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Abstract of the Dissertation

MISSISSIPPI REDISTRICTING 1977-1980

By

Thomas B. Hofeller

Claremont Graduate School: 1980

In February of 1980 the Supreme Court ended fifteen years of redistricting controversy in Mississippi with its decision in United States v. State of Mississippi. In this decision, the Court affirmed the judgment of the District Court for the District of Columbia and, thereby approved the first constitutionally sound redistricting plan for that State since the "one man, one vote" rulings of the 1960's. This dissertation is a chronicle of the process which brought that Plan into existence, and of the controversies and technical difficulties encountered by all parties in that process. Hopefully, this work will serve as a warning of the pitfalls of court involvement in redistricting, and will help others to avoid the difficulties in the technical process.

The composition of districts -- even when they are of equal population -- is probably going to be the main issue of redistricting lawsuits of the 1980's. Missis-

sippi's difficulties with racial representation, and the solutions of those problems can serve as a guide to those operating under the provisions of the Civil Rights Act.

MISSISSIPPI REDISTRICTING 1977-80

By

Thomas B. Hofeller

A Dissertation submitted to the Faculty of Claremont Graduate School in partial fulfillment of the requirements for the degree of Doctor of Philosophy in the Graduate Faculty of Government

Claremont

1980

Approved by:

George Blair

George Blair

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We, the undersigned, certify that we have read this dissertation and approve it as adequate in scope and quality for the degree of Doctor of Philosophy.

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Member

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INTRODUCTION

This is a study of the 1977-78 redistricting of the Mississippi State Legislature. It was a process that saw the culmination of a struggle between the civil rights forces and the "Establishment" in Mississippi, but its origins span almost the entire period of the "reapportionment revolution" in the United States.

The importance of the redistricting conflict in Mississippi is that it touched nearly all the constitutional issues concerning representation that were addressed by the courts in the 1970s. Indeed, it presented practical illustrations of many of the problems the courts encountered.

The Mississippi case history serves particularly well to highlight the difficulties of evaluating what is "fair" representation and how "fairness" can be measured. It also serves as a pointed example of the dangers that confront courts when they attempt to perform the legislative function of redistricting--especially when they do so without proper technical support.

The United States Supreme Court first entered the redistricting process in 1962 with its landmark decision in Baker vs. Carr.[1] The clear intention of the Warren

Court was to provide remedies for the problems of mal-apportionment--problems that had been created by dramatic population movements of the previous half-century. The growth of metropolitan areas in many states had resulted in pressures on entrenched, rurally dominated legislatures to redistrict and to recognize the new population power of urban areas. This transfer of power, however, had been resisted by the rural politicians through two devices. The first was a flat refusal to redistrict at all--the case in Tennessee, which precipitated the Baker decision. The second was the use of the "federal system"--or the apportionment of the lower house on the basis of population and of the upper house on geographic areas.

Having entered the redistricting process by its declaration that such matters were justiciable, the Court then faced the inevitable problem of determining what constituted compliance with the requirements of the Fourteenth Amendment. The Court anticipated the difficulty of this determination by refusing, for almost six years, to set any finite standard below which population deviations could become acceptable. The Court merely declared that a de minimus standard required a good faith effort to achieve exact equality. As the redistricting process following the 1970 Census began, the assumption was that only very minute variations in district populations would be allowed by the courts. The "one man, one vote" rule, it was thought, would be strictly applied to

all redistricting situations.

Having experimented, however, with the application of mathematical exactness as the paramount redistricting criterion, courts began to realize, perhaps in light of their own difficulties in drawing plans, that exact mathematical equality created serious problems of its own. Applying, for example, a 1 percent standard to congressional districting was logical because congressional districts contained more than 400,000 persons. Application of the same 1 percent standard in states with small populations and large legislatures, however, demonstrated the absurdity of the principle. In the state in which the ideal district size was 20,000 persons, 1 percent would constitute no more than 200 persons--well under the average size of enumeration districts and even many city blocks. There were, of course, sheer technical difficulties in meeting this demanding standard, and its application produced serious fragmentation of local units of government, even of neighborhoods. The emphasis on population equality to the exclusion of all other factors also opened the door to a series of gross abuses--not least the partisan gerrymander--which could be justified on the basis of compliance with the "one man, one vote" rule.

The Court was finally faced with the realization that "one man, one vote" was a two-edged sword--it struck down malapportionment, but it strengthened the gerry-

mander. The Court now turned to a policy of re-establishing some of the constraints on the gerrymander; but this was a process that would require some relaxation of the rule of mathematical exactness.

The retreat from exact equality was enunciated in the Gaffney decision in Connecticut, the Mahan decision in Virginia, and the White decision in Texas. The Court restated the de minimus rule for state legislatures by ruling that the 5 percent deviations on either side of ideal district population would be considered sufficiently exact. Any greater deviations were to be based on some rational state policy and could not be insidiously and systematically applied to the detriment of any area of the state or of any minority group.

Mississippi was uniquely illustrative of such problems. Numerous plans were drawn by all parties in an attempt to balance the requirement of equality of population with other desirable criteria, such as minority representation, county integrity, and compactness. By comparing the different plans that were drawn in Mississippi, it is possible to trace the effects of various levels of population exactitude on the other traditional criteria used in redistricting.

The other major issue in redistricting is minority representation. Having opened the door to challenges on the basis of how many persons the boundary of a district enclosed, the courts were soon faced with additional

challenges based upon what kinds of people lived within the lines.

Redistricting has always been a principal tool of majority control, and the temptation to strengthen majority dominance has generally been too great to resist. Just as many voters felt that they were denied equal exercise of individual voting power through malapportionment, others felt that their political influence as members of minority groups had been diluted in redistricting. Thus far, the Supreme Court has managed to sidestep all issues of minority representation except those pertaining to blacks and Hispanic-Americans. Most discussions of minority representation, therefore, center around these two minority groups.

The defense of minority representation in redistricting has taken two paths. One is a series of decisions by federal courts based on the Fourteenth Amendment. In these cases plaintiffs have been able to carry the burden of proof that the districting plans have been discriminatory. The second path has been through a series of decisions based on the application of the 1965 Civil Rights Act through Section 5 of that statute. This statute grants the Attorney General of the United States extensive powers to police all aspects of the voting process--including redistricting plans. In Section 5 cases, the burden of proof has been on the redistricting authorities to prove that they did not discriminate.

The Mississippi experience, again, offers an excellent opportunity to study this aspect of the redistricting process. It combines both the regular line of redistricting decisions and the Section 5 decisions. Indeed, it brings the racial aspects into the sharpest possible focus because of the unusual distribution of the black population in the State. Significant black population is found in many parts of Mississippi, both in urban and rural areas. Blacks are also found in all levels of concentration.

Mississippi's racial situation, as contrasted with the demographics involved in other cases--where blacks have been concentrated in ghettos--requires more detailed investigation to determine if "racial gerrymandering" has indeed occurred. In theory, perhaps, there is a "fair" number of seats to which any minority is entitled. But the practice of the matter is that minorities may be divided among districts in such a way that they exercise more or less power in varying degrees of political influence in relation to what is proper or fair. In the Mississippi context, the lines between "too little," "just right," and "too much" are not clearly or readily defined. The parties to the Connor cases and to the Mississippi case were forced, therefore, to address these quantitative issues in detail. As a result, some tentative conclusions on "fairness" in minority redistricting may be drawn from the Mississippi experience.

Mississippi is the last State to be redistricted in the 1970s. It is also, in the opinion of some, the State that practices the most blatant forms of racial discrimination and that is most resistant to electoral reform. Whether or not this may be true, it is certainly the State with the largest and most widely distributed minority population. Its redistricting, therefore, offerred the courts the last chance in the decade of the seventies to address issues of gerrymandering and minority representation. Moreover, in deciding this case, the Supreme Court will have had the benefit of time to examine the results of its previous experiments in applying redistricting rulings. One may conclude, therefore, that the Mississippi redistricting, and the court decisions generated by it, will set the stage for all the state redistrictings of the 1980s.

Although there is a very large scholarly literature on redistricting, few studies deal with the details of the line-drawing process. Yet these details (the calculation in different ways of population deviations, the use of different units of political and census geography, the application of various cartographic techniques, the use of different computer technologies, etc.) actually decide the shape of districts and, thus, the character of the representative process. In this study, therefore, close attention has been paid to all technical aspects of the Mississippi redistricting. Only in this way can different outcomes of redistricting be fully explored and understood.

Footnotes to Introduction

[1]Baker v. Carr, 369 U.S. 186 (1962).

CHAPTER I

A BRIEF HISTORY OF APPORTIONMENT AND DISTRICTING IN THE UNITED STATES

Overview

The "Reapportionment Revolution" of the 1960s, a series of Supreme Court decisions that enforced equal population as the basis for the allocation of legislative and congressional seats, marks a watershed in the theory and practice of representative government in this country. Population was only one basis for apportionment prior to 1964. Land--units of territory, such as counties or parishes or townships--had served as another, often competing basis.

The proper weight that should be given to population or to land in apportionment had always troubled representative governments. In England, the "rotten borough"--Old Sarum, a medieval town that had lost its population, but not its parliamentary representatives, was the classic example--became an issue of controversy as early as the seventeenth century.[1] In America, the colonies also used both population and land units as bases for apportionment. Controversies arose, even then, over the population inequities of land-based systems. Thomas Jefferson, for

example, sharply criticized Virginia's county-based system (in which the smallest county had 951 voters, while the largest had 22,105), because "among those who share the representation, the shares are unequal."[2] The Northwest Ordinance of 1787 established a population basis for the apportionment of territorial legislative seats ("one for every 500 free male inhabitants"). But the U.S. Constitution, guaranteeing two U.S. Senators to each state, regardless of population, returned to a partially land-based system.

After 1787, state legislatures differed widely in apportionment practices. A majority of the states admitted to the Union employed population as the basis for apportionment; but several states followed the "national plan" of basing one house on population, the other on land units; and others, although they employed population as the principal basis for apportionment, modified it with requirements that each county have a minimum of one representative or that no county have more than some set maximum of representatives.

In the twentieth century, land-based systems of representation came under increasing pressure: mass movements of population and the growth of great industrial centers produced ever greater population disparities among counties and other electoral units in the states. Yet state legislators, because they owed their election to the existent system, were often unwilling to reapportion.

Indeed, in several states, rurally dominated legislatures sought to perpetuate themselves by adopting new land-based apportionment schemes or by freezing existing plans into law.

Finally, in the 1960s, the U.S. Supreme Court acted to impose population as the basis of representation. The doctrine of "one man - one vote" was used to compel states to apportion both houses of their legislatures on population and to create substantially equal state legislative and congressional districts. Land units--except only the states, whose status was guaranteed in the Constitution--lost their role in the federal-state representative system.

Judicial intervention failed to end the controversy surrounding questions of representation. Indeed, new issues, debated with no less heat than in former eras, followed fast upon the Court's decisions. Today, reapportionment and redistricting remain at the center of political battles in every state in the Union.

The purpose of this brief history is to introduce some of the main themes in redistricting from earliest times to the present.

The Early View: What is Representation Or What Should Be Represented?

To understand the early American view of apportionment it is first necessary to gain some perspective on what Americans then meant by the concept of "representa-

tion." The justification of modern representative government rested then, as it does now, on the ideals of direct, participatory democracy--but, at the same time, on its absolute impracticality. The people are sovereign, but if they attempt to exercise that sovereignty by deliberating as a collective body, government would be utterly impossible. The people are therefore understood to select representatives who are their surrogates and by virtue of that status accountable to the people. In this sense, the representative is not so much a representative of "the people" as he is a representative of the opinions, attitudes, and the interests of a particular people who live in a particular place.[3]

Consistent with this view of representative government, the early Americans seemed to recognize three principal bases for the apportionment of representation: population, taxable income, and local communities. Controversy arose on the question of what role each of these should play in a particular system of representation.

The usual arguments for representing territory or political subdivisions as well as relative population turned on the perceived differences within each state. The social and economic and political interests of the coastal towns and counties, for example, were seen as different from those of the hinterlands. What was considered significant to the larger cities was quite different from the smaller towns and rural areas, since

one was the center of trade and commerce and the other of agriculture. The population of the cities might also be composed of a greater percentage of "newcomers." Similarly, the urban and rural areas might have different understandings of how to distribute the unsettled land of the state or of the future of "the western lands." To link representation to population alone, then, would be to give the larger cities disproportionate influence in deciding policies that would affect the entire population of the state. As was noted by John McMahon in 1813 in his description of the government of the State of Maryland:

> . . . for a long time anterior to the Revolution the same equality of county representation prevailed, and the same number of delegates were allotted to each county. This was the system under which the framers of the Constitution had grown up. . . . It was also accommodated to their shore and county jealousies; . . . It is probable that any attempt to repudiate it, and to substitute in its stead a representation based upon territory, property, or population, or on a ratio compounded on any or all of these, would have alerted the jealousies of the smaller counties and would have left the state the prey of internal dissensions.[4]

The representation of territory, therefore, was thought to be the necessary means to secure the loyalty of the citizens and to insure an adequate representation of the variety of opinions throughout the State. To add to the representation of counties or other political subdivisions, in this perspective, was no more than to affirm their "right to be heard."

The issue of malapportionment, or blatant over-

representation of the rural areas, was only occasionally raised in the early period. Always, in those days, there were more rural than urban counties in a state. Therefore, the smaller counties were necessarily more "representative" of the population of a particular state than the cities or commercially oriented counties.

There is evidence of wide popular support for the broad notion that representation should somehow be allocated by reference to areas and interests of the state as well as by reference to population. Yet the precise balancing of the factors of geographic area and population was recurrently an issue of controversy. Almost all the states were sharply divided into urban and rural areas, and the adjustments necessary to achieve an appropriate balance between them were difficult and frequently controverted. From the very beginning, then, the battle over apportionment was drawn over the competing interests of these two camps.

Even though there was a consensus regarding the nature and needs of representation, the disputes as to how to implement the particular districting plans promoted substantial variations in practice. To explore these differences and to broaden our perspective on the period, it is instructive to review the constitutional provisions of the original states in some detail.

The Original Thirteen State Constitutions

The original apportionment provisions, as we have already suggested, generally aimed to balance three factors: (1) population, (2) citizens with some financial stake in the state, and (3) significant divisions of interest or opinion identified with particular areas or political subdivisions. Reflecting these concerns, most states chose, in one or both legislative chambers, to guarantee to their important political subdivisions either equality of representation, or at least, a degree of representation irrespective of the distribution of population (see table 1). The only consistent rule in this period, however, was the rule of variety and experimentation. Delaware, for example, guaranteed each county equal representation in both houses. Since Delaware had ten counties, this formula meant a Senate of 30 members (3 per county) and a lower house of 70 representatives (7 per county).[5] Both the upper and lower house legislators were elected at large within their counties. In four other states (Georgia, New Jersey, North Carolina, Rhode Island) political subdivisions were guaranteed equal representation only in the upper house. Probably the most frequent practice was to guarantee each county (or town in Massachusetts, New Hampshire, and Connecticut) at least one representative and then to apportion more representatives as population disparities required. This usage varied in both directions, but two examples will

TABLE 1

APPORTIONMENT FORMULAE OF THE THIRTEEN

ORIGINAL STATES (1790)

Apportionment Formulae	Upper House	Per-cent	Lower House	Per-cent
Equality of county or town	Delaware N. Carolina Rhode Island Georgia New Jersey	38%	Delaware Connecticut New Jersey	23%
Combination of (1) County guarantee of minimum representation	Maryland S. Carolina Virginia	23%	New Hampshire Georgia Maryland Massachusetts New York N. Carolina S. Carolina Virginia Rhode Island	70%
By District, apportioned to taxable inhabitants. Each County guaranteed minimum representation	Massachusetts New Hampshire	23%	Pennsylvania	7%
By District, apportioned by population of freeholders	New York	7%		
Elected at-large	Connecticut	7%		

Sources: Benjamin Poore, The Federal and State Constitutions, Colonial Charters, and other Organic Laws of the United States (1878).

Francis N. Thorpe, The Federal and State Constitutions, Colonial Charters, and other Organic Laws of the United States . . . (1906).

illustrate: In Pennsylvania, a state with a population of 300,000 dispersed over eleven counties, the lower house was apportioned in two stages. The first stage was to guarantee to each county and to the City of Philadelphia at least one representative; the second stage allotted additional representation to counties on the basis of the number of taxable inhabitants.[6] In the Constitution of South Carolina, on the other hand, each parish was given from one to three representatives, depending on population, with an additional guarantee that the parish of Charleston--the largest metropolitan area of the South--would receive fifteen representatives.[7]

In all of these constitutional schemes, the essential ingredient was the provision for as broad a basis of representation as practicable. Recognizing the striking differences, both social and economic, among the many heterogeneous areas within the states, and given their different and often conflicting political interests, representation seemed to require much more than attention to the number of voters. The interests of the coastal towns were frequently in tension with, and, indeed, sometimes in direct competition with the counties and towns of the hinterlands. What was considered necessary policy to the centers of trade and commerce was, therefore, often contradictory to the fundamental needs of the agricultural areas. Equally threatening, the population of the cities might be composed of a greater percentage of "newcomers,"

leading the cities to take a different interest in distributing the unsettled lands of the state or in negotiating with other states over the use and development of the disputed "western lands." It was then generally thought that, if representation were linked solely to population, the larger cities (the ports of entry) would have disproportionate influence in deciding policy affecting the entire state. More specifically, if policy in any way adversely affected the value of land, it might drastically affect the fortunes of less populous areas and counties of the state.

The Issue of Malapportionment and Districting

The question remains: did these complex early apportionment formulae lead to malapportionment or to large disparities in population in the various legislative districts?

The State Legislatures

In the four most populous states--Massachusetts, Pennsylvania, Virginia, and North Carolina--there can be no question that malapportionment was significant. In the remaining smaller states there is, with the exception of Rhode Island, some doubt.[8] Although relevant information is scanty, the great majority of the states rarely drew radically new district lines. Generally, they chose to follow established county and city boundaries; this was done even in those states where counties or cities were

not guaranteed equal or minimal representation.[9] These original counties, of course, had generally been drawn with some reference to population--when estimates were available--but they also recognized geographical restraints (mountains, forests, rivers, and other natural obstacles to transportation and commerce). Legislative districts conformed to such traditional political boundaries, then, rarely possessed exactly equal population. It would be unfair, however, to be too critical of these practices. Population estimates in the period were either unavailable or unreliable; only two state constitutions required periodic censuses (and their methodology is unknown). Moreover, the counties were the basic units of state administration and, as such, were designed for the convenience of their residents: since voting booths were located at the County Court House or Sheriff's office, the general rule of thumb seems to have been that all voters should be within a half-day's travel of these centers of local government.[10]

In the less populous states, therefore, the process of districting did not seem to give rise to significant malapportionment. At least, it appears that rural counties, and thereby the majority of legislative districts, were roughly equal in population. In the larger states with the high density urban areas along the coast and inland port towns, however, malapportionment was frequently the rule.

It should be noted, of course, that population totals were not the prime consideration in this period. Until the 1830s, all the states restricted suffrage to male, twenty-one-year-olds (in two states, eighteen if married) who had resided in the state for usually more than three months (in six states, one year), and who could also demonstrate some financial stake in the community (generally, cash or property valued at 50L or more). The net effect of these restrictions, of course, varied from state to state or from region to region within the state, depending on the economy and character of the population. In Georgia, where rural land was relatively inexpensive, a county of 200 people might have only 10 "rateable polls" (qualified voters); the other extreme might be found in the State of Massachusetts, where in a town of 250 males, there might be 150 qualified voters.

Congressional Districts and Malapportionment

What was true for the state legislative districts was frequently untrue for the congressional districts. Each state was guaranteed in Article I of the U.S. Constitution one congressional representative regardless of population. In the less populous states, then, congressmen were elected at-large; but, even in states where the delegation included as many as four representatives (for example, in New Jersey and Georgia), congressmen were frequently elected without use of

districts. It was not until 1842, and then only as the result of a federal statute, that all the states elected their congressmen by districts. The states (Virginia, Massachusetts, Pennsylvania, North Carolina, and New York) that chose to assign districts followed the pattern used for state legislative districting: thus the levels of congressional malapportionment were, in these cases, generally similar to those in the state legislature.

The Process of Reapportionment and Redistricting

Despite the presence of significant malapportionment, only four states (New Jersey, New York, Virginia, and Connecticut) constitutionally provided for legislative adjustment of apportionment formulae or districts.[12] In the remaining nine states, it was possible to alter the apportionment formula only through the extraordinary means of constitutional convention.

The Politics of Apportionment:

The Early Period

Whatever political consensus was reflected in these early constitutional provisions was, at best, tenuous. In many states, significant controversy soon arose, even in the same year the constitution was ratified. Political, geographic, or economic interests became disenchanted, and then organized attempts to amend or to abandon the constitutional formulae. The controversies often turned on

population: either the formula did not accurately reflect population or it gave it too much influence. Again, conflict between urban and rural counties was generally at the nub of the matter.

This fundamental conflict--traditionally referred to as Piedmont (rural areas) versus Tidewater (coastal areas—is visible in American politics from the earliest colonial periods. The classical example of the struggle is found in Virginia and in the Carolinas; but most elements of the struggle were also present in Maryland, Pennsylvania, New Jersey, and Georgia--indeed, to some degree, in nearly all of the states.

Georgia, A Case History

One of the best examples of such struggles is the apportionment battles of Georgia and the rivalries between the Tidewater area along the coast, the pine barrens or coastal plains just beyond, and the Piedmont extending into the wilderness above the fall-line.[13] The conflict of these areas furnished the basis for the sectional struggles of Georgian politics from Colonial times to the Civil War. As soon as the settlers were allowed to introduce slavery into the Colony, and the low lands were laid out into plantations, the yeoman found it to his advantage to push further into the pine barrens where land was cheaper, though often less fertile. While the Piedmont region was not ceded to Georgia by the Indians until 1773,

the upper two regions of the State increased rapidly in population during the course of the Revolutionary War and the early nineteenth century. As early as 1790, the center of population in the State had changed from the Tidewater to the up-country.

In the wake of this transformation of the State, Georgia adopted four constitutions in the first twenty-two years of independence. But even these maneuvers did not defuse the issue: the problem of apportionment remained a central problem well into the 1840s. The controversy continued to rage around the central political problem of apportioning representation among the three geographical areas.

The first Constitution of Georgia in 1777 created eight counties: five in the coast country, two in the middle region between Savannah and Augusta, and one in upper Georgia. In this arrangement, the coast country dominated in legislative representation, since apportionment was based on representation by county (see table 2). In this scheme, each county was apportioned ten representatives, with the exception of Liberty, the seat of Savannah, which sent fourteen. Realizing that this formula ran in the face of the increasing population growth of the upper and middle regions, the up-country people quickly became dissatisfied with the unequal position they held in the affairs of the State. Unable to change the apportionment formula, however, they at

TABLE 2

GEORGIA REPRESENTATION IN 1777

	Tidewater	Middle Country	Up-Country
Whole Population	21,536	25,336	37,946
White Population	9,025	17,584	29,145
Slave Population	12,511	7,952	8,801
Federal Numbers*	1,631	22,155	33,426
Representatives in State Assembly	13	12	9
State Senators	5	3	3

* "Federal Numbers" is the basis of apportionment used in apportioning representatives in Congress: total free population plus three-fifths slave population.

Source: Lucien Roberts, Studies in Georgia History and Government, p. 96.

least succeeded in transferring the State capital from Savannah (Tidewater) to Augusta (the middle region) in 1783-84.

Dissatisfaction with the first constitution finally led to a call for a new constitution in 1789. Ostensibly, the State wished to harmonize the State Constitution with the new national Constitution; but, again, the real purpose was to adjust the original apportionment formula. The Constitution of 1789 increased the number of counties to eleven. Of the three new counties added, two were in the up-country and one in the middle country. It also provided that new counties could be added by simple vote of the Legislature. Despite this reformation of the apportionment formula, it is quite clear that the Tidewater retained its advantage. A study of table shows that the middle and up-country counties combined approximately five times as many white inhabitants and one-and-one-quarter times as many slaves as the Tidewater, but had only one-and-one-half times as many representatives in the lower branch of the Legislature. In the State Senate, the Tidewater had five members and the other two sections combined had only six.

With these new provisions seven new counties were created between 1790 and 1795. Three of these were in the up-country, two in the middle country, and two in the Tidewater. The new middle and upper counties were created in newly settled territory; the old counties of

the Tidewater were beginning to carve themselves into small units, not because of population increase or convenience in government, but for the purpose of maintaining the section's influence in legislation. Here, perhaps, is the beginning of the clear use of districting for political advantage.

In 1795 a new Constitutional Convention was convened to address the issue of representation. No less than four proposals for representation to give the up-country counties a fair apportionment were defeated before a workable compromise was reached. A proposal to abolish the bicameral system of representation and to return to unicameralism was defeated by a vote of 44-11. A proposal that representation in the Senate be based on population was defeated by a margin of only ten votes. It was then proposed that representation be placed on the basis of a census. This method was voted down by a much narrower margin, 28-27. A struggle then began to separate the State into two representative districts, the upper with 28 members and the lower with 24 members. This plan, also, was defeated by a narrow margin. Finally, by a vote of 29-26 it was decided to apportion representation to the counties without regard to population. On this basis, the lower counties received 25 representatives and the upper counties received 26. The Tidewater won a moral victory in maintaining that representation should not be based on population, and the up-country gained a material advantage

of a one-vote margin in the House of Representatives.

The Convention of 1795 specified that a convention for the consideration of further changes in the Constitution should meet in 1798. Again the issue was representation, and again the up-country succeeded in altering the formula to its advantage. In this new formulation the Constitution provided that a Senate should be elected annually and composed of one member from each county. The House of Representatives was to contain members chosen from the counties according to the principles of federal districts. Reapportionment, based on a state census, was provided for every seven years. According to this provision each county containing 3,000 population was entitled to two representatives, each county containing 7,000, three representatives, and those containing 12,000, four representatives. Each county received at least one representative and no county was allowed more than four.

The Federal Census of 1800 revealed that the five low-country counties had a population of approximately 14,000, and the seven up-country counties had a population of approximately 50,000. Such figures clearly indicated that, in the process of admitting new counties, the Tidewater had managed to maintain the same system of inequalities in evidence since 1790. By the end of the century, however, the tendency seemed to be toward a gradual increase in up-country power. The larger number of new counties had been created there, and even the

actual apportionment of the Convention of 1798 gave an advantage to the newly created low-country counties. The provisions for the future apportionment made it possible for the up-country gradually to increase in power by the creation of new frontier counties.

The Northwest Ordinance of 1787

The Northwest Ordinance is popularly regarded as the first "national" statement on the issue of apportionment in state legislatures. Passed by the Congress constituted under the Articles of Confederation, the Ordinance is held by many commentators to represent a decisive watershed, for it mandated that apportionment be determined by population.[14] The Warren Court has further enhanced this view, for it centered much of its historical analysis on the Ordinance.[15] Whether this version of the importance of the Ordinance is justified is, however, more than a little questionable.

If the standard of "apportionment by population" is not too rigorously defined, the document certainly deserves its reputation. The Ordinance specified that the "inhabitants of set Territories shall always be entitled to the benefits . . . of a proportionate representation of the people in the legislatures, . . ." and provided the following mechanics of apportionment:

> So soon as there shall be 5,000 free male inhabitants of full age, in the districts, upon giving proof thereon to the governor, they shall receive authority, with time and place, to elect representa-

> tives from their counties or townships to represent them in general assembly: Provided, That for every 5,000 free male inhabitants there shall be one representative, and so on, progressively, with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to 25; afterwards the number and proportion of representatives shall be regulated by the legislature-- . . .[16]

This represents the first formal and official proclamation that population should form the sole basis for apportioning legislative representation. When this document is coupled with the rise of Jacksonianism--the extension of the suffrage and the "direct democracy" movements of the 1830s--it does, indeed, seem to represent a decisive, even momentous step toward a new system of apportionment.

In the wake of the reapportionment cases of the 1960s, this interpretation gained a considerable following. It was argued that subsequent to the new formula of apportionment, the state legislatures were "almost completely or predominantly" apportioned according to population; whatever malapportionment later emerged in the states, therefore, emerged in violation of an accepted basic principle. The analysis is supported by only part of the available evidence (see table 3).

The Institutions of Apportionment and the Northwest Territories

The Ordinance's reliance on population as the one significant element in determining apportionment was partly a response to the controversies raging in the

TABLE 3

APPORTIONMENT FORMULAE OF STATE LEGISLATURES

IN ORIGINAL CONSTITUTIONS

Apportionment Formulae	Upper House	Year	Per-cent	Lower House	Per-cent
Representation of subdivisions. No regard for population	Connecticut	(1662)	16%	Connecticut	8%
	Delaware	(1776)		Delaware	
	Louisiana	(1812)		New Jersey	
	Montana	(1889)		N. Carolina	
	New Jersey	(1776)			
	N. Carolina	(1776)			
	Rhode Island	(1663)			
	Virginia	(1776)			
Representation of subdivisions. Some provisions for population	Arizona	(1912)	8%	Georgia	8%
	Hawaii	(1959)		Maryland	
	Maryland	(1776)		Vermont	
	S. Carolina	(1790)		Virginia	
Representation based on population	Illinois	(1818)	16%	Illinois	30%
	Indiana	(1816)		Indiana	
	Kansas	(1848)		Kentucky	
	Nevada	(1867)		Louisiana	
	New Mexico	(1912)		Minnesota	
	New York	(1777)		Nevada	
	Ohio	(1805)		New Hampshire	
	S. Dakota	(1889)		New Mexico	
				New York	
				Ohio	
				Pennsylvania	
				S. Dakota	
				Tennessee	
				Texas	
				Washington	
Combination of (1) Population (2) Political subdivision, where subdivision predominates	Alabama	(1819)	42%	Alabama	46%
	Arkansas	(1836)		Arizona	
	California	(1850)		Arkansas	
	Colorado	(1876)		California	
	Florida	(1845)		Colorado	
	Idaho	(1890)		Florida	
	Iowa	(1846)		Hawaii	
	Kentucky	(1792)		Idaho	
	Maine	(1820)		Iowa	
	Massachusetts	(1780)		Kansas	
	Michigan	(1837)		Kentucky	
	Mississippi	(1871)		Maine	
	Missouri	(1821)		Massachusetts	

TABLE 3 - Continued

Apportionment Formulae	Upper House	Year	Percent	Lower House	Percent
Combination of (1) Population (2) Political subdivision, where subdivision predominates	N. Dakota	(1889)	42%	Michigan	46%
	Oklahoma	(1907)		Mississippi	
	Oregon	(1859)		Missouri	
	Tennessee	(1796)		Montana	
	Texas	(1845)		N. Dakota	
	Utah	(1889)		Oklahoma	
	W. Virginia	(1863)		Oregon	
	Wyoming	(1890)		Rhode Island	
Combination of (1) Population (2) Political subdivision, where population predominates	Alaska	(1959)	12%	Alaska	10%
	Minnesota	(1858)		Nebraska	
	Nebraska	(1867)		S. Carolina	
	New Hampshire	(1784)		W. Virginia	
	Washington	(1889)		Wisconsin	
	Wisconsin	(1848)			

original states. Congress clearly hoped that the settlements, and the states eventually to be carved out of this territory, would avoid the conflict that had arisen elsewhere. But this does not necessarily mean that population was considered by the Ordinance the sole factor appropriate to apportioning representation. It should not be forgotten, for example, that the Northwest Ordinance devised a plan of government for a sparsely settled territory largely devoid of political tradition, of established local units, of deep-seated sectional loyalties, and of the other multifarious elements that complicated apportionment in longer established societies. In this era, the only readily identifiable factor in the territory would have been population; but the document is relatively clear that this "population" was to "elect representatives from their counties or townships," thus creating a system of representation not unlike those of the original states. A review of the actual practice of apportionment and districting in these original territories and in the states that emerged from them confirms this view.

The original constitutions of the five states carved from the Northwest Territory--Ohio, Indiana, Illinois, Michigan, and Wisconsin--shows that the principle of "apportionment representation" was interpreted quite loosely. The constitutional provisions of all these states stipulated that apportionment was to be based on populations; but they simultaneously imposed the

following restrictions:

1. County lines could not be violated in drawing district lines.
2. The provision of equal representation was approximated by grouping less populous counties into one district.
3. Populous counties elected representatives in multi-member districts.

The Issue of Malapportionment and Districting

The constitutional provisions of these new states rarely produced significant malapportionment. Again, we lack much of the necessary information; but we do know that county lines were frequently redrawn to reflect increases in population. Most of the evidence suggests that the most extreme population variance ratios in legislative districts did not exceed 2.5-1. Compared with the situation in the original states, the districts in the Ordinance territories and states were indeed "as equal as possible."

The Politics of Apportionment

Since the population and economies of the five states were generally homogeneous, they rarely experienced the complex political intrigues involved in the apportionment politics of the original thirteen states. The new states complied with their constitutional provisions and reapportioned--or more precisely, redistricted--as each

five-year or ten-year census demanded. There seemed to be little or no controversy surrounding such compliance.

In the absence of heated controversy, history rarely provides details. For this reason, we know very little about these early periodic redistrictings. By 1850, however, some level of economic, political, or social diversity had begun to appear in the states of the former Northwest Territory. Imitating the older and established states, the new states now began to alter their formulae of apportionment and districting--and did so with an eye to political advantage. Ohio, for example, and by 1870, Illinois,[17] changed their constitutions to guarantee each county at least one representative in the lower house, regardless of population. Employing the same arguments used by the original states in the early period, the new states changed their apportionment formulae to guarantee certain interests within the state some "right to be heard." Interestingly, however, these changes generated little controversy. Indeed, apportionment did not really emerge as a controversial issue in these states until the second decade of the twentieth century.

The Formulae of Apportionment Adopted in Areas Not Directly Affected by the Northwest Ordinance: 1812-1889

In many respects, this is the most difficult part of our brief history. The years spanned here constituted one of the most turbulent periods in American history; and more

states (20) were added to the Union than in any other era. Our principal focus is on the states admitted to the Union that were not directly influenced by the provisions of the Northwest Ordinance.

Institutions of Apportionment

Although the Northwest Ordinance was originally written to affect only the first states organized and admitted into the Union, it became the model for all such legislation. It was used to organize the territories that later became Alabama, Mississippi, and Arkansas; the territories acquired from Spain (Florida); and the territory acquired through the Mexican-American War (three states).

The legislation organizing the Territory of Alabama is an example:

> The government when formed shall be republican, and not repugnant to the principles of the Northwest Ordinance of 1787 (Article II) which provided for a "proportional representation of the people in the legislature.[18]

The spirit, and frequently the letter, of the Northwest Ordinance apportionment formulae were also reproduced in these states' original constitutions. Louisiana's Constitution of 1812 (the first territory absorbed as a state) included the following provision governing representation:

> Representation shall be equal and uniform in this state, and shall be forever regulated and ascertained by the number of qualified electors therein.[19]

To implement the provision, Louisiana became the first state to require a census every four years; for the first time, reapportionment and redistricting of a state legislature were constitutionally tied to population. There was also some effort made to prevent the legislature from failing to reapportion: the Louisiana Constitution of 1812, for example, intentionally restricted the size of the lower house and limited the creation of new counties.

Similar or identical provisions were faithfully employed by a number of states created in this era. Whether the reapportionment formulae were accurately translated into practice, however, and whether the districts could be described as "nearly equal as practicable," is unknown, for the census data is simply unavailable.

Even though the states admitted into the Union during this era were substantially affected by the proportionate representation standards of the Northwest Ordinance, this era also saw experiments with a number of other factors. Some analysts have argued that "between 1790 and 1889 no state was admitted to the Union in which the original constitution did not provide for representation principally based on population in both houses of the legislatures; . . ."[20] unfortunately, the record does not substantiate the claim.

The states that were admitted prior to the 1840s, and that used apportionment provisions based on population,

had altered these formulae by the mid-nineteenth century. Louisiana, for example, changed her original provisions to: (1) guarantee that each parish should have at least one representative; and (2) prohibit the creation of new parishes or alterations in the boundaries of established parishes. The net effect of these changes was to protect those regions of the state that were declining in population.

Even before mid-century, moreover, there was a distinct tendency to move away from population as the sole factor in apportionment. The states of Alabama (1819), Maine (1820), Missouri (1821), Arkansas (1836), Texas (1845), Florida (1845), Iowa (1845), and California (1850) all linked representation to their counties in some way, in most cases with restrictions that each county would be guaranteed at least one representative. The obvious intention of these provisions was to reduce the impact of population growth: and, of course, malapportionment was the result. These later constitutions also coupled such provisions with restrictions on districting (for example, no rotation of county lines, or if a county was to be represented by more than one representative, no violation of city boundaries) that tended to exacerbate the malapportionment.

The Politics of Apportionment

In many ways this era is best viewed as the "calm before the storm." In the next period of reapportionment,

beginning in the late 1880s, the majority of states would begin a great and decided move from population. Prior to the 1880s, the issues of immigration, the rise of the great metropolitan centers, and the increasing effects of the "Industrial Revolution" were still somewhat ambiguous. Nevertheless, it is clear that the direct effect of the standards of population was diminishing even before 1880; even by mid-century there were harbingers of what was to come.

The radical changes of the reapportionment provisions of the Louisiana Constitution of 1812 are an example. These changes were a direct result of the rural counties' fear of New Orleans. In the first quarter of the nineteenth century, as the settlements along the Mississippi began to grow and prosper, New Orleans became one of the great seaports of the United States. The commercial growth attracted population not only from within Louisiana and the South; the City became a haven and workshop for a dozen different nationalities newly arrived on the continent. As it was expressed at the time, the City was "filling up with all kinds of people"--the kind of people who might subvert the interests of the rural counties to meet their own, sometimes desperate, needs.[21] With representation geared to population and reapportioned every four years, New Orleans, with 20 percent of the State's population, was beginning to dominate both houses of the Legislature.

The Convention was called by the upstate counties to institute changes before they were overwhelmed. After much heated debate, the Convention focused its attention on two proposals. The first was a "federal plan"--very similar to the form adopted by the states in the early decades of the twentieth century--that would have represented counties equally in the Senate and based apportionment according to population in the House. But this did not satisfy the rural counties for it would have guaranteed, and perhaps expanded, the influence of New Orleans.[22] The rural counties would only accept the provision, eventually made law, that each parish should be guaranteed representation. As a consequence, New Orleans was granted only four senators and nine representatives--in a legislature of thirty-two senators and from seventy to one hundred representatives. This kind of political battle was not restricted to Louisiana. The same events were to occur in Illinois, Tennessee, Virginia, and Pennsylvania.

A New Element--The Gerrymander

In 1812, we have the first clear evidence that the politics of apportionment were not restricted simply to manipulation of the formal mechanics of the formula, but also included the criteria of districting. The story describing the origin of the term "gerrymander" is well known. It was supposedly coined by Gilbert Stuart, an artist, who, looking at a map of the redistricting of a

county in Massachusetts, noticed a strangely shaped district; sketching in a head, wings, and claws, Stuart constructed a dragon. A friend, who was enjoying the scene, disagreed and thought it more resembled a salamander; whereupon Stuart is said to have re-named the beast after the then governor of Massachusetts, Elbridge Gerry, "Better call it a 'Gerrymander.'"

Since we only have a few of the electoral results, population figures, or numbers of qualified voters recorded by districts from any of these early periods, we can only guess at the full story of the manipulation of districting for political advantage. Nor do we know how prevalent it was, or the degree of abuse. From as early as 1800, however, state constitutions registered some interest in the configurations of districts. Yet, whether this was a result of, or the beginning of, "gerrymandering" is unclear.

The early constitutional criteria were relatively consistent: they required (in Massachusetts, New York, Pennsylvania, and New Hampshire) that districts be, among other things, "compact" and "of contiguous territory." The general intent seems to have been that the districts, like the county lines on which they were based, should conform to "natural" communities of interest and involve relatively homogeneous populations.

By the 1840s, these criteria seem to be blended with political interest. By that date, the practice of

influencing the electoral results through districting is quite clearly in evidence.

The "Little Federal Plan" Revolution And Malapportionment: 1889-1962

The end of the nineteenth century is a critical period in the history of apportionment. The states admitted into the Union after 1889 saw a culmination of the movement away from population that had begun in the mid-nineteenth century; they initiated the formal modeling of state legislative apportionment formulae after the federal plan--an upper house apportioned by non-population factors (counties) and a lower house based on proportionate representation (at least to some extent). Imitating the new states, a number of long established states (Connecticut, Nevada, New Jersey, Rhode Island, South Carolina, and Vermont) now changed their constitutional provisions. Similar movements, but using somewhat different formulae techniques, were found in the states of New York, Pennsylvania, Ohio, and California. A third factor was also added during this period: instead of formally amending the apportionment formula, a number of states (the best examples are Alabama, Delaware, Tennessee, Texas, and Illinois) simply stopped reapportioning.

All of these events had similar causes. In the period from 1870 to 1910, the United States was radically transformed by: (1) immigration, (2) rapid economic growth as the result of the "industrial and commercial revolu-

tions," and (3) the growth of the great cities and metropolitan centers. In the decade of 1820-1830, the United States admitted only 140,000 immigrants; this total grew rapidly through the middle decades of the nineteenth century, and, after the Civil War, the level of immigration leaped geometrically. In the decade of 1880-1890, the United States admitted more than five million immigrants, and by the decade of 1900-1910 the figure had reached nine million.[23] After the first decade of the twentieth century, of course, the federal immigration laws were drastically reformed (bringing the immigration totals back to pre-Civil War levels). The first response of the states was to make voting more difficult by increasing residency requirements and instituting more stringent registration requirements. When this was not sufficient, however, the focus changed to reapportionment.[24]

The Institutions of Apportionment

In 1888, there were thirty-eight states in the Union employing a great variety of apportionment formulae. In almost all the states, as we have seen, apportionment proportionate to population was combined with some representation of political subdivisions. In 1889, four states were admitted to the Union (Montana, North Dakota, South Dakota, and Washington). North Dakota, South Dakota, and Washington adopted apportionment provisions that were similar to those of the states admitted in mid-century: the legislature was elected from districts that reflected

population, but the less populous areas of the state were given some degree of protection. In Washington and South Dakota, district lines were delineated in the constitutions and the reapportionment process--a legislative responsibility requiring use of federal census data--was restricted to increasing or decreasing the number of legislators elected from multi-member (floterial) districts. In North Dakota, districts were drawn by the Legislature; but it was required that districts should not unnecessarily violate county lines. In each of the states, the maintenance of relatively equal population in legislative districts was the primary focus--but this requirement was balanced by various geographic factors.

The State of Montana, however, adopted a different model, and its practices became the harbinger of the future. When, in 1889, Congress moved to initiate the proceedings to admit the Territory of Montana as a state, the enabling legislation, like so many statutes before it, stipulated that the State's constitution be "republican and not repugnant" to the principles of proportionate population. But when the State Constitutional Convention convened, it agreed upon an entirely different principle--a principle that was, without substantial debate, accepted by Congress. The State was divided into sixteen counties that were, in turn, guaranteed equal representation in the Senate; the lower chamber was modeled after the House of Representatives, with each county being guaranteed one

representative (and additional representation apportioned appropriate to population); there were further provisions that the three largest counties should elect representatives from floterial districts and that city boundaries should not be violated by legislative district lines.[25]

This complex formula was adopted in the wake of population growth that had followed the discovery of copper: the new population had concentrated in the three western counties (Butte, Anaconda, and Helena). Composed mainly of eastern and southern Europeans, this new population was viewed with a jaundiced eye by the older settlements: it should not be trusted, they decided, with full legislative powers.

This arrangement came to the attention of a number of states that faced the same situation. Rural counties were losing population, in both relative and actual terms, throughout the country. Indeed, the Federal Census of 1910 was the last to register a majority of citizens still residing in rural areas. The urban areas were filling up with immigrants who might demand a change in state policy. Montana's constitutional provisions found their way, with only slight modifications, into provisions for the new states of Wyoming and Idaho (1890), Utah (1896), Oklahoma (1907), Arizona and New Mexico (1912)--and even Hawaii (1959).

Equally significant, Montana's example was followed by several existing states. New York, in 1894, adopted one

of the most complex formulae in U.S. history to accomplish a similar desired effect.[26] Pennsylvania, which had restricted its most populous city and county (Philadelphia) to a maximum of four senators in 1838, and had guaranteed each county a representative in the House in 1873, amended again in 1901 to provide that no more than one-sixth of the senators could come from any one city or county.[27] Ohio adopted a similar amendment in 1900, California in 1926, and Michigan in 1952.

California and Michigan present an interesting perspective on this period, for both States changed their apportionment formulae through the initiative process and, in each case, the voters were given a clear choice between continuing a formula based more or less on population or, alternatively, adopting a federal plan. In both States, the voters chose the new formula (California defeated the proposal to continue a population base and to establish a reapportionment commission by a margin of 3-2 and approved the "federal plan" by a margin of 5-4). Both States' new provisions were tested in court (and in California tested by initiative again in 1928, 1948, and 1960) and upheld.[28]

The period between 1889 and 1962 comes to an abrupt end with Baker v. Carr. To see this decision in perspective, the range of apportionment formulae in use in the states in 1961 should be reviewed (see table 4).

