interesting interview I conducted.


4. Interview, Gary Peter Klahr, Phoenix, Arizona, June 21, 1966. Klahr's suit was unexpected. Apparently, he acted on his own volition; no interest group contacted him, either before or after he introduced the suit, to offer encouragement or assistance. Nor does it appear as if any other individual was preparing a reapportionment suit for the courts. If such activity was occurring, or about to occur, it was unknown to those involved in the 1966 apportionment experience. Most believed, however, that if Klahr had not initiated litigation, someone would have eventually.
constituted and deferred action pending decisions on eight reapportionment cases then before the Supreme Court.\textsuperscript{5}

On June 12, Klahr entered a plea for immediate action on the redistricting of Arizona's congressional districts. He noted that the cases pending before the Supreme Court all involved the reapportionment of state senates. Klahr contended that the Wesberry decision should control sufficiently to allow immediate action on Arizona's congressional districts. He argued that the Twenty-sixth Legislature had not shown "good faith" by failing to pass any redistricting legislation; therefore, the district court should intervene if the governor failed to act.\textsuperscript{6}

Before the panel could respond to Klahr's plea, the Supreme Court announced the Reynolds v. Sims\textsuperscript{7} decision and its companion cases. The scope of the decisions startled most observers, including Klahr. While viewing the Court's announcement as a favorable portent for his own suit, Klahr indicated his concern that the rulings may have gone too far: "While the suits decided by the Supreme Court do not directly affect Arizona, the ruling in my case would

\textsuperscript{5} The three-judge panel was composed of District Judge James A. Walsh of Tucson, District Judge William C. Mathes of Los Angeles, and Circuit Judge Walter L. Pope of San Francisco.

\textsuperscript{6} Arizona Daily Star, June 13, 1964.

\textsuperscript{7} 377 U.S. 533 (1964).
certainly be the same. . . . [However], I believe that some weight should be given to geography in the legislature." Judge Walsh stated he would contact the other judges to assess the relationship of the new rulings to Klahr's suit.

The three judges communicated for over a week before reaching a decision. On June 25, 1964, the district court denied Klahr's June 12 request for immediate action and issued an order staying all judicial proceedings until the legislature had another opportunity to act. The court noted that the nominating procedures for November's elections already were in effect, and that in order for a candidate's name to be on the September primary ballot, he must file papers no later than July 10. This, the court decided, was too great a burden for Arizona's electoral process:

. . . It would be impracticable to attempt a reasonable hearing and decision on the merits which would not be reasonably certain to disrupt seriously the electoral machinery established for the next Congressional election, and thus disenfranchise, or dilute the franchise, of far more persons than would reasonably be expected to result from continuing the existing system until after the next session of the Arizona Legislature. . . .

In a per curiam decision issued the same day, the court announced its intent to examine the reapportionment of both the Arizona House of Representatives and the Senate:


We note particularly that although the second cause of action here challenges only the State Senate apportionment, it is "simply impossible to decide upon the validity of the apportionment of one house of a bicameral legislature in the abstract, without also evaluating the actual scheme of representation employed with respect to the other house." If we must decide this case, apportionment in both houses must be dealt with.\(^{10}\)

The court stated that judicial action would become appropriate thirty days following the adjournment of the Twenty-seventh Legislature's first regular session. The Twenty-seventh Legislature was scheduled to convene in January, 1965. Thus, it was unlikely that any judicial action would occur prior to May, 1965. For the next eleven months, Arizona's reapportionment would be a legislative problem.\(^{11}\)

The first regular session of the Twenty-seventh Legislature adjourned April 20, 1965, without resolving Arizona's reapportionment problems.\(^{12}\) On May 18, two days before the court's deadline expired, the three-judge panel issued another order postponing judicial intervention. The


11. Klahr initiated further litigation by filing a redistricting suit in Maricopa County's Superior Court, April 20, 1965. He did so "to get action on the reapportionment problem before the 1966 election." Following the May 18 federal court order (see below), Klahr stated his intent to pursue both the federal and state court suits. However, neither he nor the Superior Court acted further on the state court suit.

12. The legislative attempts to resolve the reapportionment problems are examined in the preceding chapter.
court stated that judicial intervention would be appropriate

... only when and if, it is required in order to
insure accomplishment of such redistricting and
reapportionment in time for the 1966 elections. ... .
The task of providing plans for reforming congres-
sional districts and for legislative reapportionment
is one appropriate primarily, for the Arizona
Legislature. ... .13

The panel noted that Governor Sam Goddard had
indicated he would call a special session of the legislature
to resolve the reapportionment problem, and that the legisla-
ture had a joint study committee already working on reappor-
tionment plans.14 The court would act following the
conclusion of the special session.

This decision was applauded by both the legislature
and Klahr. The legislators were relieved to have more time
to address the problem, and Klahr was encouraged by the
court's decision to require reapportionment before the 1966
elections. On the same day, the court gave Klahr leave to
file an amended complaint, seeking reapportionment of the
House districts as well as the congressional and senatorial
districts.

Plaintiff's Counsel

In the interim between the May 18 court order and the
conclusion of the legislature's special session in early

October, Klahr hired and fired one attorney, and retained two others. Klahr, while attending The University of Arizona Law College, had filed his first brief without seeking counsel. By his admission, and that of the other attorneys involved with the case, the original briefs were inadequate. His brief reflected his inexperience.

Klahr began to seek counsel in the spring, 1965, at first without success. Then Klahr and the American Civil Liberties Union came into contact and Sheldon Mitchell, one of the ACLU's consulting lawyers, agreed to accept the case. Mitchell was willing to represent Klahr because he believed "the case was more important than the client." Realizing that Klahr's personality was "unique," and reluctant to have Klahr interfere with his prosecution of the case, Mitchell had his client sign an agreement not to say or write anything about the case without Mitchell's approval.

15. As defendant, the state was represented by the Attorney General's office and by Special Counsel John Frank. Governor Sam Goddard, Attorney General Darrell Smith and Secretary of State Wesley Bolin were named co-defendants.


Mitchell then began intensive research on the legal problems of Arizona's reapportionment, receiving aid from the ACLU's national headquarters.18

Klahr and Mitchell were not compatible, and, in April, 1966, Klahr dismissed Mitchell from the case. Various reasons explain the dismissal. Klahr disagreed with the manner in which Mitchell was conducting the case. Klahr believed that Mitchell was not devoting enough time or publicity to the reapportionment problem. Klahr also had been told by Ben Foote, Governor Goddard's political assistant, that Mitchell was attempting to secretly bargain with Goddard.19

Mitchell suggests another reason for his dismissal. He believed that Klahr "chafed" under the restraints imposed on him by Mitchell and wanted an attorney who would allow him greater freedom in discussing the case. Given Klahr's verve, this is a reasonable explanation.20


19. Interview, Gary Peter Klahr, Phoenix, Arizona, June 21, 1966. Klahr's information apparently was accurate. Mitchell was a member of the "Governor's Club," and one of Goddard's administrative assistants recalls Mitchell meeting with Goddard during the period in which Klahr's suspicions were aroused. Interview, July 20, 1966, Phoenix, Arizona, anonymity requested. Others interviewed also admitted knowing of the attempted collusion.

20. Interview, Sheldon Mitchell, Phoenix, Arizona, June 8, 1966. Mitchell's suggestion was offered also by Virg Hill, political reporter for the Arizona Republic, in an interview, April 25, 1966. Two other participants
Still, it is unlikely that Klahr would have dismissed Mitchell if other counsel had not been available. It was. While attending the joint study committee meetings during the spring, 1965, Klahr was approached by Senator John Conlan (R-Maricopa) who suggested that Klahr retain the services of Stephen Simon, a Scottsdale attorney. Conlan believed that with Democrat John Frank directing the state's case, the Republicans should be represented in the proceedings. Klahr, a Republican, agreed. Simon had been well known while participating in the Young Republicans. Although no longer active in Republican politics, Simon was a good friend of Conlan's and agreed to represent Klahr.21

Before accepting the case, Simon required Klahr to dismiss Mitchell in writing. The hand-delivered note of dismissal surprised Mitchell, who had been unaware of Klahr's dissatisfaction. Mitchell accepted the dismissal and made his files available to Simon upon request. Simon accepted Mitchell's offer.

suggested that Klahr dismissed Mitchell because Klahr did not want to be associated with a "liberal" organization, such as the ACLU. Interviews, April 28 and June 7, 1966, Phoenix, Arizona, anonymity requested.


22. Interview, Sheldon Mitchell, June 8, 1966. Mitchell later attempted to remain in the case by filing an amended complaint to include two friends as plaintiffs. The court denied his request.
Then, shortly before the trial proceedings began, the law firm of Evans, Kitchel and Jenckes, recognized as the leading Republican firm in Arizona, entered the case. Harry Rosenweig, Republican state chairman, asked the firm to aid Simon. Simon agreed, not only because of partisanship, but also because the workload of the case had become burdensome. The firm assigned David West to the case. West had been active in Republican politics and had worked on reapportionment problems previously. Wayne Warrington contacted Klahr and suggested that he allow West to aid Simon. As Warrington noted, "the fact that Evans, Kitchel and Jenckes was a well known Republican firm was not entirely a coincidence." Klahr agreed to accept West on the team.23

Thus, as the trial proceedings neared, the two parties to the suit had become agents for the major political parties. The plaintiff was represented by the Republicans, the defendants by the Democrats.24


24. There is irony in this division of counsel. Neither West nor Simon agreed personally with the Supreme Court's one man, one vote decisions, yet both came to the district court urging the application of that principle. Frank, however, did accept the one man, one vote concept, although, as the state's attorney, he would approach the bench to prevent its acceptance.
The Trial

The fourth special session of the Twenty-seventh Legislature adjourned on October 9, 1965. The legislature had reapportioned the senate, but failed to modify the congressional and House districts. Four days later, the district court issued its pre-trial order. The court ordered the suit to go to trial November 18, in Phoenix. The three-judge panel directed lawyers for both sides to submit plans for congressional districts within ten days, and plans for legislative reapportionment by October 30.25

During the pre-trial conference, the three-judge panel also: denied Mitchell's motion to add two plaintiffs; denied a motion by Pima County Attorney Norman Green to enter the suit as a third party on behalf of voters in the Second Congressional District; denied a motion by Klahr's attorney to strike the defendant's answer to the suit on the grounds that the answer was tardy; and took under advisement a request that Governor Goddard be excused as a defendant on the grounds that the secretary of state acts for the state in election matters. The panel later denied the latter request. On October 30, a second pre-trial hearing occurred, at which time the court received exhibits from the two parties.

Plaintiff's Trial Brief

One week prior to the trial, both sides filed trial briefs, indicating the arguments to be made during the judicial proceedings. The plaintiff's brief attacked the defendants' proposed redistricting and reapportioning plans as being unconstitutional under Article I, section 2, and the Fourteenth Amendment of the U.S. Constitution. Simon and West first addressed their arguments to the defendants' congressional districting proposal.

The defendants' congressional districting plan was the compromise between House Bill 1 and Senate Bill 3 which had been the focal point of controversy at the end of the special session in October.26 The proposal left District 2 untouched, shifted the western part of Maricopa County into District 3, and placed the southern and southeastern parts of Maricopa County into District 1. The three districts then contained populations of 461,495, 440,415, and 400,251 respectively. The deviation percentages from the norm of 434,000 were 6.33, 4.38 and -7.78 respectively.