TABLE 4

APPORTIONMENT FORMULAE OF STATE LEGISLATURES

IMMEDIATELY PRIOR TO BAKER V. CARR

Apportionment Formulae	Upper House			Lower House		
Representation of subdivisions with no regard to population	Arizona* Arkansas* Delaware Idaho* Illinois* Michigan* Montana	Nevada* New Jersey New Mexico* N. Dakota* Oklahoma* S. Carolina*	26%	Delaware Vermont*		4%
Representation of subdivisions with some provisions for population	Hawaii Maryland Mississippi* Ohio*		8%	None		
Representation based on population (with disparity of district not less than 25%)	Colorado* Indiana Kansas Kentucky* Massachusetts* Minnesota*	N. Carolina* Tennessee* Virginia* Washington* W. Virginia* Wisconsin*	24%	Colorado Illinois Indiana Kentucky Massachusetts Michigan	Minnesota Tennessee Virginia Washington Wisconsin	22%
Combination of (1) Population (2) Political subdivision, where subdivision predominates	Alabama California Connecticut* Florida Georgia* Iowa		26%	Alabama Arizona Arkansas California Connecticut* Florida	Montana Nevada* New Jersey* New Mexico* New York* N. Carolina*	64%

TABLE 4 - Continued

Apportionment Formulae	Upper House			Lower House		
Combination of (1) Population (2) Political subdivision, where subdivision predominates	Louisiana*		26%	Georgia*	N. Dakota	64%
	Maine			Hawaii	Ohio*	
	Rhode Island*			Idaho	Oklahoma	
	Texas			Iowa	Tennessee*	
	Utah			Kansas	Rhode Island	
	Vermont*			Louisiana	S. Carolina*	
	Wyoming			Maine	Texas*	
				Maryland	Utah	
				Mississippi	W. Virginia*	
				Missouri	Wyoming	
Combination of (1) Population (2) Political subdivision, where population predominates	Alaska	Oregon*	14%	Alaska		8%
	Missouri*	Pennsylvania*		New Hampshire*		
	New Hampshire	S. Dakota*		Oregon*		
	New York*			S. Dakota		

* Changed from original Constitution

The Politics of Malapportionment

An almost equal number of states either changed their constitutional apportionment formulae or simply stopped apportioning. The effect was the same: malapportionment as the result of both approaches became more pronounced than in any period of American history.

The motives behind such approaches were clearly political. The "established" political interests sought to disenfranchise the "new" political forces before they could gain a foothold. Without access to the legislatures, the new constituencies could do little to effect change. (These conditions, in turn, provided the basis for eventual judicial involvement.) Such political motivations, however, should not be over-simplified. The radical changes in the apportionment process were a result of equally radical changes in the political environment. A "higher" motive justifying these changes was articulated in the New York Constitutional Convention of 1894:

> I insist, sir, upon the principle which has been adopted in a large number of the States of this Union, in almost every state which has had to deal with the problem of a great city within its borders, and the relation of that city to an agricultural community, that the problem which we have had to deal with shall be dealt with by us on the same principles; that the small and widely scattered communities, with their feeble power, because of their division, shall, by the distribution of representation, be put on an equal footing, so far as may be, with the concentrated power of the cities. Otherwise we can never have a truly representative and truly republican government.[29]

The alterations in the apportionment process, of course, did not go unnoticed. As the states tried to

stabilize their institutions in the wake of the social and economic upheavals of the period, the details of decisions and their consequent effects were scrutinized and recorded. Perhaps this accounts for the overwhelming flow of information that was spontaneously generated, really for the first time, on apportionment and districting.

The Malapportionment of Congress

After 1842, when all the congressional seats were elected by district, congressional malapportionment became increasingly apparent in many states. It is not surprising that this generated rising controversy, for the U.S. Constitution stipulates that the House shall be apportioned, once state minimums are fulfilled, by population within the states. Furthermore, in 1901, Congress stipulated in the Reapportionment Act (which was passed to prescribe the number of representatives assigned to each state) that congressional districts were to be "compact, of contiguous territory, and as nearly of equal population as practicable."[30] It remained uncommon, however, for congressional districts in any state to range in size from smallest to largest by a factor of greater than five to two. There were blatant exceptions, of course. By 1946, for example, the largest congressional district in Illinois included 914,053 voters, while the smallest held only 112,116. Other states that declined to reapportion in the face of growing population disparities were not so egregiously out of line: Georgia (823,680 to 272,154), Ohio (698,650 to

163,561), Maryland (534,568 to 195,427), Texas (528,961 to 230,010), Florida (439,895 to 186,831).[31] When the Supreme Court in Colegrove v. Green[32] refused to mandate reapportionment, most of the states continued their policy of neglect.

Congressional districts throughout this period were drawn by state legislatures, which were themselves "malapportioned." The criteria of districting were not uniform, but most of the states drew congressional districts enclosing several state senate districts--unless, of course, the urban/rural split meant drawing around the metropolitan areas.

There were, nevertheless, several attempts to rectify congressional malapportionment before the Court intervened in Westbury v. Sanders in 1964.[33] In 1936, a bill was introduced in Congress that called for at-large congressional elections if the population of the largest congressional district exceeded the smallest in a given state by more than 50 percent. Other bills, modeled after this first bill, were introduced in the late 1940s and 50s and called for reapportionment, sometimes with and sometimes without specifying appropriate remedies or penalties. In every case, the bills failed to reach the floor of the House.

The Malapportionment of the State Legislatures

In the state legislatures, malapportionment varied

widely from state to state. None of the states employed criteria of apportionment for districting that fulfilled the requirement of the Supreme Court's "one man, one vote" ruling in Reynolds v. Sims; but neither were all the states equally malapportioned. Only Delaware failed to recognize some degree of population variance in either house and only thirteen states failed to apportion at least one of their houses by population. In addition, only ten states went without apportioning or reapportioning one of their houses for more than forty years. In 1962, then, there were twenty-seven states that made some allowance for population.

The levels of malapportionment were, nevertheless, pronounced. There are two studies that provide national perspective. Research funded by the University of Virginia revealed that, after the 1960 Census, counties of under 25,000 population had more than doubled the representative strength in state legislatures of counties of more than 100,000 population.[34] Using somewhat different criteria, the National Municipal League issued a report in 1962 showing that in only six states were both houses of the legislature apportioned so that at least 40 percent of the state's population was needed to elect a majority of representatives in each.[35] Only twenty states had even one house for which at least 40 percent of the electorate was required to elect a legislative majority. Finally, in thirteen states, one-third of the population or less could

elect a solid majority of both houses of the legislature.

The Politics of Reapportionment and Districting: 1962-1970s

Only some of the more important issues of this era may be touched on in this account. The complex legal maneuvering is analyzed in a succeeding chapter on "Reapportionment, Redistricting, and the Law." Despite the overriding significance of these legal questions, however, political maneuvering played an important part. It is best understood if separated into three periods:

1. From Baker to Reynonds.
2. The political response to Reynolds.
3. The reapportionment after the 1970 census.

From Baker to Reynolds

With our acquired historical perspective, Baker v. Carr can be appreciated in its full importance--as a new, sweeping restructuring of the apportionment process. What is equally remarkable, perhaps, is the unprecedented rapidity and scope of the states' responses to Baker. Once the deadlock of the first sixty years of the twentieth century was broken, the states quickly concentrated on erecting a new system. By late 1963, reapportionment was on the agenda of all but three of the states (none of these three had scheduled sessions), and twenty-six had approved redistricting plans for at least one of their legislative chambers. Confusion, with equal measures of anger and

enthusiasm, abounded; but, in one way and another, the states complied with the Courts' mandates.

Baker itself was a relatively limited decision; although reapportionment was declared a justiciable issue, the Court had not articulated clear criteria for the creation of "equal population districts." The reapportionment revolution would unfold in several stages; and, from 1962 to 1964, the states were given latitude for experimentation. This early stage laid the basis for the modus operandi of the Court's involvement: the states would try to experiment within the horizon of each successive court pronouncement, which would, in turn, give rise to new litigation and new judicial criteria to guide the states' new effort. A short list of the issues first raised in this early period will suffice:

1. What was the appropriate base population for reapportionment? Would it be constitutional to base it on registered voters, and to exclude students, military personnel, or aliens? Was it necessary to use the federal census data?
2. What was the minimum allowable ratio of disparity?
3. What was the status of political or traditional subdivisions?
4. What was the status of party competition, current districts, or party registration?

Reynolds v. Sims and the Political Backlash

This era of relative freedom ended abruptly on July 15, 1964, with the Reynolds decision that declared all geographic and demographic dispersion formulae unconstitutional. More significant to the political history, the Court ruled using the Equal Protection Clause of the Fourteenth Amendment. Such a ruling severely restricted the options of political opposition. Any limitation on the Court's decision could be achieved only by constitutional amendment or by congressional revocation of judicial jurisdiction in the reapportionment process. Political opposition, therefore, focused on both these alternatives.

Congressional Action

By mid-August, 1964, 130 resolutions and bills had been introduced, supported by 99 members, to a divided Congress.[36] The proposed legislation concentrated on three strategies: congressional restrictions of jurisdiction, delays in state compliance or stays in Court involvement, and the more permanent solution of a constitutional amendment.

The efforts to restrict, either entirely or partially, the Court's jurisdiction in apportionment cases were relatively short-lived. Emmanuel Celler (Democrat, New York), the Chairman of the House Judiciary Committee and a veteran advocate of reapportionment reform, successfully bottled up the legislation. The single exception was a bill, submitted by Representative Tuck of Virginia,

proposing to withdraw jurisdiction from all federal courts "seeking to apportion or reapportion the legislature of any State of the Union or branch thereof."[37] Cleverly bypassing Celler's committee, Tuck succeeded in gathering sufficient support for the bill and it became the only House-passed bill relevant to the controversy. In a move that effectively foredoomed this strategy, however, the Senate dismissed the Tuck bill without serious debate.

The effort to stay further Court action was equally short-lived. One effort was led principally by Senator Dirksen (Republican, Illinois)--but only to "buy time" for his proposed constitutional amendment. The Senator was successful in moving the legislation through the Senate Judiciary Committee, without hearings, and onto the floor. Unable to secure sufficient floor support, however, he was forced to propose it as a rider to the foreign aid bill--a bill that was almost certain to pass. But even in this form, the bill was defeated.

Restrictions on the Court's jurisdiction were controversial (and it was feared that the Court might declare such legislation unconstitutional), but appeared to many the only viable means available to Congress. The House and the Senate were badly split over this issue. To avoid further filibustering in the Senate, and to clear the calendars of both houses, the Senate Majority Leader, Mike Mansfield, submitted a "sense-of-Congress" resolution, passed 44-38, that required the Court to "allow" the state

legislatures freedom from further litigation so that they might reapportion themselves (and prescribed a six-month moratorium); it also requested from the Courts a stay of state compliance until after the 1964 elections. For the most part, however, these requests were not honored. The majority of the lower federal courts hurried through their reapportionment plans in time for the 1964 elections, and only a few jurists either delayed judgment or kept their distance from the legislatures' deliberations.

By far the most important strategy for overturning the Reynolds decision was the proposed constitutional amendment. Five months after the decision, the Board of Managers of the Council of State Governments and the Seventeenth Biennial General Assembly of the States both called for an amendment to permit the use of apportionment formulae other than population in at least one house. These resolutions, coupled with the amendments submitted to the House and Senate by Senator Frank Church of Idaho, Senator Jacob Javits of New York, and Senator Dirksen, gave increased legitimacy to the political opposition to the "legal thicket."

Of all the proposed amendments considered, the Dirksen amendment received the most attention. Although itself amended many times in its two year life-span, it included the following main features:

1. Authorization for apportionment of one house of a bicameral legislature "upon factors other than

population."

2. Unicameral legislatures should be permitted to give "reasonable weight" to nonpopulation factors.
3. The apportionment formulae adopted by the state legislatures were to be submitted to popular vote and approved by a majority of those voting in an election that would also pose the alternative choice of a "Reynolds" apportionment formula based on population.[38]

The Senate debated the proposed amendments during the summer of the first anniversary of the Reynolds decision. It was a heated debate that ranged over the entire issue. In the end, however, the Senate rejected the amendment: Dirksen gained a plurality, but not the needed two-thirds majority. The amendment required a state call for a constitutional convention; but this also failed to attract the necessary support (32 states approved of the needed 34).

The Senate debates, ironically perhaps, turned on the "history" of apportionment in the United States. Those opposing the amendment relied on the Court's historical analysis and on a number of scholarly reports that claimed that state arrangements frustrating numerical equality in legislative districts were not consistent with that history. Unable to rebut these claims, the argument supporting the amendment appeared untraditional, unfounded, and undemocratic.

State Action

The initial state response was twofold: as it was phrased in California, the state needed both "a battle and a capitulation plan."[39]

1. The Battle Plan: Because the states' actions depended largely on effective congressional remedies, a number of states led lobbying efforts for bills in Congress. Groups, both official and unofficial, in California, Michigan, Idaho, New York, Pennsylvania, Texas, Florida, and other states, formed "flying truth squads" to marshall arguments and political support either for a congressionally-passed amendment or for a call for a constitutional convention. The intent was to "exhaust all possible remedies to allow us to keep the bicameral legislative system as we have known it."[40] Although this activity would continue, at various levels of intensity, through the summer of 1967, it ultimately failed to accomplish its goals.

2. The Capitulation Plan: The states' "capitulation" took the form of tests of the Court's criterion of "as nearly equal as practicable." Chief Justice Earl Warren had justified some experimentation in one part of the Reynolds decision:

> A state may legitimately decide to maintain the integrity of various political subdivisions, insofar as possible. . . . Valid considerations may underlie such aims. Indiscriminate districting, without any regard for political subdivisions or natural or historic boundary lines, may be little more than an open invitation to partisan gerrymandering. . . . So long as the divergencies from a strict population standard are based on legitimate considerations incident to the effectuation

> of a rational state policy, some deviations from the equal population principle are constitutionally permissable.[41] (Emphasis added).

Exploiting this loophole, a number of states--including Montana, New York, and Missouri--tried to discover the "minimum allowable deviations." Other states attempted to satisfy the Court's principle through use of multi-member districts or experimentation with acceptable population bases. Court responses to these plans, already delineated above, continued through the 1970 reapportionment process; but the great majority of all these state efforts were judicially frustrated.

The Reapportionment After the 1970 Census

In the eight years following the first wave of reapportionment, hundreds of cases were decided by federal and state courts and a series of Supreme Court pronouncements were issued intended to clarify the constitutional requirements. By 1970, however, there were still no clear-cut guidelines of precisely what was and what was not constitutional; and many substantial issues had not yet been fully reviewed. To add to the confusion, the Court, on the eve of the 1970 Census, delineated the most precise requirements for congressional districting (in Wells[42] and Kirkpatrick[43]), but relaxed some of the requirements for precision in state and local legislative districts (in Abate v. Mundt[44]).

Institutions of Apportionment

The redistricting after the 1970 Census was not as confused and misdirected, of course, as the convulsions of the mid-sixties. The "political battle plans" had failed to affect materially the Court's dedication to its principle of "equality," and much of the "experimentation" or "testing" of the first wave of state plans was absent. Moreover, many of the states' reapportionment plans had been in effect for only one or two elections and the process generally involved relatively minor up-dating. A total of 62 percent (31 of the 50 states) of the plans enacted in the wake of the 1970 Census were challenged in the courts; but, unlike the experience after Baker, few were overturned as unconstitutional.

The uniform application of the principle of "one man, one vote" had, by 1973, substantially transformed the reapportionment process into a process of redistricting. There was, however, one significant change in some of the states' institutional arrangements. Although forty-one states continued to rely on legislative deliberation, nine states removed the initial responsibility from their legislatures. Seven states--Arkansas, Hawaii, Michigan, Missouri, New Jersey, Ohio, and Pennsylvania--provided for special boards or commissions to redistrict after the 1970 census. Two states--Alaska and Maryland--required the Governor to submit a plan. One hope from such approaches was that, by removing the process from the legislature,

some better degree of equity might be assured; another motive, perhaps more important, was to keep redistricting plans from being drawn in court.

It may provide further perspective on the period to notice that, in almost every instance, these goals of commission redistricting were at least partially frustrated. The commissions or committees were either "bipartisan" or "nonpartisan;" yet, the plans proposed were recognized consistently to reflect the partisan interest of the majority party. In five of the states, commission plans were either redrawn by the legislature, or drawn as a result of litigation, or redrawn by yet another commission appointed as a substitute. Three of the state reapportionment commissions could not come to any agreement on how to redistrict. There was only marginal success in avoiding the intervention of the Courts; these plans were challenged only half as frequently as legislative plans.

The Politics of Apportionment; Redistricting and the Gerrymander

The Court justified its entrance into the "political thicket" by way of the "Equal Protection Clause," presuming that "equal election districts" were a prerequisite for "equal representation." The argument was, and is, reasonably persuasive--as far as it goes. In the course of their decisions, the Courts removed some of the explicit partisan manipulation that had been near the heart of the apportion-

ment controversy from the very beginning. All state legislative and congressional districts now fulfill the criteria of equality of population. The one area that remained open to political stratagem, however, was the partisan gerrymander; indeed, there is much evidence that the Courts' involvement in reapportionment and redistricting was followed by an unprecedented wave of gerrymanders.

Although the Court, as early as 1964, seemed to oppose the partisan gerrymander as fundamentally inconsistent with "equal protection," it has been reluctant to assume jurisdiction. The only major case where the Court ever confronted the issue was Noun et al v. Turner (Iowa),[45] where litigation was grounded, at least in part, on the presence of gerrymandering; yet, the Court chose to rule on other grounds. The states are, therefore, still free to protect encumbents, to confine party competition within limits favorable to the majority party, and in other ways to introduce purely political considerations into the design of districts.

The net result of this freedom is that much intelligence, energy, and technological resources are now directed to realizing political goals in redistricting. Unfortunately, the data is not yet available to assess the full character of this new redistricting politics. One reasonably reliable way, however, to calculate the presence of a possible gerrymander--the disparity between votes cast for party candidates and the percentage of

party representation in the legislature--indicates that gerrymandering is present to some significant degree in at least 35 of the 50 states.

The Effects of Reapportionment and the Prospects

It is probably too soon to evaluate the long-term effects of the reapportionment revolution. A preliminary conclusion might be that the effects have not been so substantial as predicted. Party competition, although adversely impacted by the wave of partisan gerrymandering, has continued at reasonable levels in many states. It is far from clear that the policies adopted by the new "reapportionment legislatures" have been much different from those embraced by the old "malapportioned legislatures." And it is unproved that minorities or suburbs or other groups have been significantly benefited.

Conclusion

In the course of this history, we have traced the principles, institutions, and politics that have played a part in the controversy surrounding apportionment, reapportionment, and redistricting in the United States. In one sense, events since 1962 have made much of this history irrelevant; in another sense, recent events can only be understood against the backdrop of that history. One lesson above all is suggested by our historical review. It is that, whatever success the Court has had,

or may have in the future, in ensuring "equality of representation," the struggle over the structures and processes of representation in this country will continue.

(See Appendix following for examples of recent legislative gerrymanders.)

Footnotes to Chapter I

[1]Norman Wildin and Philip Laundy, An Encyclopedia of Parliament, (New York: St. Martins, 1971), pp. 488-493.

[2]Thomas Jefferson, III Writings of Thomas Jefferson, Ford ed. 1894, (New York and London: G. P. Putnam's Sons, 1904-05), pp. 322-23.

[3]For a discussion of these issues, see particularly Robert G. Dixon, Jr., Democratic Representation: Reapportionment in Law and Politics, (New York: Oxford University Press, 1968), pp. 23-57; and Robert B. McKay, Reapportionment: The Law and Politics of Equal Representation, (New York: Clarion Press, 1970), pp. 9-34.

[4]John McMahon, An Historical View of the Government of Maryland, (Baltimore: F. Lucas, Jr., 1831). pp. 465-66.

[5]Allan Nevins, The American States During and After the Revolution, (New York: The MacMillan Co., 1924), p. 180.

[6]Wayland Dunway, A History of Pennsylvania, (Boston: Houghton, Mifflin, 1930), p. 101.

[7]Nevins, American States, p. 235.

[8]McKay, Reapportionment, p. 25.

[9]Ibid.

[10]Clinton Rossiter, Seedtime of the Republic, (New York: Harcourt Brace and World, Inc., 1953), p. 90.

[11]U.S. Advisory Commission on Intergovernmental Relations, Apportionment of State Legislatures, 7-8, (Washington, 1962).

[12]Francis N. Thorpe, ed., The Federal and State Constitutions, Colonial Charters and Other Organic Laws, vol. 1, (Washington, D.C.: Government Printing Office, 1909).

[13]This account of reapportionment politics in Georgia is from James Bonner and Lucien Roberts, eds., Studies in Georgia History and Government, (Athens: The University of Georgia Press, 1940), pp. 93-120.

[14]See particularly Gordon Baker, The Reapportionment Revolution, (Philadelphia: Philadelphia Book Co., 1966), pp. 14-22; McKay, Reapportionment, pp. 9-98; and Royce Hanson, The Political Thicket, Reapportionment and Constitutional Democracy, (Englewood Cliffs: Prentice-Hall, 1966), pp. 4-17.

[15]Reynolds v. Sims, 177 U.S. 533 (1964).

[16]Henry Steele Commayer, Documents of American History, 9th ed., (Englewood Cliffs: Prentice-Hall, Inc., 1973), 1:122-132.

[17]Ohio, Constitution (1851), art. 11, sec. 2; Illinois, Constitution (1780), art. 4, sec. 7, in Thorpe, Federal and State Constitutions, vol. 1,

[18]McKay, Reapportionment, p. 275. The Appendix presents a general history of apportionment politics in all of the states through 1965.

[19]Ibid., p. 333.

[20]Ibid., p. 25.

[21]Dixon, Democratic Representation, p. 71.

[22]Francis Thorpe, Constitutional History of the American People 1776-1850, (Washington, D.C.: U.S. Government Printing Office, 1899), 2:413.

[23]U.S. Bureau of the Census, Historical Statistics of the United States, 1789-1945, (Washington, D.C., 1949), pp. 26-27.

[24]Robert Luce, Legislative Problems, (New York: Da Capo Press, 1971), p. 348.

[25]McKay, Reapportionment, pp. 363-65.

[26]See McKay, Reapportionment, pp. 380-90 for discussion of New York history. cf. Thorpe, Constitutional History, 3:585-90.

[27]Ibid., pp. 410-16. cf. Thorpe, Constitutional History, 3:599ff.

[28]For the brief history, see McKay, Reapportionment, pp. 364-51 (regarding Michigan); and pp. 205-9 (regarding California).

[29]Luce, Legislative Problems, note 4, pp. 363-66.

[30]Charles Black, "Inequities in Districting for Congress," Yale Law Journal 957 (1963).

[31]Dixon, Democratic Representation, p. 110.

[32]Colegrove v. Green, 328 U.S. 549 (1946).

[33]Wesberry v. Sanders, 376 U.S. 1 (1964).

[34]Paul David and Ralph Eisenberg, State Legislative Redistricting, (Chicago: Public Administration Science, 1962), p. 35.

[35]National Municipal League, Court Decisions in Legislative Apportionment, (New York: 1962), 1:16-20.

[36]Dixon, Democratic Representation, p. 385.

[37]McKay, "Court, Congress and Reapportionment," 63 Michigan Law Review, 255 (1964).

[38]S. J. Res. 103, 89th Congress, 1st Session (1965).

[39]Legislative Sourcebook (Sacramento: California State Assembly, 1965), p. 47.

[40]Ibid.

[41]Reynolds v. Sims, 377 U.S. 533 (1964).

[42]Wells, 394 U.S. 542 (1969).

[43]Kirkpatrick, 394 U.S. 542 (1969).

[44]Abate v. Mundt, 403 U.S. 182 (1971).

[45]Noun et al v. Turner, Iowa 193 N.W. 2d. 784 (1973).

[46]Yong Hyo Cho and George Frederickson, "The Effects of Reapportionment," National Civic Review, pp. 357-62 (1974); Robert Erickson, "The Partisan Impact of State Legislative Reapportionment," 15 Midwest Journal of Political Science, pp. 47-71 (1971); Roger Hanson and Robert Crew, "The Policy Impact of Reapportionment," 8 Law and Society Review, pp. 69-93 (1973).

CHAPTER II

REDISTRICTING AND THE LAW

Overview

Beginning in 1962, the U.S. Supreme Court took jurisdiction over complaints against "malapportionment" and quickly developed population standards for redistricting state legislative, congressional, and other electoral districts. It was a dramatic turnabout; as recently as 1947, in Colegrove v. Green,[1] the Court had denied relief in a case challenging an Illinois congressional districting plan that gave one district nine times as many people as another. In dismissing the challenge, the Court had then held that malapportionment was not "justiciable"--not appropriate for resolution by a court. "The courts," said Justice Felix Frankfurter in presenting the Colegrove opinion, "ought not to enter this political thicket."

Key Decisions

The major decisions through which the Court entered the reapportionment "thicket" are:

1. Baker v. Carr (1962).[2] A group of urban residents of Tennessee had challenged the make-up of the rurally controlled State Legislature. Although the Tennessee Constitution provided for a population-based

apportionment and required decennial reapportionments, no apportionment changes had been made since 1901--despite great population growth and shifts. By 1960, lower house districts ranged from 3,454 to 79,301 in population--a disparity of 23-1; Senate districts ranged from 39,727 to 237,905--a 6-1 disparity. The Court held that the issue was justiciable: that the federal courts had jurisdiction over complaints against malapportioned legislatures. The Court refused, however, to specify what lesser population disparity might be constitutional or to consider appropriate remedies; the case was remanded to the lower court.

Justice Felix Frankfurter's dissenting opinion read, in part:

> What, then, is this question of legislative apportionment? Appellants invoke the right to vote and have their votes counted. But they are permitted to vote and their votes are counted. They go to the polls, they cast their ballots, they send their representatives to the state councils. Their complaint is simply that the representatives are not sufficiently numerous or powerful--in short, that Tennessee has adopted a basis of representation with which they are dissatisfied . . . What is actually asked of the Court in this case is to choose among competing bases of representation, really, among competing theories of political philosophy.

Appeal for relief, Frankfurter insisted, should not be made in the courts but rather "to an informed, civically militant electorate."

2. Gray v. Sanders (1963).[3] The case presented a challenge to Georgia's county unit system of voting in statewide and congressional primary elections, which gave each county a certain number of votes, usually the number

of its seats in the State Legislature. The Court held that use of the system deprived city residents of equal protection of the laws and ruled that "within a given constituency, there can be room for but a single constitutional rule--one voter, one vote."

The majority opinion, written by Justice William O. Douglas, emphasized that the decision did not reach the question of state or federal legislative districts of unequal size. But the ground was laid: "The concept of 'we the people' under the Constitution visualizes no preferred class of voters, but equality among those who meet the basic qualifications." In dissent, Justice John M. Harlan said that the decision "surely flies in the face of history . . ." The principle of "one person, one vote" had "never been the universally accepted political philosophy of England, the American Colonies, or the United States." He said a state should have the authority to grant more voice to rural areas, either in election of state legislators or statewide officials, "in order to assure against a predominantly 'city point of view' in the administration of the state's affairs."

3. Wesberry v. Sanders (1964).[4] The Court struck down Georgia's congressional districting plan, holding that Article 1, Section 2 of the Constitution required that "as nearly as is practicable, one man's vote in a congressional election is to be worth as much as another's."

Commenting on this case in a later decision, Chief Justice Warren stated, "Wesberry clearly established that the fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a state."

4. Reynolds v. Sims (1964).[5] The Court announced decisions in six reapportionment cases on June 15, 1964, which came to be known collectively by the name of the first case, Reynolds v. Sims, from Alabama. The rulings held all six state reapportionments unconstitutional and established several major points:

a) The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution "requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis."

b) Legislative districts must be substantially equal.

c) Mathematical "exactness of precision" may be impossible, but apportionment must be "based substantially on population."

d) Even if approved by a majority of the people in an initiative or referendum, an apportionment that is not based on substantial equality of population is unconstitutional: "A citizen's constitutional rights can hardly be infringed upon because a majority of the people choose to do so."

e) Any other basis for representation, other than

population, is discriminatory: "Legislators represent people, not trees or acres." They are "elected by voters, not farms or cities or economic interests."

5. Swann v. Adams (1967).[6] In this case, the Court began to elaborate its definition of equality of population. Florida's state legislative reapportionment plan was overturned because it contained Senate districts ranging from 15.09 percent above the average district and 10.56 below, and House districts ranging from 18.28 percent above to 15.27 percent below.

6. Kirkpatrick v. Preisler (1969).[7] The Court ruled that "the 'as nearly equal as practicable' standard requires that the state make good faith effort to achieve precise mathematical equality. Unless population variances among congressional districts are shown to have resulted despite such effort, the state must justify each variance, no matter how small." The Court held that Missouri had failed to justify the deviations in its 1967 redistricting plan, and overturned it. The deviations were very small; the most populous district was 3.13 percent above the average district and the least populous was 2.84 percent below.

7. Whitcomb v. Chavis (1971).[8] A challenge was presented to a state legislative reapportionment in Indiana on the basis that the use of multi-member districts resulted in invidious discrimination against the black voters of Indianapolis. The Court held that the

challengers had not proved that the multi-member districts had operated unconstitutionally to dilute or cancel the voting strength of racial or political elements in the state.

In a 1960 case, Gomillion v. Lightfoot, the Court had outlawed racial gerrymandering, finding that the city boundaries of Tuskagee, Alabama, had been drawn to exclude Negro voters in violation of the Fifteenth Amendment. In 1964, in Wright v. Rockefeller, however, the Court dismissed a challenge to New York's congressional districts brought by voters who charged that Manhattan's seventeenth "silk stocking" district was gerrymandered to exclude Negroes and Puerto Rican citizens. Wright and Whitcomb were widely cited as evidence that the Court was unwilling to deal with the whole problem of gerrymandering, whether racial or partisan gerrymanders.

8. Mahan v. Howell (1973).[9] Justified deviations in population of state legislative districts were set at a significantly higher level than in the Kirkpatrick ruling on congressional districts. The Court upheld a 1971 Virginia state legislative reapportionment plan with a population deviation from the largest to the smallest district of 16.4 percent: the Court indicated, however, that "this percentage may well approach tolerable limits." The Court noted that the plan "may reasonably be said to achieve the rational state policy of respecting the boundaries of political subdivisions."

In two other cases in 1973 the Court hinted at further guidelines on the meaning of "equality." In Gaffney v. Cummings, Connecticut's 1971 state legislative reapportionment plan was upheld, despite a deviation of 7.83 percent between the largest and smallest districts, and despite rather clear evidence of the use of partisan data in the drawing of district lines. The Court ruled that "minor deviations from mathematical equality among state legislative districts are insufficient to make out a prima facie case of invidious discrimination under the Fourteenth Amendment so as to require justification by the state." In White v. Weiser, however, the Court overturned a Texas congressional districting plan with maximum deviations of 2.43 percent above and 1.7 percent below the average on grounds that the deviations "were not 'unavoidable,' and the districts were not as mathematically equal as reasonably possible."

9. Chapman v. Meier (1975).[10] The Court rejected a court-ordered state legislative redistricting plan in North Dakota involving multi-member districts. The ruling was that "unless there are persuasive justifications," a court-ordered reapportionment plan of a state legislature must avoid use of multi-member districts. The Court carefully noted that it was not ruling that multi-member districts were unconstitutional, but merely exercising its supervisory powers over lower federal courts.

10. United Jewish Organizations v. Carey (1977).[11]

Legislative modification of a New York redistricting plan (in order to bring it into compliance with the 1965 Voting Rights Act) had divided a community of Hasidic Jews to establish several substantially non-white districts in Kings County. The Court upheld the plan, ruling that such a use of racial criteria did not violate either the Fourteenth or the Fifteenth Amendments.

Response to Court Decisions

The Court's decision on Baker v. Carr in 1962 was followed by a flurry of citizen suits challenging mal-apportionment in state legislatures. By March 1964, 26 states had approved new apportionment plans. Alabama, Oklahoma, and Tennessee were redistricted under court-drafted plans; several states redistricted under court threats of postponement of elections or at-large elections. In Delaware, a court order gave the Legislature 12 days to reapportion; Wisconsin was given 19 days, and Michigan 33 days. Faced with these examples of judicial severity, most states now voluntarily undertook reapportionments.

At the time of the Reynolds decision in June 1964, court action on reapportionment was underway in 39 states. The 1964 decisions further accelerated the process. Two years later, legislatures in 46 of the 50 states had brought their apportionments into some degree of compliance with judicial standards of population equality.[12] Indeed, by this point, several states were experiencing their second reapportionment of the decade: legislatures

that had been reapportioned after Baker now adopted their own new plans. In a few states, reapportionment had been handed over to specially created commissions, established by statute or by constitutional amendment. In some states, too, constitutional provisions requiring geographic or other modifications to population-based apportionments were abandoned or amended. Elsewhere, states created multi-member and floterial districts in order to preserve the boundaries of traditional political subdivisions in their districting systems. A number of states actually changed the size of their state legislatures in order to accommodate to population-based apportionments.

Although in the period 1963 through 1965 there had been movements in Congress (principally, the so-called "Dirksen Amendment") and in the states (backed by groups such as the American Farm Bureau Federation) to limit the effect of the Court decisions, these faltered and faded from sight by the late 1960s. By 1970, the state legislatures were all effectively based on equal population; thus there was no longer any impetus in the movement to resist "one man, one vote." The "Reapportionment Revolution," a dramatic, judicially-imposed change in the character of the representative system, was apparently complete.

In the sections that follow, more detailed commentary is provided on Court actions in the period 1962-79. There are three areas of focus: congressional redistricting,

state legislative redistricting, and redistricting on the local level.

Congressional Redistricting

Of the three levels of reapportionment litigation, congressional equal representation cases show the Court in its most exacting and demanding posture. "One man, one vote" guides in this area have been extremely tight from their beginning in 1964, and later cases have served further to tighten some of the guides by fending off any attempted linkages between state legislative and congressional reapportionments. In this area, the Court has remained unyielding in preserving "as nearly as is practicable"[13] equality of population standards. The Court has not been willing to set a specific maximum allowable deviation, but has required that any deviations may be justified only after the test of a "good faith effort" has been applied against the state.[14]

The adamancy of the Court in these cases seems to be explained best in light of certain key concepts: (1) the federal government possesses "sovereignty" over the constitution of the House of Representatives, which is one of the arms of the federal government; (2) the right of the Court to review these cases is based on the time-tested case of Marbury v. Madison;[15] (3) the foundation for the Court's intervention comes not from an amendment to the Constitution, but from the Constitution itself, Article 1, Section 2.[16]

The line of cases to be analyzed here begins with Wesberry v. Sanders in 1964.[17] The case concerned itself with alleged malapportionment in Georgia's congressional districts, involving a ratio between the largest and the smallest districts of over 3-1. It was in this case that the Court interpreted Article 1, Section 2 of the Constitution to mean that "as nearly as practicable, each man's vote in a congressional election shall count just as much as another's."[18] The Court went on to argue that the debates at the Constitutional Convention clearly showed that the framers intended apportionment to be based squarely on equal numbers of people in each district. Justice Black drove the point home when he wrote for the Court in the Wesberry decision:

> While it may not be possible to draw congressional districts with mathematical precision, that is not excuse for ignoring our Constitution's plain objective of making equal representation of the 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.[19]

From the beginning, the Court made it known that, in congressional districting, anything less than exact equality in population would not be allowed.

This hard line was strengthened and continued in two cases decided on the same day in 1969, Kirkpatrick v. Preisler[20] and Wells v. Rockefeller.[21] Kirkpatrick concerned itself with an alleged malapportionment of the Missouri congressional districts (involving a maximum deviation of 5.97 percent), and Wells dealt with

malapportionment in New York (a congressional plan involving a deviation of 13.086 percent). The two cases served to: (1) eliminate speculation as to maximum allowable unjustified population variance; (2) make clear the parameters by which variances would be measured; and (3) eliminate various arguments that were then being used to justify deviations in both state legislative and congressional reapportionment schemes. Essentially, the cases involved an explication of the meaning of "as nearly as practicable" as enunciated in Wesberry.

The Court rejected a de minimis population deviation—a level below which population deviations will not be questioned--at the outset of the Kirkpatrick opinion. Justice Brennan wrote for the Court:

> The whole thrust of the "as nearly as practicable" approach is inconsistent with adoption of fixed numerical standards which excuse population variances without regard to the circumstances of each particular case.[22]

Brennan further argued that the setting of a de minimis level would: (1) be an arbitrary action; and (2) involve setting a target range toward which legislators would work, rather than true population equality.[23]

Instead of setting a specific de minimis level, the Court indicated that all variances from population equality had to be shown to be unavoidable "despite a good faith effort to achieve absolute equality."[24] If a "good faith effort" could not be shown, then justification for the variances was required. Should the state be unable to

justify variances absent a good faith effort, the Court claimed its right to void the plan on the grounds of violation of the Federal Constitution.

Missouri and New York were unable to show evidence of a good faith effort in the drawing of their respective reapportionment plans and, as a result, they had to attempt to justify the deviations as the outgrowth of a policy or other consideration that the Court would deem nonviolative of the Constitution.[25] Kirkpatrick presented a number of interests that Missouri thought would justify the population variances. The criteria that Missouri employed were: (1) preservation of political subdivision integrity, (2) preservation of political balance, and (3) compactness of the districts themselves.[26] The Court ruled against all three of these claims. As to the first two, the Court was of the opinion that partisan politics should not enter into the question:

> Problems created by partisan politics cannot justify an apportionment which does not otherwise pass constitutional muster.[27]

> . . . an argument that deviations from equality are justified in order to inhibit legislators from engaging in partisan gerrymandering is no more than a variant of the argument, already rejected, that considerations of practical politics can justify population disparities.[28]

The Court continued on to reject the third criterion by citing Reynolds to show that contemporary communication techniques have outdated the notion that distance prevents constituents from maintaining close contact with their representatives.[29] The Court then specifically addressed

the Missouri plan, noting that "a state's preference for pleasingly shaped districts can hardly justify population variances."[30]

The opinions in Kirkpatrick and Wells gave greater clarity to the considerations that may permissibly be taken into account in congressional districting. The rejection of political considerations and standards of compactness served to reinforce the Court's unyielding position that population exactness is the overriding consideration. All variances must be shown to be unavoidable or otherwise justified by reasons other than subdivision integrity, political fairness, compactness, or anticipation of expected population shifts.

The Kirkpatrick and Wells opinions have stood basically unchallenged and intact since they were handed down in 1969.[31] An interpretation of the "good faith effort" requirement by a lower court is found in the case of Drum v. Scott,[32] decided in 1971. The District Court considered a "good faith effort" to have been made because:

> Unlike Missouri, the North Carolina Legislature considered and debated alternate plans and did not reject without consideration a plan which would have markedly reduced population variances among the states.[33]

This is a slight departure from the line pursued in Kirkpatrick. Although it was not appealed to the Supreme Court, it may be significant in that: (1) since the total maximum deviation was only 3.79 percent, it may indicate

a quasi de minimis level below which less justification is required; and (2) there appeared to be a slight shift in the burden of proof toward those who seek to show that a plan is not representative.

Two of the most recent Supreme Court cases concerning a de minimis level, White v. Weiser[34] and Chapman v. Meier, however, have served to strengthen the refusal to adopt a de minimis position. Justice White, in writing for the Court in the Texas case of White v. Weiser, upheld a lower court ruling that struck down a plan with 4.13 percent population deviation and called for a plan with .149 percent total maximum deviation. In a tight application of Kirkpatrick and Wells to deviations, White noted:

> . . . we agree with the District Court that under the standards of those cases, they (deviations) were not unavoidable, and the districts were not as mathematically equal as reasonably possible.[36]

Speaking directly to those who desire a de minimis variance level to be set, White commented:

> It is clear, however, that at some point or level in size, population variances do import invidious devaluation . . . and represent a failure to accord him (the voter) fair and effective representation.[37]

It is significant to note, however, that the Court remanded the case back to the District Court because the plan that the Court had ordered to be implemented was counter to established state policy. Nevertheless, any hopes that the Court would greatly soften its position on allowable population deviations were squelched in the last paragraph of the opinion:

> The District Court should not, in the name of state policy, refrain from providing remedies fully adequate to redressing constitutional violations which have been adjudicated and must be rectified.[38]

One of the last cases to speak directly to congressional reapportionment was Chapman in 1975. Justice Blackmun made it clear that the Court would still pursue, in the future, the highest standards as to equipopulous representation in the House of Representatives.

> We have acknowledged that some leeway in the equal population requirement should be afforded states in devising their legislative reapportionment plans; as contrasted to congressional districting, where population equality appears to be the pre-eminent, if not the sole, criterion, on which to adjudge constitutionality.[39]

Summary on Congressional Redistricting

From the beginning of the congressional reapportionment cases in Wesberry v. Sanders, to the most recent opinion about them in Chapman v. Meier, the Court has remained steadfast in its position that "one man, one vote" is to mean exactly that. The Court began in 1964 by striking down plans with a 3-1 population variance and has continued to the point where it now orders to be put into effect plans with a total maximum deviation of .149 percent.[40] Moreover, no clear end is in sight to this tendency, for the Court continues to refuse to indicate a de minimis level below which population deviations would not have to be justified: (Kirkpatrick, Wells, White, and Chapman.) Indeed, any justifications for congressional district deviations are hard to find in the opinions of

the Court. Unlike state legislative reapportionment cases, the Court has refused to count the preservation of political subdivision integrity as a viable policy by which to determine congressional representation. "One man, one vote" has truly reached its zenith in congressional districting. It remains, of course, to be seen if equally populous congressional districts in each state will greatly improve representation.

State Legislative Redistricting

State legislative reapportionment has been at the forefront of the apportionment debate from the time that the questions of redistricting were first deemed justiciable. It was in Baker v. Carr[41] that the Court, speaking through Justice Brennan, took the reapportionment question from its traditional political setting. Although the Court did not move to redistrict the Tennessee Legislature itself, by sending the case back to the District Court for appropriate action, it took the first and decisive step into the "political thicket." In the paragraphs that follow, we will investigate the path that the Courts have followed in defining "equality" as a voting standard in state legislative districting.

The first cases decided with respect to state reapportionment were not aimed at establishing an exact standard to define population equality, but were pointed toward setting the "ground rules" by which future cases would be decided. The most prominent of the cases

decided in 1964 was Reynolds v. Sims.[43] It was in that case that the Court: (1) significantly strengthened its argument for dealing with problems of reapportionment and barriers to representation;[44] (2) established distinctions between congressional and state legislative apportionment;[45] and (3) announced some tentative and preliminary standards by which equality in population would be defined and determined.[46] The third point is of chief importance for our purposes.

Three statements of great import for the future development of equality standards were made by Chief Justice Warren in the Reynolds decision. "Legislators represent people," he declared, "not trees or acres."[47] By this first statement, the Court appeared to be discounting all other factors except population when determining "equality." Warren argued that the bedrock of the American political system was the ability of the people to elect representatives in an unobstructed manner--and that this bedrock was protected by the Equal Protection Clause of the Fourteenth Amendment. The representation of interests, in was implied, would act as an obstruction to free elections.[48] (The argument was taken to the point that bicameralism not totally based on population equality was held to be forbidden by the Equal Protection Clause.)[49]

Warren's second key statement was that mathematical exactness was not a requirement in state apportionment questions.[50] Here we have what appears in retrospect to

be the first evidence that the Court would be less strict in judging population equality in state plans than in congressional plans.

Warren's third key statement somewhat softened the tone of his first:

> So long as the divergences from a strict population standard are based on a rational state policy, some deviations from the equal-population principle are constitutionally permissible . . .[51]

Here the Court seemed to leave itself open to a flexible standard of allowable deviation that would be applied to each state individually.

In rather general terms, one may say that Warren's second and third points still stand today, indeed have strengthened; but various decisions of the Court have tended to dilute his first point on the absolute primacy of population as a criterion.

Following Reynolds, the next major case in this line was Swann v. Adams.[52] The case concerned itself with the Florida State Legislature, which had maximum population deviations in the Senate of 25.65 percent and 34.55 percent in the House. Swann employed the "rational state policy" test enunciated in Reynolds and found that Florida had failed to justify the deviations. The State's justification, an attempt "to follow congressional district lines,"[53] was not convincing to the Court, for it found that Florida could have remained close to the boundaries of its congressional subdivisions without allowing such large deviations.[54] Swann also followed Reynolds in its

argument that accepted variation norms in one state have little relevance to those in other states.[55] Yet, despite the holding against the Florida plan, the Court made clear its willingness to take particular circumstances and the desires of a state legislature into account. From this point forward, the representation of "interests" begins to gain somewhat greater acceptance in the Court, and the strict interpretation of the Reynolds finding that "legislators represent people . . ." begins to weaken. While Swann failed to set definitive barriers for maximum population deviation, it did further define the rules and tests by which future state apportionment cases would be measured.

The post-1970 state reapportionment cases have dealt with a wide range of issues that, taken as a whole, reflect not only a certain relaxation of the "one man, one vote" standards of the 1960s, but that are in general a reflection of a growing reluctance to interfere in the affairs of the states. Beginning with Mahan v. Howell[56] in 1973 and continuing up through Connor v. Finch[57] in 1977, the Court exhibited determination to settle on "tolerable" limits of population deviation and to define the tools with which to measure deviation. Some of the old measures going back to Reynolds have been enhanced, and some new measures have been developed.