The plaintiff, using a formula designed by Wayne Warrington, projected the population totals to 1964 and challenged the defendants' proposal on that basis. Applying the formula, the plaintiff contended that the 1964 population

of Districts 1, 2 and 3 was 624,784, 510,672, and 472,284 respectively. This yielded deviation percentages of 16.6, 11.9, and -4.7.

The plaintiff challenged the legality of this plan on two counts. First, Simon argued that the deviation percentages were too large. Second, Simon charged the defendants with deliberately gerrymandering so as to benefit the Democratic Party (the Democrats possessed a 2-1 majority in each congressional district under the defendants' proposal):

... There is no question but that defendants' proposed plan cannot withstand the test of established legal precedent when ... the proposed plan would allow a total variance of 28.5% and a population difference of 152,500 between the smallest and largest of the three congressional districts. Further, upon review, ... it becomes apparent defendants' proposed plan is nothing more than an attempt at unlawful political gerrymander to assure the re-election of present incumbent office holders...

The adoption of defendants' proposed congressional plan, as part of defendants' or plaintiff's total plans for redistricting and reapportioning the state of Arizona would result in the creation of a "crazy-quilt" pattern. ...

27. Warrington's formula was arrived at by (1) taking the decennial census by county and the 1960 voter registration by county and determining the ratio of 1960 population to 1960 voter registration in each county, and (2) multiplying this county ratio by the 1964 voter registration in each precinct, thus providing 1964 population by precincts. Plaintiff's Trial Brief, p. 3. See also, Plaintiff's Exhibit #2.

28. Plaintiff's Exhibit #12.

29. Plaintiff's Trial Brief, p. 3.
In the area of Senate reapportionment, the defendants were urging the court's acceptance of Senate Bill 11, passed by the legislature during the fourth special session. This too was unacceptable to the plaintiff. The plaintiff noted that, applying the projected 1964 population figures, SB 11 reapportioned the Senate so that twenty-eight of the thirty-one districts exceeded the fifteen percent deviation considered acceptable at that time. The deviation range was 105.3 percent (-78.5 percent to 26.8 percent), and Maricopa County had one Senator per 65,764 residents, as did Greenlee County per 11,130 residents.

... Senate Bill 11, as passed by the Arizona Legislature and signed by the Governor, does not validly reapportion the state senate in compliance with the recent Supreme Court decisions and the various decisions of the three-men Federal Courts pertaining to the subject. ...

Plaintiff's position is that SB 11 is in fact invalid. ... The allocation of senators under SB 11 was not based on population, voter registration or any other basis other than a desire of certain senate members to design a bill which would receive a majority vote in the senate.

Finally, Simon and West attacked the defendants' contention that the Arizona House of Representatives was apportioned equitably and, therefore, immune from litigation.

30. See Chapter 5, pp. 151-153. Senate Bill 11 granted Maricopa County thirteen senators; Pima County, five; Pinal County, two; and the other eleven counties, one each.


32. Plaintiff's Trial Brief, pp. 4-5.
at that time. The plaintiff argued that if the House was reapportioned under the existing constitutional provisions, malapportionment would result:

... There will be a percentage deviation, based on 1964 population, from 97.0% to -44.6%, or a total range of 141.6% with the largest house seat having 39,586 population ... and the smallest seat having 11,130 population. ...

Seventeen of eighty house seats would exceed a plus or minus deviation of 15%. ...

After refuting the defendants' proposals, Simon and West offered the plaintiff's proposed redistricting and reapportioning plan. The plaintiff's proposal was the "3-30-90" plan designed by Warrington and introduced into the fourth special session as House Memorial 1. The proposal would create three congressional districts, a thirty-member Senate and a ninety-member House. The ninety House districts would be of approximately equal size. Three House districts would be distributed to each of the thirty Senate districts, and ten Senate districts would be allotted to each of the congressional districts. The plaintiff's proposal modified all three congressional districts, re-arranging the previously "untouchable" District 2 by placing Yuma County and about 36,000 Maricopa County residents into District 2's area.

33. Ibid., p. 6. See also, Plaintiff's Exhibit #15.

34. See above, Chapter 5, p. 149.
Applying Warrington's formula for projected 1964 population, the plan established norms of 17,864 per House district, 53,591 per Senate district, and 535,915 per congressional district. The actual map submitted by the plaintiff provided for 551,121 people in District 1, 547,191 in District 2, and 509,418 in District 3. There were deviation percentages of 2.8 percent, 2.1 percent and -4.9 percent respectively, or a total deviation range of 7.7 percent. The population difference between the largest district (District 1) and the smallest (District 3) was 41,703, as contrasted to the population difference of 152,500 offered by the defendants' proposal.

The Senate would be composed of thirty members. Under the plaintiff's proposal, the statewide range of deviation from the Senate norm would be 12.9 percent to -16.0 percent, or a total range of 28.9 percent. The population difference between the largest and smallest Senate districts was 15,482, as contrasted to the population difference of 54,634 proposed by SB 11. Under the plaintiff's Senate reapportionment plan, 51.4 percent of the population would be required to elect a majority of the state Senate.

Under the plaintiff's proposal to reappropriate the House, the deviation percentage was 14.0 percent to -16.4 percent, or a total deviation range of 30.4 percent. The population difference between the largest and smallest House
districts was 5,432; under the existing constitutional provisions as applied to the 1966 elections, the population difference would be 28,456. If the "3-30-90" proposal was accepted, 48 percent of Arizona's 1964 population would be required to elect a majority of the members of the lower chamber.

Simon and West also offered five alternate proposals to aid the court if it decided that modification of the "3-30-90" plan was desirable.35

Concluding their trial brief, Simon and West examined the recent court decisions on reapportionment as they related to the Arizona problem. The plaintiff contended that the district court had jurisdiction over the reapportionment conflict, that a fifteen percent deviation from a mathematically exact norm was acceptable, and that Warrington's formula for projecting population figures was accurate.36 The plaintiff closed by asking that "the court retain continuing jurisdiction in this action so that the court can review and approve or reject any redistricting and reapportionment plan or plans adopted by the Arizona legislature for elections occurring after 1966."37

35. The "3-30-90" plan, and the alternate proposals, are discussed in Plaintiff's Trial Brief, pp. 7-14. For a detailed explanation of each plan, see Plaintiff's Exhibits, #'s 11 "A," 19-23.


37. Ibid., p. 29.
Defendants' Trial Brief

"If ever deviation from the one man, one vote principle could be justified, it was in Arizona. Actually, Frank made some good arguments." 38 Dave West, attorney for the plaintiff, was commenting on the arguments of the opposition. And, indeed, if any state was to be allowed to depart from the one man, one vote principle, Arizona qualified as that state. The defendants' arguments to this effect follow.

The defendants addressed the questions of congressional districting, House reapportionment, and Senate reapportionment in turn. As indicated above, the defendants' congressional districting proposal was the compromise between HB 1 and SB 3 which had been unable to muster the forty-one votes required for passage during the fourth special session. 39 The defendants noted that District 2 was almost perfectly apportioned; therefore, it was suggested that the congressional districting problem could be resolved best by leaving District 2 in its present form and adjusting the boundaries between Districts 1 and 3.

The defendants traced the legislative history of the compromise and noted its failure to pass the House was due to heavy absenteeism. Therefore, the bill represented the "best

38. Interview, David West, Phoenix, Arizona, June 7, 1966.

solution the Legislature was capable of finding," and although not approved by a majority of the House membership, it had been approved by a majority of the members present and voting.

House Bill 1 as amended . . . is the closest thing to a legislative expression on Congressional districting. It was supported by a conference committee. It represents a compromise, both geographically and politically. It had the clear and decisive approval of the majority of both houses, and failed legal passage only because of the unhappy absenteeism at the end of the session—an absenteeism which, at the end of the Fourth Special Session in one year, warrants some sympathy. An exhausted legislature did the best it could, and only a little help is required from the Court to make its unquestioned majority will effective.40

The defendants' contention concerning the reapportionment of Arizona's House was very simple:

Our position is that there is essentially nothing wrong with it now. . . .

On a 1960 population base, Maricopa County with 51% of the population would have half the legislature's members, and it in fact has forty out of eighty members. Pima County would be entitled to one-fifth of the members, or sixteen, and it has seventeen. Arizona is currently one of the best proportioned Houses in the country . . . and we know of no instance in which any of the fourteen counties is more than one legislative seat off perfect proportion.41

The defendants argued against reapportioning the House for three additional reasons. First, the defendants contended that the suit was premature. The state constitution


41. Ibid., pp. 7, 15.
provided that each county be guaranteed one representative, the remaining seats to be distributed in proportion to votes cast at the preceding general election, with the number adjusted after every presidential election. This process had not yet taken place for the 1966 election. Consequently, the reapportionment of the next house was unknown:

... Insofar as plaintiff asks this Court to review particular districts, there is nothing to pass upon. So far as the House is concerned, the matter is premature; it seeks to review the Secretary of State's administrative decision before it is made. ... 42

Second, the defendants noted that their plan based the apportionment on voter registration, rather than population. Observing that the Supreme Court had not yet stipulated any one apportionment base, the defendants submitted that "the voting practices sufficiently parallel the population realities that only minor differences exist." 43

Finally, the defendants admitted the constitutional guarantee of one house member to each county did cause a departure from perfect equality. However, they argued that the deviation from the norm in "a House which is already exceedingly well-proportioned is so trifling a quantity and so well-justified by other considerations as to be insignificant." 44

42. Ibid., p. 16.
43. Ibid., p. 17.
44. Idem.
Frank then addressed the difficult question of senate reapportionment. Conceding the unconstitutionality of the existing apportionment, he asked the court to accept SB 11. Frank granted that SB 11 departed from the population as an apportionment base and that the deviation percentages of SB 11 exceeded fifteen percent:

We acknowledge that our Senate Districts do not conform to a 15 per cent deviation; if this Court should choose to adopt such a formula . . . then the Arizona legislation is invalid. With all due respect to those [courts which require less than fifteen percent deviation], we submit that they are dead wrong in legislating by judicial decision a formula which not even the Congress has yet adopted. The Supreme Court has expressly declined to establish rigid mathematical formulas and has given no indication of a desire to have the lower courts substitute some straight jacket of their own. . . .

However, Frank argued a deviation from equal population was permissible if circumstances warranted such departure. The Supreme Court in Reynolds v. Sims had stated:

A state may legitimately desire to maintain the integrity of various political subdivisions . . . and provide for compact districts of contiguous territory. . . . Valid considerations may underlie such aims.

So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuating of a rational state policy, some deviations from the equal population principle are constitutionally permissible.

Frank believed that "legitimate considerations" obtained in support of SB 11:

45. Ibid., p. 19.
46. 377 U.S. 533, 578-579.
[SB 11] is . . . a most rational plan. It does not in a substantial fashion dilute anyone's vote; the populations of the large counties are very well taken care of. We have here no "irrational anachronism," no "crazyquilt," but rather a thoroughly justifiable Act. Population has been made the prime consideration, as it must be, in a distribution of the seats. 47

The defendants also contended that the countries were sufficiently distinctive to merit individual representation. Five criteria were offered in support of this contention.

First, and most importantly, was area. Frank stated that "Arizona presents the most extreme single area problem in the United States." 48 Arizona's fourteen counties are on the average the largest in the United States. Of the seventeen largest counties in the nation, seven are in Arizona. Consequently, Frank argued, to require compactness and at the same time strict adherence to the one man, one vote principle creates extreme problems.