The most prominent of the post-1970 cases is Mahan v. Howell. The case arose from a claim of malapportion-

ment in the Virginia State Legislature, where the population deviation totaled 16.4 percent. The District Court disallowed the plan, relying on Kirkpatrick v. Preisler[58] and Wells v. Rockefeller.[59] The Supreme Court took the case and made the following points, while ruling in favor of the status quo plan: (1) standards for congressional reapportionment are not applicable to those for the states; (2) the desire to maintain the integrity of the boundaries of political subdivisions is permissible, and may be considered part of a rational state policy. Thus, the Virginia plan, with its 16.4 percent deviation, was approved, despite allegations made in the District Court that multi-member districting diluted voting power and constituted racial gerrymandering and that the plan racially isolated Negroes.[60]

The inapplicability of congressional standards to state plans was not a novel concept--indeed, it had been brought up as early as Reynolds and Davis--but Mahan served to give permanence to the split in classifications. The opinion stated:

> It is the conclusion of this Court that the absolute equality in population test of Kirkpatrick is not applicable to bicameral state legislatures and the "rational policy" test. . . .[61]

Earlier in its opinion the Court had championed the peculiarities of state and local governments, noting that application of absolute equality to state legislatures may impair the functioning of state and local governments.[62]

The Court, as to the second point, made it known that

maintenance of the integrity of political subdivisions would be considered a rational state policy.[63] It is here that the Court begins to make clear the point that, while legislators may not represent trees and acres,[64] state legislatures do have to be concerned with local interests and other factors; and that, therefore, population deviations beyond those permitted under the strictest interpretation of the Equal Protection Clause may be permitted. Thus, the preservation of integrity of political subdivisions becomes embedded as a rational state policy and as a justification for population deviations.

Some commentators have raised the question of tolerable limits--how much deviation from exact equality will now be allowed, given that the Virginia plan, with its 16.4 percent variation, glided so easily past the Court? This is a question that cannot be fully answered, of course, particularly if the dictum in Swann of nontransferability of standards between states is sustained. A partial answer seemed to be given, however, when the Court vacated a District Court ruling on apportionment in Idaho later in 1973. The case, Summers v. Cenarussa,[65] concerned itself with an apportionment scheme of the Idaho Legislature that permitted a 19.41 percent maximum total deviation. The State, in framing its plan, claimed to have adhered to a policy of maintaining the integrity of subdivisions and anticipating increases in population. The District Court had upheld the plan; but the Supreme Court

vacated the decision of the lower court without comment.[66] While this state policy is not exactly commensurable with that in Mahan, some gross indication may have been given as to the maximum range of allowable population deviation.

Shortly after the Mahan decision, the Court took the opportunity further to define the parameters of what would be considered equal representation as dictated by the Equal Protection Clause. The opportunity came in the form of two cases, Gaffney v. Cummings[67] and White v. Regester.[68] Gaffney was concerned with the Connecticut Legislature, where the maximum total deviation was 7.83 percent. White concerned itself with the Texas Legislature, where the maximum total deviation was 9.9 percent. The question asked in both cases was--at what level does a plan lose its prima facie validity and thus have to justify itself with a rational state policy? Alternatively, what is required to build a prima facie case of invidious discrimination? In the two cases, the Court very clearly increased the burden of proof on those who seek to overturn state reapportionment plans. In effect, the Court ruled that the 7.83 percent deviation of Gaffney was not, on its face, a violation of any "one man, one vote" guidelines, and that extensive documentation must be submitted to show that the plan causes invidious discrimination. With reference to Mahan, Justice White states in the Gaffney opinion:

> We did not hold that in state legislative cases any

> deviations from perfect population equality in the districts, however small, make out prima facie equal protection violations and require that the contested reapportionments be struck down absent state justification.[69]

He went on to say:

> It is now time to recognize . . . that minor deviations from mathematical equality . . . are insufficient to make out a prima facie case of invidious discrimination under the Fourteenth Amendment. . . .[70]

It can be seen, therefore, that the Court is loosening the stringent requirements of "one man, one vote" that characterized some of its earlier decisions.[71]

This approach, combined with what is said in Gaffney and in Mahan on preservation of the integrity of political subdivisions, suggests that equality in population is moving out of its position as the sole determinant of equal representation. Instead, other factors, such as the preservation of subdivision boundaries and the "political fairness" doctrine of Gaffney,[72] are edging forward. Our view of this tendency is supported by various commentators on reapportionment law. Irwin Rubin, in "Malapportionment: Inequality and the Individual's Vote,"[73] states that:

> Taken together, Mahan and Gaffney indicate a retreat from the strict "one man, one vote" principle initiated almost a decade earlier.[74]

Another writer takes a similar view of the situation:

> Mahan v. Howell . . . simply allows the Court more flexibility in looking at factors other than population in determining the constitutionality of an apportionment plan.[75]

The various doctrines of Mahan and Gaffney have been continued in lower court cases up to the present. The

case of Graves v. Barnes[76] further supports the prima facie arguments of Gaffney. It notes that, as opposed to court-ordered plans, those that are originated by the state will receive a certain amount of "indulgence from the adjudicating court."[77] Graves does not, however, leave the door wide open, but notes that avoidance of voter confusion and encouragement of voter participation are not to be considered overriding state interests. This caveat is included at the end of the case:

> It will serve no one for us to ignore constitutional norms in the name of convenience and administrative inertia.[78]

The political fairness principle of Gaffney is continued in the Illinois city council districting case of Russo v. Vacin.[79] This case quotes Gaffney on the notion that districting and apportionment of a political nature, designed to "reflect the political balance" of the elements in the community, will be allowed.[80]

The integrity of boundaries doctrine that extends from Reynolds through Mahan, Gaffney, and White is noted in the Tennessee case of Sullivan v. Crowell.[81] The Court wrote:

> . . . we are of the opinion that the elimination of split precints would be a valid reason for increasing population disparities among legislative districts to the 12.51 percent level demonstrated here . . . if no less severe method is possible.[82]

The Court in this case ruled that deviations of 12.51 percent are permissible in the drive to retain a certain type of territorial integrity.

Before concluding these comments, it would be well to discuss the status of "one man, one vote" in relation to plans devised by the Courts. Although Graves and Sullivan comment on the subject briefly, the Supreme Court case of Connor v. Finch[83] gives what seems to be the currently definitive word on court-ordered plans. The Court quite clearly states that court-ordered reapportionment plans must be more fully justified (as to deviations from a strict equal population application) than those promulgated by a state legislature. Two quotations follow:

> With a Court plan, any deviation from approximate population equality must be supported by enunciation of historically significant state policy or unique features.[84]

> . . . a state legislature is the institution that is by far the best situated to identify and then reconcile traditional state policies within the constitutionally mandated framework of substantial population equality. The federal courts by contrast possess no distinctive mandate to compromise sometimes conflicting state apportionment policies in the people's name.[85]

It can be seen that, should the Courts deem it necessary to reapportion a governmental unit themselves, the most stringent "one man, one vote" standards will be applied.

Court attitudes toward state legislative apportionment have undergone some important changes since the Reynolds decision was handed down in 1964. From what was once a strict interpretation of the population requirements of the Equal Protection Clause, the Court's definition of "equal representation" has begun to assume a modified, softer form. In addition to equal population, the states

may now also consider such policies as the preservation of political subdivision integrity, the preservation of political balance, and the rights of states qua states to determine the specific policy considerations they will integrate into their reapportionment efforts. There has also been a slight lessening of the burden of proof laid upon the states to show that their plans do not violate the Equal Protection Clause. Gaffney and White permitted deviations up to 9.9 percent without justification, other than the fact that a state policy was present. As to court-devised and implemented plans, however, the Supreme Court, in Connor, made it clear that should a reapportionment come to the point where a court-drawn plan must be implemented, the most stringent interpretation of the Equal Protection Clause will be applied.

Thus, a contemporary summary definition of "one man, one vote" in state legislative districting would involve the requirement of adherence to equal population, but supplemented by provisions for consideration of political subdivision integrity and political fairness.

Redistricting at the Local Level

The debate on apportionment of voting rights in local political divisions was a relative late-comer in the history of apportionment/reapportionment litigation. The first case to deal specifically with the area, and which set many of the basic and continuing lines of the Court's

approach to local representation, was Sailors v. Board of Education.[86] From this case there followed a wide-ranging set of arguments that concerned themselves with such issues as: (1) whether "one man, one vote" applies to local districts, (2) what constitutes the exercise of governmental powers, and (3) what are the special requirements of local and special district governments as compared with other types of governing bodies.[87]

The first issue to confront the Court on the local level was the basic one of whether the so called "one man, one vote" rule did indeed apply. In the Sailors decision, Justice Douglas, writing for the Court, used both Gray v. Sanders and Reynolds v. Sims to support his contention that, regardless of the level of government, each voter has the right to participate equally in the electoral process.[88] The finding opened the door for judicial activity in local reapportionment. This application of the "one man, one vote" principle was further reinforced in Avery v. Midland County[89] and Hadley v. Junior College District.[90] In these decisions, the Court drew on the power of the Equal Protection Clause of the Fourteenth Amendment.

From the beginning, however, there seemed to be a certain hesitancy to apply "one man, one vote" to local units of government. In the Sailors decision, for example, Justice Douglas made a distinction between legislative and administrative bodies.[91] Although, in the summation,

Douglas refused to classify the school board in question as either legislative or administrative--he claimed they were not actually elected--the distinction indicated a certain willingness to let the states determine the quality of voting strengths in state political subdivisions. (This distinction reappears later on in one of the most recent local reapportionment cases.)[92] Douglas noted in Sailors:

> Viable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the Constitution to prevent experimentation.[93]

In other words, it appeared that the Court was willing to allow deviations beyond those accepted for state and congressional apportionments and, further, that the states would be allowed at least some say as to the degree of deviation.

After deciding that "one man, one vote" does indeed apply to local districts, the next issue to confront the Court was the definition of governmental powers and what constitutes a government. For, so the reasoning went, if a political subdivision was determined not to have governmental powers, then it could not be considered to be subject to "one man, one vote" strictures. The question was given a partial answer when the Supreme Court decided in Avery v. Midland County[94] that local political subdivisions having "general governmental powers" were subject to the provisions of the Equal Protection Clause.[95] The Court did not define, however, what it meant by "general

governmental powers"--merely saying that these powers must extend "over the entire geographic area served by such a body."

Such a definition was hardly "operational" and, as a consequence, a number of later cases shaped, modified, and remodified a definition of governmental powers. The first Supreme Court case to follow Avery on this subject was Hadley v. Junior College District.[97] The opinion noted that the college district had the power to

> . . . levy and collect taxes, issue bonds . . ., hire and fire teachers, make contracts, collect fees, supervise and discipline students, pass on petitions to annex school districts, acquire property by condemnation, and in general manage the operation of the junior college.[98]

After this listing, the Court stated:

> . . . we think these powers are general enough and have sufficient impact throughout the district to justify the conclusion . . . that the district board was actually a governmental body, and thus subject to "one man, one vote."[99]

It can readily be seen that a rather broad definition of governmental powers was used.

Hadley was the last case in which the Court took the opportunity to define governmental powers with respect to local reapportionment.[100] Various District Court and Appeals Court opinions have both broadened and restricted the Hadley definition.[101] In 1975, the Court had the opportunity to rule on a rather restrictive definition of governmental powers, but denied a writ of certiorari without comment.[102] In 1978, the Appeals Court[103] for Michigan affirmed a District Court opinion[104] which stated that the

power to tax does not constitute an exercise of governmental power:

> The committee here is not more "legislative" in character than the County School Board in Sailors which had the power to tax.[105]

Today, there is a clear opportunity for the Court to refine its definition of "government" on the local level.[106]

Aside from questions of the applicability of "one man, one vote" to local bodies and the various caveats that arise with respect to the opinions and definitions that are formulated, there is the question of the numbers involved--how large a deviation in population in each district is allowed in these representative bodies. Unlike state and congressional apportionment cases, those that deal with local apportionment have given little attention to "exactitude." Perhaps one may surmise that the Courts feel that local bodies are more closely based on interests and, therefore, that "one man, one vote" rules need not be applied so vigorously.[107]

The cases that have presented quantitative limits are Abate v. Mundt,[108] Leopold v. Young,[109] and Burton v. Whittier.[110] Abate upheld a county legislative plan that allowed 11.9 percent population deviation.[111] (That the Court gave no indication of an upper limit may have shown a certain willingness to compensate for future population changes and shifts.)[112] Leopold concerned itself with a unified high school district comprised of small constituent towns: the largest district was underrepresented by

43.0 percent and the smallest district was overrepresented by 31.0 percent.[113] The district apportionment plan was struck down in this case. Burton concerned itself with a school district in which one of the constituent towns held 41 percent of the population but had only 15 percent of the representation.[114] This plan was upheld by the Court of Appeals and has not yet been taken to the Supreme Court. Both Leopold and Burton were based on different definitions of governmental power, and were decided by lower courts. For all practical purposes, therefore, standing total maximum population deviation seems to be indicated in Abate at 11.9 percent.

In the local apportionment debate, the Court has devised several tests, each of which is in various stages of development. The administrative/legislative distinction, which surfaced in Sailors, continued in slightly changed form two years later when the governmental functions debate began in Hadley. Sailors also began the elective/appointive distinction: this doctrine still survives in good shape in Burton v. Whittier. A third test, general function v. special function, surfaced most recently on the Supreme Court level in 1973:[115] while it may lead to some unwanted entanglements for the Court, it appears that it may be more viable than the elective/appointive test.

As compared with state legislative and congressional reapportionment, the Court has: (1) shown less interest, and (2) not applied "one man, one vote" guides with such

precision (or fervor). While Sailors did establish that the Equal Protection Clause does extend to local governmental bodies, later cases have continued to raise questions that weaken the position of the Clause in relation to local units. The cases do not center around the applicability of the Clause to local units, but rather around definitions of local government and questions of the power that states should have in deciding the duties of local political subdivisions. The debate as to what constitutes a governing body has continued and grown since its inception in 1968. After discarding several early definitions, the Court has begun to settle on a definition of general governmental powers that includes, most significantly, the power to levy taxes and set budgets.[116] (Recent lower court opinions, however, denied to some bodies the title to governmental powers even though they have the power to tax.)[117]

"One man, one vote," therefore, exists on the local level, but in a much looser form. Population equality is a factor; but local interests and traditions have also been allowed to play a part in the determination of the representative nature of local governing bodies.

Footnotes to Chapter II

[1]Colegrove v. Green, 328 U.S. 549 (1947).

[2]Baker v. Carr, 369 U.S. 186 (1962).

[3]Gray v. Sanders, 372 U.S. 268 (1963).

[4]Wesberry v. Sanders, 376 U.S. 1 (1964).

[5]Reynolds v. Sims, 377 U.S. 533 (1964).

[6]Swann v. Adams, 385 U.S. 440 (1967).

[7]Kirkpatrick v. Preisler, 394 U.S. 526 (1969).

[8]Whitcomb v. Chavis, 403 U.S. 124 (1971).

[9]Mahan v. Howell, 410 U.S. 315 (1973).

[10]Chapman v. Meier, 420 U.S. 1 (1975).

[11]United Jewish Organization v. Carey, 97 U.S. 996 (1977).

[12]See Congressional Quarterly, June 17, 1966. At the time of this CQ survey, only four states (Hawaii, Louisiana, Maine, Mississippi) had legislative districts that varied widely from their average district population.

[13]Wesberry, supra, at 7-8.

[14]Kirkpatrick, supra, at 531.

[15]Marbury v. Madison, 1 Cranch 137 (1803).

[16]U.S., Constitution, art. 1, sec. 2.

[17]Wesberry, supra.

[18]Ibid., at 7-8.

[19]Ibid., at 18.

[20]Kirkpatrick, supra.

[21]Wells v. Rockefeller, 394 U.S. 542 (1969).

[22]Kirkpatrick, supra, at 530.

[23]Ibid., at 531.

[24]Ibid.

[25]Ibid.

[26]Ibid., at 533.

[27]Ibid.

[28]Ibid., at 534.

[29]Reynolds, supra, at 580.

[30]Kirkpatrick, supra, at 536.

[31]The case of Hensley v. Wood, 329 F. Supp. 787 (1971) did comment on the soundness of the Kirkpatrick and Wells decisions. The District Court questioned the notion that the decenial census figures were the only acceptable figures upon which to base apportionment. The main contention was that the census is not dynamic and that schemes drawn according to the decennial census are inherently malapportioned. "Mathematical precision, if achieved, is destined to have an ephemeral existence." 329 F. Supp. 787 at 791. The Court has commented on the use of census enumerations and projections in Kirkpatrick and the lower courts have commented in Dixon v. Hassler, 412 F. Supp. 1036 (1976) and Graves v. Barnes, 446 F. Supp. 560. All three cases note objection to the use of census projections. Dixon states that to let census estimates stand would allow legislatures to justify malapportionments on the basis of latter adjustments. Dixon, supra, at 1041. The Dixon case did show a slight softening, however, in that it cited a 1964 case as saying that courts may take projections into account if they are well substantiated and large shifts in population are known to have occurred. Calkins v. Hare, 228 F. Supp. 824. The Dixon case was affirmed without comment, by the Supreme Court. 429 U.S. 934.

[32]Drum v. Scott, 337 F. Supp. 588 (1972).

[33]Ibid., at 591.

[34]White v. Weiser, 412 U.S. 783 (1973).

[35]Chapman, supra.

[36]White, supra, at 790.

[37]Ibid., at 793.

[38]Ibid., at 797.

[39]Chapman, supra, at 23.

[40]As to plans constructed and ordered by the Courts, the exactitude demanded in congressional reapportionment is mind-boggling. The case of Dunnell v. Austin, 334 F. Supp. 210 (1972) illustrates this point. The Court disallowed a plan with approximately 2.5 percent total maximum deviation. It instead constructed its own plan where the ideal district had a population of 467,543 persons, the largest districts had 467,547 persons, and the smallest districts had 467,535 persons living in it. The ratio of the largest to the smallest was 1.000026:1 with a total maximum deviation of .00257 percent.

[41]Baker, supra.

[42]A group of six cases were decided on June 15, 1964, all of which dealt with state legislative districting schemes. The cases are listed below with the population variances in parentheses if stated: Reynolds v. Sims, 377 U.S. 533; WMCA v. Lomenso, 377 U.S. 633 (Assembly 11.9-1); Maryland Committee v. Tawes, 377 U.S. 656; Davis v. Mann, 377 U.S. 678 (Senate 2.65-1, House 4.36-1); Roman v. Sincock, 377 U.S. 695 (Senate 15-1, House 35-1); and Lucas v. 44th General Assembly (Senate 3.6-1).

[43]Reynolds, supra, n. 2.

[44]Ibid., 556-557.

[45]Ibid., 571-577.

[46]Ibid., 577-581.

[47]Ibid., 562.

[48]Ibid., 563-568.

[49]Ibid., 568-576.

[50]Ibid., 577.

[51]Ibid., 579.

[52]Swann, supra.

[53]Ibid., 445.

[54]Ibid., 444.

[55]Ibid., 445-446. Further comment on the nontransferability of standards may be found in Gerard Casper, "Apportionment and the Right to Vote," 1973 Supreme Court Review 16.

[56]Mahan, supra.

[57]Connor v. Finch, 431 U.S. 407 (1977).

[58]Kirkpatrick, supra.

[59]Wells, supra.

[60]Mahan v. Howell, 330 F. Supp. 1138 (1971).

[61]Mahan, supra, at 324.

[62]Ibid., 323.

[63]Ibid., 328.

[64]Reynolds and Davis, supra.

[65]Summers v. Cenarussa, 342 F. Supp. 288 (1972).

[66]Summers v. Cenarussa, 413 U.S. 906 (1973).

[67]Gaffney v. Cummings, 412 U.S. 735 (1973).

[68]White v. Register, 412 U.S. 755 (1973).

[69]Gaffney, supra, at 743.

[70]Ibid., 745.

[71]An up-to-date article on the loosening of standards may be found in Samuel R. Dolgow, "Political Representation: The Search for Judicial Standards," 43 Brooklyn Law Review 431, pp. 445-448.

[72]Gaffney, supra. Essentially, Connecticut's "political fairness principle" was an attempt to reflect in the legislature the balance of the various political parties around the state. Formulation of the plan involved consultation with a bi-partisan committee.

[73]5 North Carolina Law Journal 308.

[74]Ibid., 320.

[75]Clem Hyland, "Constitutional Law--Mahan v. Howell. Forward or Backward for the One Man--One Vote Rule." 22 De Paul Law Review 912, p. 924.

[76]Graves v. Barnes, 446 F. Supp. 560 (1977).

[77]Ibid., 569.

[78]Ibid., 571.

[79]Russo v. Vacin, 528 F2d. 27 (1976).

[80]Ibid., 29.

[81]Sullivan v. Crowell, 444 F. Supp. 606 (1978). The total maximum population deviation in this case is 21.78 percent.

[82]Ibid., 614.

[83]Connor, supra. This case originates from a reapportionment dispute in Mississippi that began in 1964. The Mississippi Legislature failed to promulgate a constitutional plan and so the District Court for the State was assigned the task. As of mid-1978, the District Court had not yet devised a constitutionally acceptable plan.

[84]Ibid., 417.

[85]Ibid., 414-415.

[86]Sailor v. Board of Education, 387 U.S. 105 (1967).

[87]For a general essay on local reapportionment, see Gerard Casper, "Apportionment and the Right to Vote: Standards of Judicial Scrutiny," 1973 Supreme Court Review 1. Also see James J. Doody III, "Equal Protection and Connecticut's Regional School Boards: The Parameters of 'One Person, One Vote'," 51 Connecticut Bar Journal 243.

[88]Sailors, supra, at 107.

[89]Avery v. Midland County, 390 U.S. 474 (1968).

[90]Hadley v. Junior College District, 397 U.S. 50 (1970).

[91]Sailors, supra, at 110.

[92]Burton v. Whittier Vocational School District, 587 F2d 66 at 69 (1978).

[93]Sailors, supra, at 110-111.

[94]Avery, supra, n. 4.

[95]Ibid., at 1120.

[96]Ibid.

[97]Hadley, supra. n. 5.

[98]Ibid., at 53.

[99]Ibid., at 54.

[100]Two cases decided in early 1973 touched on the subject of government powers, but appear to have only limited application. The cases, Salver v. Tulare Water Storage District, 410 U.S. 719 and Associated Enterprises v. Toltec Watershed, 410 U.S. 742, concerned themselves with the apportioning of votes according to acreage owned. The Court ruled that one man - one vote did not apply because of the authority of the districts and lack of "governmentality," 410 U.S. 719 at 728 (1973).

[101]Leopold v. Young, 340 F. Supp. 1014 (1972); Powers v. Maine School District, 359 F. Supp. 30 (1973); Barnes v. Board of Directors, Mount Anthony Union High School District, 418 F. Supp. 845 (1975); and Baker v. Regional High School District, 520 F2d 799 (1975) have all indicated that the definition of governmental powers should be broadened so as to include many more state political subdivisions in the one man - one vote apportionment category. Lockport, New York v. Citizens for Community Action, 430 U.S. 259 (1977) touched briefly on the subject, but did not fully investigate it so as to make a change in the definition. Burton v. Whittier Vocational School District, 587 F2d 66 (1978) has restricted the definition of governmental powers to the point of excluding taxing powers as a qualification.

[102]Baker, supra, at 800. Certiorari was granted in 96 S. Ct. 422.

[103]Burton, supra.

[104]Burton v. Whittier, 449 F. Supp. 37 (1978).

[105]Ibid., at 39.

[106]Tangential to the definition of governmental powers is the sense of the Court as to the degree of discretion local bodies should be allowed in their duties.

In Lockport v. Citizens, 430 U.S. 259 (1976), the Court made clear the "wide discretion" that state governments have in forming and allocating governmental tasks. 430 U.S. 259 at 269 (1976).

[107]cf. earlier discussion on Sailors and Burton.

[108]Abate v. Mundt, 403 U.S. 182 (1971).

[109]Leopold v. Young, 340 F. Supp. 1014 (1972).

[110]Burton, supra.

[111]Abate, supra, at 184.

[112]Ibid., at 186.

[113]Leopold, supra, at 1017.

[114]Burton, supra, at 67.

[115]cf. n. 100.

[116]Abate, supra, n. 4.

[117]Burton, supra, n. 25.

CHAPTER III

MISSISSIPPI REDISTRICTING CASE HISTORY

1965 to 1979

In 1965 a group of civil rights advocates brought suit against the State of Mississippi, contending that the legislative districts of the State violated both the Fourteenth and Fifteenth Amendments of the U.S. Constitution. In July 1966, the District Court in Jackson invalidated the 1962 redistricting of the Mississippi State Legislature on the grounds that it was in violation of the Fourteenth Amendment--namely the one person, one vote rule.[1] This decision started the long process of litigation that still continues as of this writing.

All statewide constitutional officers, members of the State Legislature, and county supervisors in the State of Mississippi are elected to four-year terms. All offices come up for election at the same time in the year preceding U.S. presidential elections. Thus, the members of the Legislature were up for election in the years 1967, 1971, 1975, and 1979.[2]

When in 1966 the 1962 apportionment was held to be unconstitutional, the next legislative elections were due to take place in 1967. In response to the 1966 ruling,

the Legislature enacted a new plan that was also held to be unconstitutional under the Fourteenth Amendment.[3] Thus, in 1967 the District Court was forced to implement its own plan for that year's elections.

Following the 1970 Census, in the 1971 session, the Legislature enacted a further redistricting plan. This plan was held unconstitutional on the same grounds--violation of the one person, one vote rule.[4] As was the case in 1967, the District Court formulated a plan for the 1971 elections. The Court, in recognition of the fact that large multi-member districts were discriminatory, stated its desire to formulate sub-districts within the counties of Harrison, Hinds, and Jackson. The Court further stated that it would implement the subdivision of these large counties following the 1971 election.[5]

It is clearly evident from the census data that up to six black districts could be formed in Hinds County and one in Harrison County. Thus, the plaintiffs in the Connor case appealed the 1971 decision on the grounds that the District Court should formulate single-member districts in these two counties in time for the 1971 legislative elections. The Supreme Court agreed and directed the District Court, at a minimum, to devise and put into effect single-member districts for Hinds County for the 1971 election.[6]

The District Court in Jackson managed to find insurmountable difficulties to the creation of single-member

districts in Hinds County, and the 1971 elections were held with twelve members elected at large in that county.[7] Plaintiffs in the Connor case appealed again to the U.S. Supreme Court following the elections. The Supreme Court, taking note that the District Court had retained jurisdiction, and intended to appoint a Master to attempt to subdivide the counties of Harrison, Hinds, and Jackson into single-member districts, directed that Court to act with haste to settle the case.[8]

In 1973 the Legislature, which had been elected under the 1971 temporary court plan, passed another redistricting statute with the intent of avoiding another election held under a court-ordered plan. In the construction of the 1973 statute, however, the Legislature had declined to create single-member districts in the counties of Hinds, Harrison, and Jackson. This was clearly in opposition to the District and Supreme Courts' stated preference for single-member districts in these larger counties.

The absence of these single-member districts drew strong complaints from the Connor Plaintiffs. Acting in response to these objections, the Legislature passed a new redistricting statute in 1975. This plan was the same as the 1973 statute with the exception that it created a combination of at-large and two-member districts in Hinds, Harrison, and Jackson Counties. In that same year, the District Court ruled that the Legislature's plan was constitutional and could be used for the 1975 elections.[9]

Connor Plaintiffs again appealed to the Supreme Court, and that Court reversed the District Court's decision on the grounds that the Legislature's plan required approval by the U.S. Attorney General under Section 5 of the Civil Rights Act before it could go into effect.[10]

In accordance with the ruling of the Supreme Court, the Legislature submitted its plan to the Attorney General for his approval. The next day the Attorney General rejected the Legislature's plan on the grounds that it was discriminatory both in purpose and effect. The Attorney General's disapproval left the State, once more, without a set of districts in which to hold the 1975 elections. Responsibility for the implementation of a plan was then shifted back into the hands of the District Court in Mississippi.

The District Court took the 1975 legislative plan and substituted single-member districts in Hinds, Harrison, and Jackson Counties. This plan was then ordered into effect as a court plan. This plan, because it did not originate from the Legislature, did not require Section 5 preclearance from the U.S. Attorney General. This court-ordered plan is the one under which the 1976-79 Legislature was elected in 1975.

Following the 1975 elections, the District Court was petitioned by plaintiffs to devise a final plan for the State. There were, however, several important redistricting cases before the U.S. Supreme Court at the time of

this petition. The District Court stated that it intended to delay action on a new and final plan for the State until these other cases had been decided. The Connor Plaintiffs returned to the Supreme Court again, requesting a writ of mandamus requiring the District Court to act forthwith. This writ was granted, and the District Court ordered into effect a plan produced by a Special Master in November, 1976.[11] The decision to implement this plan was appealed to the Supreme Court on the basis of Fourteenth and Fifteenth Amendment violations and was held unconstitutional on the basis of malapportionment in May, 1977.[12] The District Court was directed to try again.

Mississippi held legislative elections in the years 1967, 1971, and 1975. These three Legislatures sat for a total of twelve years. During this entire period of time, legislative elections have been held using temporary court plans which have been, at best, stop-gap solutions to Mississippi's redistricting problems. During this entire period of time, the District Court in Jackson avoided a redistricting of the State into constitutionally acceptable, single-member districts. The Court always managed to delay action until just before each election was imminent--thus precluding the formulation of single-member districts due to time limitations. It may, perhaps, be assumed that the District Court preferred a solution to be forthcoming from the Legislature; equally, however, one may conclude that the Court displayed excessive patience

with the Legislature at the expense of the Plaintiffs' rights in the action.

Following the May, 1977 Supreme Court decision, the District Court directed the parties to the Connor suit to file proposed plans for redistricting of the Mississippi Legislature. The order, entered on August 2, 1977, directed that plans should be filed no later than October 29, 1977. Thus, all parties were given a period of ninety days in which to formulate their plans.

The Legislature, acting on behalf of the Connor Defendents, and having been called into special session by the Governor on August 12, 1977, created a Special Joint Legislative Committee on Reapportionment on August 13, 1977.[13] Representative Thomas H. Campbell III, representing Yazoo County, was elected Chairman of the Joint Committee. At this point, the Committee had no staff and no data base. Accordingly, the Committee chose to interview prospective consultants, from outside the State, with previous experience in redistricting. They were particularly interested in retaining individuals with data processing expertise.

On August 16, 1977, the Joint Committee authorized the formation of a Sub-committee to handle the day-to-day details of the redistricting process.[14] On August 19th and 20th, interviews were held with prospective consultants in Washington, D.C., and in Chicago, Illinois on August 25th.[15] As a result of these interviews, the Committee

retained the services of four redistricting consultants. These consultants, referred to as "experts" throughout the process, were: (1) Richard L. Morrill, Ph.D., Chairman of the Geography Department, University of Washington (Dr. Morrill was the Special Master for the Federal District Court in Seattle in 1971-72, and had drawn redistricting plans for the legislative and congressional districts in the State of Washington);[16] (2) Delmer D. Dunn, Ph.D., Professor of Political Science and Director of the Institute of Government, University of Georgia (Dr. Dunn had been active as a consultant to the Georgia General Assembly in its 1971 redistricting effort);[17] (3) Mr. Calvin A. Webb of Manlius, New York (Mr. Webb was former Associate Director of the Joint Legislative Committee on Reapportionment for the New York Legislature, and had directed the 1971 redistricting of that state);[18] (4) the author of this study;[19] and (5) Earl F. (Rick) Fortenberry, J.D., a graduate of the Law School of the University of Mississippi (Mr. Fortenberry was Director of the Legislative Services Office for the Mississippi State Senate and had served in a staff capacity in the Mississippi Legislature's redistricting efforts of 1973 and 1975 before his appointment as Director of the Joint Committee Staff).[20] These five individuals were responsible for all plan development by the staff of the Joint Committee.

On September 2, 1977, the staff began work on tentative plans for the Committee. The first task was to de

develop a data base and a computerized redistricting retrieval system to analyze proposed plans. This task was delegated to the author. A data base was constructed for all the census units in the State using the First and Third Count Summary Tapes from the Bureau of the Census. The First Count Tape continued tabulations by county, MCD, and ED. The Third Count Tape contained summaries by Block. Only four data items were included in the data base for each geographic unit. These were the Total Population (TPOP), Total Black Population (BLK) or (TBLK), All Persons Over Eighteen (TADT) or (VAP), and All Black Persons Over Eighteen (BADT) or (BVAP). These numbers became the common reporting statistics throughout all of the court proceedings. From these were developed the Black Percentage (%BLK) and the Black Adult Percentage (%BVAP). The data base and original retrieval programs were completed by the third week of September.

The data base structure remained the same throughout the entire Mississippi redistricting effort, with some modifications to the retrieval and reporting programs being made by Mr. Robert S. Walters, Senior Programer for the Rose Institute of State and Local Government.[21] The data base and reporting programs were designed in such a way that no census unit could be assigned to more than one district and so that unassigned units could be located by deficiencies in total county populations. This did not prevent misassignment, but it did prevent double assign-

ment, and also allowed for the accounting of all units. No other plans submitted to the Courts were formulated using a computerized system.[22]

The Committee staff, meeting informally, decided that the task of district drawing should be divided up among the consultants. This writer and Mr. Webb undertook primary responsibility for the development of House plans, while Mr. Fortenberry and Dr. Dunn took primary responsibility for the development of Senate plans. Dr. Morrill, working in Seattle, was directed to develop independent alternatives for both houses. Proposed plans were to be readied for presentation to the Joint Committee on October 14, 1979. This gave about five weeks in which to design all the plans.

By the time the Joint Committee met on October 4, 1977, two plans had been developed for the House and four for the Senate. These plans were designated as House Plans A and B, and Senate Plans A, B, C, and E (Senate Plan D was abandoned by the staff as unworkable). House Plan A was primarily the product of this writer and Mr. Webb. House Plan B was developed by Dr. Morrill.[23] Senate Plan A was developed by Dr. Dunn.[24] Senate Plans B and C were developed by Mr. Fortenberry.[25] Senate Plan E was developed by Dr. Morrill in Seattle.[26] House Plan B was dropped on October 4, leaving Plan A as the only House plan.[27] On October 14, the Joint Committee chose Senate Plan C for presentation to the Legislature and re-approved

House Plan A.[28]

While this process was moving forward, a former member of the House and a staff employee of the Administration Committee, Mr. Bud Thigpen, roughed out a new plan on behalf of some of the members of the House who were dissatisfied with the configuration of House Plan A in the northern portion of the State. This plan was submitted to the staff and was developed into House Plan C.[29] On October 18, the Joint Committee shifted its support to Plan C.[30] There was then a dispute between some members in the southern portion of the State who preferred Plan A and those in the north who preferred Plan C. Fortunately, the staff was able to merge the two plans together, taking the northern and central portion of Plan C and attaching it to the southern portion of Plan A. The plan became known as A/C and was the House plan finally adopted by the Legislature and submitted to the District Court.[31] Senate Plan C was also passed and submitted to the Court. These two plans were subsequently referred to as the House and Senate Court ED Plans.

Following the completion of the Court ED Plans there were two significant events. The first was a decision by the Legislative leadership to develop statutory plans independently of the District Court. The second was the total rejection of the ED plan approach by the District Court. These two events prolonged the redistricting process for another five months.

Up until the 1977 redistricting, the Legislature in Mississippi had always been divided along county boundaries. Using a combination of multi-member, single-member, and floterial districts, counties had evaded sub-division in any districting scheme prior to 1975. Aside from racial considerations, there was an almost fanatical dedication to the preservation of county integrity in the formation of legislative districts. The Legislature, in its 1975 plan, had been able to bring itself to the point of sub-dividing the three major counties. Furthermore, the District Court had subdivided those same counties for the 1975 elections. Up until 1977, however, no portion of any county had been combined with another county to form a legislative district. There was what could only be described as "profound shock" at the prospect of fracturing counties in order to divide the State into acceptable single-member districts for both houses.

The District Court, in its order of August 2, 1977, emphasized that county integrity should be maintained whenever possible. It was also the expressed will of the members of the Legislature that the integrity of the counties should be maintained. The House Court ED Plan (A/C), although attaining a total deviation of only 4.5 percent from the smallest to the largest districts, had fractured numerous counties in the State. In order to placate the members of the Legislature, the leadership had promised to produce a statutory plan which, with greater

allowable deviation, could maintain more of the counties intact. It was under this understanding that the Court ED Plans had been passed.

The District Court angrily rejected the Legislature's ED approach and ordered creation of a precinct plan. The presiding Judge threatened to cut the size of the Senate to 45 members and the House to 90 members, and to draw co-terminous districts if the Legislature did not act.[32] Such a threat was well devised to secure the full attention of the Legislature. Plans were made in early November to move the Court ED Plan boundaries to the "nearest" precinct boundary and to resubmit them to the Court in early 1978.

At the same time, the decision was made to draft a Statutory ED Plan for passage in December. There were two reasons for this action. The first was to fulfill the commitment to the members to devise a statutory plan that divided fewer counties than the Court ED Plan. This ED Plan would be passed under the supposition that the boundaries could later, as was the intent with the Court Plans, be moved to the "nearest" precinct line. Thus, House and Senate Statutory ED Plans would be passed in December, and further House and Senate Statutory Precinct Plans would supercede them--these latter being passed in the regular legislative session in the spring of 1978.

The second reason for passage of the Statutory ED Plans in December was to convince the District Court that the Legislature was serious in its intent to redistrict

the State on its own authority and to obtain approval of a statute either from the Justice Department or the courts in Washington, D.C. If the statute were to be in existence before the District Court completed its hearings on the proposed court plans, that Court might be convinced to withhold proclamation of a judicial plan until the statute were either approved or rejected through Section 5 proceedings.

At the same time all this redistricting activity was in progress, the Plaintiffs and Plaintiff Intervenor were not idle. The Plaintiffs' technician, Dr. Gordon Henderson, Professor of Political Science, Tougaloo College, had completed a court precinct plan that was submitted on October 31, 1977. This has been subsequently referred to as the Henderson Plan. In addition, the Department of Justice submitted both House and Senate plans based on ED's and precincts. In all, they submitted four plans--two for each house. These plans were drawn by Mr. John Tanner, a second year law student, working as a paralegal for the Department of Justice. Of these two sets of plans, only one set, the precinct based plans, have received any attention. These plans have subsequently been referred to as the Tanner Plans.

Thus, as the year 1977 ended, the District Court had before it for consideration five plans for each house of the Legislature, with the prospect of two more to come for each house. The Henderson Plans and the Tanner Plans were

further modified throughout early 1978 and did not come before the Court in final form until March 23rd and February 7th, respectively. The Legislature's October 1977 ED Plans were corrected in mid January of 1978.

At the same time that the Legislature was involved in regular session, the staff of the Joint Committee was laboring to complete both the Statutory and Court Precinct Plans. The final Court Precinct Plans were completed and submitted to the District Court on March 7, 1978, and the Statutory Precince Plans were passed by both houses on March 27, 1978, and signed by Governor Finch on April 21, 1978. This completed all work on plans by Plaintiffs, the Department of Justice, and the Legislature.

Simultaneously, the Special Master for the District Court had been busy preparing his set of plans for the House and Senate districts. His original submission was made to the District Court on May 3, 1978--with final submission on May 18, 1978. The Court then instructed the parties to the Connor case to file any objections to the Special Master's Plan within 15 days. The Committee Consultant, this writer, completed analysis of the Master's Plan on May 31, 1977. Massive errors and large deviations were found and filed before the District Court on June 2, 1977.[33]

One June 1, 1978, the Attorney General of the State of Mississippi submitted the Statutory Precinct Plans to the Attorney General of the United States for clearance

under Section 5 of the Civil Rights Act. On July 31, 1977, that clearance was denied. On August lst, Mississippi filed suit against the United States for declaratory relief under the provisions of the Civil Rights Act. This was the beginning of the action Mississippi v. U.S., which at this writing is still under appeal before the U.S. Supreme Court.[34]

At the same time that the State of Mississippi was seeking approval of its Statutory Precinct Plans from the Attorney General in Washington, the Connor Court, having examined all the plans before it (now numbering sixteen), decided to initiate a settlement among the various parties in the Connor case. That Court declared that the differences between the parties in Connor v. Finch were not insurmountable, and on June 14, 1978, it directed the parties to meet in conference within fifteen days and attempt to work out a settlement. A compromise plan for both houses was worked out, but a consent decree was not signed due to a legal difference between the parties. The point of objection was that the State did not wish the plan worked out in compromise to be submitted into evidence at the Section 5 trial in Washington. The Connor Court, however, was informed that a compromise plan, agreeable to all parties in the Connor case and to a majority of the members of each house of the Mississippi Legislature, had been devised. This plan was subsequently referred to as the Compromise Plan. Due to the pending court action in

the District Court in Washington, the Connor Court stayed its hand, presumably awaiting action on the Section 5 lawsuit.[35]

Mississippi v. United States went to trial on September 18, 1978. The trial ended on September 27th. Briefs were submitted throughout the fall, and final arguments were heard on January 16, 1979.

Meanwhile, the Connor Plaintiffs, wishing speedy action from the District Court in Jackson, petitioned the U.S. Supreme Court once more for a writ of mandamus, directing the Connor Court to act in settlement of Connor v. Finch. This writ was granted on March 26, 1979. Accordingly, the Connor Court adopted a slightly modified version of the Compromise Plan as its redistricting plan for Mississippi on April 13, 1979.[36] The District Court ruled, however, that should the Washington Court rule in favor of the State, the Statutory Precinct Plans would take precedence over its plan of April 13th.

On June 1, 1979, the District Court in Washington found in favor of Mississippi, declaring that the Statutory Precinct Plans did qualify under Section 5 of the Civil Rights Act. With this decision, these plans became law, and, for the first time since the start of these lawsuits, Mississippi had a constitutionally acceptable redistricting statute.

Following the decision of the District Court, the Connor Plaintiffs requested a stay from the United States

Supreme Court and submitted an appeal of that decision. If a stay were to have been granted, the plan adopted by the District Court in Mississippi would have gone into effect for the legislative elections in 1979. This plan was clearly more acceptable to the Justice Department and the Connor Plaintiffs. The Supreme Court, however, denied the petition for a stay, and elections were held under the Statutory Plans in November of 1979.

In the 1979 elections the number of black legislators in the Mississippi Legislature increased from four to seventeen. Black House membership increased from four to fourteen, and the first three black State Senators were elected since the Reconstruction days.

As of the date of writing this study, Mississippi v United States is still on appeal to the U.S. Supreme Court. It is extremely doubtful that the Supreme Court will invalidate the entire plan. If the ruling of the District Court in Washington is found to be in error, the Supreme Court will probably direct the Court in Mississippi to modify the Statutory Plans in only those areas which it is found to be unconstitutional. This would amount to about five districts in the House and one or two in the Senate.

Discussion of Section 5 of the Civil Rights Act

It would be impossible properly to analyze the 1978 Mississippi redistricting case without some exploration of Section 5 of the Civil Rights Act and its relevance to this particular case. The provisions of this federal act place burdens on Southern states in the conduct of all redistricting that are different from those that bear on most Northern jurisdictions.

Section 5 specifies that any state or political subdivision that is subject to Section 4 of the Act may not change any ". . . voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964" without meeting one of the two following requirements:[37]

(1) It must obtain a declaratory judgment from the District Court for the District of Columbia that the proposed change ". . . does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color."[38]

(2) It must submit the change to the Attorney General of the United States and he must not object to that change within a sixty day period from the date of submission.

In accordance with the provisions of Section 5, any statute which has not been approved by the Attorney General,

or for which a declaratory judgment has not been obtained, may not go into effect. Thus, in jurisdictions covered under this Act, any change in the law which affects voting in any way (from changing a precinct boundary to changing the structure of the government) must be approved in Washington, D.C.[39] The constitutionality of this statute was upheld in South Carolina v. Katzenbach,[40] and its applicability to redistricting was upheld in both Allen v. State Board of Elections[41] and Georgia v. United States.[42] While these cases defined the limits of jurisdiction of the Act, it remained for the Supreme Court to address the method of application in redistricting until its decision in Beer v. United States in 1976.[43]

Beer involved a redistricting of the City Council of the City of New Orleans following the 1970 census. In this action, the Council was redistricting the five council seats in which the members were elected from single-member districts. Two more members were elected at large, but their districts, the entire City, were left undisturbed by the new ordinance. The D.C. District Court found that the new plan would have the effect of abridging the voting rights of the City's blacks. This decision was made on two grounds. First, the District Court held that, by virtue of the fact that blacks constituted 35 percent of the voters of the City, they were entitled to districts in which they could elect 2.42 of the City's seven council members. The plan in question only gave them an opportunity

to elect one member.[44] Even in this one district, their majority was only 52.6 percent. Second, the existence of the two at-large seats abridged the right to vote on account of race or color. The key point was that the District Court held that blacks should have their proper portion of all seven seats. The two at-large seats were out of the reach of black voters due to majority vote and anti-slingshot voting rules in force in New Orleans. For these two reasons, declaratory relief was not granted.[45]

The Supreme Court held that the District Court was in error in its interpretation of Section 5 criteria. The primary question posed was one of statutory construction, not constitutional law. The Court reasoned that the will of Congress in enacting Section 5 was to prevent the erosion or destruction of gains made in minority political participation through the enactment of new statutes. The Court further stated that

> . . . the purpose of (section) 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.[46]

Thus, a ". . . legislative reapportionment that enhances the position of racial minorities" does not have "the 'effect' of diluting or abridging the right to vote on account of race within the meaning of (section) 5."[47]

Application of this standard requires that the new plan must be compared to the plan in effect to establish if the position of minorities is enhanced or diminished by

the new plan. Thus, if no retrogression is present or intended, then the new plan passes the first test.

The second test involves a determination if the ". . . new legislative apportionment itself so discriminates on the basis of race or color as to violate the Constitution."[48] There is, however, a further problem involved for those who wish to challenge the constitutionality of a plan under Section 5. The Supreme Court declared that this involved a violation of the Fifteenth Amendment--not the Fourteenth. The Court went on to say that, "There is no decision in this Court holding a legislative apportionment or reapportionment violative of the Fifteenth Amendment."[49] It is extremely difficult to prove a Fifteenth Amendment violation and the Court further declared that, in comparison with other Fourteenth Amendment cases, the alleged violations did ". . . not remotely approach a violation of the constitutional standards enunciated in those cases."[50]

The Supreme Court based this later determination on the facts presented by the intervenors in the case who produced evidence that the black percentage of voters had increased to 38.2 percent in 1974. Thus, the Court reasoned that blacks would decide the election in one of the districts and had a good chance in a second. Thus, based on the calculation that 38 percent of five seats is 1.9 seats, blacks had a reasonable influence in city council races involving single-member districts. The

at-large seats, having been unaffected by the redistricting statute, were not subject to Section 5 scrutiny. This definition of Section 5, however, does not preclude a normal constitutional challenge to any districting scheme.

A normal constitutional challenge could include an indictment of the at-large districts and could assert that the black voters should form a majority in 38 percent of all seven seats. This would entitle them to 2.66 seats. Thus, the present plan for New Orleans would not measure up to this requirement. However, the Supreme Court has also stated that no one group is entitled by the Constitution to elect representation from that group.

Nonetheless, assuming for purposes of argument that only five seats would be subject to some proportional division between black and white voters, the two at-large seats could be ruled unconstitutional on the grounds that black voters could never elect a candidate of their choice to either of these two seats. This is due to the voting rules in the City of New Orleans and to the fact that racial bloc voting is the overwhelming phenomenon in that City's elections.

The problem raised by this decision is that it leaves us with no standards by which the Fifteenth Amendment can be used to challenge an apportionment plan. The Court leaves the impression that the plan must be clearly and significantly deficient to sustain a challenge on Fifteenth Amendment grounds. This is, however, a two-edged

sword. The decisions covering Section 5 have clearly placed the burden of proof on the designer or enactor of a plan to prove that it is not in violation of Section 5. If it is difficult to sustain a challenge due to a lack of precedents, it may be almost impossible to prove that a plan does not have the effect of denying or abridging the right to vote on account of race or color.

Justice Marshall, in his dissent to the Beer decision, speaks to this point. He maintains that the retrogression test cripples the intent of the statute. He maintains that the constitutional issue is the primary concern. In dissenting from the majority opinion, he states the following:

> When does a redistricting plan have the effect of "abridging" the right to vote on account of race or color? The Court never answers this question. Instead, it produces a convoluted construction of the statute that transforms the single question suggested by Section 5 into three questions, and then provides precious little guidance in answering any of them.[51]

Aside from his objection to the retrogression test, he goes on to state that

> . . . the Court dilutes the meaning of unconstitutionality in this context to the point that the congressional purposes in Section 5 are no longer served and the sacred guarantees of the Fourteenth and Fifteenth Amendments emerge badly battered.[52]

Justice Marshall was, perhaps, prescient in regard to the issues posed in Mississippi v. United States. He warns that

> Today the Court finds it simple to conclude that Plan II (New Orleans) is "ameliorative," but

> it will not always be so easy to determine whether a new plan increases or decreases Negro voting power relative to the prior plan. To the contrary, I believe the Court's test will prove unduly difficult of application and excessively demanding of judicial energies.[53]
>
> . . . when would an increase (in Negro voting strength) become retrogressive? As soon as the majority becomes "safe"? When the majority is achieved by dividing pre-existing concentration of Negro voters?
>
> When the size of the majority increases in one district, Negro voting strength necessarily declines elsewhere. Is that decline retrogressive?[54]

Justice Marshall is concerned that these questions should be answered in the constitutional context, not in terms of a retrogression test. He is further concerned that the procedural advantage of the United States has been eliminated by the first statutory test.

While Justice Marshall is concerned with expansion of the power of Section 5, he forgets that the local jurisdiction, faced with the problem of constructing a plan within a legislative environment, is also entitled to some guidance. If all that is required on the part of the United States is the assertion that the plan is in violation of the Fifteenth (or Fourteenth) Amendment, how can this charge possibly be countered? If, as was the case in Mississippi v. United States, the plan is to be compared with the proposed plans of the advocates of the black position, how is the local government or state to determine where it can balance their demands against other legitimate redistricting criteria? This is, indeed, a heavy burden--perhaps even impossible.

The other problem is that the distribution of the black vote geographically will not always be as concentrated as it has been in all the other Section 5 cases which have come before the courts. In most municipal areas the blacks are concentrated in district neighborhoods. Where this is the case, a proportional comparison is both logical and possible. This was not the case in Mississippi. Large numbers of blacks are interspersed with whites. How does one then determine what proportion of the black population shall be used to determine what should be the proper number of "black" districts? What constitutes a black district? Is the proportion reduced if 64 percent black adult districts are required instead of 54 percent districts? Is there a point at which dilution occurs on one side and maximization occurs on the other? Is there a grey area which involves "political" decisions? It is one thing for Justice Marshall to pose questions; it is another to suggest answers.

Perhaps the majority, in deciding Beer, felt that at least a majority of redistricting cases could be resolved by the retrogression test and could, thereby, be pulled from the morass of statistics involved in determining when dilution has taken place and to what degree it has taken place. The testimony in Mississippi v. United States proved one thing if it proved nothing else. Trying to balance the impact of past discrimination against present voting habits, against demographic data, against political

sophistication of black candidates, represents an enigma within an enigma within an enigma. There are no solid standards to which anyone involved in such a restricting situation can turn. It is fortunate that the Compromise Plan was so very close in nature to the State's Plan in the case at hand. The only benefit which can be gained by hearing Mississippi v. United States at the Supreme Court level will evolve from a resolution of these complex issues by that Court. It seems impossible that this could be accomplished--especially with the lack of statistical expertise demonstrated by the witnesses, many of whom propounded half-developed theories in the trial transcript. If even one side's experts were confounding each other and contradicting each other's testimony, how can federal judges, untrained in complicated statistical analysis, hope to extricate themselves from this numerical thicket? While Justice Marshall's motives are beyond reproach, his approach to Section 5's application in redistricting may create a morass that will make the Court's fumbling over "one man, one vote" look like "childs' play."

A review of the proposed conclusions of law presented to the D.C. District Court in Mississippi v. United States is instructive in light of the previous discussion. Intervenors, carrying the major load for the United States, attempted to persuade the District Court to repeat the same legal position overturned by the Supreme Court in Beer--while presenting a position to that Court with two major

differences. First, they admitted the necessity of a search for a plan against which the State's Plan must be compared. They merely confounded the issue by offering numerous alternatives for which they have varying degrees of preference. Second, they offered a demographic evaluation of proposed districts in which the nature of those districts is neither black or white, but often grey. It is to the District Court's credit that they were able to cut through this thicket in which the Department of Justice and defendent intervenors attempted to entwine them.

Certain conclusions of law in the Mississippi case were evident from the very beginning. First was the fact that the State was subject to the provisions of Section 5 and that the D.C. Court had jurisdiction. Second was that redistricting plans fell under Section 5. Other contentions were not self evident.

While correctly paraphrasing both City of Richmond v. United States[55] and City of Petersburg v. United States,[56] in that Mississippi carried the "heavy burden" of demonstrating by a preponderance of the evidence that its plan would have neither the purpose nor effect of denying or abridging the right to vote on account of race or color, intervenors failed to note that in both these cases the issue was significantly clearer than in Mississippi.

Both these cases involved annexations of overwhelmingly white areas to black majority cities. In both cases, the original method of election of the city council was

at-large election for all members. In the case of Petersburg, the Court agreed that election of the council at-large in the newly expanded City, where the blacks were in a clear minority, did abridge the black vote. They agreed that the suggestion of the Attorney General, that the City change to single-member city council districts, would correct this defect. In the case of Richmond, the Court found a situation in which the City had changed to single-member districts, but the blacks had control of only a minority of districts. Previous to the annexation, the City was 52 percent black. Following annexation, the City was 42 percent black. In the newly apportioned city council districts, the blacks held clear majorities in four, the whites held clear majorities in another four, and the ninth seat contained a 41-59 percent split in favor of the whites. In this case the Court held that the annexation was permissible because the new districting scheme recognized the blacks proper political potential. Thus, if the city has sound, nondiscriminatory economic and administrative reasons for annexation, it may annex large numbers of whites--even if a black majority is reduced to a minority. It must be noted, however, that in these two cases the issue is clear and the demographic evidence is simple. The cases do not involve measurement of fine degrees of minority representation.

Intervenors contended that in Mississippi, as in Petersburg , the objection of the Attorney General under

Section 5 is entitled to deference. Actually, in Petersburg the Court stated that, ". . . his objection to this section of the statute, as applied to the facts of this case, is entitled to deference."[57] It is, perhaps, up to the Court to determine the degree of deference to which the opinion of the Attorney General is entitled--particularly when the proceeding in the D.C. Court is supposed to be a trial de novo.

Intervenors then misquoted a passage from Fortson v. Dorsey,[58] citing also Burns v. Richardson[59]-- in which the Court cited its ruling in Fortson. The quote from Fortson is given below with the portion left out by intervenors underlined:

> It might well be that, designedly or otherwise, a multi-member constituency apportionment scheme, under circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial elements of the voting population. When this is demonstrated it will be time enough to consider whether the system still passes constitutional muster.[60]

First of all, these cases dealt with multi-member districts, not single-member districts (as is the case in Mississippi). Second, the Court did not state that the Fortson rule applied beyond the consideration of the constitutionality of multi-member districts.

The next conclusion of law proposed by intervenors is quoted below:

> In single-member districting plans, black voting strength is constitutionally and impermissibly diluted, minimized, and cancelled out (1) when heavy black concentrations are unnecessarily

> fragmented and dispersed, and (2) when black population concentrations are unnecessarily combined with white population concentrations to deny black voters the opportunity to elect candidates of their choice.[61]

The amazing thing about this proposed conclusion of law is that this quotation does not appear in any of the six cases cited. Intervenors also did not offer any guidance in regard to the words underlined in the quote--such as "heavy," "concentrations," and "unnecessarily." Even in the cases cited regarding Hinds County and Leflore County's supervisorial redistricting plans, the conclusions in the cases did not support the contentions of dilution asserted in those very same counties by both the intervenors and the United States.

The complaints against the configuration of the State's House districts in both Leflore and Hinds Counties are major issues in this case. In Moore v. Leflore County Board of Election Commissioners, intervenors complained about the very same alleged fragmentation of the blacks in Greenwood that they objected to in the State's Plan. They contended that black adult populations of 55 percent, 62 percent, and 59 percent are not good enough. The District Court, although recognizing that black adult percentages, at the levels cited above, only produced voter registration majorities of 51 percent, 58 percent, and 50 percent, made the following statement:

> Hopefully, blacks will now and in the future register in numbers approaching their full potential. If they do, the Holland Plan allows them full access to the reigns of government.[62]

Thus, in a previous instance, a district court has found the 60 percent urban, 66 percent rural requirement enunciated by Dr. Loewen to be more than is constitutionally required. Blacks are simply not entitled to a "sure thing."

In Kirksey v. Board of Supervisors of Hinds County, Mississippi,[63] the issue was not the division of the rural area of the County, as was the issue in Mississippi, but rather the fragmentation of the black concentrations in the City of Jackson. In Mississippi, these blacks in the City of Jackson had districts created for them which satisfied all parties. It has never been clear that the blacks, who are spread all over the rural area of Hinds County, represent a heavy concentration--particularly in terms of the cases cited.

In citing Connor v. Finch,[64] intervenors simply quoted the Supreme Court's recitation of their own complaints against the plan proposed by the Connor Court. The Supreme Court refused to pass on these complaints and limited itself to an admonition to the District Court to avoid practices which might lead to a suspicion of racial dilution.

Intervenors' next proposed conclusion of law was even more bizarre. This is especially true when each contention is examined separately. First, intervenors contended that, "A legislative reapportionment plan is enacted for a racially discriminatory purpose when . . .

the essential inevitable effect is to fragment and dilute black voting strength."[65] First, this contention is not supported by either Connor v. Finch,[66] Gomillion v. Lightfoot,[67] or Village of Arlington Heights v. Metropolitan Housing Development Authority[68]--the cases cited. Second, a judgment of the presence and amount of fragmentation and dilution in the Mississippi context is extremely difficult to ascertain. Finally, it is illogical to assume that effect proves purpose. These two factors have always been divided in Section 5 cases. There are many instances in which the Court has held effect but not cause.

The second contention is as follows:

> A legislative reapportionment plan is enacted for a racially discriminatory purpose when . . . the plan fragments and minimizes black voting strength in the face of alternative alignments which would avoid such dilution and still meet the proper criteria . . ."[69]

In the Connor decision the Supreme Court, when speaking of alternative plans, was speaking in reference to plans with less deviation from ideal population. "One man, one vote" was the basis of this decision. In adapting this principle to alternative racial arrangements, intervenors are quoting their own law as summarized by the Court. The Supreme Court merely advised the Connor Court in this way:

> Such unexplained departures from the results that might have been expected to flow from the District Court's own neutral guidelines can lead, as they did here, to a charge that the departures are explicable only in terms of a purpose to minimize the voting strength of a minority group. The District Court could have avoided this charge by more carefully abiding by its stated intent of adopting

> reasonably contiguous and compact districts, and by fully explaining any departures from that goal.[70]

Nowhere did the Court state that the non-acceptance of alternatives constituted either dilution or proved intent. In addition, intervenors did not define "proper established criteria." Cases cited simply do not support the argument.

The third contention is that, "A legislative plan is enacted for a racially discriminatory purpose when . . . the impact of the plan is to bear more heavily upon one race than another."[71] This is a paraphrase from Arlington in which the Court cited Washington v. Davis.[72] Arlington is a rezoning controversy and Washington is a police recruitment controversy. In Arlington, the Court stated that there must be a "clear pattern, unexplainable on grounds other than race."[73] This is extremely difficult to apply. The Court went on to say that "absent a pattern as stark as that in Gomillion or Yick Wo, impact alone is not determinative, and the Court must look to other evidence."[74] In Washington, the Court states that:

> Nevertheless, we have not held that a law, neutral on its face and serving ends otherwise within the power of government to pursue, is invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than of another. Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution.[75]

Even if this rule did apply to both Section 5 and redistricting, it is subject to a requirement that the degree to which it bears more heavily must be substantial.

The fourth contention is that, "A legislative reappor-

tionment plan is enacted for a racially discriminatory purpose when . . . the plan is enacted against an historical background of a series of official actions taken for invidious purposes . . ."[76] This statement is ridiculous on its face. Intervenors wish us to believe that the Court maintains that if one has been ajudged guilty of discriminatory purpose in the past, that one is thereafter preconvicted of guilt in the future. This is not what the Court said in Arlington. It said, rather, that a background of ". . . a series of official actions taken for invidious purposes . . . may shed some light on the decisionmaker's purpose."[77] He is not, however, automatically convicted without trial. This is a strange attitude for a civil rights advocate to take.

The fifth and last contention is that, "A legislative reapportionment plan is enacted for a racially discriminatory purpose when . . . there are departures from the normal procedural sequence."[78] It is again sufficient to quote what the Court actually said: "Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role."[79]

It is possible that intervenors, having searched through the case law on discrimination, were just trying to throw as many accusations into the case as possible, hoping that something may have stuck. However, to take five weakly linked statements, reword them, reinterpret them, and then try to gloss over that fact by combining

them into one fine-sounding conclusion of law is bad scholarship at best, and certainly bad law.

Discussion of Redistricting Criteria

In any redistricting performed in the United States, two constitutional criteria must be satisfied. The first is the one person, one vote rule established by the Supreme Court's interpretation of the Fourteenth Amendment to the United States Constitution. This rule of law simply states that legislative districts should be as equal in population as possible. The other criterion is proper minority representation guaranteed by both the Fourteenth and Fifteenth Amendments. It is, perhaps, ironic that all rulings in the Connor case in Mississippi were based on lack of population equality, when the real issue was black representation.

All other redistricting criteria lack constitutional standing, but can serve as standards against which adherence to the constitutional criteria may be measured. It is widely accepted that in singling out the one person, one vote rule, the Supreme Court made possible gerrymanders never before thought to be possible. A gerrymander, however, when defined as the creation of odd-shaped districts for political advantage, can "cut" both ways. This is particularly true in a state such as Mississippi, where black representation is so very important--and has been so long denied. Just as it is theoretically possible to deny blacks any representation in the Mississippi Legislature,

it is also possible, theoretically, to give them a majority of the seats. If the black population of that State were to be perfectly integrated, it would be impossible to create any black seats. If, on the other hand, absolute segregation were the case, and if those 100 percent black areas were adjacent to white areas of equal population, there would be a theoretical potential to create seats capable of electing a 60 percent black legislature.[80] One must make the distinction among those conditions limiting the election of black legislators that are not due to redistricting or political policy, those that are due to political policy alone, and those that are due to redistricting policy.

For example, to the extent that blacks have been integrated with the whites in Mississippi, they have lost their ability to elect representatives of their choice alone. This is not due to the State's political policy. Nor is it due to redistricting policy. In fact, integration is the stated goal of all civil rights legislation in this nation. This is, in effect, a neutral condition which affects the outcomes of elections in any district.

Another condition in Mississippi is the ratio of adults to children in the population as a whole as compared with the black population. This, again, is not a political factor, but a demographic factor. While one could make a case that, in some circumstances, adult blacks leave the State due to lack of economic opportunity, and

that this lack of opportunity is due to discrimination, which in turn is due to lack of political power, it is not election law that causes this situation to exist in Mississippi today. Furthermore, this phenomenon arises in part from the fact that blacks have more children. While this factor should be taken into account, it is nevertheless a demographic factor, not a political factor in the strict sense of that term.

The fact that blacks do not register (as adults) in equal percentages to whites is, of course, partially a political factor. The fact that black registered voters do not come to the polls in equal percentage to whites may also be a political factor. If, because of election law and redistricting policy, blacks have been deprived of the ability to register, or to vote, or if their votes have been rendered ineffective, then those conditions are political--and may also be due to redistricting policy. However, to the extent to which such conditions are caused by ignorance or apathy, they are not political--or, at least, are not readily subject to political remedies.

Ideally, the proper number of seats to be created as "black" seats should be determined by what is "fair." Yet such a determination is difficult or impossible to ascertain. The civil rights activists may maintain that the State has an obligation to redress past injustices and to remedy past discrimination by positive action. They might also maintain that redistricting plans are a proper medium

in which such redress should take place; in a sense, redistricting is an opportunity for affirmative action to create black positions in the State Legislature. This may, indeed, be "fair" in the abstract. It is questionable, however, that it is "fair" in terms of the law or that it was the intent of Congress in enacting Section 5 of the Civil Rights Act. If it were possible to derive some mathematical formula to determine how many seats any minority should have, then the problem might be easier. Indeed, this is why non-constitutional criteria are so useful in judging racial fairness: they add some measurable boundaries to a discussion of any redistricting controversy.

There was no doubt that more seats with higher percentages of black voting age population could have been drawn into the State's Plan. The question became one of determining what other criteria must suffer if those seats were created. Another question raised was whether or not the creation of those districts would make any difference in the racial composition of the Legislature. A third difficult question concerned the method of determining what made a seat "black" as opposed to "white." Who should set the standard, and who should determine when the standard should not apply? Perhaps the whole question ultimately comes down to what is "reasonable," and <u>that</u> is what the courts must decide. It seems doubtful that any reasonable man would maintain that an apportionment plan which elected only four blacks out of 122 members to the State House of

Representatives, and no blacks out of fifty-two members of the State Senate, was really reasonable. On the other hand, a reasonable person should not argue that because blacks constitute 30 percent of the adult population of Mississippi, a redistricting plan must give them exactly proportional representation of thirty-seven black seats in the House and sixteen black seats in the Senate. Surely, a plan can be fair and reasonable while allowing some margin for error.

The State, in the creation of its statutory plans for the House and Senate, did not create every "black" seat that was possible. To do so would have required a massive gerrymandering of the entire State. The State did, however, adhere to rational, constitutionally neutral criteria, while making a conscious, positive effort to create strong black seats. The Department of Justice, on the other hand, contended that the State had deliberately avoided the creation of some black seats, and that the State's failure to locate black seats in areas where the Department of Justice's plan had located them was proof that the State had consciously pursued a policy detrimental to the interests of blacks. It simply did not matter to the Department of Justice that the State was unwilling to gerrymander, and that there was reasonable latitude for the intrusion of other rational criteria. To maintain that the State's plan was not a significant improvement over any other plan proposed by the Legisla-

ture--or by the District Court, for that matter--was absurd. Furthermore, to contend that there were significant and unreasonable differences between the Compromise Plan and the State Plan was not a defensible position. For these reasons, the U.S. lost the case.

The District Court, grappling with this problem, listed, in its order of August 23, 1977, seven criteria under which plans submitted to it must be developed. (They are not discussed here in the same order as enunciated by the Court.)

1) There shall be no "minimization or cancellation of black voting strength." Such dilution would only be justified by the necessities of population equality, compactness, or contiguity.

2) Population variances should be as near de minimis as possible.

3) Reasonable variances in population could be present in order to follow precinct, beat, and county lines.

4) Only the 1970 Census population figures were to be used. No estimates developed during the subsequent decade should be used.

5) Any county with enough population for one complete district should have one full district created within its boundaries.

6) Unless a county contained enough population for more than two districts, it should not be split into more than two segments.

7) Criteria 5 and 6 could be infringed upon in order to maintain "reasonable contiguity, an acceptable degree of compactness, or a tolerable equality of population."[81]

It could be concluded that the three judges had never drawn a redistricting plan and that they were also being deliberately vague. At the least, there were serious deficiencies in the Court's criteria for guiding the formulation of plans to be submitted.

First, the Court did not address the question of what constituted minimization or cancellation of black voting strength. The judges did not even give any examples.

Second, the Court did not provide any limits as to the amount of population deviation they would allow. If the Court were willing to accept the Gaffney standard, why did they not say so in the beginning?[82]

Third, the Court never addressed the very difficult problem of determining precinct--and, therefore, district--populations. The split ED issue was never addressed.

Fourth, the Court never discussed the problem of county representation--a subject that will be discussed in some detail below.

If the Court had intended to expedite the redistricting process, the judges might have been well advised to require all the parties involved to develop a common methodology and data base. They also might have made their prejudice against the use of Ed's more obvious.

As it was, the Court wasted much time and many dollars by failing to provide proper guidance. This should be a lesson to other courts that find themselves in similar situations.

The criteria of maintaining county boundaries was developed so that voters, as citizens of counties, could have members in the Legislature who would be responsive to the interests of their counties. The voters in Mississippi are reputed to identify very strongly with their counties, and county governments are certainly very powerful in the State. The question that remains unanswered is the extent to which the average voter feels that his representative in the State Legislature should be responsive to his needs as a resident of a specific county, as opposed to his needs as a member of some other interest group, such as his race, economic level, or profession. This question has never been systematically addressed. The fact remains, however, that there is a long-standing tradition in Mississippi that representation in the Legislature is by county. To the extent that this tradition, embodied in the State Constitution, does not clash with the Federal Constitution, it should be honored and kept as part of a rational state policy. The problem is that this tradition does tend to clash with the one person, one vote rule. Furthermore, representation by county does limit the extent to which concentrations of blacks forming a portion of one county can be connected with other concentrations of blacks

forming portions of adjoining counties. While there are certain recognized and quantifiable limits to population deviation, the fragmenting of counties to form "black" districts is a practice of debatable propriety. The Connor Plaintiffs would maintain that it is required; the State would maintain that it is not. The courts will probably seek to avoid the issue.

The fact remains that anyone who has constructed a redistricting plan for the State of Mississippi has found that all counties cannot be left intact. The dynamics of forming 122 House seats representing 18,171 persons each--even given an allowable variation of 5 percent from ideal district size--require the fragmentation of some counties, and the splitting of almost all the counties. There must be some better method for evaluating compliance with this criterion than merely a count of the number of counties that are left intact. This was the problem facing the technical staff of the Joint Committee, and that forced them to develop an alternative approach.

Given that the rationale for maintenance of county lines is county representation--as opposed to racial discrimination or simple convenience--then the following rules may apply: (1) the best policy is to leave the county intact or to subdivide it internally, (2) the next best policy is to form as many districts as possible within a county, leaving only one fragment, (3) third best is to form as many districts as possible within a county,

leaving as few fragments as possible, (4) if a county's population is greater than the population of one district, and therefore must be split, then the population from that county which is placed in districts with other county population portions should form a majority of the population in the number of whole districts to which the first county is entitled, (5) counties smaller than the size of one district should be left whole or should form the majority of the population in the district in which they are located. These guidelines form the basis of a rule of "maximized representation." Simply stated, this rule holds that a county is at maximum representational status if it is left whole or has only one fragment forming part of a district. This was the goal in the formation of the Statutory Precinct Plans.

By making a list of all the counties in the State, one can evaluate the representational status of each county using the following symbols: (W) means that the county is undivided in the plan; (M+) means that the county is divided, but has within it all the complete districts to which it is entitled by population (i.e., it has only one fragment); (M++) or (M+++) means that the county still has within it the full number of complete districts to which it is entitled, but that the remaining portion of the county is divided into two or more fragments; (S^{O}) means that the county is split and, if larger than the size of one district, does not have its full entitlement of

complete districts within its boundaries; the county does, however, control the maximum number of districts that it should according to its population; (S) means that the county is badly fragmented and has poor representation in the Legislature. If these symbols are ranked according to the degree of representation that each circumstance affords to a county, they appear as follows: (W) or (M+) are equal and lst; (M++) is 2nd; (M+++) is 3rd; (M++++) is 4th; (S^{O}) is 5th; and (S) is 6th. Using this scheme, one can evaluate a plan's compliance with the criterion of county integrity in a meaningful way.

In comparing one plan with another, each county will be placed in one of three categories: one is better in the first plan, two is better in the second plan, and three is the same in both plans. Table 5 shows an evaluation of four of the State's House plans according to this system. The following comparisons between plans have been made: House Plan A to House Plan B, House Plan A to House Plan C, House Plan C to House Plan A/C, and House Plan A/C to the House Statutory Precinct Plan. These plans are evaluated in this order because it was the order in which they were considered by the Joint Committee.

Plan A was selected over Plan B on October 4, 1977. Plan A was superior in 30 counties, equal in 37, and inferior in 15. This was an easy choice. Plan C was selected over Plan A on October 18, 1977. Plan A was superior in 25 counties, equal in 36, and inferior in 21.

TABLE 5

COMPARISON OF THE HOUSE ED PLANS
PROPOSED TO THE JOINT COMMITTEE

COUNTY	A	B	C	AC	COUNTY	A	B	C	AC
Adams	M‡	M‡	M‡	M+	Leflore	S‡	S‡	M+	M‡
Alcorn	S‡	S‡	S‡	S°	Lincoln	M‡	M‡	M+	M‡
Amite	S	S	S	S	Lowndes	S°	S°	S°	S°
Attala	S°	S°	M+	M+	Madison	S	S°	S°	S°
Benton	W	W	S	S	Marion	M‡	M‡	M‡	M‡
Bolivar	M‡	M‡	S°	S°	Marshall	M+	M+	S°	S°
Calhoun	W	W	S°	S°	Monroe	M+	S	M+	S°
Carroll	S‡	S‡	W	W	Montgomery	S	S°	W	W
Chickasaw	S°	S	S°	S°	Neshoba	M‡	M‡	M‡	M‡
Choctaw	W	S	W	W	Newton	S	M+	M+	M+
Claiborne	W	S	W	W	Noxubee	W	W	S°	S°
Clarke	W	S	S	S	Oktibbeha	M‡	M‡	M‡	M‡
Clay	W	S	M+	M+	Panola	M‡	S	M+	M+
Coahoma	S	M‡	M+	M+	Pearl River	M‡	M‡	M+	M+
Copiah	S‡	S	S°	S°	Perry	W	W	W	S
Covington	W	W	W	W	Pike	M‡	S	S°	S°
DeSoto	W	S	W	W	Pontotoc	S	W	W	W
Forrest	M‡	S	M+	M‡	Prentiss	M‡	S°	S	S
Franklin	W	S	S°	W	Quitman	W	W	S	S
George	W	W	W	W	Rankin	M‡	M+	S°	S°
Greene	S	W	W	W	Scott	M+	M+	S°	S°
Grenada	M‡	M‡	S°	S°	Sharkey	S	W	S	S
Hancock	W	W	W	W	Simpson	S°	M+	M‡	M‡
Harrison	M+	M‡	M‡	M‡	Smith	W	W	W	W
Hinds	M+	M+	M+	M+	Stone	W	W	S	S
Holmes	M‡	S	M‡	S°	Sunflower	S	M+	M+	M+
Humphreys	W	W	W	W	Tallahatchie	S°	S°	M+	M+
Issaquena	W	W	W	W	Tate	W	S	W	W
Itawamba	W	W	S°	S°	Tippah	S°	S°	S	S
Jackson	M‡	M‡	M+	M+	Tishomingo	W	S°	S°	S°
Jasper	W	S°	S°	S°	Tunica	W	W	W	W
Jefferson	S°	W	S°	S°	Union	M+	S	M+	M+
Jefferson Davis	S	S°	S	S	Walthall	W	S	W	W
Jones	M+	M‡	M‡	M+	Warren	M+	M+	M+	M+
Kemper	S	W	W	W	Washington	M+	S	M+	M+
Lafayette	M+	M‡	M+	M+	Wayne	W	W	W	W
Lamar	W	W	S°	W	Webster	W	W	W	W
Lauderdale	M‡	M‡	M‡	M‡	Wilkinson	W	W	W	W
Lawrence	S	S	S	S	Winston	W	S°	S°	S°
Leake	S°	W	W	W	Yalobusha	W	W	S	S
Lee	M+	M+	S°	M+	Yazoo	S°	S	S°	S

SOURCE: Joint Committee Map Archives

This was a more difficult choice--with some political considerations outweighing the slight advantage of Plan A under this single criterion. Plan A/C was selected over Plan C on October 22, 1977. Plan A/C was superior in 5 counties, equal in 69, and inferior in 8. This was a still more difficult choice than that of A over C, and was again attributable to political considerations. The most interesting comparison comes when Plan A/C is compared with the Statutory Precinct Plan (SPP). SPP is superior in 26 counties, equal in 54, and worse in only 2. It is evident that allowing the district deviations to move from ± 2.00 percent to ± 5.05 percent brought about a very large increase in the number of counties that could have their representational status improved.

When the Statutory Precinct Plan is compared to the Department of Justice Precinct Plan submitted to the Connor Court, the comparison is also very interesting (see table 6). The State's Plan is superior in 30 counties, equal in 41, and inferior in 11. The reasons for these differences will be examined in a later chapter; one should note, however, that adherence to this neutral criterion was almost three times better in the State's Plan.

The other two neutral criteria ordered by the Court were those of compactness and contiguity. Contiguity is easily determined--either a district is contiguous or it is not. Of course, none of the plan drawers intended to create non-contiguous districts; yet, as a result of error,

TABLE 6

COMPARISON OF THE PLANS OF THE
STATE, HENDERSON AND TANNER

COUNTY	ST	HN	TN	COUNTY	ST	HN	TN
Adams	W	M+	M+	Leflore	M+	S°	S°
Alcorn	M‡	S°	M‡	Lincoln	M‡	S	M+
Amite	S	S	S	Lowndes	M‡	M‡	M+
Attala	M+	M+	M‡	Madison	M+	S	M+
Benton	S	W	W	Marion	M+	S	S°
Bolivar	M+	M‡	M‡	Marshall	M+	M+	M+
Calhoun	S°	W	S°	Monroe	M+	M‡	S
Carroll	W	S	W	Montgomery	W	W+	S
Chickasaw	W	W	S°	Neshoba	M+	M+	M‡
Choctaw	W	W	W	Newton	M+	S°	M+
Claiborne	W	W	W	Noxubee	W	W+	S
Clarke	W	S°+	S+	Oktibbeha	M‡	M+	M+
Clay	W	M+	M+	Panola	M+	S°	S°
Coahoma	M+	S°	S°	Pearl River	M+	M‡	M+
Copiah	M+	S°	M+	Perry	W	W	W
Covington	W	W	S	Pike	M+	M‡	M‡
DeSoto	W	W	W	Pontotoc	W	W	W
Forrest	M+	S°	S°	Prentiss	S°	S°	S°
Franklin	W	W	W	Quitman	S°	S	S
George	W	W	W	Rankin	M+	S°	M‡
Greene	W	S+	S+	Scott	M+	M+	M+
Grenada	S°	M+	M+	Sharkey	S°	S	W+
Hancock	W	W	W	Simpson	M+	M+	M+
Harrison	M‡	M+	M‡	Smith	W	W	W
Hinds	W	W+	W+	Stone	S	W	W+
Holmes	M‡	M+	M+	Sunflower	W+	W	M+
Humphreys	W	S	S	Tallahatchie	M+	S	M+
Issaquena	W	S	S	Tate	W	S	W
Itawamba	W+	S+	S°‡	Tippah	W	S	W
Jackson	M+	M+	M‡	Tishomingo	S°	W	W
Jasper	W	S°	W	Tunica	W	S°+	W+
Jefferson	S°	S°	S°	Union	W	M+	M+
Jefferson Davis	S+	S+	W+	Walthall	W+	W+	S+
Jones	M+	M+	M+	Warren	M+	M+	M+
Kemper	W+	W	W	Washington	M+	M‡	M+
Lafayette	M+	M‡	M‡	Wayne	W	W	S
Lamar	W	S	S°	Webster	W	W	W
Lauderdale	M‡	M‡	M‡	Wilkinson	W	W	W
Lawrence	W	W	S	Winston	W	W	W
Leake	W	W+	S	Yalobusha	S+	W	W+
Lee	M‡	M+	S°	Yazoo	M+	S°	M+

SOURCE: Joint Committee Map Archives

this did happen from time to time. Compactness, for its part, is a quantitative criterion. All of the plans contained some districts that were not compact. Nevertheless, judged against districts created by other legislative redistrictings in the United States during the 1970s, all the Mississippi plans allowed for reasonable compactness. There was, however, room for argument that some of the non-compact districts could have been racially motivated--either for or against blacks.[83] This question also will be discussed in more detail in a later chapter.

Since we are dealing with redistricting criteria, the State's policy on race and population should also be discussed. The legal counsel and technical consultants for the Joint Committee held lengthy discussions on both issues. The consensus was that the Court ED Plans would aim for a 2 percent plus-or-minus deviation. It was felt that this was the lowest deviation possible without the excessive splitting of ED's. As it turned out, the Court ED Plan did contain the lowest population deviations of any plan presented to the Court. The Statutory Plans, being legislative and not court plans, fell under a different rule of law. In this case $\pm$ 4.0 percent was originally desired, until it was found that so much could be gained by going up to $\pm$ 5.0 percent that is was worthwhile to stretch the Gaffney standard to its limits.

The issue of racial dilution was met by an instruction to the consultants drawing up the State's plans that

they were to go out of their way to construct districts that would include a dominant number of blacks. Furthermore, significant concentrations of blacks were not to be broken up. The consultants clearly understood that the goal was not to maximize the number of black districts, but to see to it that black districts were constructed whenever their creation did not conflict with de minimis requirements or with reasonable adherence to the other neutral criteria. To set a percentage of blacks who must be residents in a district in order for it to constitute a "black" district was only to become embroiled in controversy with the Court, the Plaintiffs, and the Department of Justice. As a matter of record, the attorney for the Department of Justice refused, at the beginning of the district-building process, to provide any guidance on this issue. (Such guidelines, perhaps, would have limited the Department of Justice's ability to launch subjective criticisms when the State's districts were challenged in court.) The Connor Plaintiffs would not talk with the State at all.

It is proper, at this point, to raise the subject of incumbency. From a purely technical viewpoint, one great disadvantage that a legislative plan has over a plan developed by some other group (such as the Department of Justice or the Connor Plaintiffs) is that it must be passed by a majority vote. Some members of the Mississippi State Legislature would not have voted for a single-member district plan if it had been drawn by Jefferson Davis himself!

There were others whose counties were fractured and who could not vote for the plan and return home to face their constituents. Still others had been placed in a district with another legislator and would certainly vote "no." And finally, there were some who found themselves in districts with large numbers of blacks, and who, perceiving that they would fail to be reelected, would also vote "no." Thus, within the bounds allowed by the guiding criteria, the wishes of incumbents had to be considered. A bill or resolution, after all, had to be passed.

One other consideration ought to be discussed. Mississippi is a one-party state. The Speaker of the House is, in the opinion of many, the most powerful official in the State. In order to maintain his position, he must receive strong support from all the members of the House majority party. The redistricting plan, however, placed the seats of over a third of the House members in jeopardy--at least that was as they perceived the situation. To set one-third of the incumbent legislators in such a position would be an unpleasant duty in any legislative body. Many of the members did not--and never will--understand the constitutional implications of the redistricting process. All they understood was that the Federal Court was forcing them into an unpleasant situation in which they were expected to vote against their own personal interest. Even worse, they had to vote against their friends. It is a credit to the leadership of the House

that the redistricting plans were passed. It is also a credit to the Chairman of the Joint Committee that he was not afraid to allow the staff to draw, in almost all cases, those configurations that they felt to be the most constitutionally acceptable and the most logical. Certainly many legislatures have acted with much less responsibility.

Footnotes to Chapter III

[1]Connor v. Johnson, 256 F. Supp. 962 (1966).

[2]It should be noted that the present plan will only be in effect for one election. Redistricting must take place again in 1981 or 1982 following the 1980 Census.

[3]Connor v. Johnson, 265 F. Supp. 492 (1966).

[4]Connor v. Johnson, 330 F. Supp. 506 (1971).

[5]Connor v. Johnson, 330 F. Supp. 519 (1971).

[6]Connor v. Johnson, 402 U.S. 690 (1971).

[7]Connor v. Johnson, 330 F. Supp. 521 (1971).

[8]Connor v. Williams, 404 U.S. 549 (1972).

[9]Connor v. Williams, 396 F. Supp. 1308-38 (1975).

[10]Connor v. Waller, 421 U.S. 656-657 (1975).

[11]Connor v. Coleman, 425 U.S. 675-79 (1976).

[12]Connor v. Finch, 431 U.S. 407 (1977).

[13]See Governor's Executive Order of August 9, 1977, and Senate Concurrent Resolution No. 502, August 13, 1977. The resolution authorized the Joint Committee to hire staff and expand funds in order to produce redistricting plans to be transmitted to the District Court.

[14]Deposition of T. H. Campbell III, Connor v. Finch, taken January 10, 1978.

[15]Ibid., p. 74.

[16]Deposition of R. L. Morrill, Connor v. Finch, taken January 13, 1978.

[17]Deposition of D. D. Dunn, Connor v. Finch, taken January 10, 1978.

[18]Deposition of C. A. Webb, Connor v. Finch, taken January 11, 1978.

[19]The author.

[20]Deposition of E. F. Fortenberry, Connor v. Finch, taken January 10, 1978.

[21]Located at Claremont Men's College, Claremont, California.

[22]The Legislative system was used by Committee Staff to analyze other plans for the court trial in Mississippi v. U.S. (1978).

[23]Campbell Deposition, p. 115.

[24]Fortenberry Deposition, p. 24.

[25]Ibid., p. 25.

[26]Ibid., p. 30.

[27]Campbell Deposition, p. 118.

[28]Ibid., p. 117.

[29]Ibid., p. 187.

[30]Ibid., p. 200.

[31]Ibid., p. 202.

[32]Connor v. Finch, District Court Hearing, November 21, 1977, Henderson - Direct, pp. 112-3.

[33]See chap. VI for detailed analysis of the 1978 Plan of the Special Master.

[34]U.S. v. Mississippi (U.S. District Court, District of Columbia, filed June 1, 1979).

[35]Connor v. Coleman. Response to Motion for Leave to File Petition for Writ of Mandamus, Petition for Writ of Mandamus and brief in support thereof, U.S. Supreme Court Brief, Case No. 78-1013, Leonard Cohen, Gettings & Stein, Washington D.C. (January 1979).

[36]Connor v. Finch, final judgment of District Court, District of Southern Mississippi, entered April 13, 1979.

[37]79 Stat. 439, as amended, 89 Stat. 402, 404, 42 U.S.C. Section 1973c (1970 ed., Supp. V).

[38]Ibid.

[39]Normal procedure would call for the issue to be settled in the local federal court in which that jurisdiction was located.

[40]South Carolina v. Katzenbach, 383 U.S. 301 (1966).

[41]Allen v. State Board of Elections, 393 U.S. 544 (1969).

[42]Georgia v. U.S., 411 U.S. 526 (1973).

[43]Beer v. U.S., 425 U.S. 130 (1976).

[44]None of the five seats had a majority of black voters under the 1961 redistricting.

[45]New Orleans voting law requires a majority vote for election. In addition, in primaries each voter must cast all the votes to which he is entitled. These two procedures work to the pure mathematical disadvantage of minority voters.

[46]Beer v. U.S., 425 U.S. 141 (1976).

[47]Ibid., p. 141.

[48]Ibid.

[49]Ibid., p. 142.

[50]Ibid., p. 143.

[51]Ibid., p. 145.

[52]Ibid., p. 146.

[53]Ibid., p. 153.

[54]Ibid., p. 154.

[55]City of Richmond v. U.S., 422 U.S. 358 (1975).

[56]City of Petersburg v. U.S., 354 F. Supp. 1021 (1972).

[57]Ibid., p. 1031.

[58]Fortson v. Dorsey, 379 U.S. 433 (1965).

[59]Burns v. Richardson, 384 U.S. 73 (1966).

[60]Fortson v. Dorsey, 379 U.S. 439 (1965).

[61]Mississippi v. U.S., Defendent Intervenor's proposed conclusions of law, p. 39.

[61]Moore v. Leflore County Board of Elections, 502 F. 2d 626 (1974).

[63]Kirksey v. Board of Supervisors of Hinds County, 554 F. 2d 139 (5th Cir. 1977).

[64]Connor v. Finch, 431 U.S. 407 (1977).

[65]Mississippi v. U.S., Defendent Intervenors' proposed conclusions of law, p. 40.

[66]Connor v. Finch, 431 U.S. 407 (1977).

[67]Gomillion v. Lightfoot, 364 U.S. 339 (1960).

[68]Arlington Heights v. Metropolitan Housing Authority, 429 U.S. 252 (1977).

[69]Mississippi v. U.S., Defendent Intervenors' proposed conclusions of law, p. 40.

[70]Connor v. Finch, 431 U.S. 425 (1977).

[71]Mississippi v. U.S., Defendent Intervenors' proposed conclusions of law, p. 40.

[72]Washington v. Davis, 426 U.S. 229 (1976).

[73]Arlington Heights v. Metropolitan Housing Authority, 429 U.S. 266 (1977).

[74]Ibid.

[75]Washington v. Davis, 426 U.S. 242 (1976).

[76]Mississippi v. U.S., Defendent Intervenors' proposed conclusions of law, p. 40.

[77]Arlington Heights v. Metropolitan Housing Authority, 429 U.S. 267 (1977).

[78]Mississippi v. U.S., Defendent Intervenors' proposed conclusions of law, p. 40.

[79]Arlington Heights v. Metropolitan Housing Authority, 429 U.S. 267 (1977).

[80]Seventy-three seats with 9,086 black persons in each.

[81]Connor v. Finch, 419 F. Supp. 1076 (August 1, 1977).

[82]The Gaffney Standard allows a 10 percent "top to bottom" deviation, i.e. district may vary 5 percent above and below ideal district size. See Gaffney v. Cummings, 412 U.S. 740-751 and White v. Register, 412 U.S. 761-4.

[83]There are districts in the State's House Plans which would have been more compact if there had been no attempt made to raise their percentage of black population.

CHAPTER IV

THE GEOGRAPHY OF REDISTRICTING

There are three sets of geographic units involved in the redistricting process. These units are those created by the United States Census Bureau, those created for voter registration and election polls, and the boundaries of local units of government. A large majority of the data problems involved in the redistricting process are caused by the fact that the boundaries of these units do not coincide. In many states, this fact alone makes it difficult, if not almost impossible, to determine exact political and demographic characteristics for any proposed legislative district. This chapter reviews the nature of these three sets of units and discusses the problems involved in their use.

All the demographic data commonly used in redistricting come from the United States Census Bureau.[1] The Bureau is charged with the responsibility of determining the population and housing characteristics of all states, counties, county legislative districts, and incorporated cities and townships. In order to accomplish this task, the Bureau has created its own set of geographic units. These units are tracts, Minor Civic Divisions (MCDs).

County Census Divisions (CCDs), Enumerations Districts (EDs), Block Groups (BGs), and blocks. In urbanized areas, the key units are Tracts and Blocks, while in rural areas the key unit is the ED.

In the urbanized areas tracts are subdivided into block groups or EDs, which are, in turn, subdivided into blocks. A block may correspond to a regular city block, but it may also be a portion of a block or a number of city blocks. In any case, data are available for very small geographic units inside urbanized areas.

In the rural areas the smallest geographic census unit is the ED. The ED is an artificially created unit used only by the Census Bureau. In theory this unit is supposed to encompass that area which may be enumerated by a census enumerator within a one-day period--Census Day. These units, however, are also used to tabulate data for cities and unincorporated "places." Because of this requirement, EDs do not normally cross city boundaries, or include both rural territory and unincorporated residential areas.