The plaintiff's proposal to redistrict the Senate was illustrative. The plaintiff had combined Mohave and Yavapai Counties, which resulted in a district covering almost 21,500 square miles, and Apache and Greenlee Counties, with an aggregate square mileage of 13,059. The latter would stretch from New York to North Carolina if overlaid on a map of the eastern seaboard. More importantly, the roads in this

47. Defendants' Trial Brief, pp. 18-19.
48. Ibid., p. 20.
district run east and west; there is no feasible way of traveling north to south. In order to reach his constituents, a Senator from Apache-Greenlee would have to travel into New Mexico and then back into Arizona. Similarly, in the Yavapai-Mohave district, a Senator would have to travel 450 miles around the Grand Canyon in order to campaign. The defendants argued this ought not to be: "The requirement of compactness is utterly disregarded by [the plaintiff's proposals], to such an extent that one may only suppose that it never occurred to plaintiff." 49

The defendants also cited water as a justification for granting each county independent representation. Water is the number one problem in Arizona, and, consequently, of singular significance to each county. Frank argued that the counties used water in sufficiently separate ways that "it is extremely reasonable that they have separate voices to participate in the determination of the issues presented." 50

The defendants presented evidence confirming that each county's water needs were peculiar. To allow Maricopa and Pima Counties to control the state legislature would jeopardize the other twelve counties:

We are perfectly well aware that fearful counsel may on occasion make excessively gloomy predictions. We mean merely to be sober, not frightened. But we

49. Ibid., p. 23.

50. Ibid., pp. 24-25.
say with gravity that if by the wave of a judicial wand the State Senate is turned from a 14 per cent representation of [Maricopa and Pima Counties] to a more than two-thirds representation in that body, then in terms of the water needs and the water future of this State, we risk turning the rest of Arizona into a wasteland. This is not because the people of Maricopa or Pima Counties are cruel, or overbearing or greedy, or thoughtless, more than all people; but they are people, and their own interests and their own needs are so terribly pressing that they are bound to have a myopic view of needs elsewhere. The other regions are entitled to be heard.51

The defendants also cited non-water resources as factors justifying the grant of separate representation to each county. Frank argued that combining counties with widely varying natural resources could have adverse political consequences. Frank contended that the plaintiff's proposal to combine certain counties could result in one resource gaining political influence at the expense of another:

We understand perfectly well that there are not senators from resources, there are senators from people. But the people have interests in resources and these in turn must be expressed by their senators and representatives in the Legislature. The proposed county partnerships under the plaintiff's plan compel subordination of these interests, one to another.52

Still attacking the "3-30-90" proposal while pressing for separate representation for each county, the defendants argued that the plaintiff's plan joined incompatible interests with respect to industry and agriculture: "Again, the counties which plaintiff seeks to put together simply do not

51. Ibid., p. 29.

52. Ibid., p. 30.
match. Each has legitimate local interests of substantial effect on local political institutions which warrant independent representation."  

Finally, the defendants examined "special county problems" which were not directly related to the previous considerations. And again, the plea was for recognition of the counties as independent political units deserving independent representation.

The defendants' trial brief concluded eloquently:

Arizona clearly is suffering from no blight. Under its existing government it has been the boomingest part of America. . . . The Constitution it has was adopted by its people not in some ancient antiquity but during the decade of the 1950's.

Nonetheless the word has come down from on high that the governmental system must be changed. The legislature has changed it. It has not done so in a grudging or niggardly fashion, but fully and completely, and after earnest labor. . . . It has given its two largest cities and counties a very full measure of their entitlement under the new dispensation.

We have no doubt that if proportion is the sole objective of the Fourteenth Amendment, then each House could be a little more proportionate than it is. It is perfectly possible for the plaintiff to feed an infinite number of statistics into a computer and come out with what appears to be the utterly perfect proportions of a 3-30-90 plan, a plan in which every other factor which makes sense is sacrificed to feed the perfection of these multiples of ten.

. . . But the Constitution has not instructed us, through any interpretation of the Supreme Court, that we must sanctify the computer and ignore all of the factors of human needs and human geography.

53. Ibid., p. 32.
Our mandate is that we have a "rational" plan, a plan compact and contiguous which takes into account needs, boundaries and history along with the dominant element of population. . . .

The Trial Proceedings

The trial began on Thursday, November 18. Both sides used their opening statements to press the arguments made in their trial briefs. Simon argued for the acceptance of the "3-30-90" plan, and Frank asked the court to depart from a strict application of the one man, one vote principle.

During the first day of the trial, witnesses proposed to the court virtually every reapportionment and redistricting plan which had been considered by the Twenty-seventh Legislature (and Representative Isabel Burgess [R-Maricopa] offered a new proposal). The attention of the court, however, was focused on the proposal submitted by the plaintiff and defendants. Also during the first day, Warrington explained his formula for projecting population totals beyond the last census and the plaintiff asserted that, using this formula, Arizona could reapportion every four years if desired. John Burke, Maricopa County Election Bureau director, took the witness stand and testified to the accuracy of Warrington's formula.

As Simon began to argue the virtues of the "3-30-90" proposal, Judge William Mathes interrupted to question

54. Ibid., pp. 35-37.
whether either the court or the legislature could alter the size of the House, with its constitutional ceiling of eighty. Judge Walter Pope, who was presiding over the trial, suggested that the constitutional stipulation on the size of the House would be "open to question."  

When Frank's turn came, he emphasized the economic peculiarities of the individual counties and the marked geographical problems of the large counties. Judge Pope acknowledged Frank's contentions and assured the attorney that "Arizona is a very special case and we will consider that."  

Judge Pope also raised the question of returning the reapportionment problem to the legislature for one more try: "Would it be feasible or appropriate to stipulate that should we find the Senate Bill 11 did not measure up to standards, would it be feasible for us to enjoin the use of this plan and throw it back to the governor to decide whether to call another special session?" Both the plaintiff and the defendants suggested that the court settle the question as the 1966 elections were imminent and time now had become a factor.

Judge Mathes asked if it would be feasible to resolve the congressional districting problem by leaving District 2

untouched and require the remaining two congressmen to run at-large. Frank objected to this proposal, noting the "tremendous geographical problems" which would face the congressmen running at-large.\textsuperscript{58}

On the second day of the trial, the state presented several witnesses who testified to the competing interests of Arizona's counties and argued the need for county integrity to be maintained through independent representation. Several legislative leaders also addressed the court, urging that it adopt Senate Bill 11. Frank continued to contend that the House conformed closely to the one man, one vote principle and should remain unchanged.

The final witnesses testifying in behalf of the "3-30-90" plan also appeared the second day. Dr. Conrad Joyner, Professor of Government at the University of Arizona, complimented the proposal and suggested that its adoption "would make the election machinery more meaningful to the average citizen."\textsuperscript{59} House Majority Leader John Haugh also spoke in favor of the plaintiff's proposal. Haugh criticized SB 11, noting that the House had passed the bill with the understanding that it would be used by the Senate as a means to compromise, rather than a final attempt to reapportion.

\textsuperscript{58} Idem.

\textsuperscript{59} Arizona Daily Star, November 20, 1965.
A highlight of the day's proceedings occurred when Frank and Senator John Conlan (R-Maricopa) exchanged words. Conlan took the witness stand opposing SB 11 on the basis that it was unfair to Maricopa County. He also criticized the defendants' congressional districting proposal, claiming it was "gerrymandering" in favor of the Democrats. Frank rejoined that Conlan's remarks were politically motivated. Frank claimed Conlan wanted to run for Congress in an at-large election so as to avoid clashing with the popular incumbent, Congressman John Rhodes. Conlan became visibly agitated at Frank's accusations, and the court instructed Frank to keep politics out of the case as much as possible.

The trial concluded at the end of the second day's proceedings. Judge Pope noted the changing role of the judiciary when he commented that "three or four years ago, if you'd told me this court could apportion the state, I'd said you were crazy." Then, in a prophetic comment, Pope informed both sides that, despite the numerous reapportionment and redistricting plans offered for the court's consideration, "we can just go off on our own, I believe. We're not obliged to accept anybody's lines." The judges retired to deliberate, taking with them sixteen hours of testimony and dozens of exhibits.

The court announced its decision on February 2, 1966. The ruling was anything but anti-climatic. The court, true to Judge Pope's words, had not "accepted anybody's lines." Neither the plaintiff's nor the defendants' reapportionment proposals were accepted. Instead, the court presented Arizona with its own reapportionment plan, and, consequently, with a new legislature as well.

Judge Pope wrote the opinion of the court. After describing the history of the case and the issues raised by the parties to the suit, Pope turned to the court's findings. Addressing the problem of congressional districting, Pope accepted the defendants' suggestion that the court adopt the compromise proposal agreed on by the joint conference committee during the fourth special session. District 2 was left untouched. The first congressional district would be composed of eastern Maricopa County, and District 3 would consist of its present makeup, bolstered by the addition of western Maricopa County. The dividing line between Districts 1 and 3 would start at the Yavapai County line and move south down the Agua Fria River to Olive Avenue, then east to Nineteenth Avenue, and then south to the Pinal County line.61

Judge Pope indicated that legislative action on the compromise proposal had influenced the court's decision: "We

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choose to adopt the defendants' suggestions since the line of demarcation they proposed had been accepted as a compromise by the conference committee of the two Houses of the Arizona Legislature at the special session.\textsuperscript{62}

The findings of the court were based on the 1960 census, as the judges declined to accept Warrington's formula for projected 1964 population. A recent special census had revealed that Warrington's formula was not as accurate as contended.

Turning to the issue of Senate reapportionment, the court nullified SB 11 as accomplishing "an unconstitutional and invidious discrimination \ldots against the more populous counties and voters thereof."\textsuperscript{63} Criticizing the wide deviation percentages of SB 11, Pope stated: "We know of nothing in any of the Supreme Court decisions which would warrant this statute's extensive deviations from the 'one man-one vote' rule implicit in such decisions. \ldots Senate Bill 11 is shot through with invidious discrimination."\textsuperscript{64} The court was not impressed by Frank's contention that the size and area of the counties were relevant considerations:

\ldots Such an argument in these days of modern improvements in transportation and communication sounds rather hollow and is 'unconvincing.' \ldots

\textsuperscript{62} Ibid., p. 545.

\textsuperscript{63} Ibid., pp. 540-541.

\textsuperscript{64} Ibid., pp. 545-546.
The decisions of the Supreme Court, in line with Reynolds v. Sims, make it plain that where population is sparse, areas to be represented must necessarily be large. . . .65

Then Judge Pope announced the first of two surprises:

The court finds that any apportionment of membership of the House of Representatives accomplished pursuant . . . to the Arizona Constitution, will necessarily result in an invidious and unconstitutional discrimination against the larger centers of population of the State and the voters thereof . . . . The court finds therefore that reapportionment of the said House is necessary.66

The second surprise was even more unexpected than the decision to reapportion the House. Judge Pope's "open question" concerning the size of the House was answered as the court determined that:

. . . [T]he court finds that an appropriate and validly apportioned Legislature of the State of Arizona elected in the year 1966 would consist of 30 senators and 60 representatives elected from eight legislative districts within the State.