EDs are also used to determine the population of areas annexed to cities since the previous census. Thus, for example, an ED would not include territory which was annexed or inside the city limits before the 1970 Census along with territory annexed following the 1970 Census. This means that, in some cases, EDs will not be contiguous or, in the cases of a small city which has expanded its

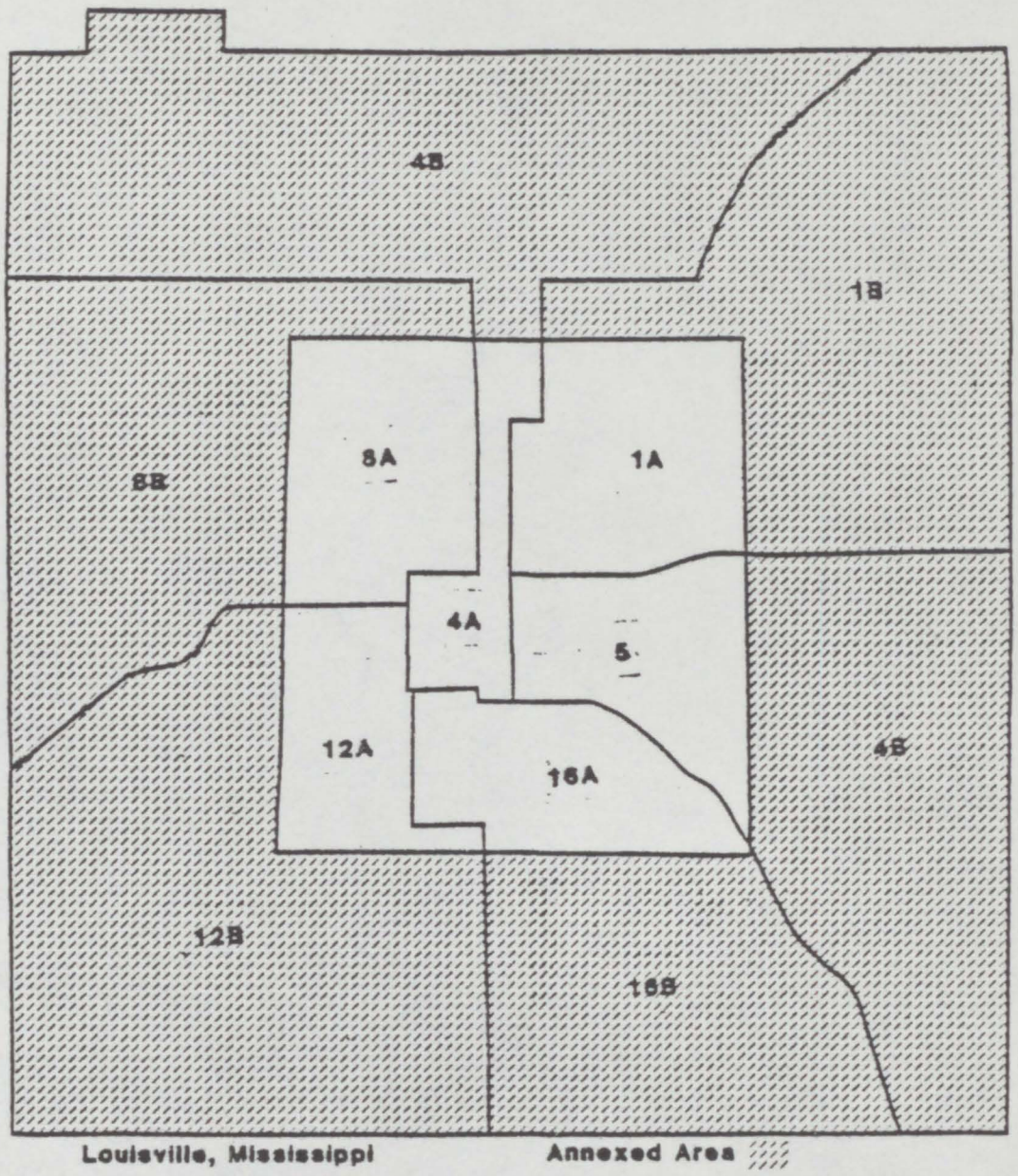
boundaries on all sides, might surround one or more EDs which make up the former territory of that city (see figure 1). This is an example of a case in which an ED might have to be split in order to combine a portion of the old city with nearby rural areas. The surrounding ED would have to be split to create a corridor into the former city (see figure 2).

Another difficulty encountered when using EDs in redistricting is that some rural EDs completely surround a residential town. If one does not wish to split the surrounding rural ED, one is forced to include both EDs in the same district.

These are problems facing the reapportioner when he is just using EDs as the geographic base of his plan and when he is just interested in the demographic characteristics of the districts he is building. They are difficulties which are bothersome, but certainly not impossible with which to deal. Another problem of great difficulty arises when the districts being created must have small populations and the allowable deviations are also very small--as was the case in Mississippi. For example, the average population of an ED in the State of Mississippi in 1970 was 858. The average district population was 18,171. The average ED, therefore, represented 4.7 percent of the ideal district population. This fact alone made it difficult to construct districts with less than a 5 percent deviation from ideal district size. The

FIGURE 1

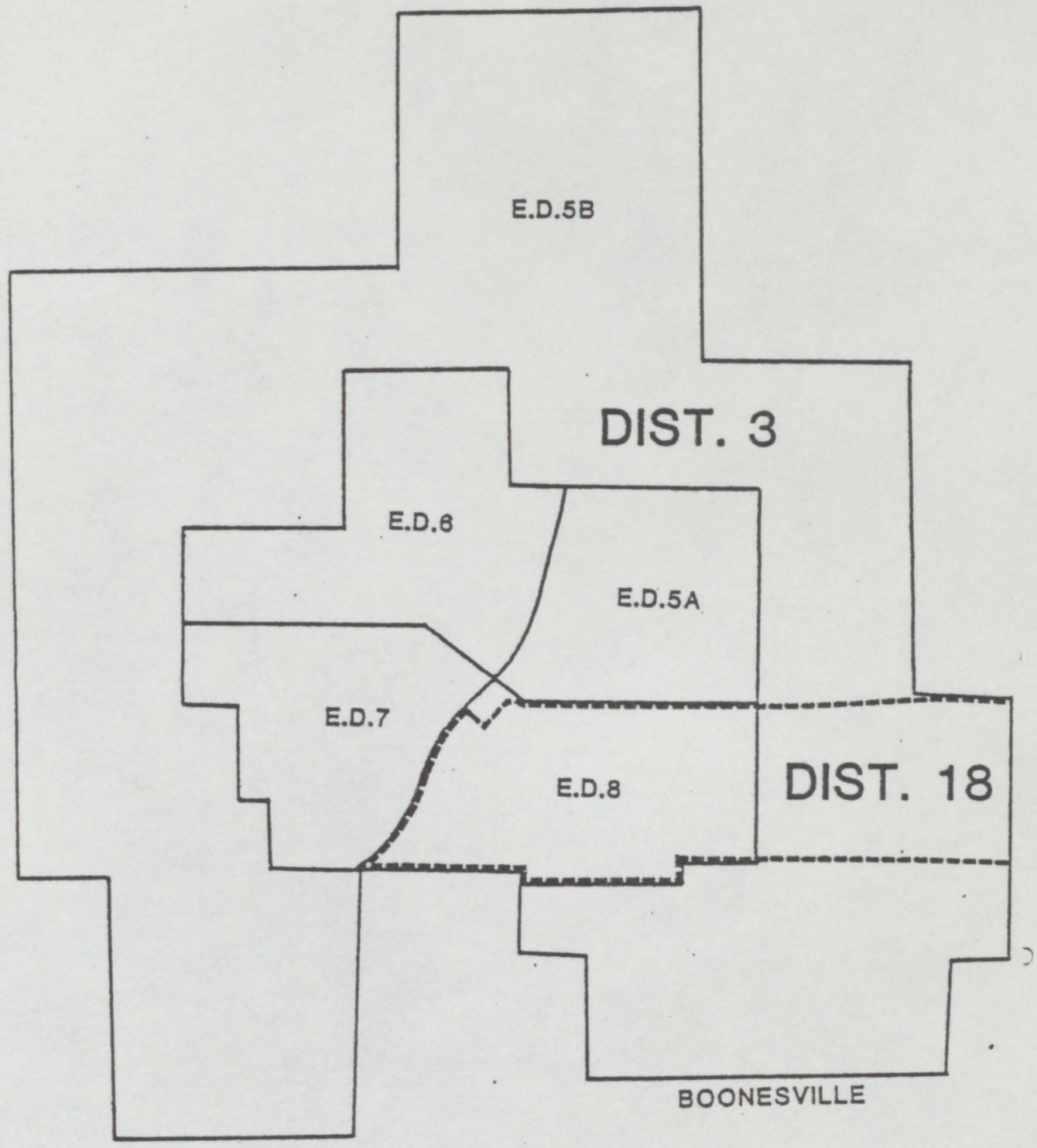
EXAMPLE OF ENUMERATION DISTRICTS CAUSED BY ANNEXATION



SOURCE: Joint Committee Files and U.S. Census Bureau Maps

FIGURE 2

EXAMPLE OF HOW AN ENUMERATION DISTRICT CAUSED
BY ANNEXATION HAD TO BE SPLIT IN THE STATE'S PLAN



SOURCE: Joint Committee Files

placement of EDs of proper size in relationship to each other would become more important in determining the combinations of EDs into districts than the desirable configuration of the district in terms of compactness or community of interest. For example, if one were required to cross over into an adjacent county to pull a few more people into a district, one would choose the ED being taken from the adjoining county on the basis of its population rather than its geographic location. The larger the average unit size and the smaller the districts being created, the less the shape and configuration of the districts is determined by "good government" criteria and the more it is determined by the actual populations of the individual units. It was very difficult in Mississippi to construct a plan with maximum district population deviations of less than $\pm$ 2 percent.

In the urbanized areas, where block-by-block data are available, the problems outlined above are not present. One can simply work with individual block units. It is always relatively easy to find some block on the perimeter of a district with the appropriate population to "fine tune" the final district population. In states with large proportions of their populations located in urbanized areas, the availability of block data gives considerable latitude to those constructing redistricting plans using only census units and data. However, Mississippi is a state in which only 16.4 percent of the legislative

districts may be constructed in areas with block-by-block data. All other districts are subject to the problems discussed in the paragraphs above because they are being built in so-called "rural" counties. Even though large cities are located in those counties, the cities are not large enough to have block data compiled by the Census Bureau.[2]

Unfortunately, census data and census geographic units are not the only data and units used for redistricting. It is rare, indeed, when some political information is not required in the redistricting decision-making process. It is also common for many state redistricting projects to attempt to minimize the fragmentation of precincts (or election districts) when building new districts. Because of one or the other (or both) of these requirements it is often necessary to interpolate data from voting precincts "into" census units or census data into election units--or both.

Considering the problems that were involved in the interpolation of census data into precincts in the 1977 Mississippi redistricting process, it is fortunate that there was no requirement to provide political data by census units. If that were the case, the redistricting might never have been completed.

Even in the best of circumstances there is little correspondence between tract and ED boundaries on one side and precinct or election district boundaries on the other

side. In Mississippi this problem uniquely increased by several factors. The first is the maintenance of separate precinct structures for city and state elections. The second is Mississippi's unusual supervisorial redistricting criterion. The third is the interference by the Civil Rights Act with normal precinct revision process due to population and registered voter growth; local agencies in charge of adjusting precinct boundaries must first submit the changes to the Attorney General, a difficult process which discourages these changes and often ends in disapprovals.

The State of Mississippi has two different precinct structures. One is used for county and statewide elections every four years, and is established by the county election officials. The second set of precincts is for cities and is used in municipal elections only. In order to vote in a city election, a voter must first register with the county officials and then with the city officials. Thus, two different voter rolls are maintained in some areas. Unlike the situation in many states, precinct boundary lines for county precincts do not terminate at corporate boundaries. Many precincts combine numbers of city voters with rural voters--extending far beyond the corporate boundaries to encompass large rural areas. To further complicate the issue, the policy for redistricting county supervisor districts, called "beats" in Mississippi, is subject to an unusual statistical constraint.

One of the primary duties of the supervisors is the maintenance of the county road system. Each supervisor is charged with the maintenance of the roads within his own district. Thus, the ability to repave or regravel any given road represents political power to all supervisors. For many years, it has been common policy for each of the supervisors to divide up the county into districts so that each has an equal amount of road mileage. This practice dates from the time when all supervisors were elected at large, but governed within districts. The enforcement of the one person, one vote rule has played havoc with this basic tradition for county redistricting--the "one road, one vote" rule. Faced with numerous suits demanding redistricting according to both equality of population and proper racial representation, and still wishing to honor the "one road, one vote" policy, county boards have drawn bizarrely shaped districts in many counties.

Most Mississippi counties are oriented around the county seat that contains a large portion of that county's population. If that city is centrally located in the county, it is possible to draw the beats so that they divide up the county like a pie. But, if the large city in the county is not centrally located, or if the rural racial distribution is awkward, or if any other political consideration comes into play, then some extremely irregular district shapes may result. An example is presented below:

Pearl River County contains a population of 27,802 (see figure 3). Each beat, therefore, should contain a population of 5,560. This county has two major cities--Picayune, with a population of 10,467, and Poplarville, with a population of 2,312. The 1960 beats are also shown in figure 3. In that plan, the city of Picayune is located almost entirely within Beat 4--with a small portion in Beat 5 (probably due to annexation since the redistricting). The city of Poplarville is located entirely within Beat 1. The districts are reasonably regular in shape and roughly equal in area.

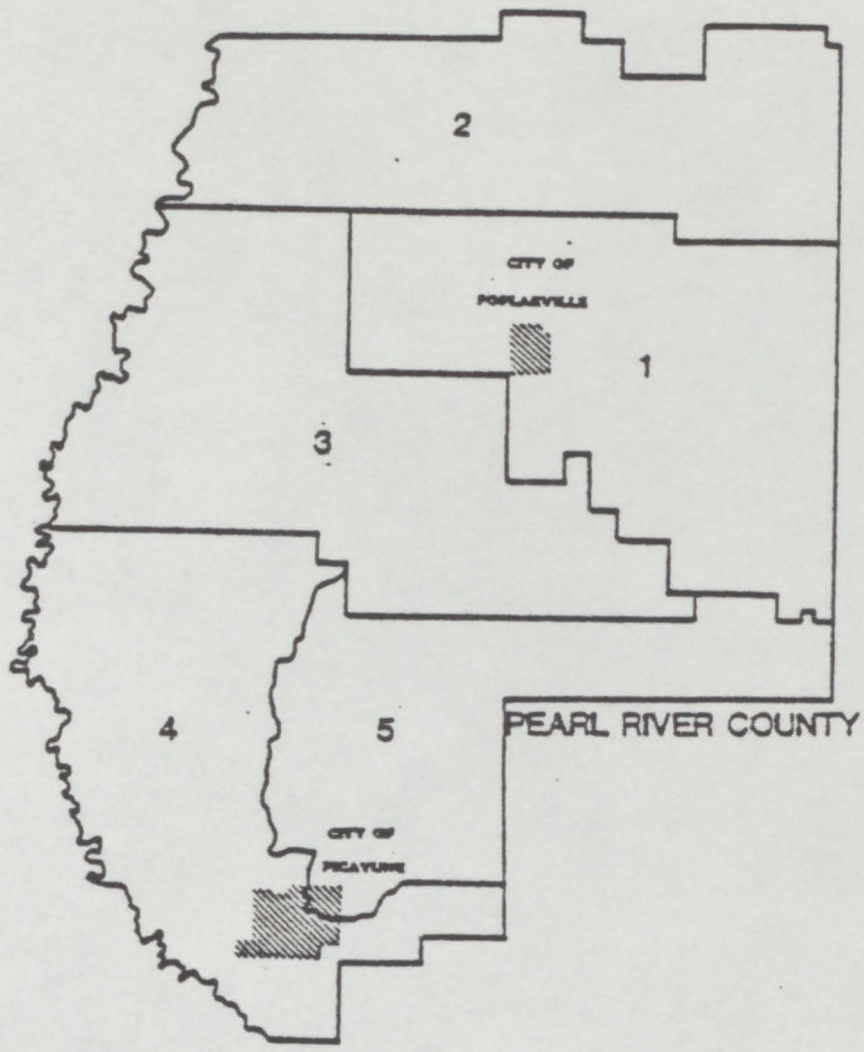
The present plan carves up the county in what can only be described as a bizarre manner. All three of the northern beats descend south into the city of Picayune through corridors one mile wide, which open up within the city. One of the corridors is 23 miles long; the others, 10 and 13 miles long. The city of Poplarville is split between districts. Precincts run up and down these corridors or are formed entirely within them. There is no way that these districts could be anything but confusing to the voters of the county. It is illogical that precincts shaped by road policy should be used to form state legislative districts!

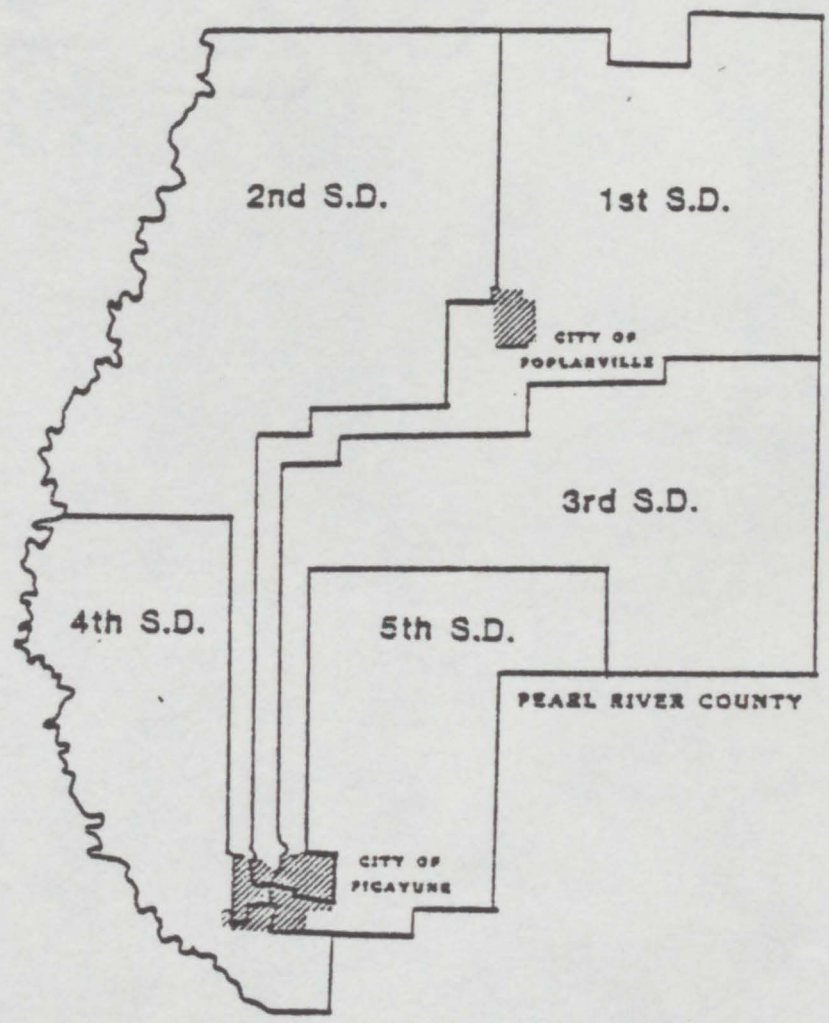
Other counties' supervisor districts, such as those in Alcorn, Franklin, Greene, Lee, Prentiss, and Winston Counties, also serve as good examples of this practice.

All these beat configurations would be of little

FIGURE 3

THE 1960 AND 1970 SUPERVISOR BEATS IN PEARL RIVER COUNTY





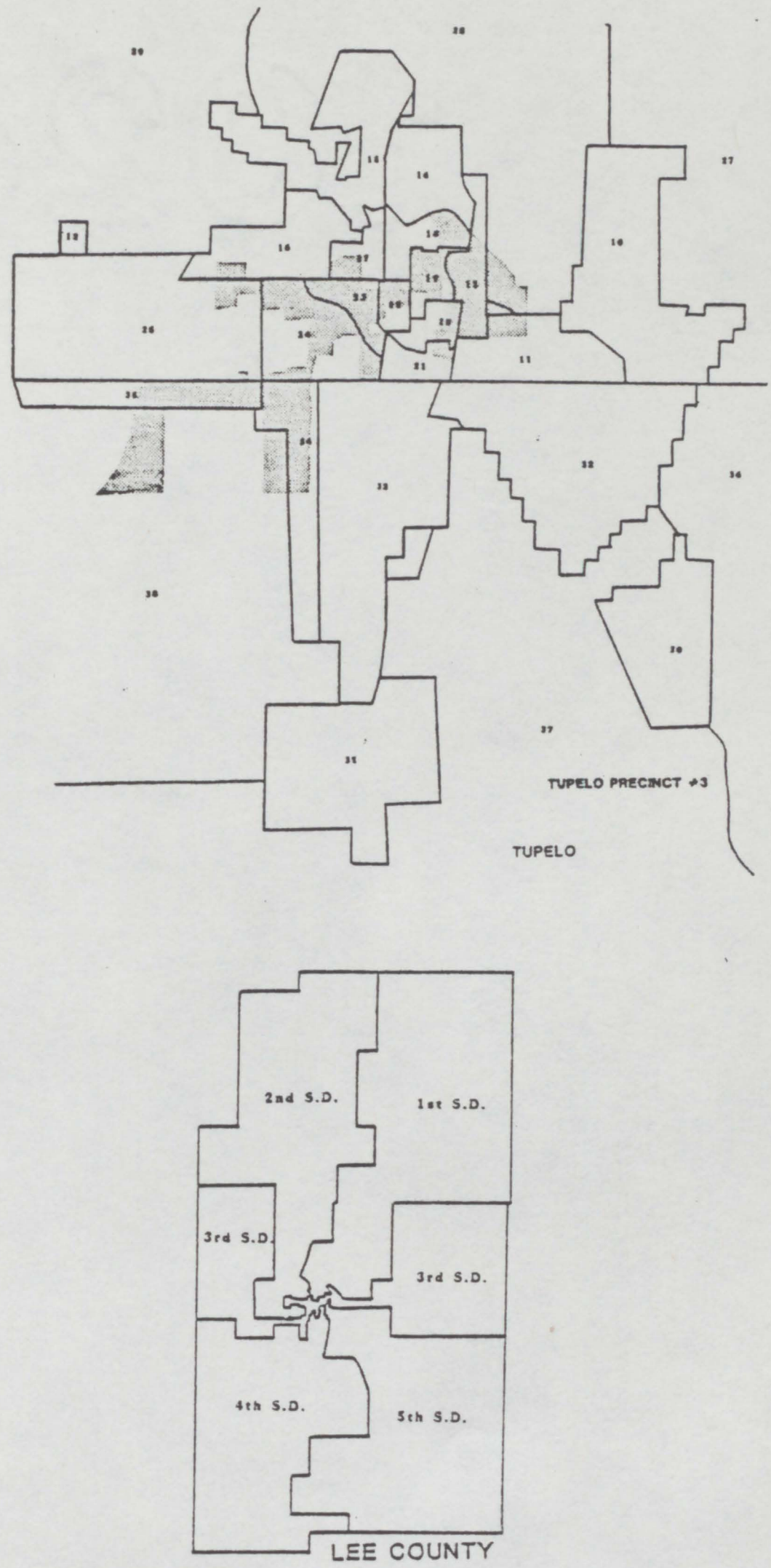
SOURCE: Joint Committee Files

importance to the legislative redistricting problem in the State except for the fact that such contorted precinct shapes make the determination of the populations of the precincts very difficult. The precinct of Tupelo 3 in Lee County is a striking example of this problem. This precinct was designed to allow Beat 3 a pathway through the city of Tupelo so that the beat could open up in rural areas on both the east and west sides of that City (see figure 4). This precinct contains portions of no less than 17 EDs, and not one of those EDs is entirely contained within the precinct. It happens that the average beat population in Lee County is about half that of the average House district. This, therefore, was one case in which beat lines could be followed. The determination of the correct estimated 1970 population of these beats, however, was a major problem involving the splitting of many EDs. This was the case in many areas of the State.

As previously mentioned, the Civil Rights Act of 1965 has also distorted the precinct structure in the State of Mississippi. In many of the counties of that State, the primary concern of the civil rights forces over the last decade has been the registration of black voters and increasing their turnout at the polls. Before the enforcement of the Civil Rights Act, many blacks had been denied the right to register and had been discouraged from voting. Thus, Section 5 of the Civil Rights Act, among its many goals, was designed to discourage the alteration of precinct

FIGURE 4

LEE COUNTY SUPERVISOR BEATS AND THE CITY OF TUPELO SHOWING PRECINCT 3 (SHADED) WHICH CARRIES BEAT 3 THROUGH THE CITY



SOURCE: Joint Committee Files

boundaries or changing of polling places--a device used to confuse black voters. Every change in precinct lines, therefore, is subject to the veto of the Department of Justice.

The administration of elections is, at best, rather informal in some Mississippi counties. Many precinct boundaries are not defined at all. Voters simply register where it is most convenient to vote or where the local election official thinks they should vote. It is not always clear exactly where all the voters actually reside. Under the best of circumstances, local election officials are not eager to change any precinct boundaries because it is difficult for them to ascertain which voters would fall on either side of the new lines. In some cases, it is asserted that all voters in precincts where boundaries are shifted would have to re-register in order that their current residence could be determined. All these factors, combined with the complex and drawn-out process involved in obtaining permission from the Justice Department to change voting precinct lines, has kept Mississippi precinct boundaries stable over the last decade. What changes that have come about have usually been the result of court actions--which are not subject to the Justice Department's veto or in which the Justice Department has been a party to the settlement.

Following the 1970 Census there was a long string of court challenges to the composition of supervisorial dist-

ric

ricts in Mississippi's counties. Plaintiffs were seeking both enforcement of the one man, one vote rule and appropriate representation for black voters. The result of these actions has been discussed above--namely, the unusually shaped districts in many counties. The need for determination of demographic characteristics for these new supervisorial districts has spawned a variety of methodologies for splitting EDs. In some cases the United States Census Bureau was asked to aplit the EDs. In other cases, special censuses were taken. Sometimes current (at the time of each case) housing counts were made and the population was divided in accordance with the number of housing units. Sometimes this same method was followed using outdated housing maps. Sometimes the parties to the action simply agreed that certain populations were correct. Sometimes people simply guessed at the population.

At any rate, the population estimates originated from a variety of methodologies and used population bases anywhere from the 1970 Census to estimated 1977 figures. The important factor to note is that the primary motivation in almost all these cases was racial. Interest was focused on black representation, not exact equality in population. As long as they were obtaining proper black representation, the civil rights forces and the Department of Justice were not prepared to argue over differences in population estimates. In many cases settlements were made out of court--with Justice's agreement to approve the

results when submitted. In other cases, the courts involved were not qualified to determine if the population estimates were accurate. One fact is certain--there was no uniformity in the demographic work done for supervisorial redistricting on a statewide scale.

The preceding discussion on supervisorial redistricting serves to emphasize the difficulties involved in the determination of accurate estimates of populations for precinct-based districts. Even in a non-adversary proceeding it would be difficult to develop satisfactory demographic summaries for many districts. In the context of the Connor v. Finch decision, the U.S. Supreme Court held that the 1976 District Court Plan was unacceptable due to excessive population deviations. In this plan, the House districts had ranged from -9.9 percent to +9.4 percent in relation to ideal district population. The Senate districts ranged from -8.3 percent to +8.2 percent. These maximum deviations of 16.5 percent for the Senate and 19.3 percent for the House, held the Court, "simply cannot be tolerated in a court-ordered plan, in the absence of some compelling justification."[3] The Supreme Court itself recognized the problem facing those attempting to construct redistricting plans in a footnote to this decision.

> As is not unusual in cases such as this, there is considerable controversy among the parties as to what the proper population figures are. The census is itself at best an approximate estimate of a State's population at a frozen moment in time. Because it is taken by census tract rather than along supervisory district or voting precinct lines,

relevant population figures for these political districts have to be extrapolated. That process is complicated by the recognition that major shifts in population and in voting precinct lines have occurred since the 1970 census, and by the fact that proportionally more Negroes than whites are ineligible to vote because of age.

> We need not 'enter this imbroglio of mathematical manipulation,' but instead 'confine our consideration to the figures actually found by the (district) court.' (Mahan v. Howell, 410 U.S. 315, 319 n. 6. See also Burns v. Richardson, supra, at 91-93.) On remand, however, to avoid the substantial confusion that characterizes the record now before us, the District Court should explain the genesis of the population figures on which it relies.[4]

It is interesting to note that while the primary issue in the Connor litigation was black representation, all rulings prior to the D.C. District Court ruling of June, 1979, were decided on the issue of population equality. It was felt by both the Counsel and Technical Consultants to the Joint Reapportionment Committee that the Supreme Court had placed considerable emphasis on both population equality and adequate documentation of demographic data compiled for districting plans. The Supreme Court, in a further footnote, took the District Court to task for claiming that the small size of the districts being created was justification for high population deviations. Turning to another case, they stated that "The 1 percent population norm in the sparsely populated State of North Dakota was 121, but the Court did not consider that a 'legitimate basis for departure from the goal of equality' in Chapman v. Meier, 420 U.S., at 24."[5] It was inferred from this language and similar language throughout this decision that strict

application of the de minimis rule was required and that sound methodology in determination of populations of district was also required.

Because the U.S. Supreme Court had mentioned the 1 percent deviation in North Dakota and had also instructed the District Court to present better documentation of its data in its next attempt to redistrict the State, both the Committee's counsel, and most of the experts retained by the Committee, felt that the plan to be presented to the District Court for its adoption should be drawn along ED boundaries. This would allow the construction of a plan with the smallest possible deviations and the highest accurace of demographic data. Thus, the Legislature's Court ED Plans and the first version of the Statutory Plans were created with EDs as the building blocks.

Although the District Court, in its somewhat vague instructions to the parties submitting plans for its consideration, had expressed some preference for the use of precinct boundaries, the Committee decided that the plan which it was presenting should follow ED lines. It considered the need for the lowest possible deviations and accuracy of data to be more important than the District Court's preference for keeping precincts intact.

In doing so, the Committee had underestimated the District Court's absolute preference for precincts. After the Legislature's ED Plans had been submitted to the District Court, the Court expressed extreme dissatisfaction

at the Committee's use of EDs.

The Court felt that the use of ED boundaries would result in the splitting of a large number of precincts in the State. This, in turn, would result in the necessity of re-registration of all the voters in those precincts--perhaps throughout the entire State. This re-registration process would result in a greater drop in the numbers of blacks registered than whites. It would also cause considerable expense to the various county election officials. The Court, on this issue, was trading off about 4 to 6 percentage points of district equality for the avoidance of disruption of the voter rolls and polling places. The District Court in Jackson has long been under fire from the civil rights forces in the State for what they perceive to be its unenthusiastic enforcement of federal civil rights legislation. There might have been some fear of further criticism of that Court's redistricting record. Whatever the reason, the Court directed the Legislature to submit new plans which did not break precinct boundaries.

In accordance with the desires of the District Court, the Joint Reapportionment Committee instructed the Committee staff to "adjust" the boundaries of the Court ED Plans and the Statutory ED Plans to the "nearest" precinct lines. This was to be accomplished without increasing the maximum district deviations beyond ± 4 percent for the Court Plan, and ± 5 percent for the Statutory Plans. This change in policy, of course, threw the Committee's

technical staff into the same statistical thicket as the other parties submitting plans. All were now faced with determining the best possible populations for the split EDs which were on the boundaries of the new districts where the precinct lines did not coincide with the ED lines.

What follows is a discussion of the various approaches taken to this problem by plan designers. This will serve as a final example of the difficulties of dealing with the various sets of geographic units involved in the redistricting process and the problems of interpolation of data for split units.

The District Court Master, in the construction of his 1976 Plan, used the turnout in the Democratic Primary of 1976 for estimation of precinct populations. This produced highly questionable figures. To begin with, the Democratic Primary does not represent all voters. Second, one cannot assume that voter registration is consistent as a percentage of total population throughout an entire geographic area. Third, even assuming a homogeneous ratio of voters to total population, this method does not account for members of the other parties. Fourth, there is a built-in bias against blacks, who do not register in equal percentages to whites. Fifth, he should have used 1970 registration, not 1976. In fact there are so many statistical errors in this method that it might, in the eyes of some critics, bring into question the competence of the Court that ordered the plan into effect. It is no wonder

that the Supreme Court questioned the population figures of the 1976 Plan. Unless one were to make a blindfold guess, one could hardly imagine a worse method for estimating population.

None of the experts or plan-drawers involved in the Connor case after 1977 used registration as a means of population estimation. There were, however, a variety of other methods employed. These were the "enumerator map count" method, the "office separation" method, the "cultural" method, the "area" method, and "house-count" method, and, for lack of a better term, the "former settlement" method.

The "emunerator map count" method involves the actual maps carried around by U.S. Census enumerators on Census Day. On these maps, enumerators are instructed to mark the locations of all the housing units which they encounter and the number of inhabitants in each unit. Using this map, assuming that the enumerator was both conscientious and accurate, one would be able to make a very precise determination of the number of persons on each side of a line running through the middle of an enumeration district. This method, however, can only be used by the Bureau of the Census, which keeps the maps in storage in Jeffersonville. Furthermore, only a limited number of personnel are available who can read these maps. This method, therefore, is both time consuming and expensive, but it is also the most accurate method available of

splitting EDs.

If one is to take advantage of the expertise of the Bureau, one may also pay the Bureau to use the "office separation" method. In this method, trained personnel from the Bureau make an educated determination of the number of persons on each side of the line drawn through an ED. This method is less accurate than the "enumerator map count" method, but it has one desirable feature: it cannot be biased by the prejudice of the plan drawer. The Bureau's expert does not have any stake in the outcome of the estimate. He is not likely to tamper with the data in order to make it fit the plan. This method was used by the Joint Committee in the formulation of both its Court and Statutory Precinct Plans.

An alternative method of splitting EDs is that of straight areas proportions (discussed above). Mr. Tanner undoubtedly used this method when splitting EDs that did not contain lakes, swamps, or forests (as defined by National Forest boundaries). This method can be shown to be totally invalid by common logic.

The "cultural" method was employed by the plan drawer from the Department of Justice, Mr. John Tanner, who drew the Court Precinct Plan submitted to the Connor Court. Mr. Tanner stated in the Washington D.C. trial that the "cultural" method involved the use of "actual geographic area, less lakes, swamps, or forests" (trial page 1190). His view was that, after allowances for these factors, the

population should be split on a basis proportional to geographic area. There are two main problems with this method, which is essentially a modified "area" method. First, one can never assume that population distributes itself proportionally to geographic area. This is not even true in the metropolitan area--a fact that can be verified by reference to block data. Second, the maps that were used by Mr. Tanner did not even show forest area, and Mississippi has a considerable amount of forested territory. Much of the forest area is not contained in National Forests; it is privately owned. None of this privately owned forested land is shown on the census maps. Thus, there is at least a double error in Mr. Tanner's splitting methodology.

The "house-count" method is, perhaps, the most valid method, other than the "enumerator map count" method. Its validity is, of course, limited by the accuracy of the maps from which the houses are counted. In Mississippi, the Highway Department published both county and metropolitan maps throughout the 1970s on which are shown locations and types of housing. They also show apartments--of which there are few outside the major cities. They are reputed to be of acceptable accuracy. In any event, the distribution of houses on these maps gives a generally good idea of where the people live within each ED. Villages and subdivisions are shown on these maps. (Ideally, it might, of course, be desirable to have aerial photographs of the

State, flown on the day of the census. These, however, are not available.) Lacking actual photographs, and not having access to the Bureau's enumerator maps, the State Highway Department maps provide the best source of information which is available on a uniform basis throughout the entire State. This method was used in part by the Connor Plaintiffs and by the staff of the Committee in the examination of the Tanner and Henderson Plans. It was also used to examine the Master's 1978 Plan.

The "former settlement" method involves the use of all the documents and data used to split EDs in the redistricting of the supervisor districts throughout the State in the period from 1970 to 1977. Some ED splits involved house-counts, some actual special censuses, other EDs were split by the Bureau, many splits were just agreed to by the parties involved. The problem with reliance upon these documents is that they are not consistent--nor were they developed with the goal of statewide legislative redistricting in mind. They are, however, probably more accurate than either the "cultural" method or the "area" method. This approach was used by Dr. Henderson in the formulation of his plans, together with the house-count method.

Perhaps the notes here have given the reader a sense of the problems involved in determining accurate population counts for Mississippi's legislative districts. It should be added that these were only total populations. The data

on adult population, both total and black, and total black population could only be assigned in direct proportion to the total population. It was admitted by all parties to this process that this could involve significant error in the estimation of black percentages. This is why assertions by the Justice Department that there is a significant difference between a district in Jackson with 59.7 percent black adults and one in a rural area with 60.0 percent black adults (a difference of 0.3 percent) is evidently absurd. A skeptical person might draw the assumption that the Department of Justice was, in this instance, attempting to mold both the criteria and the data to cast their plan in the best possible light in relation to the plan of the State. This is probably the primary reason they lost the case. Indeed, it appeared from the very beginning that the Department of Justice was manipulating the statistics, with no consistency in their methodology. The State's data were simple and they were consistent. The State may not have created as many black districts as the Department of Justice; but the Court could be sure of the State's data and be sure, also, that no "games were being played" with the statistics.

On the Technical Aspects of Drawing A Redistricting Plan

A consultant, faced with the problem of redistricting a state legislature, confronts difficulties that span four disciplines: politics, data processing, cartographics, and law. For purposes of this study, cartographics and data processing have been labeled the "technical" aspects of the redistricting process. Maps and data are the essential tools of redistricting; redistricting, by definition, is a method of allocating representation based upon the number of people residing in a geographic area. In the case of Mississippi, however, the nature of the people living in an area is often more important than their numbers.

In terms of the type of data required, the process of redistricting Mississippi was relatively simple. There were only four data items required for each geographic unit. These were: total persons, total black persons, total persons over eighteen years of age, and total black persons over eighteen years of age. These pieces of information represent only a fraction of the data required for redistricting a large urban state. In states such as Illinois and New York, much more information is required to obtain a suitable demographic description of the population. Among these are age, race, ethnic group, income, occupation, housing data, and education. In addition to these demographic factors, data are required on a myriad of political factors, usually limited only by the amount

of room available for the data base on the computer system being used in any particular state. Such information is especially important in a large, two-party state, in which the staff performing the redistricting is faced with a multitude of competing interests--including both ethnic and racial groups and the major political parties. All of these interests must be kept in balance within the limits allowed by the one person, one vote doctrine.

The problems in Mississippi were those of size and time. Size was a problem because, while the number of counties and the number of seats in the Legislature are large, the population is small. For example, in Mississippi the average House member represents 18,171 persons. In California, each Assembly member represents 249,600 persons. The seats in California's lower house are, therefore, 13.75 times "larger" (in terms of population) than those in Mississippi. Also, in California, the population of the census units is smaller. This is because the State is more urbanized, and statistics are more widely available on a block-by-block basis. The point is that in Mississippi it is much more difficult to put together districts that are both equal in population and demographically and geographically acceptable. In the lower house in Mississippi, it was virtually impossible to create districts with deviations lower than $\pm$ 2.00 percent. Such problems made the whole process extremely difficult, and required the splitting of many voting precincts.

The problem of maintaining acceptable district deviations was exacerbated by the necessity of building districts out of precincts, rather than census units. In California, it is a common and accepted practice to split voter precincts in a redistricting. In fact, in the large counties, precincts are redrawn on a routine basis. In Mississippi, however, permission must be obtained from the Justice Department in Washington before a precinct can be split or a polling place moved. And, since this permission is routinely withheld (and because growth patterns are often uneven), precincts vary in size tremendously, in terms of both area and population. In Washington County, for example, 70,681 persons are distributed among just twenty voter precincts. This is an average population of 3,534 per precinct. By contrast, in Kings County, California--like Washington County, a rural county with a large central city--66,717 persons are divided among 60 precincts, with an average precinct population of just 1,112. In fact, in the State of California, there is a statutory limit on the number of voters who may live in any one precinct.

The large size of the precincts in Mississippi is generally due to the low percentage of voter registration. The size of the precincts, in itself, is not being criticized. Mississippi has a right to organize its election system in any constitutional way it pleases (or that pleases the Department of Justice). However, when the

average population of a precinct, as in Washington County, represents 19.45 percent of the population of a district, it severely limits the number of combinations which can result in districts with a deviation smaller than ± 5.00 percent.

In addition to the large variances in precinct size, many Mississippi precincts are highly irregular in shape. This irregularity is due to the State's redistricting policy for county supervisor districts. The irregular shapes of precincts make it much more difficult to ascertain the populations of many Mississippi districts, since precinct lines, even under the best of circumstances, do not correspond to the boundaries of census enumeration districts (EDs).

The time problem was also a limiting factor in the Mississippi redistricting. When the technical staff arrived in Jackson on September 1, 1977, they were faced with the prospect of producing a tentative plan by no later than September 30th--with a final plan to be ready by October 29th. This time limit made it mandatory that a data base and tabulation program be in existence no later than September 15th. Thus, the scope of the data processing effort had to be limited. Two weeks is a very short time in which to write any program--let alone a redistricting retrieval system and a full set of programs to create a data base.

To create Mississippi's data base, the data from the

U.S. Census Bureau's first and third count summary tapes were extracted for counties, supervisor districts, census tracts, enumeration districts, and blocks. After a short period of time, the block data were dropped from the data because the disk space required to maintain them was not justified by the marginal use to which the block data were being put. The data were organized hierarchically by ED within either tract or supervisor district within each county. It should be noted that the supervisor districts, (the basis on which the data were organized within counties) were the districts as of April 1970--many of which had been drastically redrawn during the preceding seven years.

The data base consisted of one indexed sequential file, with one logical record per geographic unit. Having the file in indexed sequential mode allowed the access of any single record without having to read the file from the beginning--as would be the case with a magnetic computer tape. Any record could be accessed by one disk read at any time. Each record contained a geographic identifier section, followed by the four data elements, followed by a 15-element array into which assignments for that unit could be made. This allowed for the storage of up to fifteen plans simultaneously. The file was protected so that the users could not erase any of the data, but could change district assignments or blank out entire plans. The data base was backed up on

magnetic tape each evening. Security was maintained by the use of passwords. Entry to the system was by remote terminal over telephone lines. The terminal was located in the Joint Committee Offices in the State Capitol building in Jackson, and the computer was the DEC-10 system located at the University of Mississippi in Oxford.

There were two modes programmed for the assignment of census units. The first was the random access mode. Using this mode, the user would indicate the county, SD, and ED he wished to assign. The computer would then display the data for that unit and the district to which it was presently assigned. Each unit assigned using this mode had to be entered by giving the county, SD, and ED (tract was substituted for SD when available).

The second assignment mode was the sequential mode. In this mode, the starting county, plus the SD or tract was designated. The computer would then display each unit sequentially in turn, and the user would enter the district assignment. If a county were assigned as a whole unit, then all other units would be passed over for that county. The same was true in the case of an SD or tract. The assignment of a tract or SD would cause the computer to skip over all the EDs within that unit. This program allowed for rapid entry of a whole plan or a portion of a plan.

One disadvantage of the data base as it was organized was that in order to split a county, SD, or tract that had

been previously assigned as a whole unit, the larger area had to be reassigned to district 0 (i.e., unassigned). This was not difficult to do, but sometimes users forgot this procedure. Their forgetfulness generated complaints that the program was not functioning properly. The alternative, however, was to have the program force disassignment of a unit when one of its sub-units was assigned. But with random access available, this would allow for units to remain unassigned either by themselves or as sub-units. This was considered a greater disadvantage of the software than the problem which the change would have solved.

Another program was written to display the districts for any given plan. This program also could be run in two modes. Mode one was for the entire plan, while mode two was for selected districts. At the beginning of the run, the user was required to indicate the plan number he wished to access, and whether the plan was for the House or the Senate. The program would then proceed to read the data base file sequentially, reading each record and checking the appropriate array position to see if that record's unit had been assigned to any district. If so, the program wrote out the record in an output file; if not, it would proceed to read the next record. If a county were assigned, the program would advance immediately to the next county record. If an SD or tract were assigned, the program would advance to the next SD or tract.

The resulting output file would then be sorted first

by district then by county, then SD or tract, then by ED. A second program would then produce individual district reports and summaries, a summary report by district for the entire State, and a rectification of assigned population to actual population by county. An optional report of district population by county, or county population by district, could also be produced. A copy of the programs is found in the Appendix.

When the decision was made to produce precinct plans instead of ED plans, some modifications in the software were required in order to accommodate large numbers of split EDs. An additional ISAM file was created into which split portions could be written. When an ED was to be recorded as split, the user would assign the ED to district 555. The program would then ask into how many sections the ED was to be divided, record the population of each section, record the district to which it was being assigned, check the total against the total population, proportion out the three remaining data elements to each section, and write out a record into the split file for each section. The program which read through the file for district assignments would then be triggered into reading the split file when a unit appeared in the main file which was assigned to district 555. Instead of writing out the unit assigned to district 555, it would read each of that unit's section records in the split file (which carried the actual district assignments)and write out those records instead

of the originals. These records would be indicated as split on the printout.

This program was extremely simple, containing none of the geographic retrieval features available in programs built for the larger states. The Mississippi program, however, was a good example of the application of computer technology to small state redistricting. The one arduous task which could not be performed by the available software was the checking of the plan for contiguity. Geographic display, even of the most primitive nature, would have been extremely helpful in this project. The ability to plot ED assignments by centroid location also would have been most helpful. In the 1981 redistricting, the breakdown of the 1980 Census by block for the entire State of Mississippi should allow the fairly accurate calculation of precinct demographics. This, in turn, should end the continuous battles over district data which have occurred throughout the 1977-78 project. The 1981 data base, if aggregated into precincts, will streamline some of the software. In addition, a touchlist and plotting program could be used with data aggregated by voter precinct.

By way of comparison, and to give an example of a sophisticated redistricting system, a short discussion of REDIS, a system being developed in part by this writer for large state redistricting is included in the Appendix.

Another of the technical problems encountered in

Mississippi was the lack of adequate maps. In mid-August, 1977, the Joint Committee initiated the central collection of precinct maps for the State's 82 counties. Several of the counties did not have precinct maps--some because maps had never been drawn, others because there were no precinct lines in existence. (These counties without precinct lines had merely designated polling places; voters chose the polling place which was most convenient and registered in that precinct's book.) In many cases when maps were sent to the Committee, they were vague or primitive. The poor quality of the maps was not a problem as long as the Committee was generating only ED plans. However, when the Committee decided in November, 1977, to switch to precinct-based plans, it became important to know which sections of which EDs were located in any given precinct. At this point the Committee consultants, led primarily by Calvin Webb, recommended most strongly that the Committee produce a set of maps adequate for the task. For each county, two maps were produced on the same base maps set; one of these contained the precinct boundaries and the other the ED boundaries. In addition, an acetate overlay with ED boundaries was produced. As it turned out, these maps, although produced at great expense, were one of the best investments which the Committee made. They allowed not only the production of accurate statistics for the Legislature's plans, but also allowed accurate analysis of the plans produced by other parties in the litigation.

Accurate maps are a "must" for any effective redistricting project.

Throughout the entire redistricting process, the staff was pushed by the shortage of time. The original ED plans were produced in just four weeks, and given the final form in two more weeks. The Statutory ED plan was produced in another three-week period, and put in final form two weeks later. Both of the precinct-based plans, the one for the Connor Court and the one that was to appear as a statute, were adjusted to precinct lines from their original ED base within a period of nine weeks. During this nine-week period, not one of the technical consultants was able to devote full time to the project, since each was employed elsewhere in a different capacity.

Thus, it is apparent that for the legislators and lawyers involved in any redistricting effort, it is important to have an understanding both of the intricate procedures involved and of the difficult decisions that will have to be made. A basic understanding of these realities is just as important as the technical knowledge that the staff must have in order to operate in the complex political and legal environment that surrounds today's redistricting process.

Footnotes to Chapter IV

[1]Not to be confused with data on voting and registration, which is referred to as "political" data.

[2]That population was 50,000 in 1970 and will be only 10,000 in 1980.

[3]Connor v. Finch, 431 U.S. 407, 417 (1977).

[4]Ibid., at 416 n. 13.

[5]Ibid., at 418 n. 18.

CHAPTER V

THE DEVELOPMENT OF THE HOUSE PLANS

The Court ED Plans

The first task in the development of any redistricting plan is to obtain a general overview of the state. The State of Mississippi had a 1970 population of 2,216,912. Of this total population, 37 percent were black. The total number of persons who were of voting age in 1970 was 1,368,321, of which 31.5 percent were black. There are eighty-two counties in the State, ranging in size from Issaquena County with 2,737 persons to Hinds County with 214,973 persons. The Legislature is comprised of a Senate, with fifty-two members, and a House of Representatives, with 122 members. This set the ideal population of a Senate district at 42,633, and of a House district at 18,171.

Of the eighty-two counties, thirty-nine were smaller than the ideal population for one House seat, twenty-seven had populations between one and two House seats, nine between two and three House seats, four between three and four House seats, one between four and five House seats, and two greater than five House seats. Hinds County, which contains the capital city of Jackson, had enough

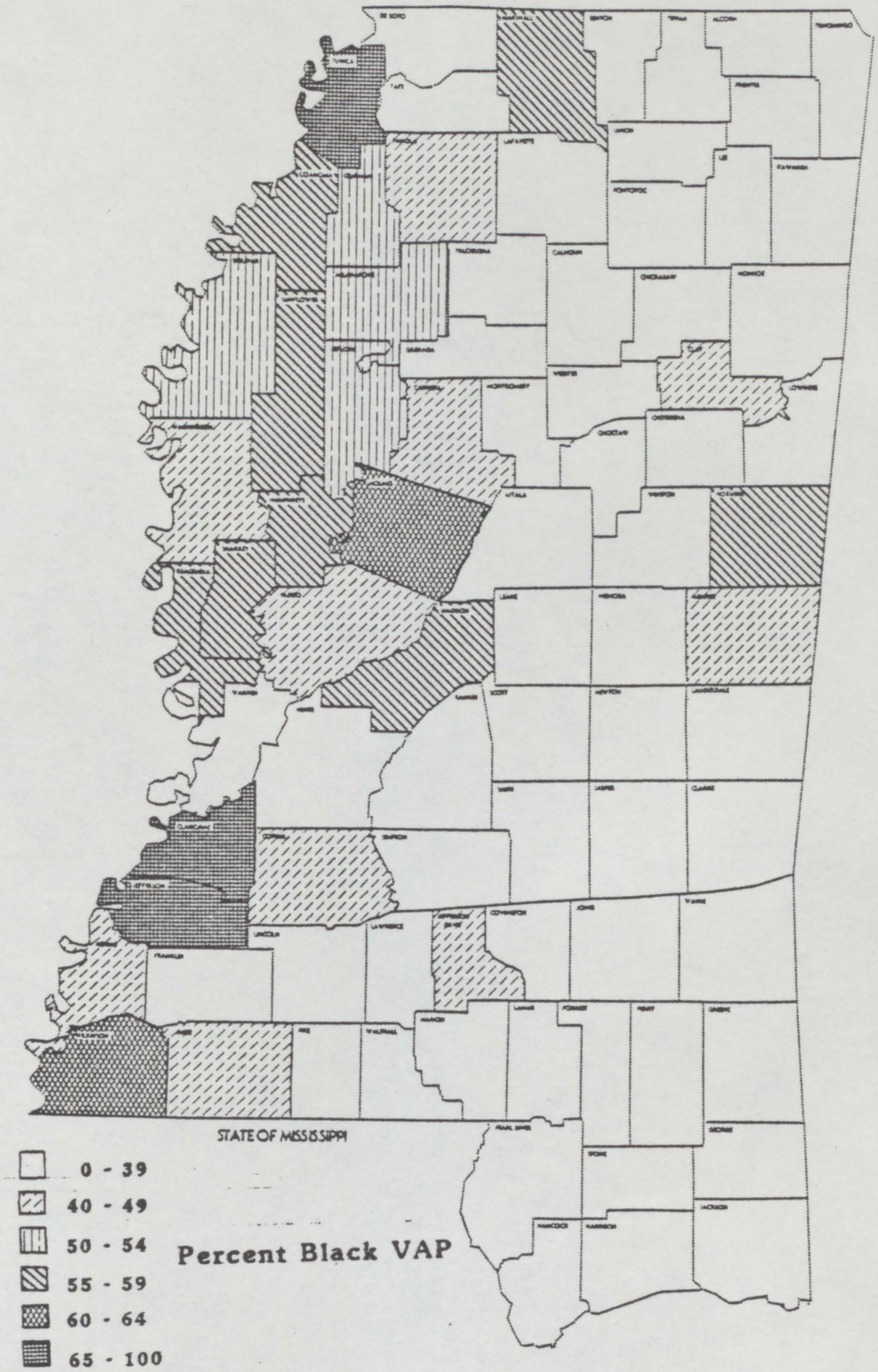
population for twelve House seats, and Harrison County, containing the cities of Biloxi, Pass Christian, and Gulfport, had enough population for just over seven seats. Other large counties included Jackson, Forrest, Jones, Lauderdale, and Washington. With the exception of Rankin County, which contains suburbs of Jackson City, and De Soto County, which contains suburbs of Memphis, Tennessee, the counties listed above are the only ones containing any cities approaching "metropolitan" size. All of the remainder of the State is essentially rural in nature.

Figure 5 shows the distribution of the black population by county for the entire State. With the exception of two counties bordering on Alabama--Noxubee and Kemper--all of the counties with heavy black populations were located on the west side of the State near the Mississippi River. Those counties in the northwestern portion of the State comprise the "Delta" area. The "Delta" area contained the largest concentrations of rural black residents in the State. Outside of the counties with high percentages of blacks, the only other large concentrations of blacks were in the cities of Jackson, Hattiesburg, Laurel, Gulfport, and Meridian.

The Joint Committee Staff, having been charged with the duty to avoid dilution of black voters, adopted a policy of attempting to draw districts so that they did not cross over county lines from counties with high concentrations of blacks to counties with low percentages of blacks.

FIGURE 5

THE DISTRIBUTION OF BLACK ADULT POPULATION BY COUNTY IN THE STATE OF MISSISSIPPI IN 1970



SOURCE: U.S. Census Bureau First Count Summary File

It was reasoned that if special care were taken in drawing districts on the western side of the State, in Noxubee and Kemper Counties, and in the five cities mentioned in the paragraph above, then the other districts in the State could be drawn in accordance with the other criteria without fear of creating districts which diluted the black vote.

In the case of the counties of Noxubee and Kemper, Noxubee County, containing a black Voting Age Population (VAP) over 55 percent, was combined with a portion of Kemper, another heavily black county. In the southwest portion of the State, the counties of Claiborne and Jefferson were combined to make a heavily black district. The heavily black County of Wilkinson in the southwest corner of the State was combined with a portion of Amite County to make another black district.

Aside from the Delta area and the large cities, these combinations handled the remaining major black areas in the State. Specific district construction was begun at the southern end of the State. Staff members noted the combination of the counties of Harrison, Jackson, and George as just slightly shy of thirteen full districts. Therefore, they added a portion of Greene County to this area, and set aside the resulting population for the creation of thirteen districts at a later time.

The planners then noted that the County of Hancock was just slightly short of the exact district population. A portion of Pearl River County was combined with Hancock

to form a district. Another full district was formed within Pearl River County. The remaining portion of Pearl River County was combined with all of Stone County and found to be just short of a full district. Accordingly, a portion of the southern end of Forrest County was added to that area to form another district.

The remaining area of Greene County was added to all of Perry County and found to be short of a full district. Another portion of Forrest County was added to this group to form a district. A three-district area was formed within Forrest County and left for later subdivision. The remainder of Forrest County was added to Lamar County to form one district.

At this point the staff determined that Jones and Wayne Counties together could form four districts. Thus, a small portion of Jones County was added to Wayne to form one district, and the remaining portion of Jones County was left for the construction of three districts.

Covington, Jefferson Davis, and Lawrence Counties were found to have a population just in excess of two districts. Jefferson Davis County was split, with a portion being added to Covington to form one district, and the other portion being added to Lawrence to form a second district. A small portion of Lawrence was subtracted to bring the second district down to the desired population.

At this point, the planners determined that if a line were drawn across the tops of the counties of Wayne,

Jones, Covington, Jefferson Davis, Lawrence, Lincoln, Jefferson, and Claiborne, the resulting area would be just 600 persons in excess of thirty-six districts. Thus, a small area of Lincoln County was reserved for combination with Copiah County. A portion of Jefferson County and all of Claiborne County were combined to form a heavily black district.

A two-district area in Adams County was set aside for later subdivision. A second two-district area, consisting of the remainder of Adams County, the remainder of Jefferson County, and all of Wilkinson and Franklin Counties was formed. As previously planned, all of Wilkinson was then combined with a portion of Amite to form a black district. The remaining portion of the two-district area--consisting of part of Adams, part of Jefferson, all of Franklin, and the remaining part of Amite--was found to be just short of one-district size. Thus, a portion of Pike County was added to make another district.

Turning back to the other side of the State, Lamar, Marion, Walthall, and the remaining portions of Forrest and Lawrence Counties were combined into a three-district area. This area was just short of the required population, so a portion of Pike County was added. The planners then subdivided the resulting area, creating a full district in Marion County and dividing that county in half to form two other districts (a Pike-Walthall-Lawrence-Marion district and a Marion-Lamar district).

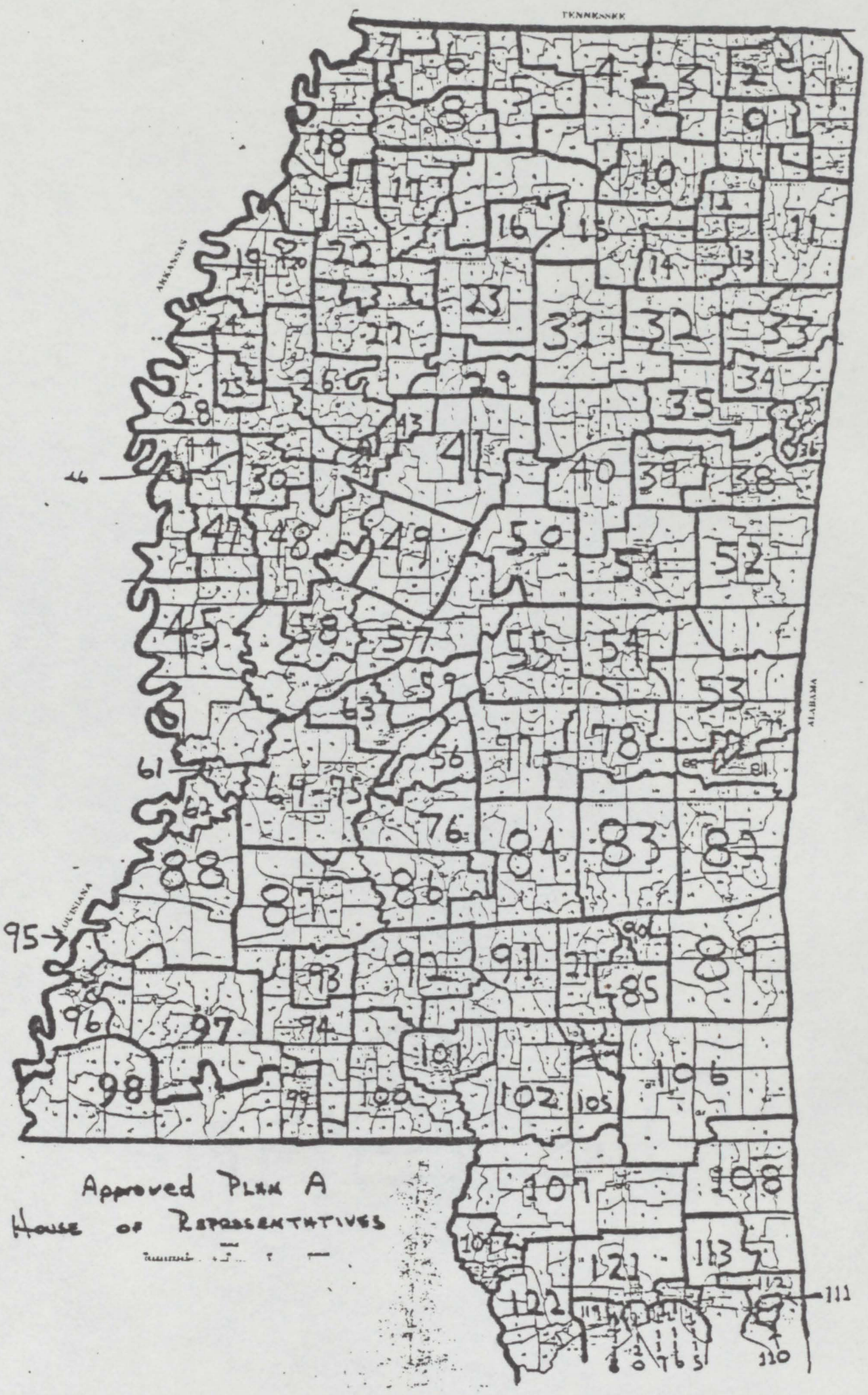
Another full district was formed within Pike County, and yet another within Lincoln County. The remaining portions of Pike and Lincoln Counties now comprised the last district in the southern portion of the State. Thirty-seven districts were now specifically located (see figure 6 for map of original Plan A districts in Mississippi).

The staffers then focussed their attention on the northern end of the State. Do Soto County was subdivided into two full districts. Tate County was designated as a full district. In the northeast corner of the State, a district was constructed within Prentiss County, leaving the remainder of that county to be divided and combined with Itawamba to form one full district, and with Tishomingo County to form a portion of another. The Tishomingo District received a part of Alcorn County to bring it up to full population.

The planners then noted that the remaining portion of Alcorn County, along with Tippah, Benton, Marshall, and Union Counties, could be formed into five districts. After forming a full district each within Alcorn, Union, and Marshall Counties, the planners drew the remaining two districts by dividing Tippah County. Two districts were formed in Lee County and left for later subdivision; meanwhile, a Lee-Pontotoc district was formed. Single districts were formed within Lafayette County and Panola County. A Yalobusha-Panola district was formed. This left portions of Panola, Lafayette, and Pontotoc to form another full

FIGURE 6

HOUSE PLAN A AS APPROVED BY JOINT COMMITTEE



SOURCE: Joint Committee Files

district.

The staffers then decided to move over to Oktibbeha County and form a full district within that County. A very small portion of Clay County was set aside, and the remainder was formed into a district. An Oktibbeha-Lowndes district was formed, which also included the small portion of Clay County. A two-district area was formed in Lowndes and all of Monroe, Chickasaw, and Calhoun Counties in this part of the State. Since the area in question was just short of four districts, a small portion of Grenada County was added. A Lowndes-Monroe district was constructed, and a full district was set aside within Monroe County. Chickasaw County was then divided to form the other two districts. Elsewhere in this area, Webster and Choctaw Counties were combined to form a full district. Another full district was formed within Grenada County, and Winston County became a self-contained district. This completed location of another thirty districts in the State.

Turning to the east-central portion of Mississippi, the planners determined that the counties of Noxubee, Kemper, Lauderdale, Clarke, Jasper, Newton, Neshoba, Scott, and Leake had a combined population that was just 700 persons in excess of eleven full districts. Hence it was decided to form eleven districts in this nine-county area. At the same time, the five-county area of Smith, Simpson, Copiah, Hinds, and Rankin (along with 600 persons in Lincoln County) would form seventeen and one-half districts.

The planners decided to take the excess population out of the nine-county area by removing the northwest corner of Leake County. They further decided to take the excess over seventeen districts from the five-county area by removing part of Rankin County and combining it with Madison County--the same approach used in the 1975 Plan. These decisions having been made, districts could then be formed in both areas.

Hinds County was just short of twelve districts in population. Thus, a small portion of Copiah County was combined with Hinds County to form a twelve-district area, which was set aside for later subdivision. A district was then formed by combining part of Copiah County with a small fragment of Lincoln County. The remaining portion of Copiah County was combined with a portion of Simpson County to form another district. All of Smith County was combined with a second portion of Simpson County to form a district. The remaining part of Simpson County was added to Rankin County to form a two-district area for later division; and what remained of Rankin County was set aside to be added to a Madison County district.

In the nine-county area mentioned above, the staffers found Scott, Newton, and Jasper Counties to be about 1,400 persons in excess of three districts. Thus, a district was formed within Scott, a second district was formed by adding all of Jasper to a portion of Newton, and 1,400 persons were taken out of Newton to form a Scott-Newton

district. A portion of Lauderdale was combined with Clarke, forming another district. The predetermined Noxubee-Kemper district was formed, leaving a portion of Kemper County free. Moving over to Leake County, the remaining portion of Leake (700 persons having been removed from the northwest corner) was combined with a portion of Neshoba County to form a district. One full district was formed within Neshoba County, and the remainder of Neshoba County was combined with the remainders of Newton County and Kemper County, and the northern portion of Lauderdale County to form a complete district. This left a three-district area in the east-central part of the State to be subdivided later. At this point in the process, the locations of ninety-five out of one hundred twenty-two districts had been completed, leaving just the twenty-seven Delta area districts to be constructed.

Accordingly, district construction now moved to the Delta, where significant concentrations of blacks were located in all counties. Warren, Issaquena, Sharkey, and Washington Counties comprise a seven-district set. When a portion of Sharkey was added to Washington County, that left a four-district area for later subdivision. The remainder of Sharkey, all of Issaquena, and the northern portion of Warren were then formed into a single district, leaving a two-district area in Warren County--also for later subdivision.

The planners then made a decision to form districts

down the counties bordering the Mississippi River, and to move eastward from there into the counties located away from the river. Beginning with Tunica County, a Tunica-Coahoma district was formed. A district was also formed within the City of Clarksdale in Coahoma County, and the remainder of that county was combined with the northern end of Bolivar County to form yet another district. Two complete districts were formed within Bolivar County, and the remaining portion of that county was set aside.

Quitman County was combined with part of Tallahatchie County to form a district, and the remaining portion of Tallahatchie County was combined with parts of Grenada and Leflore Counties to make another district. This left just thirteen more districts to be located.

Many of the remaining district locations were now determined by what was geographically possible. Certain constructions were logical. A Madison-Rankin district was drawn. Another Madison district was also drawn. The southern part of Sunflower County became a district, and Humphreys County was combined with a portion of Holmes County to form another district. A district was formed within Holmes County, and the remaining portion of Holmes County was combined with northern Yazoo County to form one more district. This left seven districts to be drawn.

A two-district area was formed from the remaining parts of Bolivar and Sunflower Counties plus a portion of Leflore County. Formation of a Greenwood City district

was planned in Leflore County, with the remainder of Leflore County to be combined with a portion of Carroll County to form another district. This left three districts to be formed out of the remainders of Carroll, Leake, Yazoo, and Madison Counties, plus the whole of Montgomery and Attala Counties. To create these districts, both Montgomery and Attala Counties had to be split. Finally, a split was made in the above-mentioned Bolivar-Sunflower-Leflore district, and the outline of Plan A was finished.

At this point in the development of Plan A, twelve multi-district areas had been created and set aside to be subdivided into single districts. These included the large municipal areas in which racial factors needed to be considered in more detail. In addition, the criterion governing the treatment of counties was not in effect in these areas. This gave the plan drawers a greater degree of latitude in creating proposed districts. In some cases, individual legislators or groups of law makers had expressed an interest in participating in the drawing of these lines. In other cases, the Committee Staff wished to have some local input. This does not mean that individual members who participated in the devising of Plan A could dictate lines; it meant merely that they could contribute to the process.

Certain members of the staff were of the opinion that, in counties with large central cities, attempts should be made to place one or more districts entirely

within those cities. This was not done in many cases--for two reasons. First, since these cities had been in multi-member districts in previous plans, the incumbents would all reside in close proximity to one another in these cities. Second, there was in the Legislature a strong rural bias, most legislators preferring city-county combinations to the possible polarization of city and rural areas. When these preferences did not affect the racial aspects of the Plan, they were allowed to influence policy decisions. (Of course, such social and political preferences are apparent in any redistricting plan that is developed in a legislative setting. There is also ample evidence that such preferences influence redistrictings that are done by commissions.) At any rate, while the drawing of the rural districts took place with very little legislative input, the city districts were drawn only after a great deal of research and consultation with local residents.

At this point, the staff began work on these fifty remaining districts in the twelve multi-member areas. De Soto County's two districts were drawn with a north-south line, and presented little difficulty. The City of Vicksburg in Warren County was split, creating two city/rural districts. This same policy was followed in the City of Natchez in Adams County. Over some strong staff objections, the City of Laurel in Jones County was split three ways, giving each incumbent in Jones County his own district. In Lauderdale County, two districts were created

within the City of Meridian, and the remaining portion of the City was connected to the adjacent rural area. The City of Meridian had one black district drawn within its boundaries. The two Rankin County districts, dividing the suburbs of Jackson, were drawn without controversy.

It was in the counties of Hinds, Harrison, Jackson, Washington, Leflore, and Lowndes that serious problems developed. The situation in these areas was exacerbated by the fact that time was running out, and not all redistricting possibilities could be investigated.

In Hinds County, there was confusion as to how many black seats should be created. On paper there could be anywhere from three to six. In Washington County, one black seat, and possibly two, were to be drawn; there was much debate as to where this should be done. In Forrest County, one black seat could be created; but there was some opposition to such a move. In Harrison County, one black seat was possible (although it would be an extremely weak seat), but one incumbent would have to displaced. And finally, in Jackson County, there was a difficult incumbency problem. Each of these situations will be covered in some detail below.

The first version of Plan A, when publicly presented, did not even contain individual districts for Jones, Forrest, Washington, and Leflore Counties. In the case of Hinds, Washington, Forrest, Jackson, and Harrison Counties, the districts went through considerable modification

between the time they were first made public and the time they were presented to the District Court. A detailed discussion of the development of House Plans in Hinds County and the other metropolitan areas appears later in this chapter.

Plans A and B were presented to the Joint Committee on October 4. At this time, both plans were still incomplete. There were different reasons, however, for the incompleteness of each. Plan A had balanced populations. Where there were areas remaining in which subdivision into single districts was required, those areas had the correct composite populations. In the case of Plan B, however, not only was the County of Hinds undistricted, but the Plan was out of balance in terms of district populations, the Leflore Districts (32, 35, and 36) required adjustments, and the whole southeastern portion of the State was badly out of balance.[1] At this point, the Committee examined the general configurations of the two Plans and chose to continue the development of Plan A while setting aside Plan B. Plan A was scheduled for public hearings on October 11 and 12, and was in its final form by October 14, 1977. At this point, Plan C had just been brought to the attention of the Joint Committee.

Plan C was developed by a former member of the Legislature from the "Delta" area. This former member was on the staff of the House, but not of the Joint Committee. His aim in sketching out this new plan was to correct some

of the problems pointed out by powerful members in the House. The primary motivation behind the Plan was to vary the treatment of districts in the counties of Coahoma, Sunflower, Tallahatchie, Leflore, Carroll, Montgomery, and Kemper. While Plan C was not substantially different from Plan A in its treatment of blacks (nor did it contain population deviations significantly different from those in Plan A), it caused considerable disruption in some counties outside of the area with which it was chiefly concerned. The choice between these two plans became one that grew out of political considerations rather than objective judgment. With considerable dissension about Plan C on the part of Committee members, the Committee directed the staff to complete and "fine tune" Plan C, and then move to adopt it over Plan A (see figure 7, Plan C).

As it turned out, however, there were powerful members of the Joint Committee from the southern part of the State who preferred the way Plan A dealt with their area. Fortunately, there was enough compatibility between the southern portion of Plan A and the northern and central portions of Plan C for the two plans to be merged together. This was the genesis of Plan A/C, which was the Plan presented to the District Court on October 29 (see figure 8).

The basic problem with the Court ED Plan (A/C) was that the plus or minus 2 percent allowable deviation simply did not permit enough latitude to avoid county fracturing.

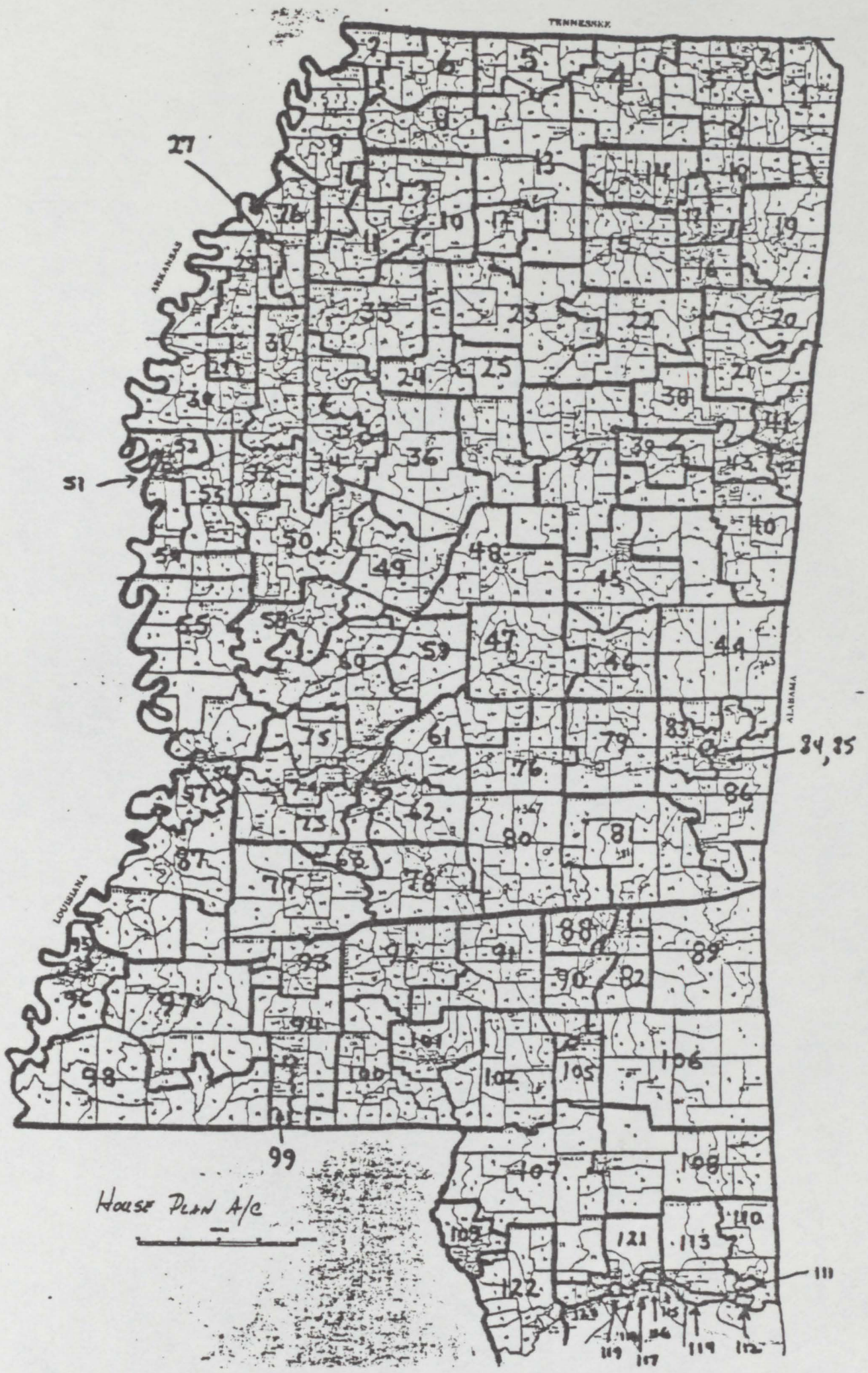
FIGURE 7

PROPOSED HOUSE PLAN C

SOURCE: Joint Committee Files

FIGURE 8

HOUSE PLAN A/C AS PASSED BY THE LEGISLATURE -
THE COURT ED PLAN - OCT. 29, 1977



SOURCE: Joint Committee Files

There were two ways in which this problem could be corrected. The first was an increase the allowable deviation. The second was to draw the districts in a way that seemed desirable, and then "stretch" the statistics. The State took the first approach, (while the other parties in the Connor litigation appeared to have taken the second). Nevertheless, there were areas in the State where counties were badly fractured in the Court Plan. These were the northeast and east-central areas. The idea behind the creation of the Statutory ED Plan was to increase the populations of some districts and to diminish the populations in others so that more counties could be left intact and there would be fewer county fragments. A later section of this chapter will deal with the Statutory ED Plan.

House Plans in Hinds County

Hinds County, containing a population of 214,964, is the largest county in Mississippi. In it is located the State Capital, the City of Jackson, with a 1970 population of 153,968. This City has undergone a considerable population growth since 1970, mostly through annexation of the surrounding suburbs. As Jackson has annexed the surrounding territories, its boundaries have come up against the City of Clinton, which with a 1970 population of 7.246, is the only other large town in the County. The County's population fell 4,084 persons short of the required number for twelve full House districts. All past redistricting plans

based on 1970 Census figures have placed twelve full seats completely within the County--even though, technically, one--or perhaps two--of the County's districts should cross over the County boundary to pick up the required 4,084 persons.

The black population of the County was 84,064 persons. They comprised 39.10 percent of the total population, which represented 4.79 House seats. It is technically possible to create five black seats if district lines are drawn so as to take in certain parts of the County with 60 percent or greater black voting age population (VAP). Given the expansion of the black population into certain suburban areas, it may even be possible to create six 60 percent-or-better black VAP seats. This latter proposition, however, is highly speculative. The drawing of such districts would entail leaving areas which in 1970 had high populations, but which are now low in population, within the black districts; it would also require that areas with almost no population in 1970, but which have since filled up with blacks, be added to the black districts. While this sounds like a correct "trade-off," it complelely ignores the fact that there has been considerable growth in the white areas of the City and County, and that this policy could result in deliberate malapportionment. The number of black seats to be created in Hinds County was a matter of great controversy throughout the entire 1977-78 redistricting process in the State.

No history of this process could ignore consideration of the areas of Hinds County located to the west of the 1970 city boundaries. This part of the County contained enough population for approximately three House seats. The districts in question were commonly referred to as the "rural Hinds County Districts." Current demographic examination, however, would reveal that this is a misnomer. Actually, there was only enough "rural" population for one rural district in Hinds County. The rest of the area lying outside the 1970 city limits of Jackson is now suburban in nature. According to 1970 population figures, this three-district area was about 38 percent black. However, the 1980 Census will probably reveal that those areas which are still rural--and predominantly black--will have lost population, while the suburban areas will have picked up large numbers of whites. It could, therefore, be contended that to create a district in the far western portion of the County would be to deliberately underrepresent the predominantly white suburban areas.

This problem is pointed out because there was much discussion on the part of both the Plaintiffs in the Connor case and the Department of Justice about taking black migration patterns into account when drawing districts. There was never any talk of taking total migration patterns--and, more specifically, white migration patterns--into account. It should be noted that the one person, one vote rule does not apply to blacks only. In principle, this rule is

totally color-blind. Any plan based on the 1970 Census should have been put into effect in 1971; if the plan was constitutional then, it would also be constitutional today. If Connor Plaintiffs wished to place more blacks in districts created in 1978 due to migration, they should have also allowed some districts to be underloaded with blacks due to in-migration of blacks. One must play the population game both ways.

Philosophy aside, however, the combination of census tracts 105, 106, 107, and 113--the four westernmost tracts in Hinds County--would have created a district containing 18,213 persons. This district would have been 66.96 percent black and 57.80 percent black VAP. Readjustment of the district along precinct lines would raise the black VAP to 59.02 percent. This would be considered a marginal black district, according to the Justice Department's standards (as enunciated in the Mississippi v. United States hearings).

The configuration of the "rural Hinds County Districts" was, as previously stated, a matter of great controversy. Of all the complaints brought against the Statutory Precinct House Plan in Mississippi v. United States, this issue, and that of the Warren County Districts, provided the strongest arguments for the Connor Plaintiffs and the Department of Justice against the State's House Plan.

The decision to draw the "rural Hinds County

Districts" with east-west lines evolved out of a general policy decision for Hinds County as a whole. The Federal Court had subdivided Hinds County into twelve single-member districts for the 1975 legislative elections. The white members of the Hinds County House delegation had expressed a desire, from the very beginning of the process, to keep the County's districts as close as possible to the 1975 configuration. The three black members of the Hinds delegation were contacted by the staff many times throughout the district-building process in this County. They never expressed any dissatisfaction with the final boundaries in either the Court or the Statutory ED Plans--until after both plans had been voted on by the House of Representatives.

The lines in the City of Jackson underwent a more complex evolution. The first plan for that City had provided for five black districts. These five districts are shown on figure 9, with the relevant statistics listed below:

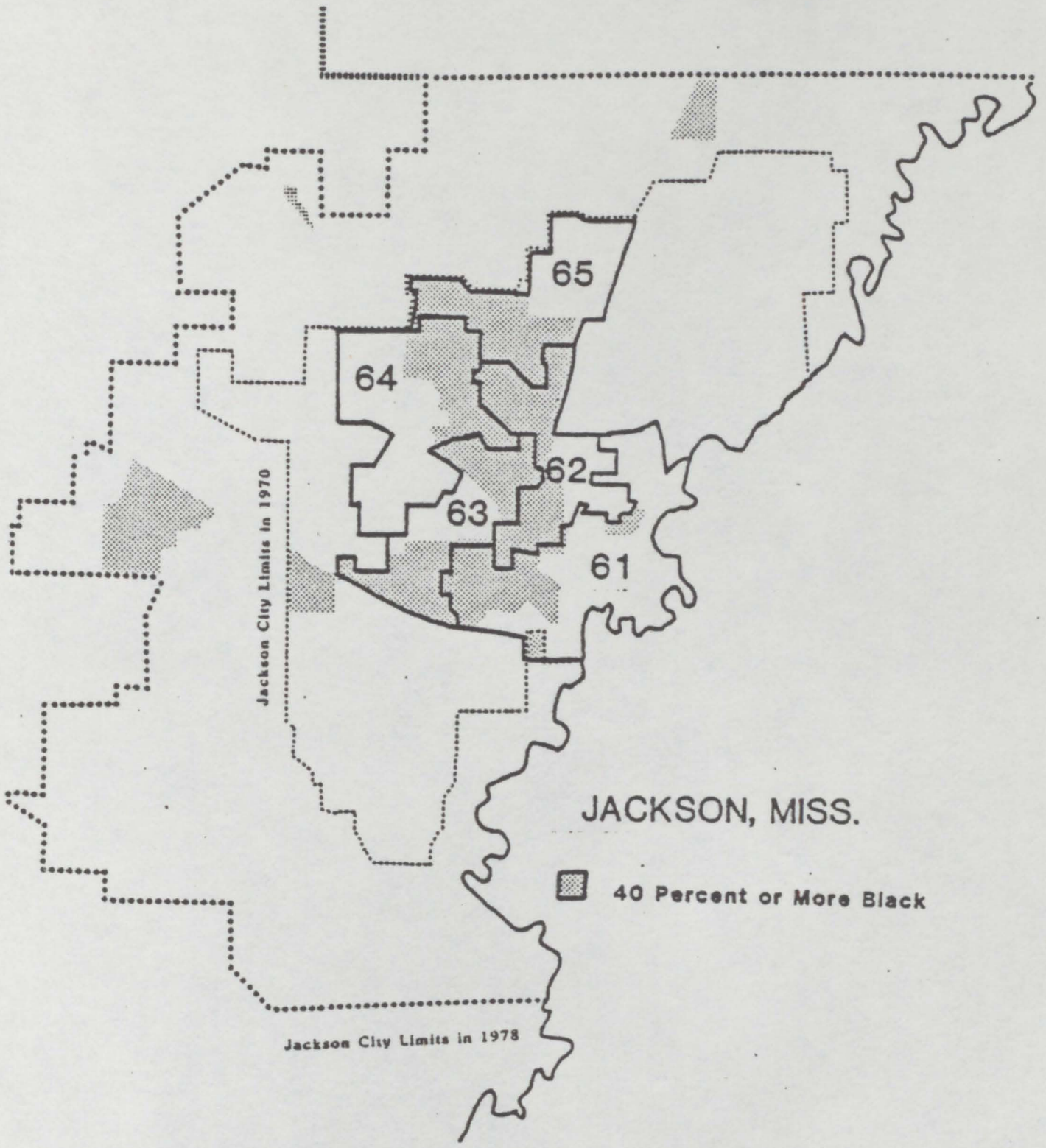
HINDS COUNTY FIVE BLACK SEATS IN JACKSON

District	Population	% Deviation	% Black	% Black VAP
61	17,871	- 1.65	67.39	61.04
62	18,069	- .56	64.90	54.75
63	18,118	- .29	62.46	54.06
64	18,215	+ .23	68.53	60.23
65	18,306	+ .73	67.59	62.68

The data for these districts show an average black population percentage of 66.17 and an average black VAP

FIGURE 9

A FIVE "BLACK" SEATS PLAN FOR JACKSON CITY



SOURCE: Author's Files

percentage of 58.55. With some minor adjustments, these districts might all have been brought above 59 percent black VAP. This five-district plan was shown to the black member of the Joint Committee from Hinds County and was objected to because that member believed the five districts would be too weak to insure the election of black members.