This finding is based upon the United States census figures for the year 1960, which . . . the court finds to be the most reliable and dependable basis for reapportionment in accordance with this decree. Using those figures an ideal apportionment for a Senate of 30 members would provide a population of 43,405 for each member and for a House of Representatives of 60 members the ideal population for each member would be 21,703.67

The court explained that the decision to change the size of the legislature had been made in order to meet the

65. Ibid., p. 546.
66. Ibid., p. 541.
67. Idem.
constitutional requirements of one man, one vote, and, at the same time, preserve, as nearly as feasible, county integrity:

In arriving at the number of Senators and Representatives we considered the possibility of a reapportionment of a House of 80 members, its present size. Such an effort, as any one who tries it will discover, cannot produce a result consistent with any degree of preservation of county lines. Provision for a House of 60 members is consistent with the constitutional provision for a House "not to exceed 80 members." The arrangement for identical senatorial and representative districts will provide a desirable simplicity.68

Under the court decree, Maricopa County received fifteen senators and thirty representatives—half the members in each chamber. The remaining representatives were apportioned in the following manner: Pima County, six senators and twelve representatives; Mohave and Yavapai Counties, one senator and two representatives; Cochise, Graham and Santa Cruz Counties, two senators and four representatives; Navajo, Apache and Greenlee Counties, two senators and four representatives; Pinal and Gila Counties, two senators and four representatives; and Coconino and Yuma Counties, one senator and two representatives.69 Maricopa and Pima Counties were to be subdivided, so as to facilitate the electoral process in those populous counties. The parties to the suit were invited to design the subdistricting proposals.

68. Ibid., p. 547.

69. Ibid., p. 542.
The decision was not unanimous. Judge Mathes entered a dissent. Judge Mathes objected first to a "Federal-made congressional and legislative reapportionment scheme for the State." Mathes' position was consistent with his opinion in an earlier reapportionment decision, Hearne v. Smylie.\footnote{225 F.Supp. 645 (D. Idaho, 1964).} Mathes believed a court should always "accommodate the relief ordered to the apportionment provisions of state constitutions insofar as possible." Therefore, he argued, the court should accept SB 11 as controlling: "The scheme provided for the Arizona Senate in Senate Bill 11 does not in my opinion dilute 'the equal population principle . . . in any significant way' and is therefore valid."

Mathes also took issue with the substance of the court's decision, and indicated his support of requiring at-large elections until the legislature, rather than the court, had designed an acceptable reapportionment and redistricting scheme:

While I hold in high regard the views of my distinguished colleagues, I am unable to subscribe to their conclusion that a Federal-Court-made scheme of reapportionment is valid (1) which is based upon population figures a half-decade old; (2) which admittedly allows a known voting-strength disparity of more than 22% as between District 1 comprising Mohave-Yavapai counties and District 6 comprising Yuma County; and (3) which permits on its face a voting-strength disparity of more than 31% (and, were present-day population figures known, might well permit a much greater voting-strength disparity).
... By permitting county lines to govern their plan for redistricting the State, my colleagues have permitted the equal population principle to be unnecessarily diluted to a substantial degree; and it appears to me that no one can say with assurance whether that is not a greater dilution than the plan devised by the Legislature in Senate Bill 11, when considered along with the reapportionment of the House.

Rather than seek to impose a Federal-Court-made scheme of reapportionment upon the State, I would favor enjoining all save elections at large for the 31 Senate seats established by Senate Bill 11, until both the Senate and the House of Representatives of the State shall have been apportioned by the Legislature in conformity with the requirements of the . . . Fourteenth Amendment.71

Judge Walsh issued a brief concurring opinion, aimed at refuting Mathes' dissent. Walsh questioned the accuracy of Mathes' calculations.72

Conclusions

What the court said is this. The Arizona Legislature is malapportioned and the congressional districts are maldistricted. The legislature had failed to act on the congressional districting problem and the reapportionment of the Arizona Senate. However, the legislature had expressed its wishes in the area of congressional districting, and


72. Ibid., p. 550. Mathes' calculations, however, are accurate. Under the court reapportionment of the House, District 1 had a 15,569 deviation percentage and District 6 had a -6.519 deviation percentage, or a total deviation range of twenty-two percent.
although the compromise between HB 1 and SB 3 had failed to gain the necessary votes for passage, it had received a majority of the votes cast. Therefore, the court would "make [the state legislature's] unquestioned majority will effective" by accepting the compromise proposal.

The state legislature had also expressed its wishes in the area of Senate reapportionment through the passage of SB 11. This effort, however, failed to conform to the one man, one vote standards established by the Supreme Court and, therefore, must fall. Thus, the state legislature remained to be reapportioned, and the district court assumed the task. Using the 1960 population census as the apportionment base, the court designed eight legislative districts containing thirty Senate and sixty House seats. The integrity of Arizona's constitution was preserved as its provisions prohibited the House membership exceeding eighty seats, but did not prohibit a House of less than eighty seats.73

Klahr v. Goddard is of more than passing significance among the multiplicity of reapportionment decisions which occurred during the early and mid-1960's. First, if legislators who represented trees and acres, rather than people, were to be constitutionally tolerated, they would be tolerated in Arizona. As noted earlier in this study, rarely has the ecology of a state related more closely to the reapportionment

73. Arizona Constitution, Article IV, part 2, paragraph 1.
issue. The vast geographical area, and correspondingly sparse population, of Arizona pose difficult problems indeed for the representative. The needs of the fourteen counties do vary sufficiently to lend a uniqueness to each county and suggest the desirability of each county possessing an independent voice in the state legislature. And one could scarcely quarrel with Frank's development of these issues; he is skilled in his profession and blessed with eloquence few men possess.

Still, the district court rejected most of the defendants' contentions. Klahr v. Goddard provides little comfort to those states which believe their unique geographical characteristics qualify as one of the "legitimate considerations incident to the effectuation of rational state policy" mentioned in Reynolds v. Sims. It does not appear that the physical characteristics of a state can be used to escape the application of the one man, one vote principle.

Second, Klahr v. Goddard offers insight into the continuing judicial search for equitable apportionment bases. The Supreme Court has not yet determined whether any one apportionment base is required by the Constitution. Klahr v. Goddard casts a vote in favor of flexibility. While basing its apportionment decree on population, the court invited the parties subdistricting Maricopa and Pima Counties to use voter registration, or such other statistics as they
might find available. And, as noted in the following chapter, the parties opted for voter registration over population.

Third, Klahr v. Goddard demonstrates the process of judicial policy-making. The three-judge panel had been patient to a fault in granting the Arizona Legislature time to resolve the state's reapportionment problem. The court was explicit in expressing its belief that legislative reapportionment was properly the province of elected officials. When the court acted, however, it did so boldly, completely redesigning the Arizona Legislature.

Finally, Klahr v. Goddard is an innovative decision. The state's reapportionment and redistricting problems were resolved, in effect, by three different reapportionment bodies. The court itself redistricted the state legislature. The court accepted the congressional districting proposal developed by the state legislature during the fourth special session. And, the subdistricting of Maricopa and Pima Counties was done by the parties to the suit, and actually, by the political parties (see below, Chapter 7). The latter approach departed from current practice. Usually, the reapportionment and redistricting ordered by the federal courts had been effected either by the state legislature, the court itself, or official apportionment commissions authorized by the court.
The decision of the district court in Arizona to invite the participation of the parties to the suit in the actual reapportioning of the two most populous counties also accented the political nature of Arizona's reapportionment exercise. The 1966 reapportionment experience continued, but now the participants worked in "smoke-filled rooms" rather than judicial chambers.
CHAPTER 7

THE POLITICS OF REAPPORTIONMENT

The Arizona reapportionment experience of 1966 did not terminate with the court's announcement of Klahr v. Goddard. The decision itself signaled the extension of the problem:

... It is further ordered that Maricopa County and Pima County shall be subdivided into subdistricts. Fifteen such subdistricts shall be established in Maricopa County . . . the same to be as nearly equal in population as possible, and composed of contiguous areas.

Each of the parties hereto is directed to file with the clerk of this court, within thirty days after the filing of this decree, his or their proposals for a plan for so subdividing said County. In designing such plans, the parties may base the same upon the 1964 voter registration figures, or upon such other statistics as they may find available.

Six subdistricts shall be established in Pima County, in like manner. . . . Plans or proposals for such Pima County subdivisions shall be filed by the parties in the same manner as herein provided in respect to Maricopa County.

Elaborating, Judge Walter L. Pope explained that the parties to the suit had been directed to file subdividing plans because of the absence of a "readily understandable

2. Ibid., pp. 544-545.
guide" by which the court could subdivide Arizona's two most populous counties. The court concluded by expressing its hope "that the parties [to the suit] might find it possible to agree upon a plan for defining these subdistricts."^3

Judge Pope's concluding remarks stimulated the most partisan aspect of Arizona's 1966 reapportionment exercise. For the next four weeks the two major political parties, working through the litigants to the law suit, conferred, clashed and compromised with each other in an attempt to satisfy the court's decree and, at the same time, maximize their opportunity to control Arizona politics.

The area of inquiry in this chapter is a description and analysis of these activities.

The Reaction to Klahr v. Goddard

The reaction to Klahr v. Goddard was pronounced. Arizona reapportionment dominated the Arizona news media for almost a week following the decision. "Cowboy Legislature's Death Knell Sounds" read one headline;^4 "Arizona's 'Cow County' Legislature Heads for Corral" read another.^5

The legislative comment was mixed. Senate President Clarence Carpenter (D-Gila) stated bluntly, "I think this

3. Ibid., p. 548.
[the court's decision] is wrong." Senator Carpenter was concerned that the decision would be used as a stepping stone to reduce Arizona's representation in the United States Senate. 6 House Speaker Jack Gilbert (D-Cochise) and Senate Majority Leader Harold Giss (D-Yuma) each expressed surprise that the court had reapportioned the lower chamber. 7 Representative William Jacquin (R-Pima) accused the court of being negligent, derelict and lazy, and Senator Darvil McBride (D-Graham) lamented that his county has been "shackled, drawn and quartered." 8

Senators John Michelson (D-Graham) and William Huse (D-Navajo) described the decision as "good" and Senator Tom Knowles (D-Coconino) went them one better and termed the court's announcement "great." 9 Senator Dan Kitchel (D-Cochise), reminding the legislators of their failure to reapportion and redistrict Arizona during the special session, said, "We've gotten exactly what we deserve. We should have no tears, no regrets." 10

Governor Sam Goddard described the decision as "revolutionary." Two of Arizona's three congressmen expressed satisfaction with the ruling. Speculation on the substantive import of the decision began immediately. Senator Sol Ahee (D-Pima) predicted that the majority-minority coalitions which had characterized Arizona's legislative politics in the past would disappear. Professors David Bingham and Conrad Joyner, colleagues in the University of Arizona's Government Department, suggested that the court's decision would provide the metropolitan areas the authority with which to solve the state's urban problems; whether this authority would be exercised was considered problematic.

On February 4, Governor Goddard met with the Attorney General, the Secretary of State, several legislative leaders and the attorneys who represented the state during the trial, to discuss the possibility of an appeal. The nearness of the 1966 elections militated against an appeal and Goddard

12. Ibid. Congressmen Morris Udall (D-2nd District) and George Senner (D-3rd District) approved the decision. Congressman John Rhodes (R-1st District) was in England and did not comment on the decision.
13. Tucson Daily Citizen, February 3, 1966. Ahee was a prophet with honor; the next legislative session witnessed the demise of coalition government in Arizona's legislature.
14. Ibid.
announced, "We are convinced the court's decree controls the
next election."15

A decision was made at this meeting to seek an
agreement between the counties involved to establish sub-
districts in Apache-Navajo-Greenlee and Cochise-Graham-Santa
Cruz. The court's decision had ordered four representatives
and two senators to be elected at large from these multi-
county districts. Governor Goddard required the officials of
these counties to agree to the subdistrict boundaries before
any plan would be submitted to the court. If agreement was
obtained, the plan for these counties would be tendered with
the proposals subdividing Maricopa and Pima Counties.