In accordance with the opinions expressed by the black member, the staff drew up a new plan for Hinds County, which provided for three black districts. This Plan, shown in figure 10, created districts with the following statistics:

HINDS COUNTY THREE BLACK SEATS IN JACKSON

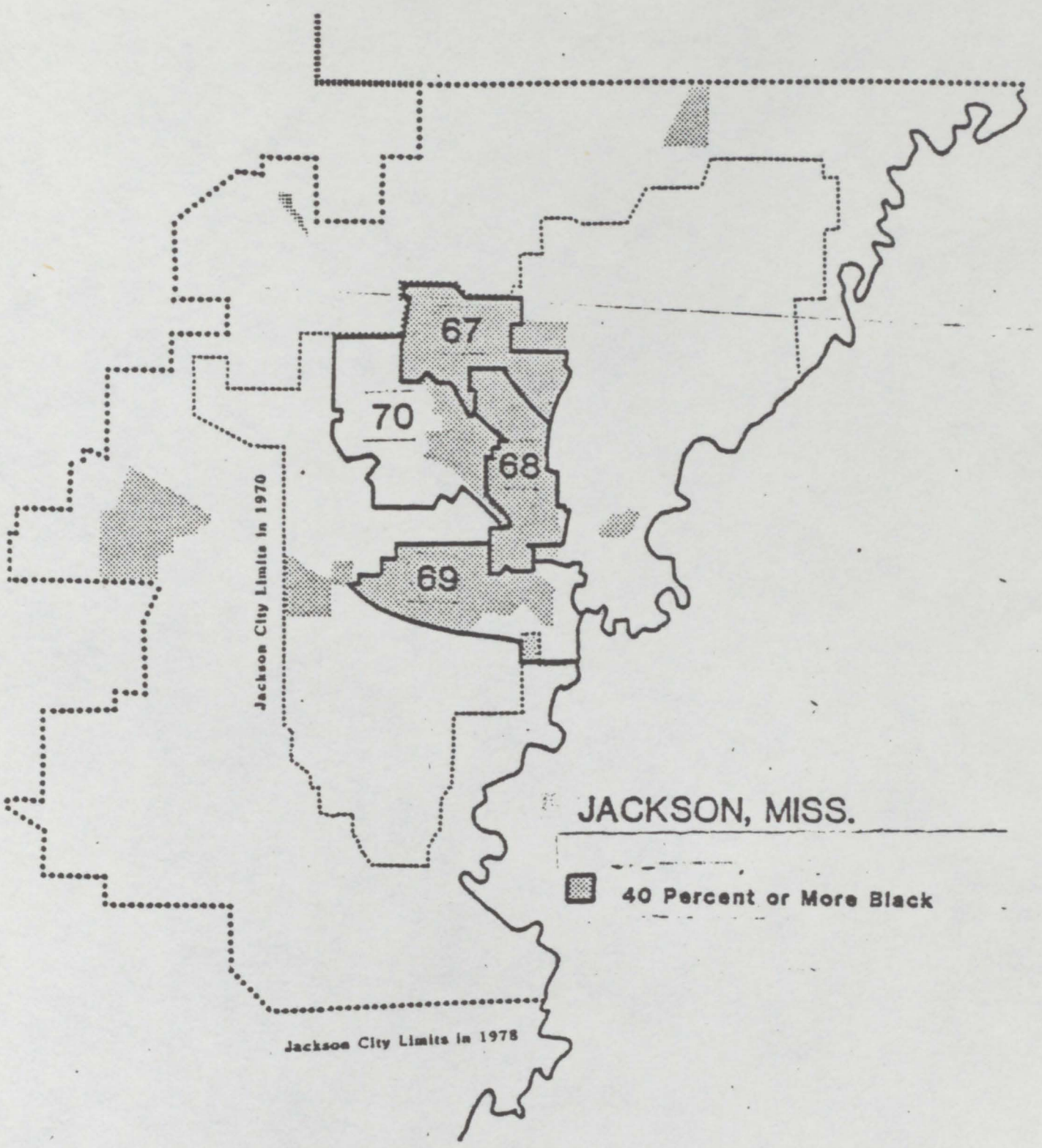
District	Population	% Deviation	% Black	% Black VAP
67	18,163	- .04	97.80	96.71
68	18,157	- .08	83.97	80.22
69	18,156	- .08	81.55	78.28
70	18,167	- .02	47.58	38.84

These three districts (District 70 is shown because most of the remaining black population in the City was placed in that District) had an average black population percentage of 87.77 and an average black VAP percentage of 85.07. The black delegation from Hinds County objected to these districts also, however, as being "packed." In effect, the blacks thought these three districts were too strong in black population--they wasted black votes.[2]

The staff concluded from all this that if five black

FIGURE 10

A THREE "BLACK" SEAT PLAN FOR THE CITY OF JACKSON



SOURCE: Author's Files

districts in the City were too weak, and three were too strong, then four ought to be acceptable. Thus, the staff set to work to draw a plan with four black districts in the City. This four-black-district plan was presented to the Joint Committee for approval on October 4, 1977. This same configuration was carried on into all subsequent House Plans. The statistics for the four black districts in this plan were as follows:

HINDS COUNTY FOUR BLACK SEATS IN JACKSON

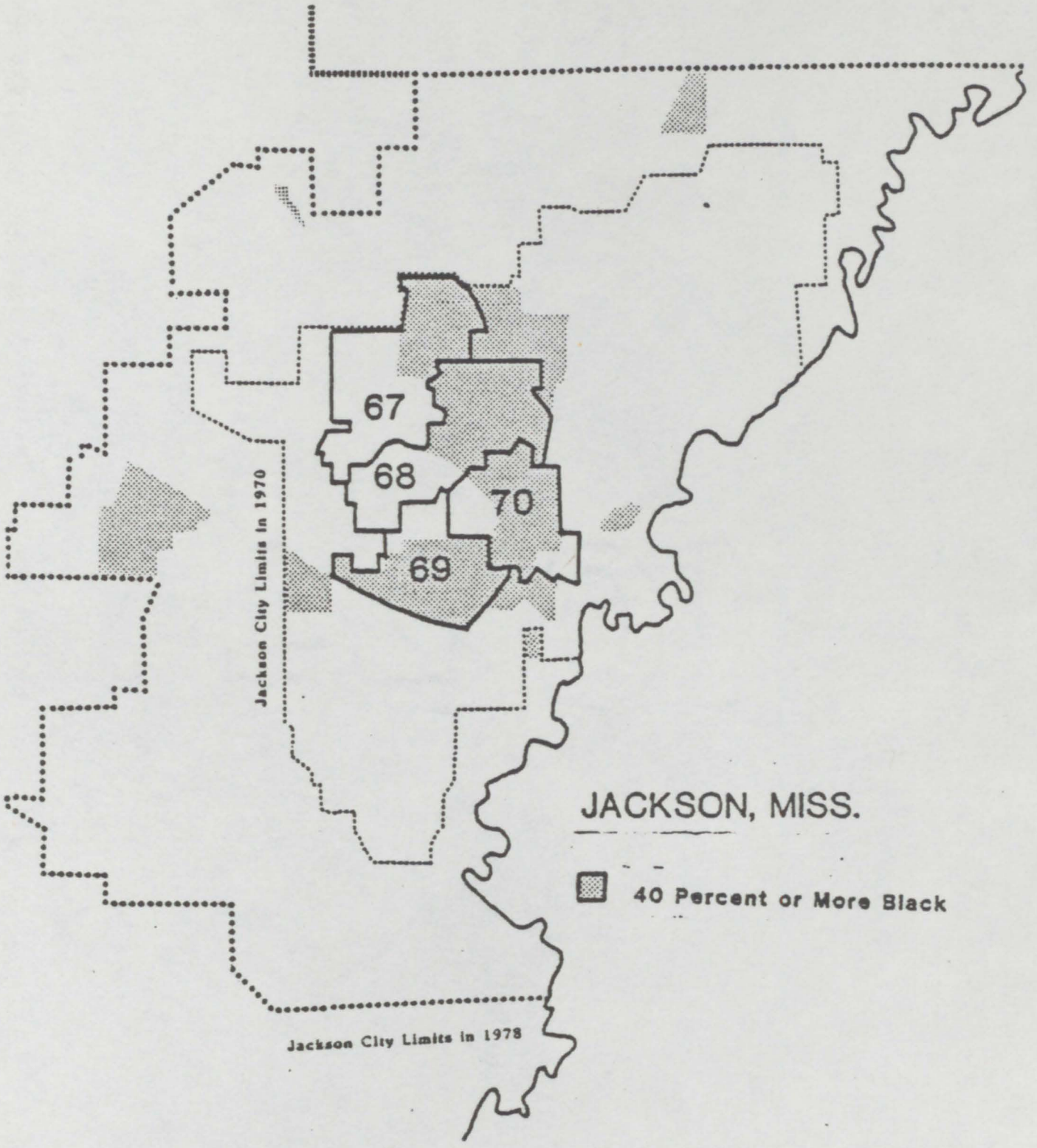
District	Population	% Deviation	% Black	% Black VAP
67	18,271	+ .54	76.70	70.09
68	18,028	- .79	72.98	66.05
69	18,212	+ .22	80.92	76.28
70	18,120	- .28	74.61	67.21

The average black population percentage in these districts was 76.30, with an average black VAP percentage of 69.91 (see figure 11).[3]

These four districts, which had been negotiated and re-negotiated, were moved into a precinct plan in December of 1977. Seen below are the data for these same districts as they appeared in all plans presented to the Court in 1978 or enacted into law by the Legislature in 1978:

FIGURE 11

A FOUR "BLACK" SEAT PLAN FOR THE CITY OF JACKSON
THESE ARE THE DISTRICTS INCLUDED IN PLAN A/C



SOURCE: Joint Committee Files (Plan A/C)

HINDS COUNTY FINAL STATUTORY PLAN

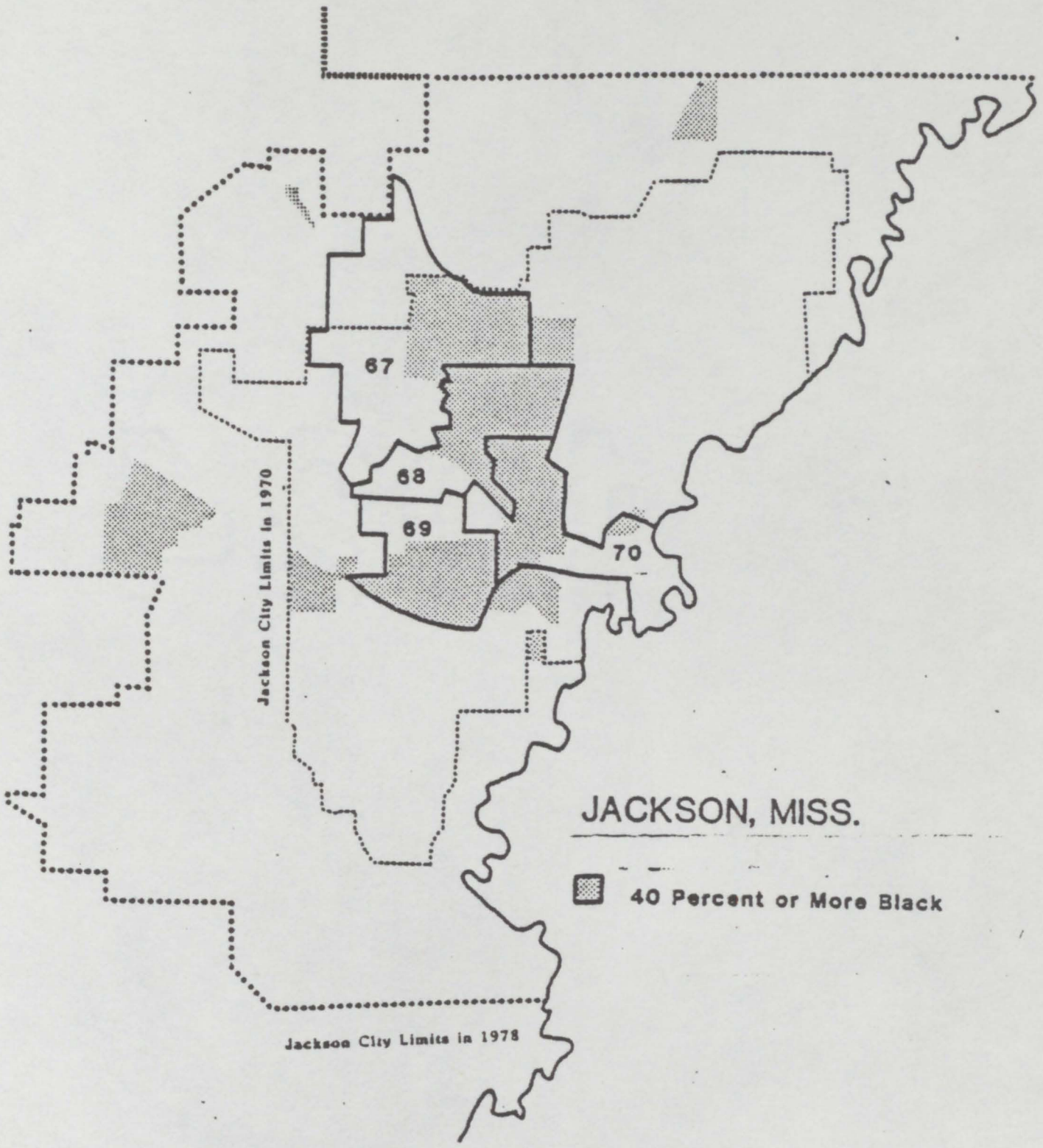
District	Population	% Deviation	% Black	% Black VAP
67	18,182	+ .06	76.35	70.25
68	17,270	- 4.95	80.89	74.53
69	17,997	- .95	74.36	69.70
70	18,761	+ 3.24	75.30	68.73

The average black population percentage in these final districts was 76.72, and the average black VAP percentage was 70.80. On the whole, then, these districts were the strongest to appear in any plan--without being so strong as to bring on a charge of "packing" (see figure 12).[4]

The final problem in the redistricting of Hinds County was caused by the shift from an ED-based plan to a precinct-based plan. In order to maintain the basic configuration from Plans A and A/C, it was necessary to break up some of the County's precincts. Two of these precincts were located in heavily black neighborhoods in Jackson. These precincts, numbers 28 and 52, were both split in the plan along the line of a single street. The members of the Committee believed that the Circuit Clerk's office could notify these voters of the change by mail, and set up separate polling places in the two parts of the precincts.

FIGURE 12

THE STATUTORY PRECINCT PLAN FOR JACKSON CITY WITH FOUR "BLACK" SEATS



SOURCE: Joint Committee Files (HB 1491)

Redistricting the Remaining Metropolitan Counties

This section will discuss the problems encountered in the counties of Forrest, Harrison, Jackson, Jones, Lauderdale, Leflore, Lowndes, Warren, and Washington. In its redistricting plans for many of these counties, the State of Mississippi was accused of discrimination by the Connor Plaintiffs and the Department of Justice. This section will not, however, attempt to answer the legal arguments involved; rather it will describe the process by which the districts in question came into being.

Warren County

The staff of the Joint Legislative Committee expected that the redistricting of Warren County would involve an incumbency problem. This was because it was clear that four districts--one of them black--should be placed within the County of Washington; this meant that Warren, Issaquena, and Sharkey Counties should be combined to make a three-district area. The problem was that there were four incumbents living in the area, and one was the Speaker of the House.

Fortunately, one of these four members was appointed to a post in the Central Intelligence Agency, and the incumbency problem was thus solved. The planners then decided to combine the northern areas of Warren, Issaquena, and Sharkey Counties to form a district for the Speaker.

The remaining portion of Warren County, including all of the City of Vicksburg, was left to be divided into two districts.

There were two ways in which this two-district area could be divided. One involved the creation of one full district within Vicksburg, and the combining of the remaining area of the City with the rural area of the County. The second method was to split both the City and the rural areas in half, and to make two city/rural districts. At this point in the redistricting effort, there was no consistent policy on such issues; in effect, there was something like a "local option" given to the House members who represented this area to decide what action should be taken. Although there was the possibility of creating a black district in the area, such a district would be too weak to elect a black and the staff believed that it would not be accepted by legislators who desired to avoid the polarization of their constituencies along city/county lines. Thus, when the two districts were created, one had a black population percentage of 44.77, and the other a black population percentage of 30.71.

The Connor Plaintiffs made a major issue of this decision. They had created a district by combining the black precincts in the City with heavily black precincts in the northern rural areas of the County. A statistically correct version of this district was later included in the Compromise Plan. The district had a black population of

60.99 percent, and a black VAP percentage of 56.22. In retrospect, this alternative probably should have been examined in more detail and included in the State's plans, even though the district thereby created would not have been a strong black district, but a weak one. Its creation, however, might have prevented a great many court battles.

Washington County

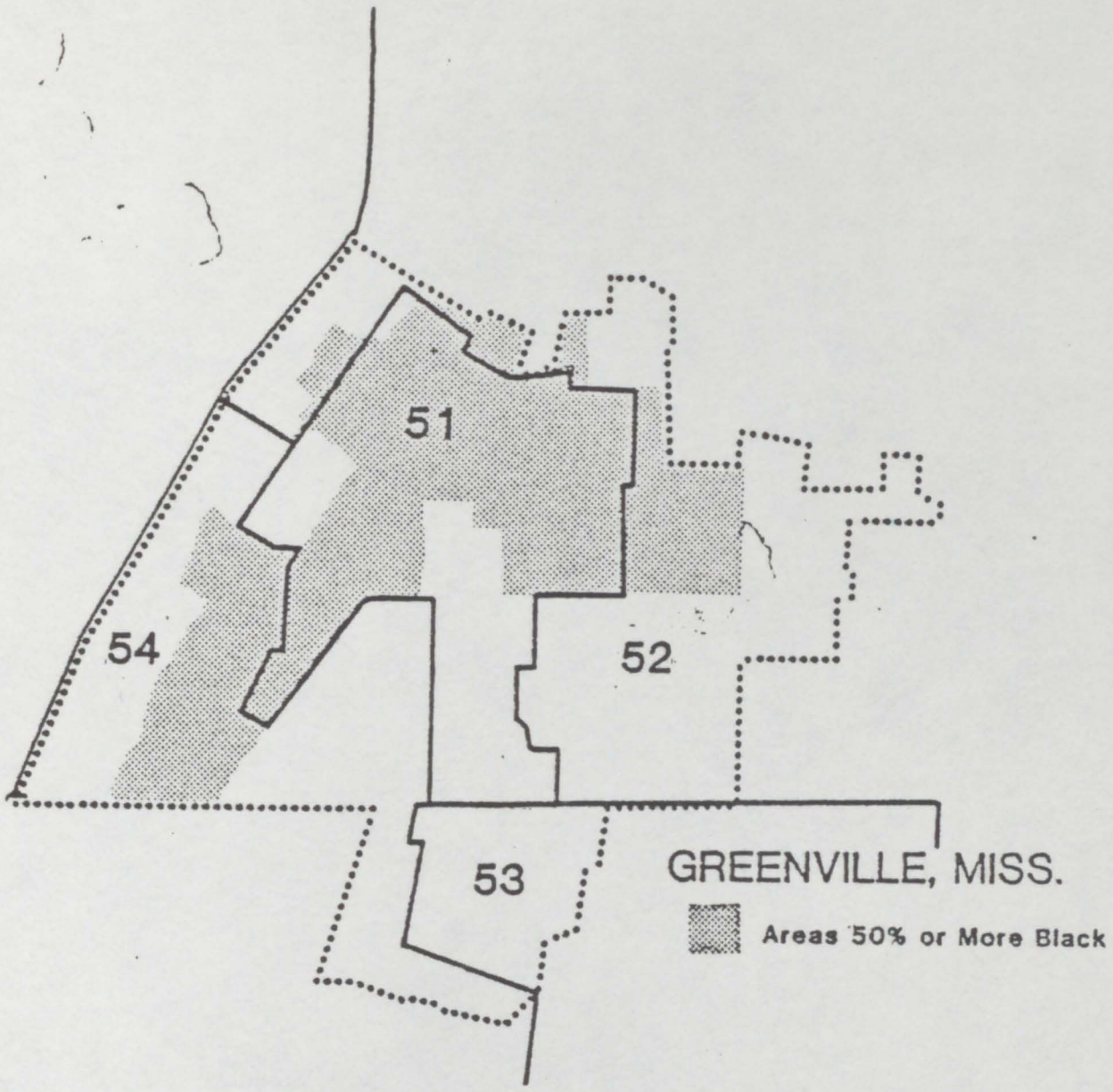
Washington County was another county in which there was considerable input from the local legislators. In the first pass through Plan A, the entire County had been combined with a small section of Sharkey County to form a four-district area. The suggestion was made by the staff to divide up the County four ways by forming one district across the northern end, creating a second district within the Greenville area, and then splitting the remaining area with a north-south line to form the final two districts. This suggestion worked out well, and Plan A was presented for public hearings with these districts (see figure 13). These Washington County Districts had the following statistics:

WASHINGTON COUNTY PLAN A

District	Population	% Deviation	% Black	% Black VAP
44	18,347	+ .96	54.31	50.41
45	18,054	- .64	45.83	40.07
46	18,131	- .22	52.99	48.87
47	18,003	- .93	66.74	59.81

FIGURE 13

PLAN A IN GREENVILLE CITY IN WASHINGTON COUNTY



SOURCE: Joint Committee Files

At the public hearings, however, this districting plan met with strong objections. The opponents contended that a strong black district could be formed in the City of Greenville. While it was certainly commendable to have a rural black district in the County, opponents to the proposed House Plan contended that a very strong black district in the City of Greenville would give blacks from Washington County a better chance to send a black legislator to the House. After much consultation, and subsequent modifications, the configuration in figure 14 was incorporated into Plan A/C before the Plan was sent to the House floor:

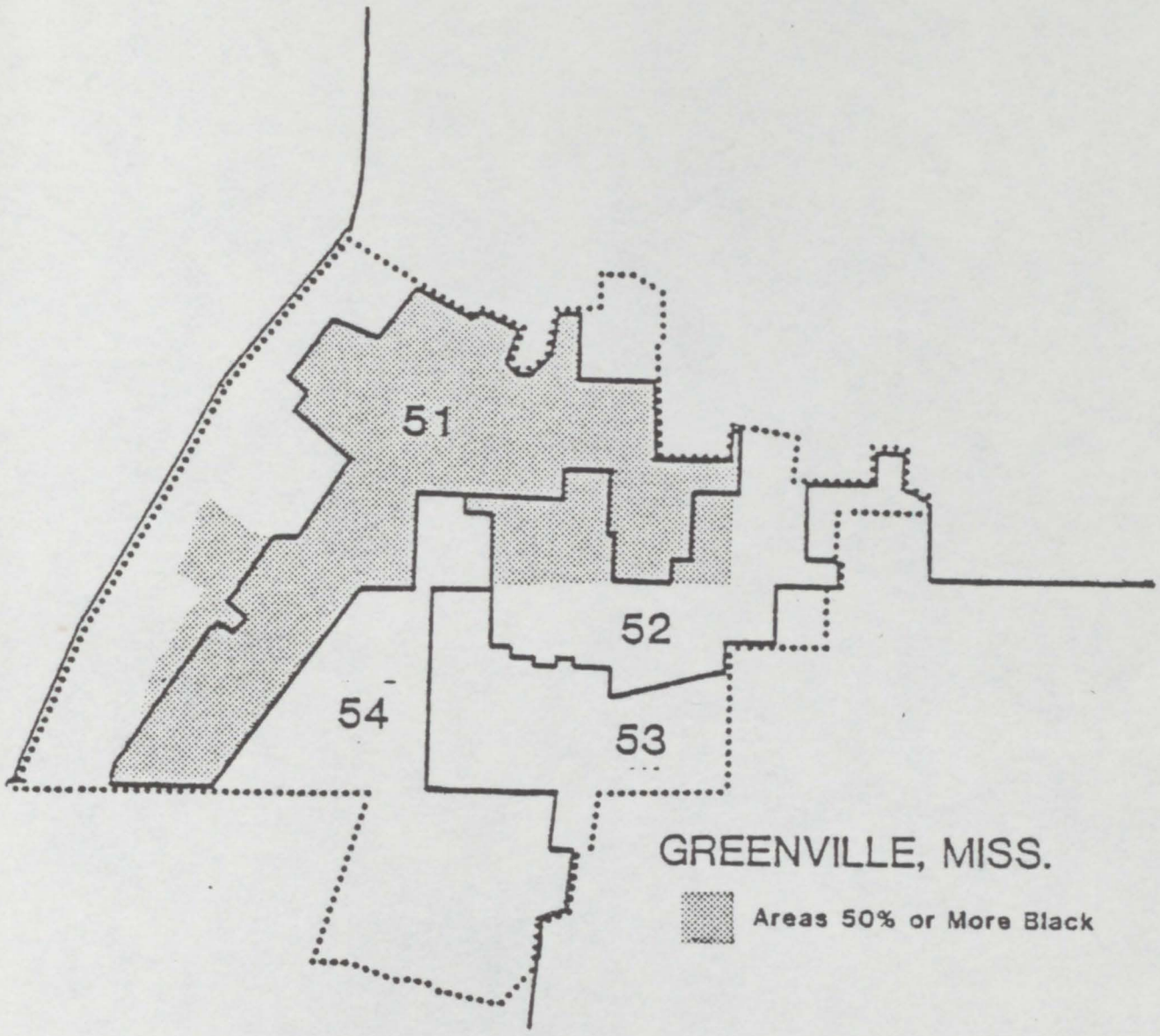
WASHINGTON COUNTY PLAN A/C

District	Population	% Deviation	% Black	% Black VAP
51	17,940	- 1.27	90.51	87.85
52	18,286	+ .63	53.35	48.72
53	18,225	+ .29	43.67	36.57
54	18,084	- .47	32.71	26.36

These were the districts which were included in both Plan A/C and the Statutory ED Plan passed in December. By the time the Statutory Precinct Plan was being completed, however, there were some complaints that the black district was a little "too black." Thus, as shown in figure 15, the following districts were adopted for the final Statutory Precinct Plan:

FIGURE 14

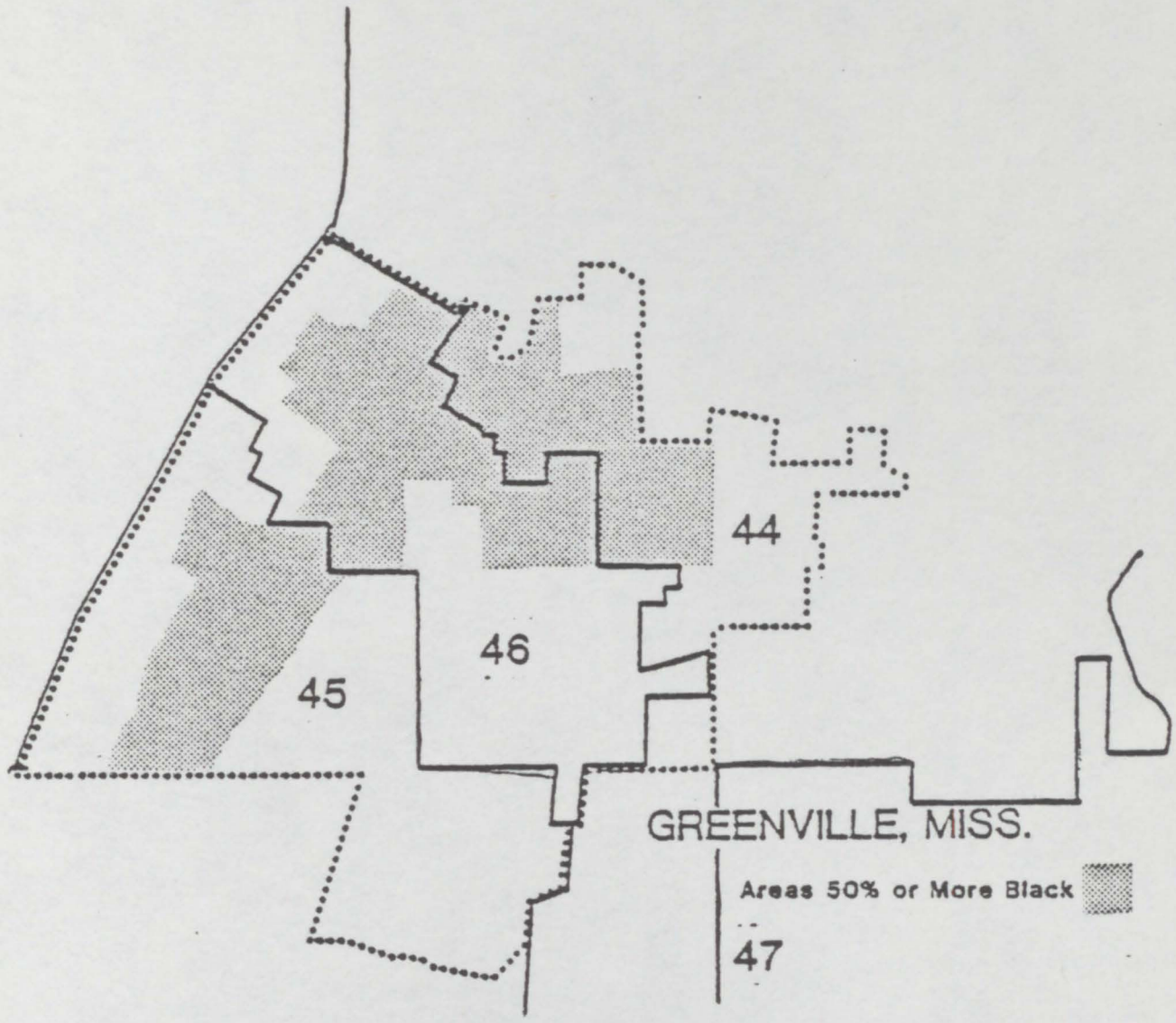
PLAN A/C IN GREENVILLE IN WASHINGTON COUNTY



SOURCE: Joint Committee Files (Plan A/C)

FIGURE 15

STATUTORY PLAN IN GREENVILLE IN WASHINGTON COUNTY



SOURCE: Joint Committee Files (HB 1491).

WASHINGTON COUNTY STATUTORY PLAN

District	Population	% Deviation	% Black	% Black VAP
51	17,617	- 3.04	73.36	68.35
52	17,810	- 1.98	37.55	33.38
53	19,055	+ 4.86	62.20	55.63
54	17,901	- 1.48	46.89	40.14

The large deviations in these districts are due to the fact that many of the precincts in Washington County have very large populations. It was very difficult to fit them together to form districts that came anywhere near the original Statutory ED Plan configuration, and still had permissible deviations.

Leflore County

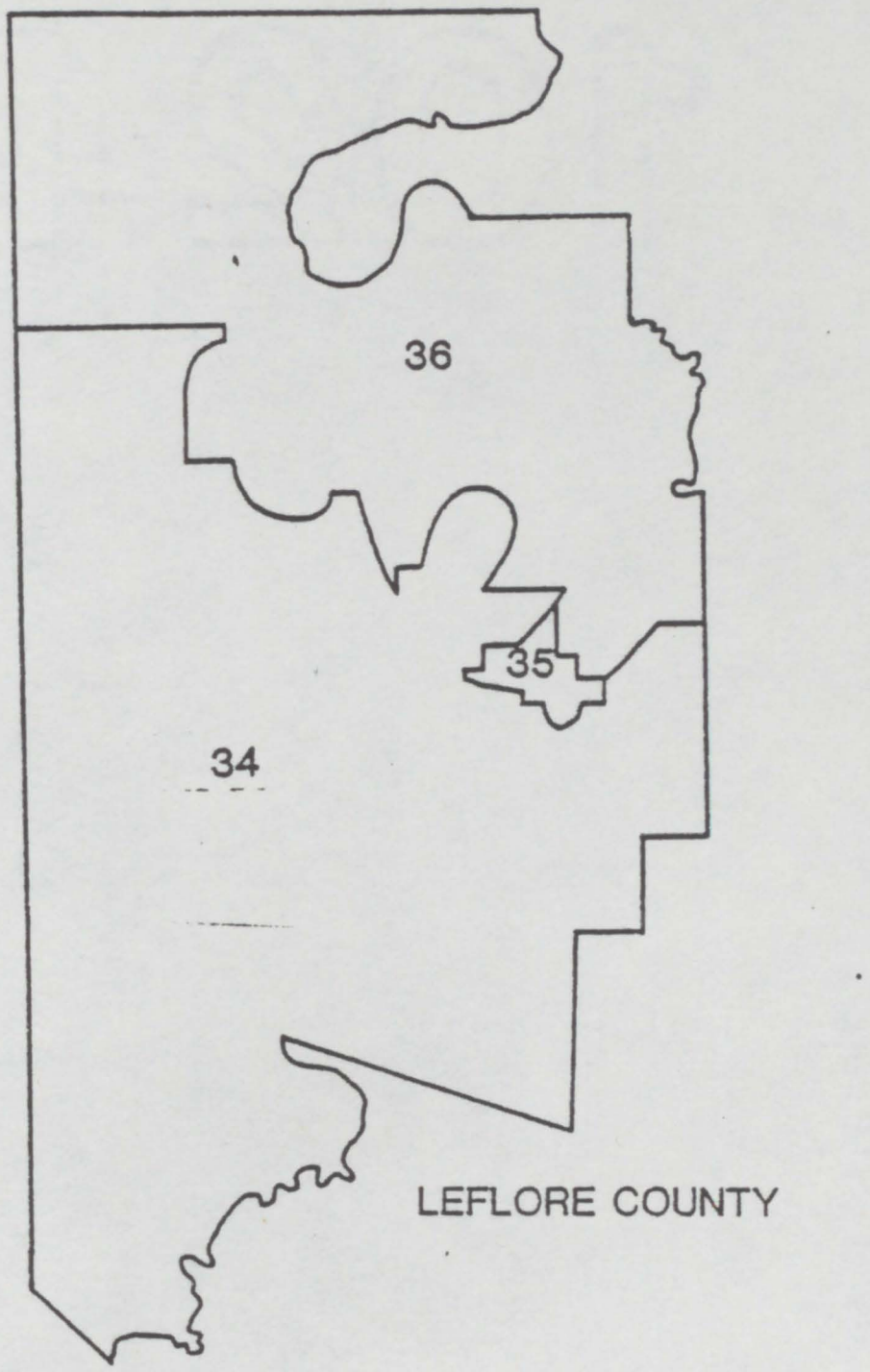
Leflore County contained a large enough population for about two and one-third districts. When the planners divided this County into individual districts, therefore, they felt that they should locate two complete districts inside the County. They further believed that one district should be located entirely within the City of Greenwood. Accordingly, a portion of the east side of Greenwood was broken off and combined with the rural areas. Figure 16 shows the districts which are listed below:

LEFLORE COUNTY PLAN A/C

District	Population	% Deviation	% Black	% Black VAP
34	18,400	+ 1.26	60.93	55.31
35	18,028	- .78	52.66	47.26

FIGURE 16

PLAN A/C IN LEFLORE COUNTY



SOURCE: Joint Committee Files (Plan A/C)

Leflore was another county in which objections were raised after passage of the Court ED Plan. The Connor Plaintiffs wanted a stronger black district in the County. In the Statutory Precinct Plan, the configuration shown on figure 17 resulted in the following statistics:

LEFLORE COUNTY STATUTORY PLAN

District	Population	% Deviation	% Black	% Black VAP
34	18,378	+ 1.13	69.17	64.26
35	18,322	+ .83	42.89	37.72

These modifications in the Statutory Plan, therefore, brought up the black percentages of the City-rural District by about 9 percent, for both total population and VAP.

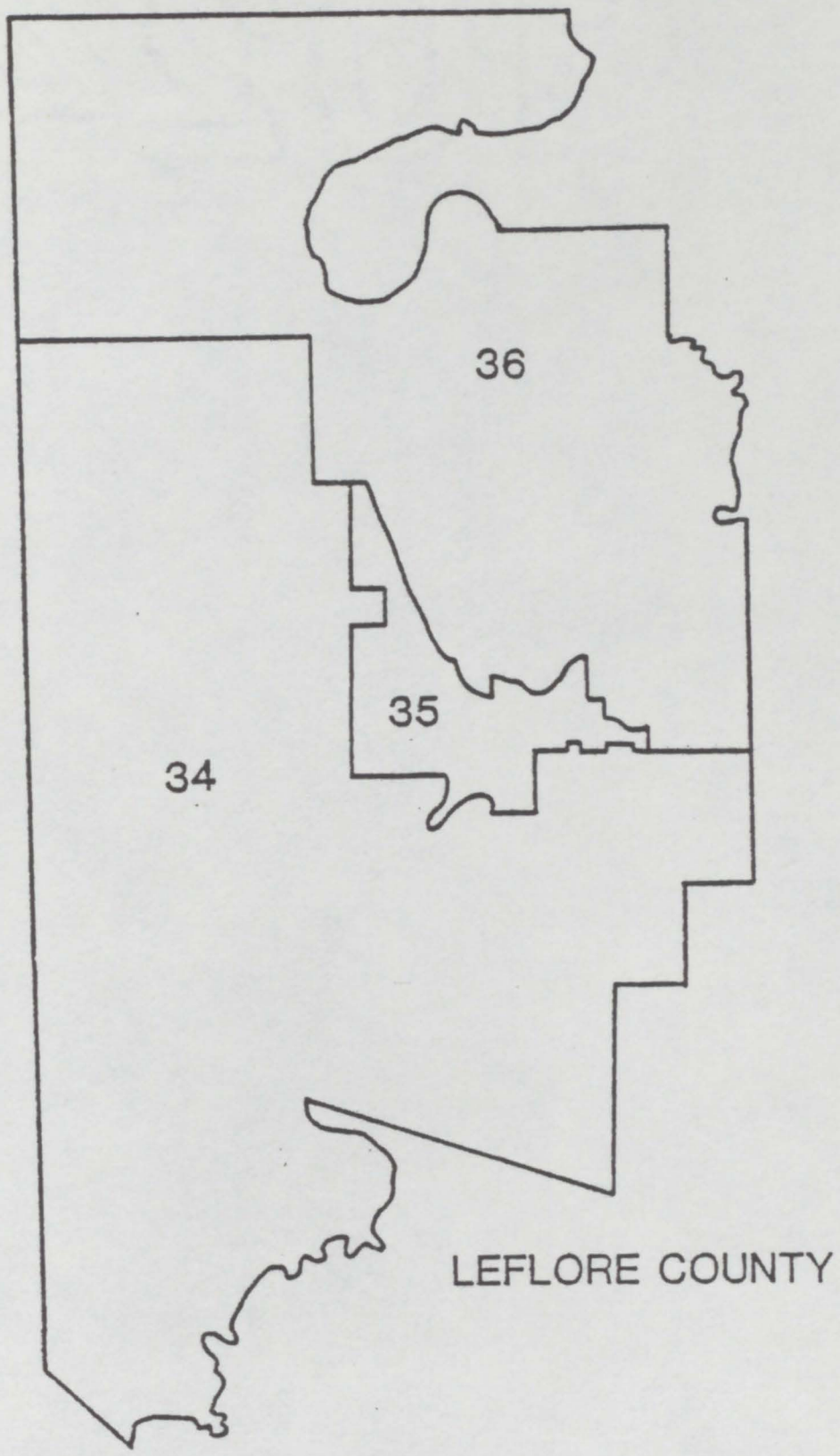
Forrest County

This County consisted almost entirely of the City of Hattiesburg and its suburbs. The City itself had enough people for more than two districts. The County had 3,436 people in excess of the population required for three districts. In every plan completed by the State, this County contained three districts entirely within its boundaries. However, in both Plans A and A/C, the remaining portion of the County was divided three ways to complete adjoining districts.

There were three incumbents in this County, all of whom lived in the City of Hattiesburg. Thus, in the first version of Plan A, and continuing until the final adjust-

FIGURE 17

STATUTORY PLAN IN LEFLORE COUNTY



SOURCE: Joint Committee Files (HB 1491)

ments in Plan A/C, the districts in this County were as shown in figure 18:

THE THREE FORREST DISTRICTS - PLAN A

District	Population	% Deviation	% Black	% Black VAP
103	18,203	+ .17	3.80	3.37
104	18,179	- .03	32.06	28.40
105	18,034	- .75	40.98	35.95

One of the functions of the staff consultants was the continuous review of all Plans, in an attempt to improve them in terms of both constitutional criteria and neutral criteria. Staff review of the plan for Forrest County led to the conclusion that a black district was possible. Working with the members of the Joint Committee from this area, the staff devised a new plan for Forrest County and it was included in the final version of A/C. The data for the new districts are shown below, and the map is on figure 19:

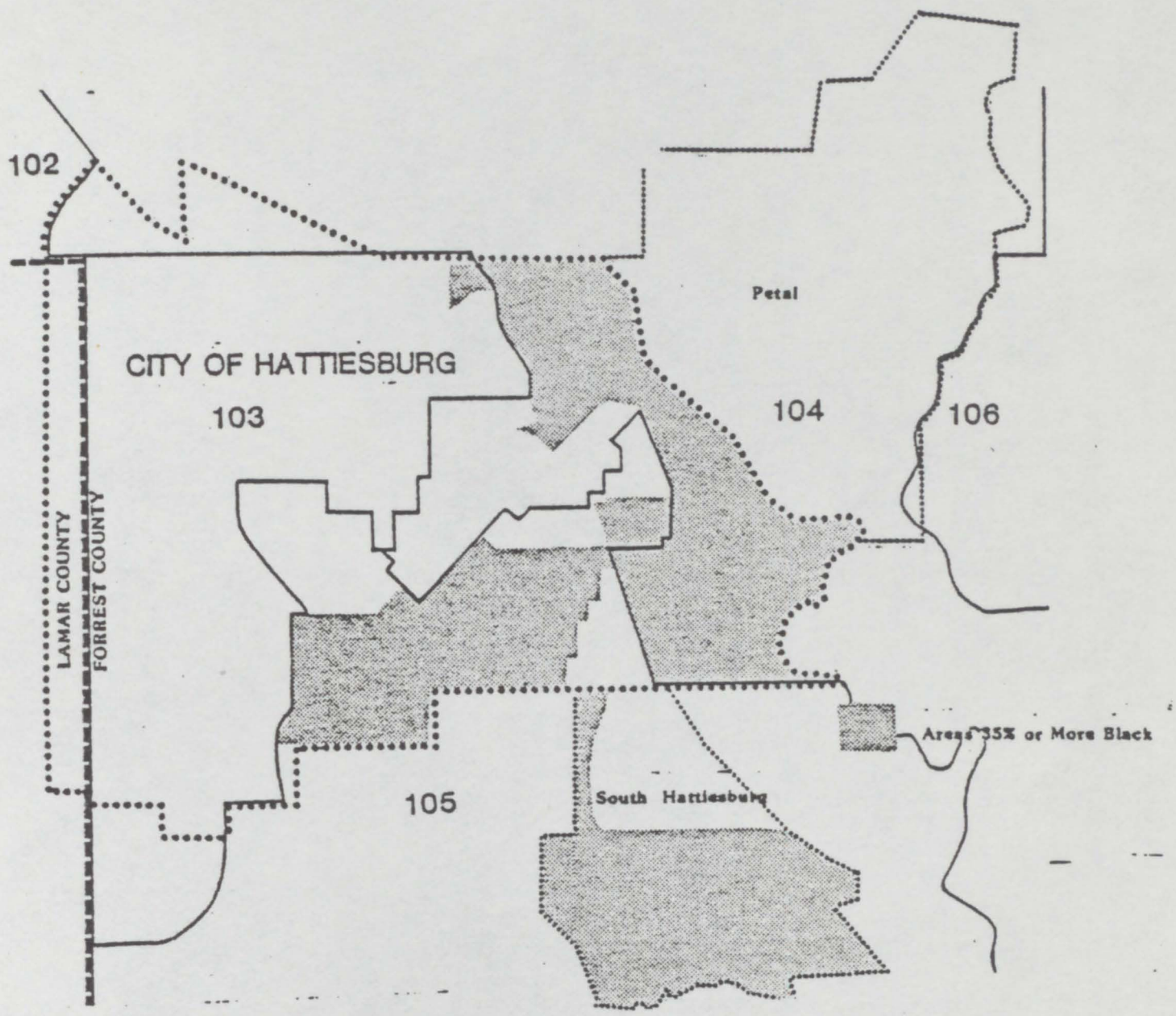
FORREST COUNTY IN PLAN A/C

District	Population	% Deviation	% Black	% Black VAP
103	18,070	- .55	2.99	2.59
104	18,234	+ .34	64.62	59.26
105	18,255	+ .46	8.69	7.78

Unfortunately, the switch from ED's to precincts brought about a decrease in the black strength of District 104. If the Committee had been able to split two or three

FIGURE 18

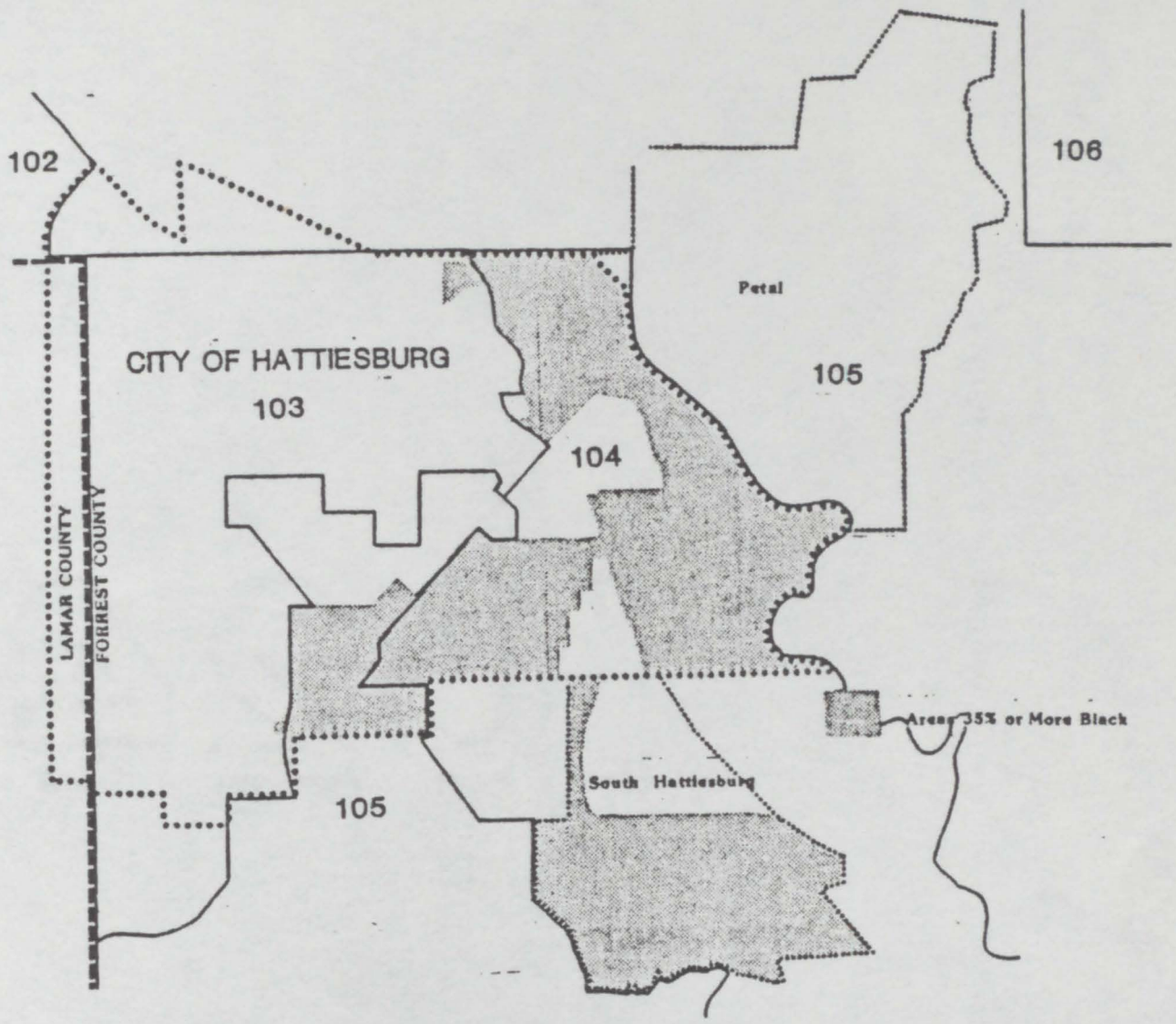
HATTIESBURG IN PLAN A



SOURCE: Joint Committee Files

FIGURE 19

HATTIESBURG IN PLAN A/C



SOURCE: Joint Committee Files (Plan A/C)

precincts in the County, the black strength in this District might have been maintained. However, they could not. The Statutory Plan Districts, as shown on figure 20, contained the following populations:

FORREST COUNTY STATUTORY PLAN

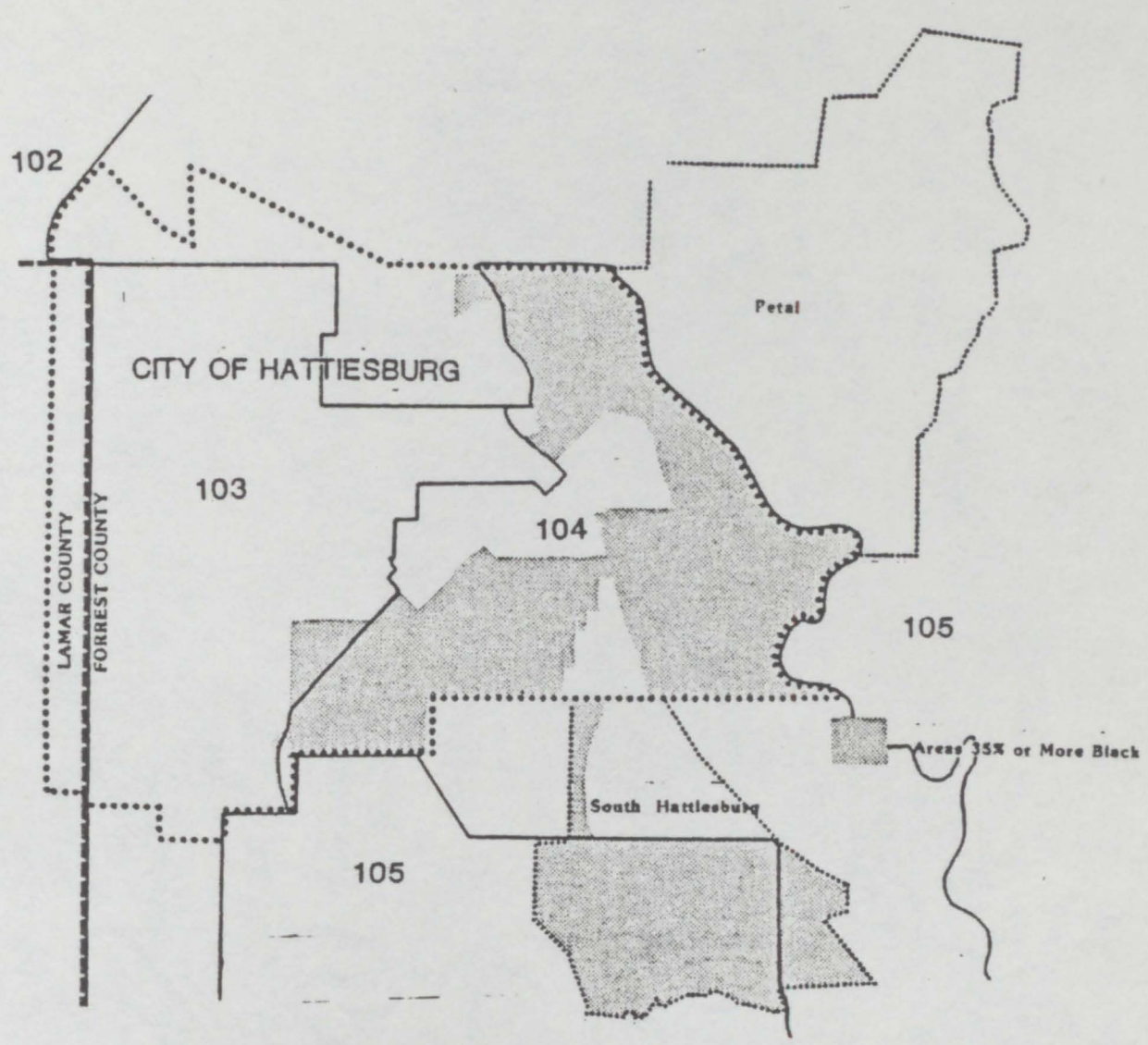
District	Population	% Deviation	% Black	% Black VAP
103	18,853	+ 3.75	1.54	1.48
104	18,623	+ 2.58	58.53	52.28
105	18,134	- .20	15.66	14.07