Representatives from the counties involved gathered
the following week and attempted to subdivide the senatorial
districts. Agreement could not be reached, however, and the
meeting dissolved. The meeting failed as a result of "the
'haves' being reluctant to concede to the 'have-nots.'" The
counties which possessed sufficient population to control
their districts were unwilling to dilute that control. Sena-
tor John McLaughlin (D-Greenlee) commented: "Well, at least
we tried. We might as well forget it and all run at-large.
I guess we'll all cross paths on the campaign trail and wave
as we go by."16 Governor Goddard announced that no further
attempt would be made to subdistrict the combined counties.

Klahr v. Goddard continued to evoke response. In the Arizona Legislature the House Suffrage and Elections Committee introduced an alternate reapportionment plan, increasing the House membership to ninety. Most observers, including members of the committee, accurately forecast the bill's failure. In the upper chamber Senator Robert Morrow (D-Mohave) submitted a bill granting to those counties without their own representatives the right to have non-voting delegates (who would receive the same pay as the legislators) attend the legislative sessions. The bill did not gain the approval of the Senate. In Phoenix a "Committee for Government of the People" organized to support a constitutional amendment allowing states to apportion one house of their legislature as they wish.

On February 22, Senator Earl Cook (D-Mohave) introduced a bill establishing a $200,000 legal fund to fight federal court reapportionment of the legislature. Introducing the bill on George Washington's birthday inspired Cook to orate:

If we ever needed a George Washington, we need one now. We are in worse shape than the thirteen colonies. . . . We shall be worse than traitors if we don't fight this reapportionment to the last ditch.

. . . [E]very subdivision and every town will pay for putting in the streets of Phoenix and then tearing them up again. . . .

This bill means the difference between free men and slavery. . . .

Perhaps the most colorful response to the decision occurred three days after its announcement. On February 7, several rural senators donned western garb and, wearing black arm bands, hung Gary Peter Klahr in effigy, leaving behind a sign admitting the action had been planned and executed by "cow-county Senators." 21

As the initial impact of Klahr v. Goddard waned, attention focused on the court order to subdistrict Maricopa and Pima Counties. The earlier failure to subdivide the multi-county districts was not a favorable omen. As the politicians turned to the tasks of subdistricting, the partisan nature of the problem did not encourage hope for success in either metropolitan county.

Maricopa County: The Art of Compromise

On February 16, Klahr expressed hope that a single subdistricting plan could be agreed upon by both parties to the suit:

. . . We [the parties to the suit] gain nothing, nor do the people of Maricopa and Pima counties, by


proceeding separately to draw lines. . . . However, I must say this: Any plan which I would agree to must provide districts which are as near equal as possible and which consist of contiguous territory. . . .

I could never approve of a plan which was drawn to favor one group or party over another.\(^22\)

The next day, Klahr's attorneys, Dave West and Steve Simon, met with Attorney General Darrell Smith and agreed to submit a single subdistricting plan to the court on the March 4 deadline. Six guidelines were agreed upon for the actual drawing of the subdistricting boundaries:

1) The Senate districts would not cross the northwest line between the 1st and 3rd congressional districts;
2) 1964 voter registration figures, rather than population, would be the apportionment basis;
3) The districts would, as nearly as possible, conform to the one man-one vote rule;
4) The existing precincts would be preserved wherever possible;
5) Wherever possible, the district boundaries would be straight lines; and
6) No new proposals would be considered after February 25 in order to leave time to meet the court's March 4 deadline.\(^23\)

The ground rules had been determined. Now the serious job of mapmaking began.

\(^{22}\) Ibid., February 16, 1966.

\(^{23}\) Arizona Republic, February 18, 1966.
Pre-negotiations: The Democrats

On February 4, Attorney General Darrell Smith, John Frank, John McGowan and several legislative leaders met following the decision not to appeal Klahr v. Goddard. Frank, acting on behalf of Governor Goddard, suggested that the two political parties attempt to reach an accord on the subdistricting of Maricopa and Pima Counties. Smith and McGowan, representing the Republicans, agreed. Each party consented to nominate participants, and joint meetings were to be held after each side had prepared subdistricting maps.

The following day, Governor Goddard called Harold Scoville, Democratic Maricopa County Chairman, and requested the county organization to act for the Democratic Party in

24. The dates cited below are used solely to establish a general temporal framework for the reader's orientation. None of the participants in the bargaining processes were consistent in identifying when the meetings began or the schedule of the meetings.

25. Both McGowan and Frank agree that the meeting took place immediately after the decision was made not to appeal Klahr v. Goddard. McGowan, however, believed the date to be February 7, which would conform closely to Scoville's comment to this author that ten days elapsed between Goddard's initial instructions and the first meeting between the Republicans and Democrats on February 19. However, McGowan and Frank are certain that the decision to attempt a compromise was made at the same time the multi-county districts agreed to try to subdistrict. This was definitely February 4.

26. Smith was a Republican Attorney General. McGowan, special assistant Attorney General, was one of the most respected Republican figures in the state. One Democratic participant referred to McGowan as "the Republican 'Miracle Man.'" Interview, May 31, 1966, anonymity requested.
the bargaining process. Goddard believed the issue to be a county matter and, therefore, the county organization should be in charge because of its "grass roots" knowledge. Frank, whose influence with Goddard was known widely, concurred.27

Scoville placed Frankie Archer, Democratic county secretary, in charge of developing the subdistricting maps. He also called Tom Baker, the executive secretary of the state Democratic organization, Dr. William Phillips, Professor of History at Arizona State University and an active Democrat, and Robert Evans, leader of Arizona's AFL-CIO, and requested that they assist Archer. Scoville instructed Archer to complete a map in three weeks. Less than two weeks later, Scoville notified Archer that meetings with the Republicans were about to begin. Archer was not prepared.28

In the interim between Scoville's initial charge to Archer and the beginning of the joint meetings with the Republicans, the factionalism which characterized Democratic Party politics in Arizona was evident. The major conflict turned on the question of jurisdiction. The county organization argued that since the county was being subdistricted, 

27. Interviews with Harold Scoville, May 12 and June 22, 1966; John Frank, May 31, 1966; Ben Foote, Special Assistant to the Governor, August 12, 1966; and Peter Starrett, Special Assistant to the Governor, May 2, 1966.

the county organization should be in charge. The state organization, however, contended that the political significance of Maricopa County to Arizona politics transcended county boundaries and was of statewide importance. Hence, the state organization also should assume a primary role in the proceedings. The jurisdictional conflict was never resolved and would have serious consequences for the Democrats in Maricopa County.

This intra-party discord became obvious during the first meeting of the Democrats. Baker sent his secretary, Pauline Smith, to represent the state organization. Evans sent a labor representative, and Dr. Phillips also was present. Archer and Smith clashed over the jurisdictional issue, and Archer made it explicit that while the others might participate, she, as representative of the county organization, would make the final decisions. For three days the group struggled unsuccessfully to ignore the tension which existed between the two women.29

Reapportionment was a virgin area for the Democrats. No reapportionment maps had been prepared prior to the litigation, and none had been developed in anticipation of the court's decision.30

29. The friction between Archer and Smith was not unexpected. Both women were political activists and had clashed before. Interview, August 12, 1966, anonymity requested.

30. Dr. Phillips had chaired a party committee on reapportionment the previous spring. The committee conducted
Following Frank's suggestion, Archer took a non-partisan map drawn by John Burke, chairman of the Maricopa County Elections Board, and began to modify it "like a waffle," i.e., move from precinct to precinct until the required number of registered voters had been obtained for a district. It was a map based on mathematics, not political behavior.31

Efforts by the other Democrats to persuade Archer to be more partisan failed. Phillips showed his voter profile to Archer, but it was not used. He also suggested the use of a computer to facilitate the development of Democratic districts. Labor's Evans concurred, offering labor funds to finance the project. Archer declined, contending lack of time. Phillips concluded that Archer resented his presence at the proceedings and left.32

Smith also withdrew from the meetings. After seeing that Archer was going to rely on voting registration figures rather than voting behavior, Smith returned to the state

an attitude survey of precinct chairmen. Phillips also had prepared a voter profile of Maricopa County, but the only reapportionment maps he had designed had been for Dr. Heinz Hink during the preceding summer, and for Senator George Peck during the special session. Interview, Dr. William Phillips, Tempe, Arizona, June 28, 1966.


32. Interview, Dr. William Phillips, June 28, 1966. Dr. Phillips believes that Archer, whose loyalty to Scoville was well known, was irritated because Phillips had advised Scoville that Klahr would not be linked with the Republicans.
headquarters. There, assisted by Burke, she designed a map based on a voter profile analysis developed by the state organization. The map was given to Governor Goddard's political assistant, Ben Foote. The state organization believed that before any final decision would be made, their map would receive consideration. They were incorrect.

Thus, Archer was the architect of the Democratic proposal. Foote maintained contact with her, as did Sco-ville. Archer developed a map based on voter registration and designed to protect certain incumbents and ethnic blocs. One observer described this strategy as a "candidate" approach, rather than a long-term "party" approach. The emphasis placed on protecting specific incumbents and minority blocs emanated from the Governor's office as Governor Goddard looked ahead to the November elections.

33. The "pinto" Democratic vote made voter registration figures an inaccurate index of partisan strength. See above, Chapter 4, p. 92.

34. Smith alleges that Archer "refused to see the [state organization's] map." Archer says that Smith never contacted her after leaving the initial meetings. Interviews with the state organization confirm Smith's story; those with the county people confirm Archer's. Foote admitted possessing the state's map, but says he did not show it to Archer. Instead, he "influenced" Archer to use some of the behavior patterns suggested by the state organization's voter profile. Smith says there is no evidence of this "influence" in the map Archer carried to the joint meetings.

35. Interview, May 23, 1966, anonymity requested.

36. Interviews, June 22, June 28, May 31, June 2, and August 12, 1966, anonymity requested.
used voter registration rather than voting behavior because she believed the court would reject the latter method. Archer contended that whatever disadvantage the Democrats might receive from Republican-dominated districts could be overcome by offering attractive Democratic candidates.37

Scoville took Archer's map and showed it to representatives from labor and ethnic groups. He also solicited the comments of Senator Peck and the Democratic Maricopa County representatives. Their suggestions and criticisms were noted, but Scoville did not consult them again in order to reduce the potential conflict during the joint compromise meetings.

Thus, the Democrats prepared to go to the bargaining table. They brought a map designed for the short-run goal of protecting certain incumbents and minority groups; the long-range goal of controlling the county's political delegation to the state legislature was de-emphasized. Neither goal would be achieved.

Pre-negotiations: The Republicans

Republican activity prior to the joint meetings bore little resemblance to the Democrats'. Wayne Warrington and John McGowan would participate in the discussions on behalf

37. Interview, Frankie Archer, June 28, 1966. Scoville also believed that attractive candidates could offset the Republican advantages gained by the reapportionment compromise. Interview, Harold Scoville, June 22, 1966.
of the Republican Party. Warrington, as chairman of the Maricopa County Taxpayer's Association, ostensibly was nonpartisan and merely representing Klahr during the compromise efforts. To all involved in the compromise proceedings, however, Warrington was accepted as part of the Republican team.

Warrington was an obvious choice to aid McGowan (actually Warrington would do most of the bargaining, with McGowan primarily an observer) as he had been involved in Arizona's reapportionment problems since 1964. Warrington had been developing reapportionment plans for the Republicans since the Supreme Court announced Reynolds v. Sims, as the Republican Party had foreseen the application of the 1964 decisions to Arizona. The Republicans had done extensive voter profile analyses on both Arizona and Maricopa County for two years, and Warrington was prepared to take advantage of that experience.

Unlike their Democratic counterparts, the Republican county organization in Maricopa County did not participate in the compromise proceedings. This was partly because the Republicans recognized the statewide influence of Maricopa County and therefore considered the bargaining process to be beyond the jurisdiction of the county organization. More importantly, however, the Republican county organization in Maricopa County was identified with the right-wing branch of
the Republican Party in Arizona. Both Warrington and McGowan were identified with the more moderate state organization. Charles Miller, the Republican county chairman, was kept informed of the proceedings, but had no influence of the decisions being made.38

So, while the Democrats fought among themselves and made their first attempts to design reapportionment plans, the Republicans waited, having done their "homework." Politics is described as both an art and a profession, and as the two parties joined at the bargaining table, the artists and professionals were Republicans.

The Negotiations

The actual negotiating between the parties was done by Warrington and Archer. Scoville and McGowan frequently were present, but perceived their roles to be passive. The contrast between Warrington and Archer was marked. Warrington was well known and respected in Republican state politics. He had been working on reapportionment profiles for over a year and was well-acquainted with the voting behavior of Maricopa County's precincts. Although not oblivious to the needs of Republican incumbents, Warrington was identified more with the state organization and perceived his task to concentrate more on strengthening the Republican Party in

38. Interviews, June 22, May 17, and June 7. Anonymity requested.
the legislature rather than protecting specific Republican politicians.

Archer was a newcomer to Arizona politics, having resided in the state for two years. She was not yet familiar with the voting patterns of Maricopa County. Her reputation seemed to rely more on her ability to remember facts, rather than understand political behavior. "She [Archer] knows names and addresses of precinct chairmen, but not hard political facts."39 "Archer can remember telephone numbers and addresses better than anyone I ever saw, but she doesn't understand precincts. She is not exactly stupid, but unaware."40

Archer labored under the handicap of having no prior reapportionment experience. Thus, while Warrington came to the meetings with maps based on a year's analysis of Arizona and Maricopa County politics, Archer was armed with a map, hastily drawn and based on voter registration rather than analyses of voting behavior.

The negotiations occurred from February 19 to February 24. Most of the meetings took place in Scoville's


40. Interview, June 2, 1966, anonymity requested. One participant who defended Archer admitted that he had to qualify his defense. If considerations were immediate, Archer was suited to the task; if, however, long-range goals were being pursued, someone with more knowledge of Maricopa County politics might be desirable. Interview, June 28, 1966, anonymity requested.
office, and Archer and Warrington continually discussed the compromise over the telephone. During the first meeting, Archer and Warrington agreed to maintain strict confidence concerning the proceedings. They also decided that no senatorial districts would cross the congressional district boundaries, and that no more than three incumbents would be placed in any one senatorial district. It was determined that four of the fifteen Maricopa County districts would be placed in the third congressional district, and the remaining eleven in District 1. Warrington and Archer exchanged maps and withdrew to evaluate the other's proposal.

Reapportionment is very partisan and understandably it was expected that conflict would be endemic to the compromise meetings. Indeed, following the inability of the multi-county districts to agree on subdistricts, Scoville admitted that "frankly, I did not anticipate much success." Surprisingly, then, the meetings occurred almost void of conflict. There was no "bitterness," no "heated discussions." The meetings were characterized by wide areas of

41. The morning following the first meeting, Warrington discovered some details of his plan in the press and called Archer to terminate the negotiations. She explained that while she was visiting the lady's room, a reporter apparently had entered the county headquarters and spied Warrington's map laying on a table. Warrington accepted her explanation. Interview, Wayne Warrington, April 28, 1966.

42. Interview, Harold Scoville, May 12, 1966.
agreement, and even frequent humor as Warrington continually made light of his "non-partisan" status. Agreement was reached easily on all but four of the fifteen districts, and by the final day of negotiations, only one district remained to be determined. Archer wanted to increase the size of one district by 1000 votes, but Warrington was unwilling to go beyond 730. As the time to meet with Governor Goddard neared, Warrington put it to Archer on a "take it or leave it" basis. Archer took the 730 votes.  

Attempts by "outsiders" to influence the negotiations were unsuccessful. Warrington and Archer were called frequently by concerned legislators, but both rejected all efforts to pressure them. Indeed, as the negotiations entered the final stages of development, no one but the four participants took part. On the day before the plan was presented to Governor Goddard, Ben Foote attempted to gain entrance to the proceedings, but Scoville refused.

Warrington and Archer agreed on a compromise plan two hours before Governor Goddard was scheduled to see the

43. Interviews, Frankie Archer, May 19 and June 28, 1966; Wayne Warrington, April 28 and June 22, 1966.

44. Interview, Ben Foote, August 12, 1966. Foote believes Warrington asked Scoville to deny him entrance to the proceedings. Warrington, however, suggests that Scoville feared Foote's presence would upset the meeting. Interview, Wayne Warrington, April 28, 1966. Scoville had no comment other than to observe that Foote was kept informed of the meetings' progress. Interview, Harold Scoville, May 12, 1966 and June 22, 1966.
proposal. The plan placed six senatorial districts in the immediate Phoenix area and divided the remaining urban and rural areas into nine districts. Scoville noted his satisfaction with the map, predicting that the proposal favored Democrats and Republicans equally, with one swing district. Warrington commented that eleven of the fifteen districts contained a majority of registered Democrats, but declined to speculate on the actual voting behavior of these districts. Goddard, acting on the advice of Frank, Foote and Scoville, accepted the plan, and the agreement was released to the press.45

John Frank announced the accord:

In behalf of the governor and secretary of state, we are happy to report agreement on the remapping of Maricopa County.

The agreement is the product of the very diligent efforts by the Democratic county committee through Chairman Harold Scoville and Mrs. Frankie Archer, vice-chairman, and for the Republican interests, Mr. Wayne Warrington.

As a Democratic member of the defense team, I wish to pay tribute to the superb non-partisan manner this has been handled by Attorney General Darrell Smith and his deputy, John McGowan.46

45. Klahr nearly rejected the plan. Earlier he had threatened to reject any compromise offered by the negotiators. He believed he was "being taken for granted and used." During the compromise proceedings, Klahr contacted Dennis DiConcini, special assistant to the governor, and offered to work with the Democrats rather than the Republicans. DiConcini declined. Interview, Gary Klahr, June 21, 1966.

Response to the Compromise

The Republican response to the announcement was muted. Very little public comment was made, most of it favorable. Bill Worthington, executive director of the state Republican committee, predicted that the proposal would provide the Republican Party eleven of Maricopa County's fifteen Senate seats. Warrington made a brief statement taking exception to Frank's comment that Warrington had represented the Republican Party during the negotiations. Republican criticism of the plan was confined to private remarks made to McGowan by some "Conlan-like" legislators.

The Democratic reaction was not so soft. Democratic legislators from Maricopa County were upset at the proposal's Republican flavor. Representative Robert Stump scored the plan as granting an advantage to the Republicans, declaring that "the Democrats came out on the short end of the stick." Senator George Peck was angered because he had not seen the proposal before Governor Goddard approved it. Peck said Goddard had agreed to withhold his consent until Peck and Stump had examined the plan. Indeed, Peck had designed his own map for Maricopa County, and had given it to Dr.

48. Ibid.
49. Interview, John McGowan, April 26, 1966.
Phillips, expecting it to be considered with the other plans. Peck was unaware that Phillips had withdrawn from the negotiations. 51

The Democratic state organization also was surprised at Goddard's announcement. Like Peck, Democratic state chairman, Rober Allen, and executive secretary Tom Baker believed their plan was being considered by the governor. The state organization had not been informed that the county organization would make the final decision on the compromise. Baker assumed that Archer's activities were simply preliminary actions. 52

The state organization knew nothing of the compromise before Governor Goddard announced it to the press. By then it was too late to reverse the governor's decision, although Baker demonstrated to Goddard the advantages granted the Republicans by the compromise. 53 Frank was adamant about accepting the compromise and threatened to resign if Goddard refused. 54 Goddard did not refuse.

52. Interview, Robert Allen, May 23, 1966.
53. Governor Goddard received the compromise shortly before its announcement to the press. This was done deliberately to limit the time during which pressure to reject the compromise might be brought to bear on Goddard. Interview, Harold Scoville, May 12, 1966.
54. Frank would not confirm this story. It is confirmed, however, by two other participants in the compromise. Interviews, May 22 and June 8, 1966, anonymity requested.
Frankie Archer received phone calls from several Maricopa County representatives, one of whom "called me every name in the book for messing up her district."\(^{55}\) As the criticism became more heated, Scoville visited each Democratic representative from Maricopa County and explained the reasons for accepting the compromise. The public criticism abated.\(^{56}\)

Democrats, however, found it difficult to accept the compromise. Both Democratic and Republican voting profiles revealed the same result: Maricopa County's reapportionment compromise heavily favored the Republican Party. The plan had been accepted by Governor Goddard, and the Democrats could do little about it—except hope that the subdistricting of Pima County did not bring the same results.

**Pima County: Something in the Air**

The attempt to subdistrict Pima County failed. Neither party was committed to a compromise. The Republicans believed they had a plan which was acceptable to the court. The Democrats were unwilling to repeat the Maricopa County performance. The failure to compromise surprised few observers; John McGowan noted that both he and John Frank were skeptical before the Pima County negotiations began: "Pima

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55. Interview, Frankie Archer, May 19, 1966.
Pre-negotiations: The Republicans

Following the February 4 meeting where both sides agreed to attempt to compromise, John Haugh, who had been present at the meeting, contacted Representative William Jacquin and authorized him to act for the Republican Party in Pima County's compromise efforts. Jacquin had been active in Arizona's reapportionment conflict, having served on the joint Redistricting and Reapportioning Study Committee, and the House Conference Committee on Reapportionment during the fourth special session of 1965. Jacquin also had participated in the Republican Party's early decision to prepare reapportionment maps in anticipation of possible litigation resulting from the Reynolds decision. In the spring, 1965, Jacquin had aided the Republican Party in developing voter profiles for every precinct in the state.

In the early summer of 1965, Jacquin had designed a map redistricting Pima County. He showed it to Representative Etta Mae Hutchinson (D-Pima) who, although a Democrat, participated with the Republican-controlled majority coalition in the legislature and was generally recognized as a

57. Interview, John McGowan, April 26, 1966.
"pinto" Democrat. Hutchinson was interested primarily in her own district and, seeing that she was protected by Jacquin's plan, accepted most of Jacquin's suggestions. This plan was accepted by the joint study committee in August, 1965.

When *Klahr v. Goddard* was announced, Jacquin modified his original proposal and again contacted Hutchinson. To provide Hutchinson with a sense of participation, the adjusted map included some lines obviously unacceptable, and when Hutchinson suggested they be modified, Jacquin agreed readily.

While modifying his proposal, Jacquin showed the map to no one but Haugh and Hutchinson. The other Republican representatives in Pima County were told they were being "cared for," but their advice on the subdistricts was neither solicited nor received.

When the map was completed, Jacquin drafted a formal letter noting the bi-partisan nature of the proposal and urging its adoption. Both Hutchinson and he signed the letter and it was mailed, with copies of the map, to both parties to the suit.

Dave West, one of Klahr's attorneys, advised Klahr to accept the "J&H" proposal. Following a meeting at Steve


59. See Chapter 5, p. 135.

60. Interview, July 19, 1966, anonymity requested.
Simon's law office (Simon was Klahr's other attorney), Klahr agreed. The "J&H" plan would be the proposal Jacquin would bring to the bargaining table as a basis for compromise.

Pre-negotiations: The Democrats

Following the decision to attempt to reach compromises in both Maricopa and Pima Counties, John Frank contacted Dr. David Bingham, Professor of Government at The University of Arizona, and asked him to begin work on sub-districting maps for Pima County. Bingham agreed and called Jacquin, whom he assumed would be acting for the Republicans. Although he had not been contacted yet by Haugh, Jacquin agreed to work with Bingham toward a compromise. Shortly thereafter, Haugh called Jacquin and officially authorized him to act on behalf of the Republicans.

Like Jacquin, Bingham had been an active participant in Arizona's reapportionment affairs for several years. He was on good terms with both the Democratic Pima County organization and the governor's office. Bingham had served as an adviser to the joint Redistricting and Reapportioning Study Committee during the summer of 1965.

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61. Interview, William Jacquin, July 9, 1966. Apparently only one other proposal was offered in lieu of the "J&H" plan. Senator John Conlan supported the alternative. Klahr asked Jacquin if he knew more about Pima County reapportionment than anyone else and Jacquin replied, "If I don't, then something is wrong." Klahr then accepted the "J&H" plan.
Bingham worked first with the maps he had designed for the joint study committee. He also contacted two graduate students at The University of Arizona, John Kozlowicz and Jerry Polinard, who had done work for the Democratic Party, and asked them to begin designing subdistricting maps. A preliminary series of maps was developed.

On February 19, Bingham met in Richard Duffield's law office with several Pima County Democratic legislators (the "pinto" representatives were excluded). Duffield was the Democratic Pima County Chairman. Senators Sol Ahee and Ed Kennedy were present, as were Representatives Tony Carillo, Neal Justin, Sam Lena and Forrest Pearce. Duffield and his aide, Dino DiConcini, attended the meeting as did the two graduate students.

Each representative was invited to suggest the boundaries for the Pima County subdistricts. Not surprisingly, all were concerned primarily with their own district. The meeting adjourned without any definite guidelines being established.

Bingham continued to contact the representatives to discuss their suggestions for the subdistricts. Then, on February 21, Bingham was instructed by the governor's office to begin meeting with Jacquin and see if an accord could be reached. Bingham and Jacquin started negotiations on February 23.
The Negotiations

Bingham and Jacquin met once at each other's home and spent several hours together on the telephone in an attempt to agree on a common plan. The meetings were futile. It was apparent to both participants at the first meeting that no agreement could be reached.62

Jacquin believed his plan would be accepted by the court because of its "bi-partisan" nature and was unwilling to modify it in any way that might benefit the Democrats. Bingham had checked with the governor's office following the Maricopa announcement and discovered that "the Democrats had bungled the whole reapportionment area."63 The Pima County Democrats had agreed then that any compromise which provided the Republican Party with the advantage would be unaccept­able. If the Pima County Democrats were to be wounded by the reapportionment decision, it would be at the hands of the court, rather than self-inflicted.

Bingham and Jacquin were unable to reach a compromise. The northwest and central area of Pima County became focal points of contention. Bingham, trying for a proposal with a 4-2 Democratic advantage, wanted to define the central dis­tricts of Pima County more to the south where the Democrats


63. Interview, May 23, 1966, anonymity requested.
held sway. Jacquin's plan provided a 3-3 division with the central and northwestern districts designed to take advantage of the Republican migration to northern Tucson. Jacquin believed that with his proposal adopted, the Republicans would be able to capture four of the six seats within a few years.64

Recognizing that their efforts were in vain, Bingham and Jacquin agreed to cease trying. Bingham then turned to the task of designing a plan which would be acceptable to the Pima County Democrats. On February 27, Bingham met again with the democratic representatives in Duffield's office. Here he presented a proposal which he claimed served the best interests of all involved. Although the plan received favorable comment, Representative Neal Justin was disturbed that his district contained too few Democratic votes. The meeting adjourned with no decision on the plan being made.

Bingham then contacted Justin and proposed a modification of his proposal to which Justin agreed. On March 2, Bingham flew to Phoenix and presented the plan to Governor Goddard. The Pima County Democrats were present also, and, surprisingly, both Justin and Senator Ed Kennedy objected to Bingham's proposal. Justin and Kennedy were

64. Interview, David Bingham, August 10, 1966.
overruled, and Goddard indicated he would submit the plan to the court.65

When the Democratic plan was announced, the Pima County Republican organization quickly drafted a plan and petitioned the court to accept it for consideration.66 The Republicans hoped that by submitting an obviously Republican proposal, they could facilitate the acceptance of the "J&H" plan. The court would have three plans subdistricting Pima county: a Republican plan, a Democratic plan and a "bi-partisan" plan. The Pima County Republicans believed the court would be more receptive to a bi-partisan plan.

On March 4, Governor Goddard met with Attorney General Darrell Smith, Secretary of State Wesley Bolin, John McGowan, Peter Starrett, and John Frank. Here Goddard indicated his intent to submit the Democratic plan as the state's proposal for subdistricting Pima County. Smith asked Goddard to submit both the Democratic and Republican plans to the court without comment. Goddard asked, "What is the [partisan] nature of this plan," and exclaimed that as the plan submitted

65. Ibid. When Kennedy objected, Bingham noted that he had been given a district with a 4000 vote Democratic majority. Kennedy claimed that as senators, Ahee and he should be given priority. Ahee and the other representatives rejected Kennedy's claim.

66. Jacquin also had designed this map. Interview, William Jacquin, July 9, 1966.
by the state would appear to have his personal endorsement, he was not going to approve a Republican plan. 67

Frank intervened and strongly objected to Goddard's intentions. Frank argued that by submitting an obviously Democratic proposal, the governor would be accenting the bipartisan nature of the "J&H" plan, thereby decreasing the chances of the Democratic proposal being accepted. 68 When Goddard remained adamant about submitting only the Democratic plan, Frank became very angry, but to no avail. 69

Goddard's action was denounced by the Republicans as a "breach of faith." Smith claimed that an understanding had existed providing that if either county was unable to reach a compromise, the state would submit plans from each political party without comment:

A mutually satisfactory agreement between the parties to the suit and the political parties was negotiated for Maricopa County. It was understood that should such negotiation fail in Pima County each political party would have its plan submitted to the court by the state.

67. Interview, Peter Starrett, May 2, 1966. Starrett explained that Goddard had been stung by the criticism of his accepting the Maricopa compromise and did not want to be accused of "selling the Democrats down the river" in Pima County.


69. Interviews, April 26, May 2 and May 12, 1966; anonymity requested. Frank was angry not only because he believed Goddard's decision legally unwise, but also because he had pledged his work that the state would file all plans submitted if a compromise could not be reached.
The governor has, at the last moment, broken this understanding by insisting that only the Democrat plan be submitted on behalf of the state. Therefore, I hope that the court will consider the Republican plan submitted by the legal counsel for the Republican party even though technically it has no official standing.\textsuperscript{70}

House Majority Leader John Haugh also scored the governor's decision: "He [Governor Goddard] took an oath to represent all the people of this state. Submission to the federal court of only the plan for Pima County offered by a segment of his political party is a gross breach of that oath."\textsuperscript{71}

Governor Goddard responded by noting that Pima County's reapportionment conflict differed from that in Maricopa County, where both parties were able to agree on a common plan:

In the case of Pima County, the plaintiff [Klahr] had already announced that there was no hope for agreement when the Maricopa County settlement was reached.
As defendant for the state, I merely chose what I thought was the best one.\textsuperscript{72}

Thus, the court was presented three proposals to subdistrict Pima County. One, the "J&H" plan, seemingly had the virtue of being bi-partisan. In addition, the "J&H" plan had the lowest deviation percentages of the three proposals,

\textsuperscript{70} Arizona Daily Star, March 5, 1966.
\textsuperscript{71} Arizona Republic, March 6, 1966.
\textsuperscript{72} Arizona Daily Star, March 5, 1966.
with no more than a five and one-half percent variation in voter registration between the six districts. The Democratic proposal had a maximum deviation percentage of fourteen and was obviously intended to provide the Democrats with an advantage. The third proposal, filed by the Pima County Republican Party, was intended to emphasize the partisan nature of the Democratic plan and the bi-partisan nature of the "J&H" plan. Even so, the Republican proposal maintained lower deviation percentages than the Democratic proposal.\(^\text{73}\)

The decision of the court was anti-climactic. On March 14, the three-judge panel accepted the compromise proposal to subdistrict Maricopa County and, citing the lower deviation percentages as a contributing factor, accepted the "J&H" proposal to subdistrict Pima County.

The reaction to the decision was as expected as the decision itself. Professor Bingham expressed disappointment and hoped that the next legislature would alter the district boundaries. Representative Hutchinson challenged Bingham's comments, arguing that "the Democratic Party did not get hurt [by the decision] in any way.\(^\text{74}\) The *Tucson Daily Citizen* cited the proposal as a "good plan for Pima County.\(^\text{75}\) Most

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\(^{73}\) Ibid.


\(^{75}\) *Tucson Daily Citizen*, March 17, 1966.
observers, including Democratic legislators, admitted that the decision was fair.

Conclusions

The highly partisan nature of legislative reapportionment is obvious. Thus, a legitimate question would concern the willingness of political parties to compromise when control over a state's political system is at stake. In Maricopa County both parties believed a compromise would be to their advantage. The Republicans believed a compromise was preferable to either of two alternatives they perceived as possible consequences of court reapportionment.

First, the Republicans did not want the county board of supervisors, within whose jurisdiction county apportionment fell, charged with the task of reapportionment. Two of the three supervisors were Democrats, and the Republicans feared a Democratic-oriented proposal would result.

Second, the Republicans wished to avoid an at-large election. Although Maricopa County was considered a Republican stronghold, the uncertainty of at-large elections bothered the Republican leadership. In addition, the Republicans believed that at-large elections would increase intra-party conflict during the primaries.

The Democrats also feared at-large elections. Not only was the Republican voting strength concentrated in Maricopa County, but the Republicans were better financed and
better known to Maricopa County voters. The Democrats were concerned with protecting certain incumbents and believed this would be facilitated if court reapportionment or at-large elections could be avoided.

Leaders of both parties were aware that some courts had ordered reapportionment by computers, and neither party wanted to risk such an occurrence in Arizona. A compromise would obviate computer reapportionment.

In Pima County, neither party was so wary of court action. The Republicans knew the bi-partisan appearance of the "J&H" proposal would be attractive to the court, two of whose judges were not from Arizona and therefore unfamiliar with the "pinto" vote so common to Arizona politics. If the Democrats were willing to compromise without seriously modifying the "J&H" plan, then the Republicans would agree; otherwise, they would take their chances in the court.

The Democrats also were willing to risk an unfavorable court decision. First, they were unwilling to accept a compromise which would be to their disadvantage; the Democratic debacle in Maricopa County had made the Pima County Democrats sensitive to the issue of compromise. Second, if the court ordered at-large elections or reapportionment by the county board of supervisors, the Democrats would benefit. Pima County's Democratic vote was much more sizable than that in
Maricopa County, and, as in Maricopa County, the board of supervisors was controlled by Democrats.

Both parties were willing to attempt a compromise to satisfy the court's request, but most observers correctly predicted the ensuing failure.

Granting the reasons for compromising, Maricopa County's experience merits further explanation. Though political parties may desire to compromise, the partisan nature of reapportionment would seem to militate against success.

Pima County's failure to compromise is illustrative. Some of the reasons for Pima County's failure have been mentioned, e.g., the impact of Maricopa County's compromise on Pima County Democrats and the attractiveness of the "J&H" plan to the Republicans. There were other reasons.

Pima County politics is much more "heterogeneous" than politics in Maricopa County. By this I mean that the concentrations of Democratic and Republican voters is less definite in Pima County than in Maricopa County. This creates more marginal areas and, therefore, more areas of conflict to resolve when an accord is attempted.

In addition, one of the two major participants in the Pima County negotiations was a legislator. His vested concern with the product of the negotiations may have impaired the flexibility of the proceedings. More probably, the absence of a legislator in the Maricopa County negotiations
may have facilitated their labors more than Jacquin's presence hindered those in Pima County.

Still, the parties in Maricopa County not only compromised, they compromised with ease. Perhaps the factor which contributed most to easing the way for Maricopa County's compromise was the initial map offered by the Democrats. During the first meeting between Warrington and Archer, maps were exchanged so that each side could explore the areas of agreement and disagreement. Upon receiving Archer's map, Warrington was "elated." He told one official that the Republicans would not "have had the guts to present a plan identical to the compromise; we would have been embarrassed not to offer the Democrats more."76

Warrington's elation was understandable. The Republicans initially offered Archer a proposal which granted the Republican Party twelve of the fifteen districts. The plan was offered simply as a beginning point to compromise; the Republicans did not believe the court, or Archer, would accept it. Archer presented a map which she believed guaranteed the Democrats eight or nine of the fifteen seats. Archer, however, had used voter registration as the basis for her proposal. Warrington's voting profile indicated that, using voting behavior rather than voter registration as the

76. Interviews, May 24 and June 2, 1966, anonymity requested.
basis, the Republicans could count on ten of the fifteen districts outlined in Archer's plan. Thus, the two maps compared much more than they contrasted. Archer was allowed to make some minor adjustments to Warrington's map, and the compromise was effected.

The Democrats simply had not done their homework. Archer was a novice in the area of reapportionment and failed to make the critical distinction between voting behavior and voter registration. In addition Archer was restricted by the governor's office, which instructed her to protect certain incumbents and ethnic blocs.77

Other factors contributed to Maricopa County's successful attempt to compromise. Unlike Pima County, Maricopa County politics are "polarized." The concentrations of Democrats and Republicans are easily identified and, therefore, the marginal areas which lend themselves to conflict are few. The absence of a legislator participating in the proceedings has been mentioned above. Finally, Warrington suggests that conflict was reduced somewhat by the presence of a woman during the proceedings.

77. The attempt to protect certain incumbents was described by one Democratic official as "very altruistic, but many of those they tried to protect did not seek re-election. You can't afford to try to protect today and not look out for tomorrow." Interview, June 2, 1966, anonymity requested.
Thus, the attempts to subdistrict Arizona's two most populous counties concluded. Now the two political parties prepared for the 1966 elections. These elections would be unique; for the first time, voters in Maricopa and Pima Counties would cast a ballot of full worth. The one man, one vote principle had come to Arizona.
CHAPTER 8

CONCLUSIONS

What does all this mean? The description of a political exercise is itself valuable; any contribution to our knowledge of the political process cannot be gainsayed. Perhaps, however, there is additional insight to be gleaned from the Arizona reapportionment experience of 1966. The conclusions suggested by this study follow.

The interrelationship between the legislature, judiciary and political parties in resolving the reapportionment problem is explicit throughout this study. The legislature's attempts to remap Arizona's congressional districts were obstructed partially by the partisan actions of the House members. The Republicans were unwilling to accept a congressional districting bill which would dilute Republican influence in District 3. This would not only narrow their opportunity to capture the third district (and thereby control two of Arizona's three congressional districts), but would also strengthen Congressman George Senner's tenuous hold on District 3. For the first time in the Twenty-seventh Legislature, the majority coalition dissolved along partisan lines.
At the same time, the relationship between the legislature and the political parties was not so clear in the area of Senate reapportionment. The legislature's difficulty with Senate reapportionment was not a function of partisanship. Rather, the senators were unwilling to reapportion themselves out of their legislative seats. In addition, an urban-rural division militated against an equitable resolution of the Senate reapportionment problem. The rural senators, constituting a majority of the upper chamber, were unable to accept the possibility of a Senate dominated by urban interests, and especially urban interests controlled by Maricopa County.

The judiciary performed three roles in Arizona's reapportionment exercise. First, the federal district court served as a catalyst to both the legislative and political party activity which occurred during the reapportionment period. The court was obvious in its reluctance to actively become involved in the reapportionment process. Judicial proceedings were postponed continually as the court acted with restraint, noting explicitly its belief that reapportionment was a problem best suited to legislative or executive resolution.

Second, the court made policy. When the court did act, there was no hesitation. The cloak of judicial restraint was flung aside easily. Judicial policy filled
the vacuum created by the absence of legislative or executive decree. And the court acted with imagination, rejecting the multiplicity of reapportionment proposals which had been tendered during the trial in favor of a plan designed by the court.

Third, the court implemented its own policy. The court amended the size of both houses of the Arizona Legislature, and innovated with its request that the parties to the suit assist in subdistricting Maricopa and Pima Counties. The court continued making policy when it accepted voter registration in lieu of population as an apportionment base.

The court's decision to confirm a congressional districting plan designed in the legislature, develop its own plan for reapportioning the Arizona Senate, and accept subdistricting proposals from the political parties is testimony to the interrelationship between the legislature, judiciary and political parties. An overview of the decision-making process utilized during the 1966 reapportionment exercise would indicate the district court served as a link between the legislature and political parties in effecting the reapportionment policy which should obtain during 1966.

Perhaps the most obvious generalizations to be drawn from this study concern political party behavior in a partisan context such as a reapportionment exercise.
The research proposition offered at the introduction of this study appears to be valid. Political parties do view reapportionment as a means of political control and are involved directly in reapportionment activities.

In choosing representatives to advance the party influence in this area, the political parties in Arizona opted for expertise rather than such formal actors as party officials. With the exception of the Maricopa County Democrats, all the participants were chosen for their knowledge and experience in reapportionment conflicts. Warrington, Jacquin and Bingham had been examining voter behavior and relating it to reapportionment plans for months before the negotiations began. Although Warrington's influence in the Republican Party might qualify him as a formal actor in Republican Party politics, he was chosen for his knowledge of Arizona's reapportionment problems, rather than his position in the Republican Party. Similarly, Jacquin was asked to act for the Republicans in Pima County not because he was a legislator, but because he had been active in Arizona's reapportionment conflict.

In the case of Maricopa County's Democrats, where expertise was eschewed in favor of participants holding formal positions in the party apparatus, the political party suffered. It would seem that in a partisan conflict involving a problem of political behavior, a political party should
choose as participants, those who are familiar with the problem area, rather than party officials whose organization relates directly to the issue. This is not to suggest that expertise and partisan politics are mutually exclusive. Indeed, the Arizona experience offers a blending of expertise and partisanship. Expertise, however, is apparently the more desirable value.

The most obvious generalization suggested by this case study concerns the impact of party decentralization on the ability of a party to successfully achieve stated goals. The federalized nature of our political system decentralizes the organizational structure of our political parties. This does not mean that American parties are organized from "the bottom up," but rather that there are many autonomous centers of power within the party organization. Communication between these different loci of power is often difficult to achieve, and conflict within the party hierarchy is common.

The lack of communication between the state and county organizations was apparent in the Arizona reapportionment conflict. The Republicans viewed the conflict as a struggle for control of the state's political machinery. Consequently, the county organizations were not employed during the compromise negotiations. In Maricopa County the county organization, identified as predominantly right-wing, was perceived to have different goals from the state
organization, and, although the county chairman was kept informed concerning the progress of the compromise meetings, he had no policy-making authority.

In Pima County the county organization did not participate in the compromise activities, but there was no ideological conflict as in Maricopa County. Oliver Pierce, the Republican county chairman, was informed of Jacquin's actions, but recognized that the ramifications of the negotiations transcended Pima County and was content to perform a passive role.¹

The Republican goals dictated a strategy designed to achieve overall Republican political strength. The Democrats, however, viewed the conflict in more specific terms. Governor Goddard believed the reapportionment conflict to be a county matter and delegated the authority to resolve the problem to the county organization. In Maricopa County the county and state organizations clashed. Consequently, the research on voting behavior done by the state organization went unused and the county organization's reapportionment plan failed to recognize the statewide significance of the reapportionment conflict.

It is possible that the county organization did not intend to take cognizance of the statewide significance of the reapportionment conflict. The county organizations in

¹. Interview, Oliver Pierce, July 29, 1966.
both Maricopa and Pima Counties were concerned, with Goddard's approval, with protecting (and purging) specific representatives. They operated on the basis of what one participant termed "the theory of mutual protection," whereby each party was granted the privilege of protecting certain incumbents.

In Maricopa County communication between the county and state organization was almost non-existent. The state organization knew nothing of the compromise before its announcement in the press. Indeed, two days prior to the conclusion of the meetings, the state organization was informed that no progress was being made.\(^2\) At the same time the county organization was unaware of the map designed by the state organization and based on voting behavior rather than on voter registration.

Nor did the state organization participate in the Pima County negotiations. This was due more to the state organization's ignorance of Pima County politics rather than any conflict between the two levels. Still, this ignorance accents the lack of communication and rapport between the state and county organizations.

The plight of the state organization is clarified by Richard Duffield. Shortly after the reapportionment exercise was concluded, Duffield became chairman of the

\(^2\) Interview, Tom Baker, May 24, 1966.
Democratic state organization. His comments are reminiscent of Cotter and Hennessy's discussion of the impotent national organizations: 3

The state organization really has little function, especially with an incumbent governor. . . . The function of the [state organization] is to find something to do. Party organization is federated; the counties are autonomous and should be. . . . [In addition], Arizona is too large a state to have a central organization, it's a project just to get together. Also, the state party has little patronage power . . . and can't operate too well on a quid pro quo basis.

Other than dispensing national party money during a Presidential election, the state party simply has no function. . . . 4

Thus, communication within the parties appears to be the function of party strategy, personality, geography, and ideology. The Maricopa Democratic conflict resulted largely from the inability of Archer and Smith to get along. In Pima County the geographical distance interdicted the Democratic state organization's intervention into the proceedings as the state organization was unfamiliar with Pima County politics.

The Republicans in Maricopa County clashed ideologically with the state organization, and in Pima County, the county organization recognized the statewide


importance of the issue and did not participate in the proceedings. In both counties communication between state and county organizations was unimpaired, but only in one direction: from the state organization to the county. The county organizations did not participate in the policy-making activities.

Even within the county organizations communication sometimes faltered. Bingham was notified of his role first by Frank, rather than Duffield, and Jacquin was informed of his role first by Bingham, rather than Haugh.

And so, the 1966 reapportionment conflict concluded, if it can validly be said that any political exercise ever concludes. The impact of the 1966 reapportionment experience would linger far beyond one year or even one decade. New legislators would serve because of the reapportionment decision, and, therefore, the output of the legislature would change.

The most immediate effect of the reapportionment would occur following the 1966 elections. As the Arizona Republic's political reporter, Don Bolles, observed at the end of the 1966 legislative session, the atmosphere in the state legislature had changed since the reapportionment activity had concluded: "The Legislators are playing out a hand and enjoying their few remaining days as
representatives. . . ."⁵ Most of those "playing out their hand" would not return to the legislature because of Klahr v. Goddard.

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⁵ Arizona Republic, March 27, 1966.
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