Jones County

Jones County was almost exactly the same in population as neighboring Forrest County. Its central city, Laurel, was about 60 percent the size of Hattiesburg, with a population of 24,145. The first proposal for this County was to create one district within Laurel. The remaining portion of that City would then be included in the second of the three districts that were to be created in the County. To test the viability of a black district in Laurel, the staff drew a city district which had within it all but thirty-four of the City's 8,731 blacks. The County was divided as shown in figure 21, with the following results:

FIGURE 20

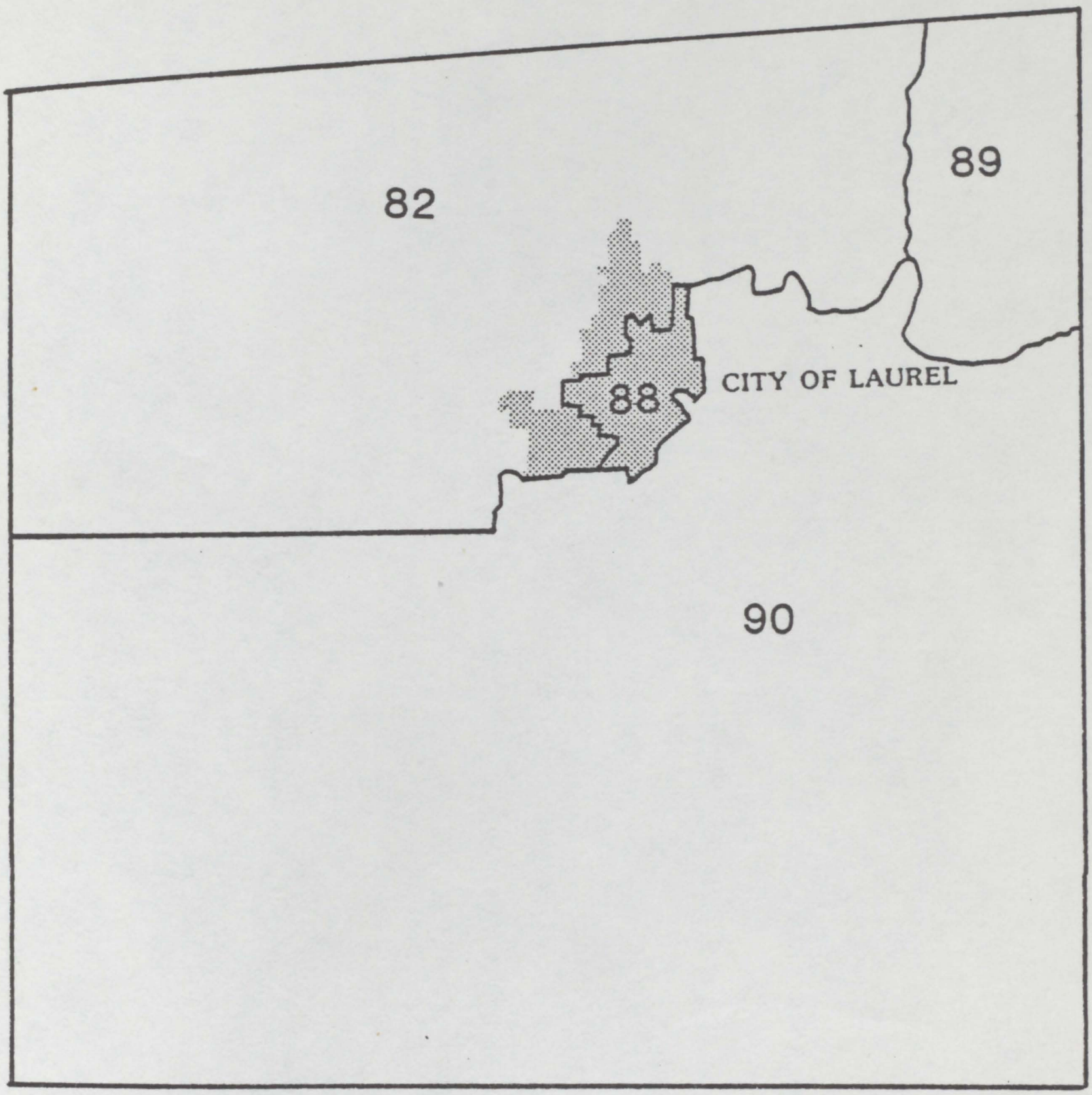
HATTIESBURG IN STATUTORY PLAN



SOURCE: Joint Committee Files

FIGURE 21

AN ALTERNATE PLAN IN JONES COUNTY



JONES COUNTY

SOURCE: Author's Files

JONES COUNTY ALTERNATE PLAN

District	Population	% Deviation	% Black	% Black VAP
82	18,348	+ .96	14.62	11.61
88	18,430	+ 1.41	47.18	41.35
90	18,368	+ 1.07	12.79	11.76

A black district with just 41.35 percent VAP, however, was not considered to be a viable black district. This configuration also caused an incumbency problem, since all of the incumbents from this County lived within the City of Laurel. Because the black district was not considered viable, the City was split three ways, with each district extending out into the rural areas of the County. The resultant districts are shown on figure 22, with the following data applying to them:

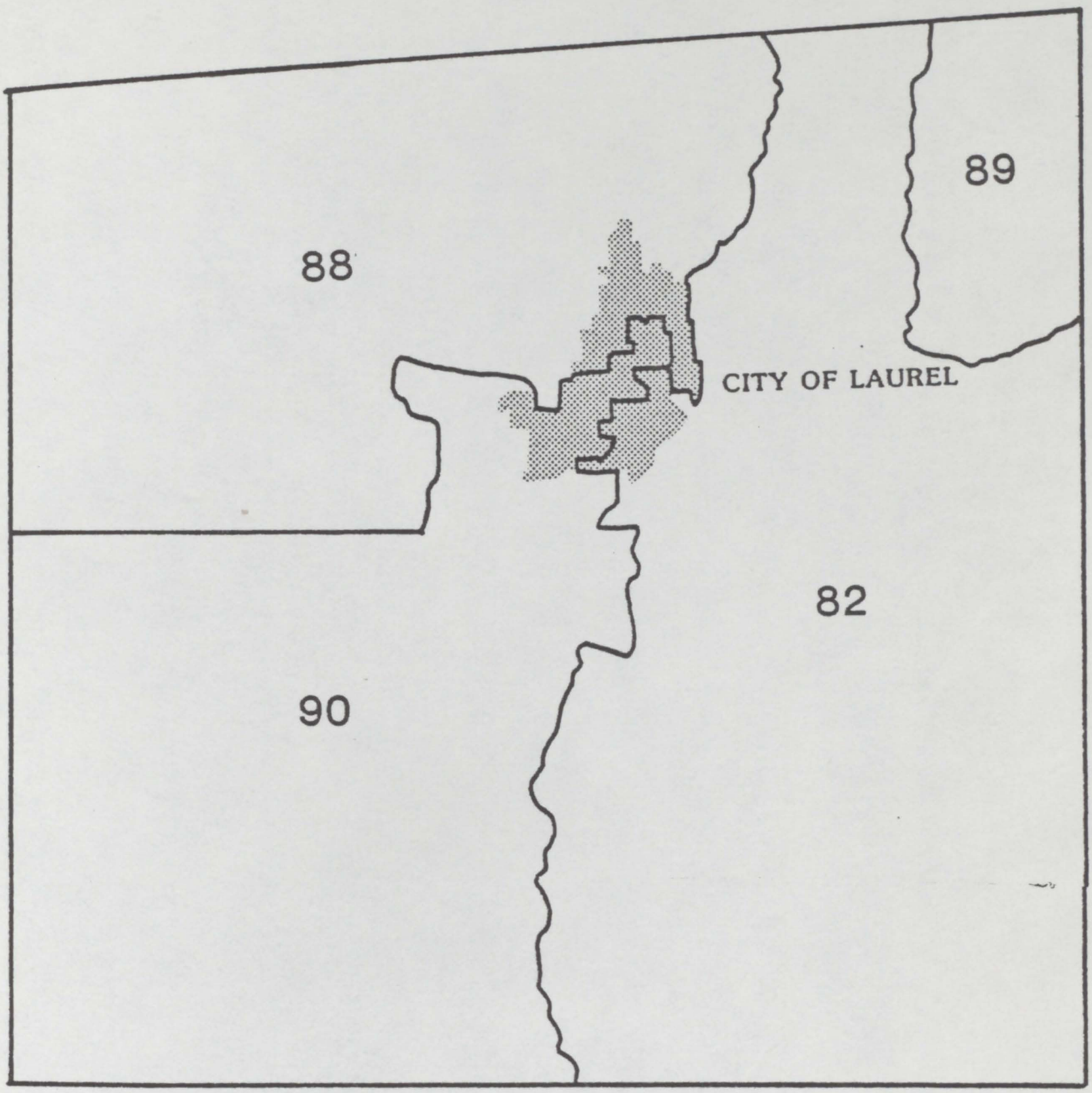
JONES COUNTY PLAN A/C

District	Population	% Deviation	% Black	% Black VAP
82	18,329	+ .86	34.97	31.20
88	18,358	+ 1.02	29.75	25.67
90	18,459	+ 1.58	10.07	9.05

Finally, the switch to precincts resulted in the districts shown on figure 23, with the relevant data shown below:

FIGURE 22

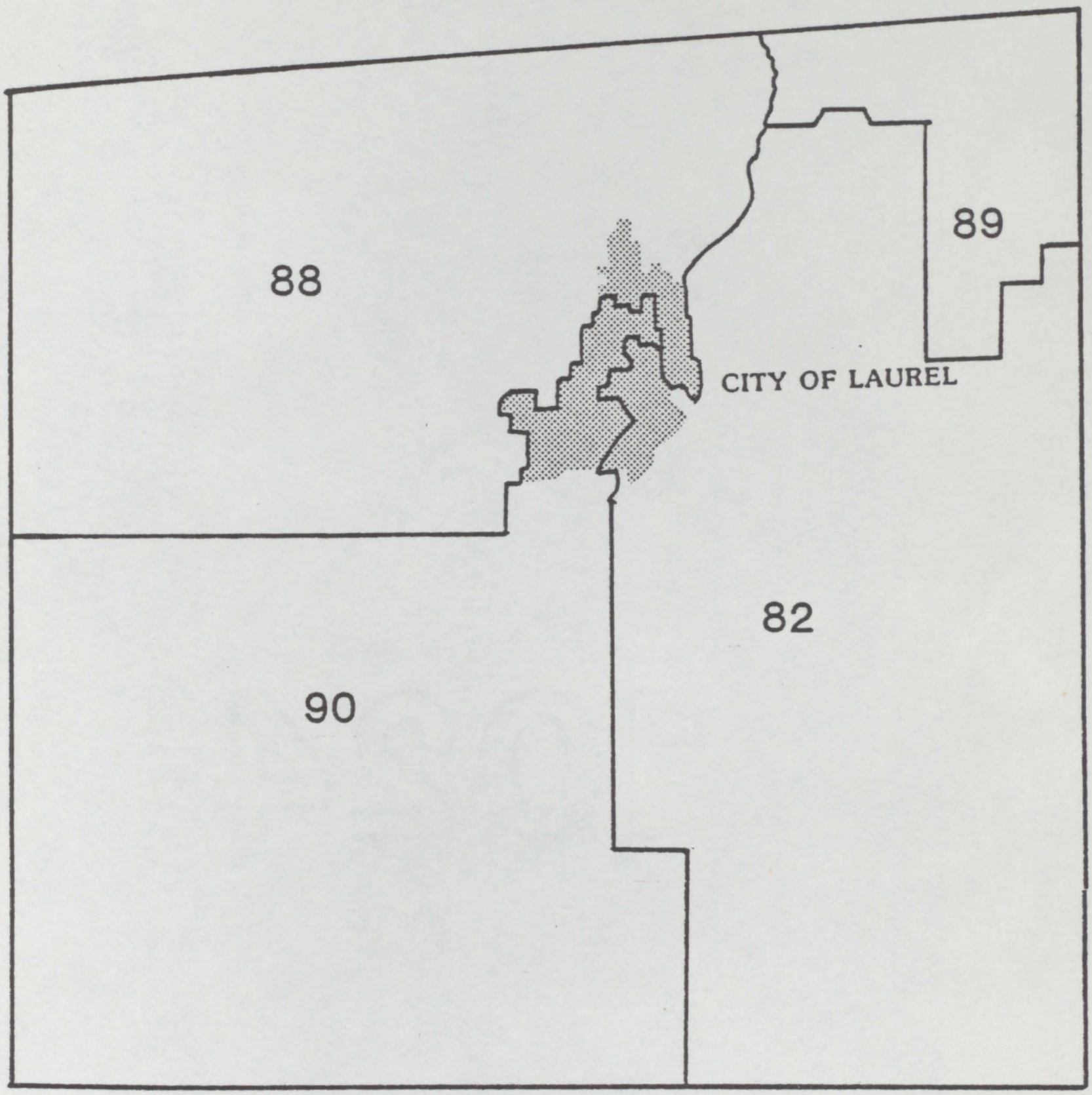
PLAN A/C IN JONES COUNTY



SOURCE: Joint Committee Files (Plan A/C)

FIGURE 23

THE STATUTORY PLAN IN JONES COUNTY



JONES COUNTY

SOURCE: Joint Committee Files (HB 1491)

JONES COUNTY STATUTORY PLAN

District	Population	% Deviation	% Black	% Black VAP
82	18,005	- .91	33.53	29.47
88	18,433	+ 1.44	29.85	25.69
90	18,039	- .72	10.19	9.34

Lauderdale County

This County, with a population of 67,087, was the fourth largest in the State. It also contained the State's third largest city, Meridian, with a population of 45,083. In the development of Plan A, the northern end of Lauderdale County was split off to complete the Kemper-Neshoba-Newton District (53). At the same time, the far southern end of the County was broken off to form a Clarke-Lauderdale District. This left for later division a three-district area in Lauderdale County, including all of Meridian.

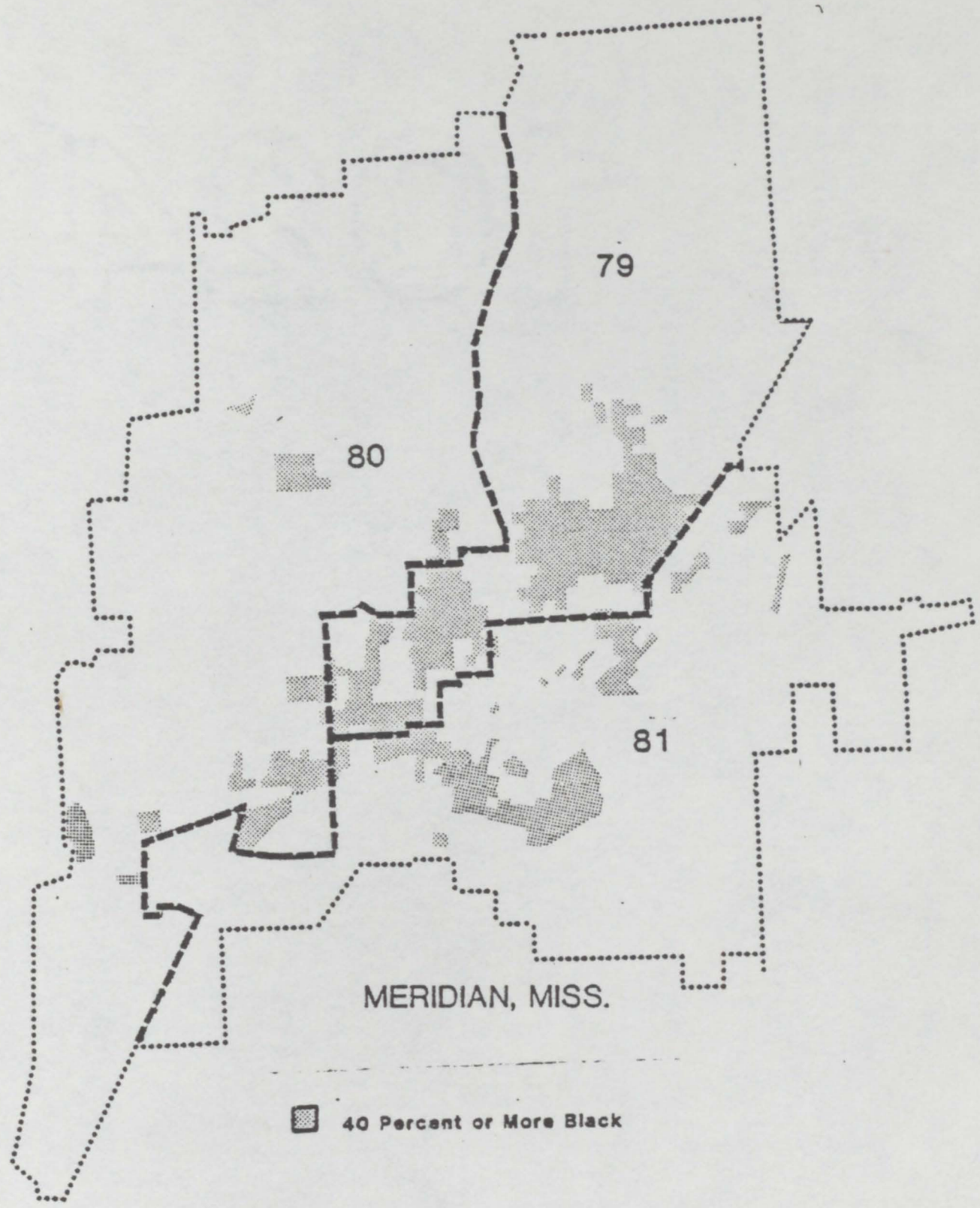
The division of this three-district area was greatly influenced by local input, with the result that two districts were created within the City and one district took in both city and rural areas. These districts, as they appear in Plan A, are shown on figure 24.

LAUDERDALE COUNTY PLAN A

District	Population	% Deviation	% Black	% Black VAP
79	18,316	+ .79	53.37	47.59
80	18,291	+ .65	11.72	10.80
81	18,209	+ .20	32.74	27.57

FIGURE 24

MERIDIAN PLAN A



SOURCE: Joint Committee Files

When Plan C was adopted, Lauderdale County was in a different configuration, with a larger southern portion of the County combined with a portion (instead of all) of Clarke County, and a smaller part of the northern area combined with all of Kemper County. This meant that District 81 in Plan A (which is District 83 in Plan C) had to be redrawn. The two Meridian Districts (79 becoming 84, and 80 becoming 85) remained the same. The remaining portion of Meridian was divided between Districts 83 and 86. District 83 now contained 4 percent fewer blacks.

At the time that Plans A and C were being merged into A/C, the staff investigated the possibility of a black district within Meridian. They found this to be possible, so they redrew Districts 83, 84, and 85, with the following result (see figure 25):

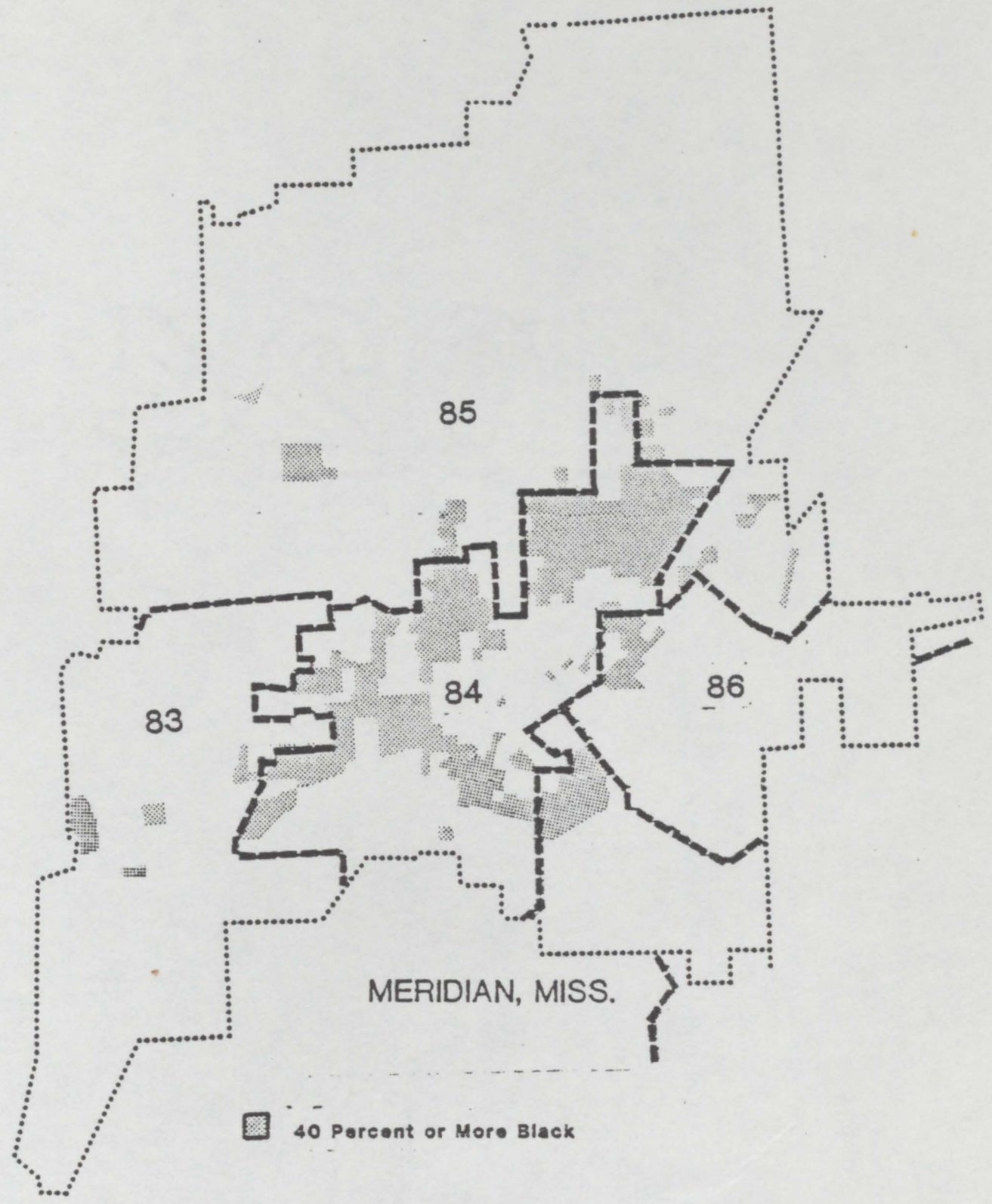
LAUDERDALE COUNTY PLAN A/C

District	Population	% Deviation	% Black	% Black VAP
83	17,998	- .95	17.69	15.06
84	18,140	- .17	64.19	57.60
85	18,466	+ 1.62	8.71	7.41

This new black district, located entirely within the City of Meridian, was considered only a marginal black district. Unfortunately, as happened in other counties, the switch to precincts resulted in degredation of the black percentages in this district. The black percentage in the Statutory Precinct Plan was 58.45, and the VAP

FIGURE 25

MERIDIAN PLAN A/C



SOURCE: Joint Committee Files (Plan A/C)

percentage 51.41. Again, this was due to the large size of the precincts in Meridian, which offered fewer possible combinations than did the ED's.

Harrison County

This County was the second largest in the State. Its population of 134,582 entitled it to seven House seats, with 7,385 people left over. The vast majority of the County's population lived along the coastline, from Pass Christian on the west to Long Beach, Gulfport, Mississippi City, and Biloxi farther east. The Biloxi metropolitan area spilled over into the neighboring County of Jackson, consisting of the suburbs of D'Iberville and Ocean Springs. (D'Iberville actually sits astride the county line just north of Biloxi.) Harrison County's heavily populated coastal area was separated from the remaining portions of the County by bays, canals, and swamps. Suburbs were "spilling over" to the north, with considerable growth in Orange Grove, North Long Beach, and Holly Hills. The coastal area itself, however, contained enough of the County's total population to form six of the seven-plus districts to which it was entitled.

The staff adopted a very straightforward approach to dividing this County. The northern portion of the County was made into one district. The coastal area was then divided with north-south lines into six more districts. The remaining portion of the County, which was just the

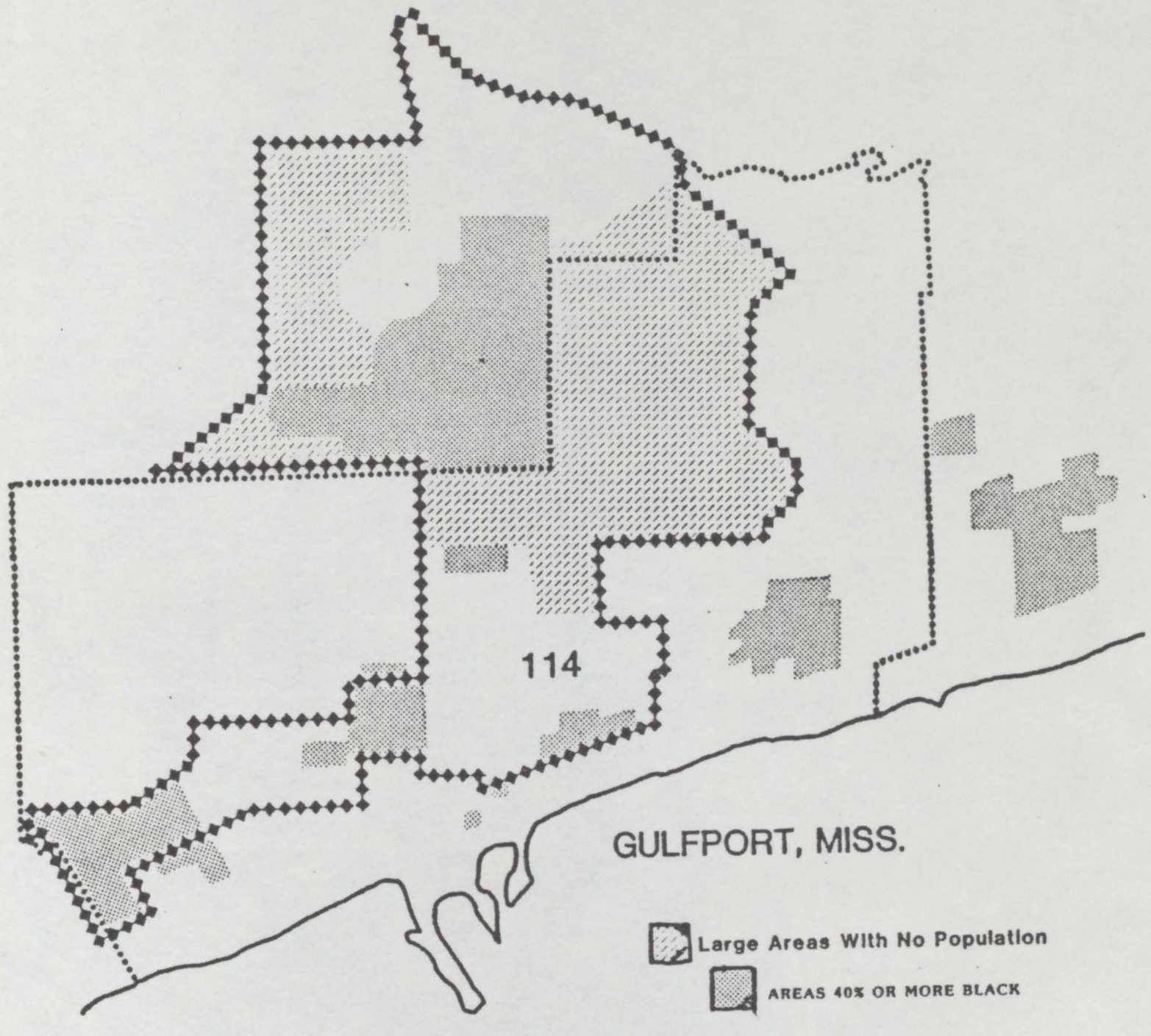
part of D'Iberville lying inside Harrison County was combined with the portion of D'Iberville in Jackson County in a district that continued on east to take in part of Ocean Springs.

This seemed to be a simple approach, but when presented in Plan A, it caused several difficulties. First, some of the lines had to be adjusted to correct incumbency problems. Then, the delegation from Harrison County requested that the staff attempt to create a black district in Gulfport. The Gulfport area did indeed have enough blacks to form a black district. The problem was that they were spread out all around the City. About 6,400 blacks lived in West Gulfport (which is actually an unincorporated area to the northwest of the City). Gulfport's remaining blacks were divided among six areas, none of which had more than 1,500 blacks living in it. In an attempt to accommodate the members from that area, however, the staff drew a district that encompassed West Gulfport and four of the small black neighborhoods. This district, which was highly irregular in shape (see figure 26), contained a black percentage of 58.52 and a black VAP percentage of 51.87. Such figures denote a very weak district. When the Statutory Plan was moved to precinct lines, the planners could not make this district fit into the configuration of the County. Thus, it does not appear in the Statutory Plan.

The only other controversy to arise in Harrison

FIGURE 26

THE GULFPORT "BLACK" DISTRICT (114) IN PLAN A/C



SOURCE: Joint Committee Files (Plan A/C)

County concerned the splitting off of the northwestern portion to form a district along with portions of Pearl River and all of Stone Counties. This action was necessitated by incumbency problems in Jackson County, which are described below.

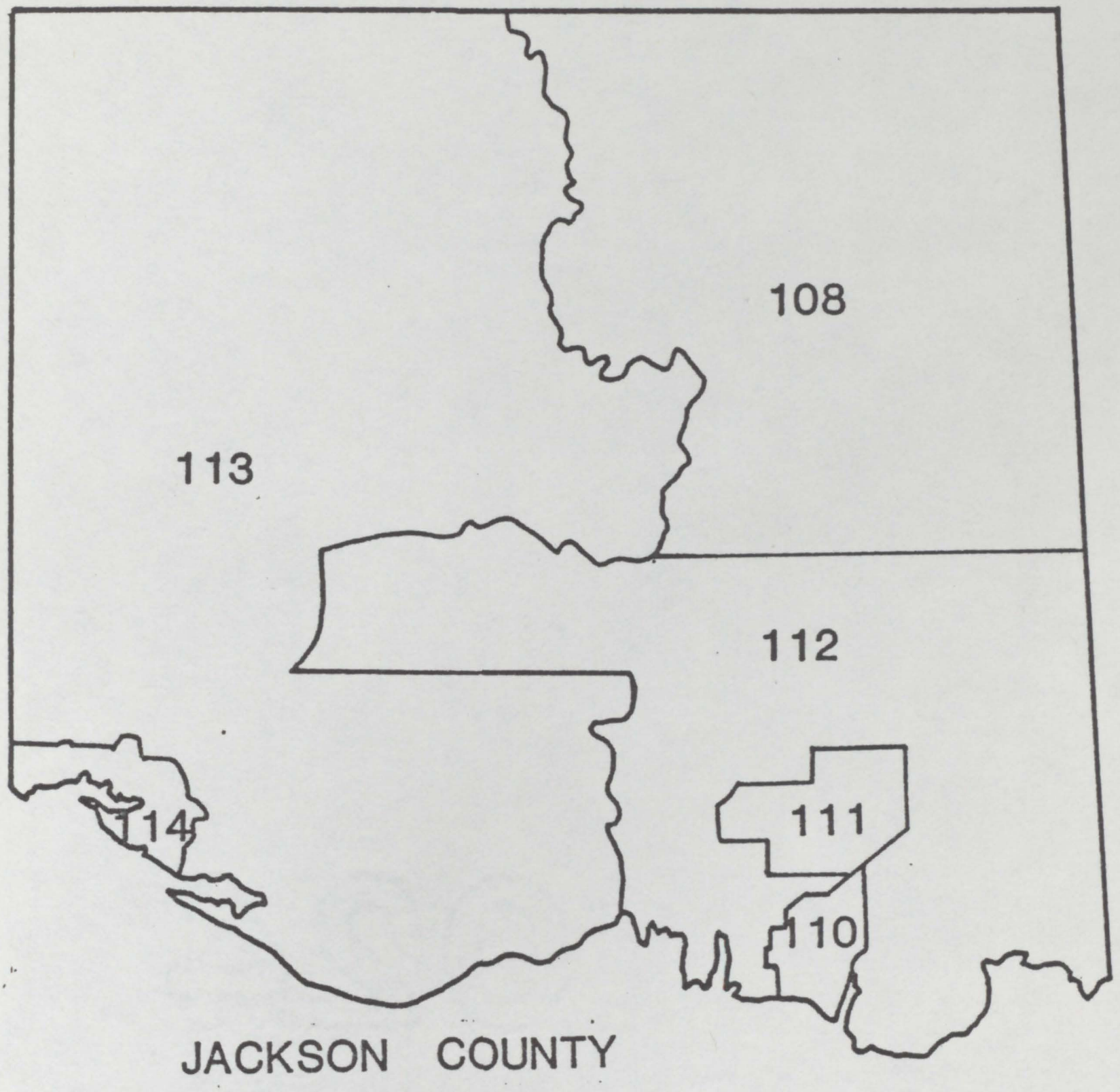
Jackson County

The County, with a population of 87,975, was the third largest in the State. Its principle cities are Pascagoula, Moss Point, Ocean Springs, and D'Iberville. In 1975, Jackson County was combined with George County to form a six-district area. This same general configuration was utilized in Plan A, with the addition of a single ED from Green County.

The plan for the division of Jackson County in the original version of Plan A was as follows. First, a district was formed which included all of George County and the single ED from Green County. Since this area did not contain enough people for a full district, the northeastern portion of Jackson County was added to it (see figure 27). Next, a full district was formed within the City of Moss Point. Then a full district was created within the City of Pascagoula. Since the remaining portion of the County east of the Pascagoula River was not populous enough for another complete district, the staff reached across the river to include the only ED with enough population to complete the district without making it too populous.

FIGURE 27

JACKSON COUNTY PLAN A



SOURCE: Joint Committee Files

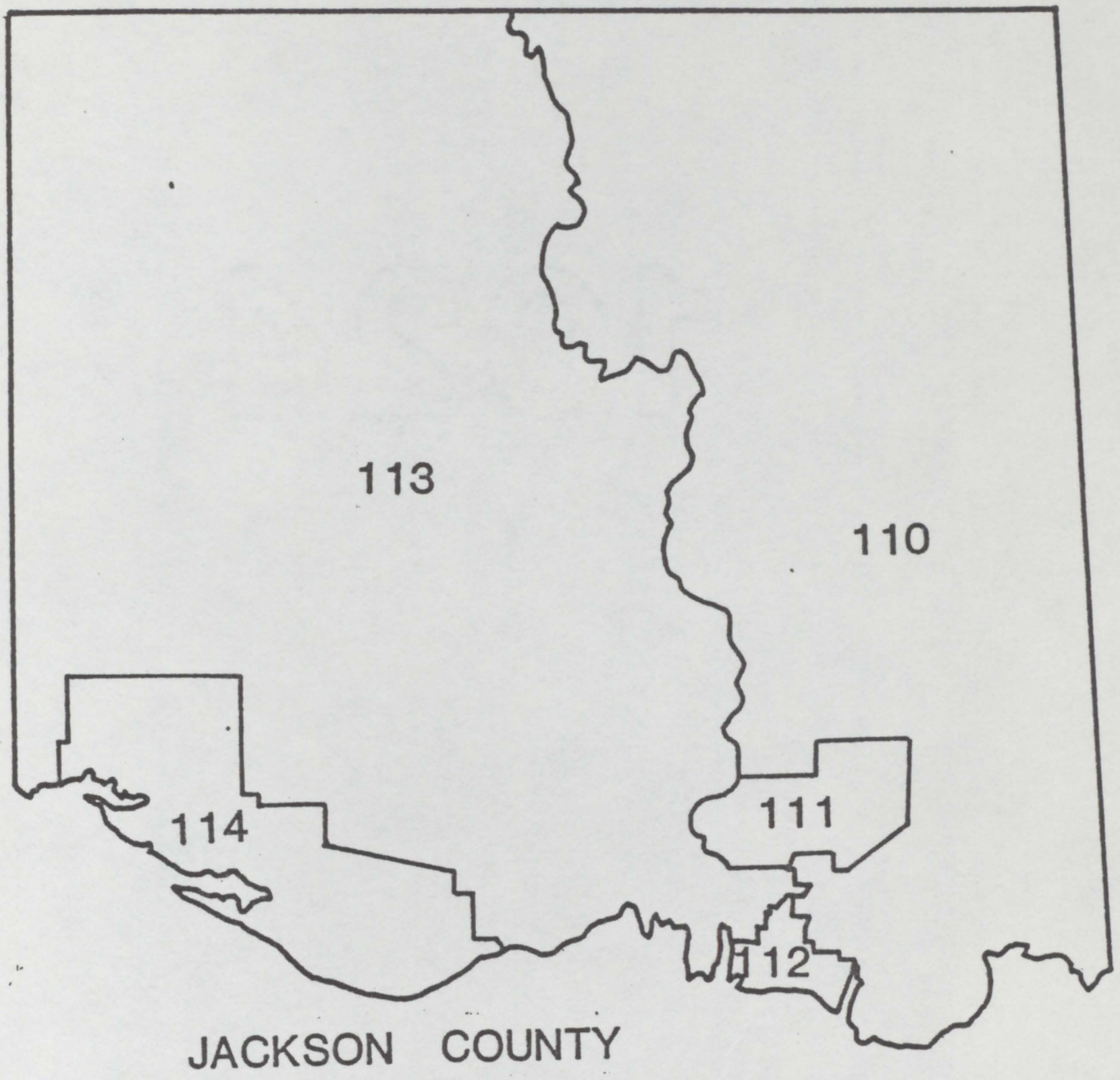
A portion of the County's western coast had already been combined with Harrison County to form the D'Iberville-Ocean Springs district. The area remaining on the western coast thus formed the sixth district. The only problem with this design was that two of the districts now had two incumbents living in them.

When Plan C was presented, the incumbent situation was somewhat alleviated by a rotation of the Harrison, Jackson, George, and Stone County districts, as shown in figure 28. When Plan A/C was in its final stages, this same sort of rotation was performed in Plan A (the plan being used in this part of the State). The Plan A rotation is shown in figure 29. District 108 was withdrawn from Jackson County and pushed into eastern Stone County. This gave enough population to the Jackson County area east of the Pascagoula River to solve one of the incumbency problems. Unfortunately, the initial rotation made it necessary that other districts be rotated.

As District 108 pushed into eastern Stone County, District 107 was forced into northwest Harrison County. District 121 was then pushed into District 119, and all the districts--except 115, the easternmost Biloxi district--were bumped eastward. District 116 was bumped north across Back Bay into D'Iberville. This allowed the D'Iberville-Ocean Springs District (114) to reach out and take in the residence of the other incumbent. This rotation of districts was a somewhat controversial maneuver, but it

FIGURE 28

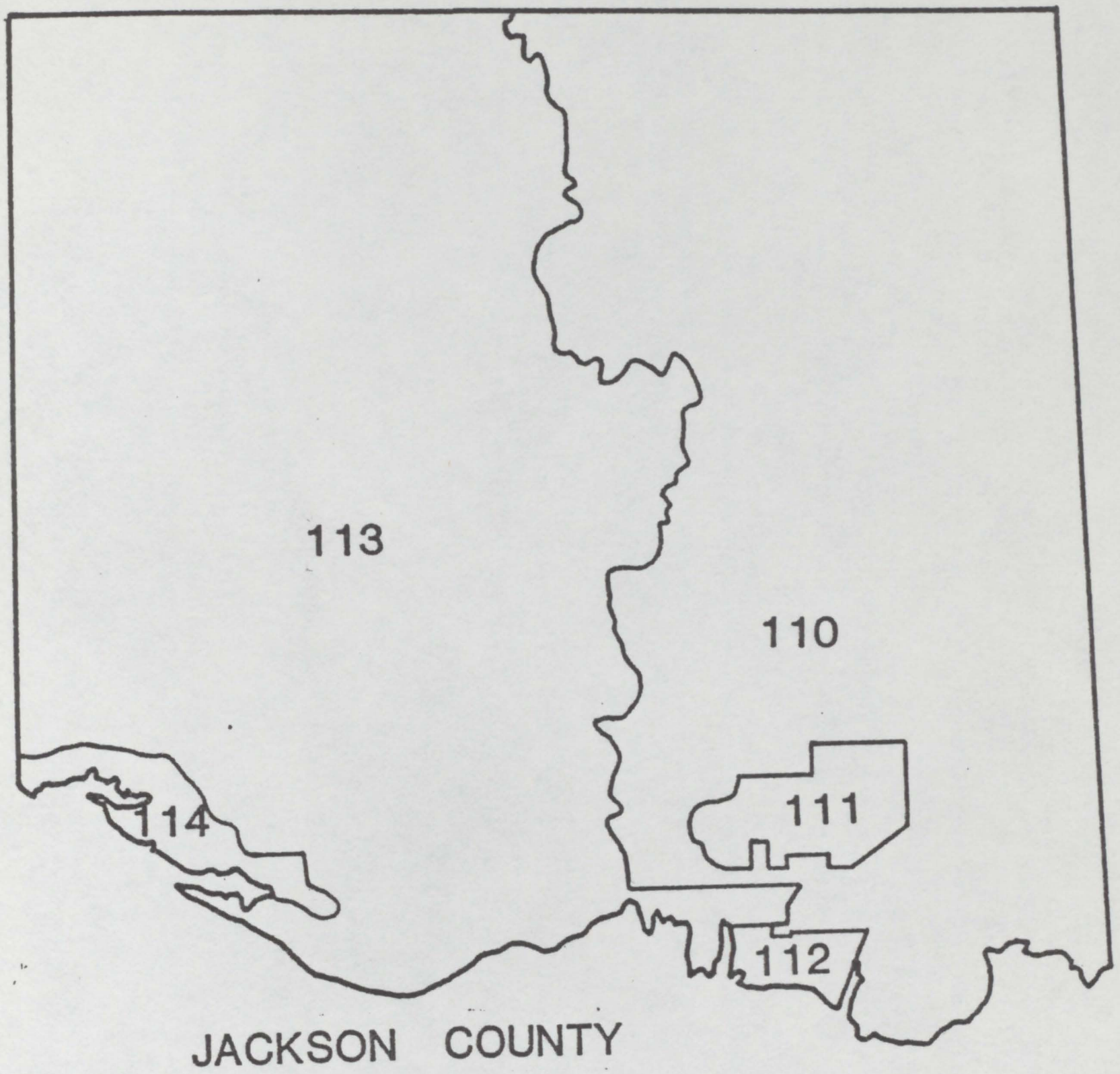
JACKSON COUNTY PLAN C



SOURCE: Joint Committee Files

FIGURE 29

JACKSON COUNTY PLAN A/C



SOURCE: Joint Committee Files (Plan A/C)

violated no constitutional criteria. It was exactly the type of adjustment, in fact, which must be made in any redistricting plan requiring legislative endorsement.

The Statutory ED Plan

Many legislators, as we have seen in the previous section, acquiesced to the Court ED Plan under the condition that a statutory plan was to be brought before them for consideration. They believed that a statutory plan, which would come into being by the authority of the State rather than of the Federal Courts, would bring about a less disruptive division of the State. Their basic premise was that the population equality standards governing redistricting by state legislatures (as enunciated by the Supreme Court) were less stringent than those governing court-ordered redistricting. The Chief Counsel to the Joint Committee had advised Committee members that deviations ranging from -5.00 percent to +5.00 percent from ideal district size were considered *prima facie de minimis* by the Supreme Court for legislative redistricting plans. The drawing of the Statutory ED Plan proved that this increase by 3 percent could rectify many of the problems in the Court ED Plan.

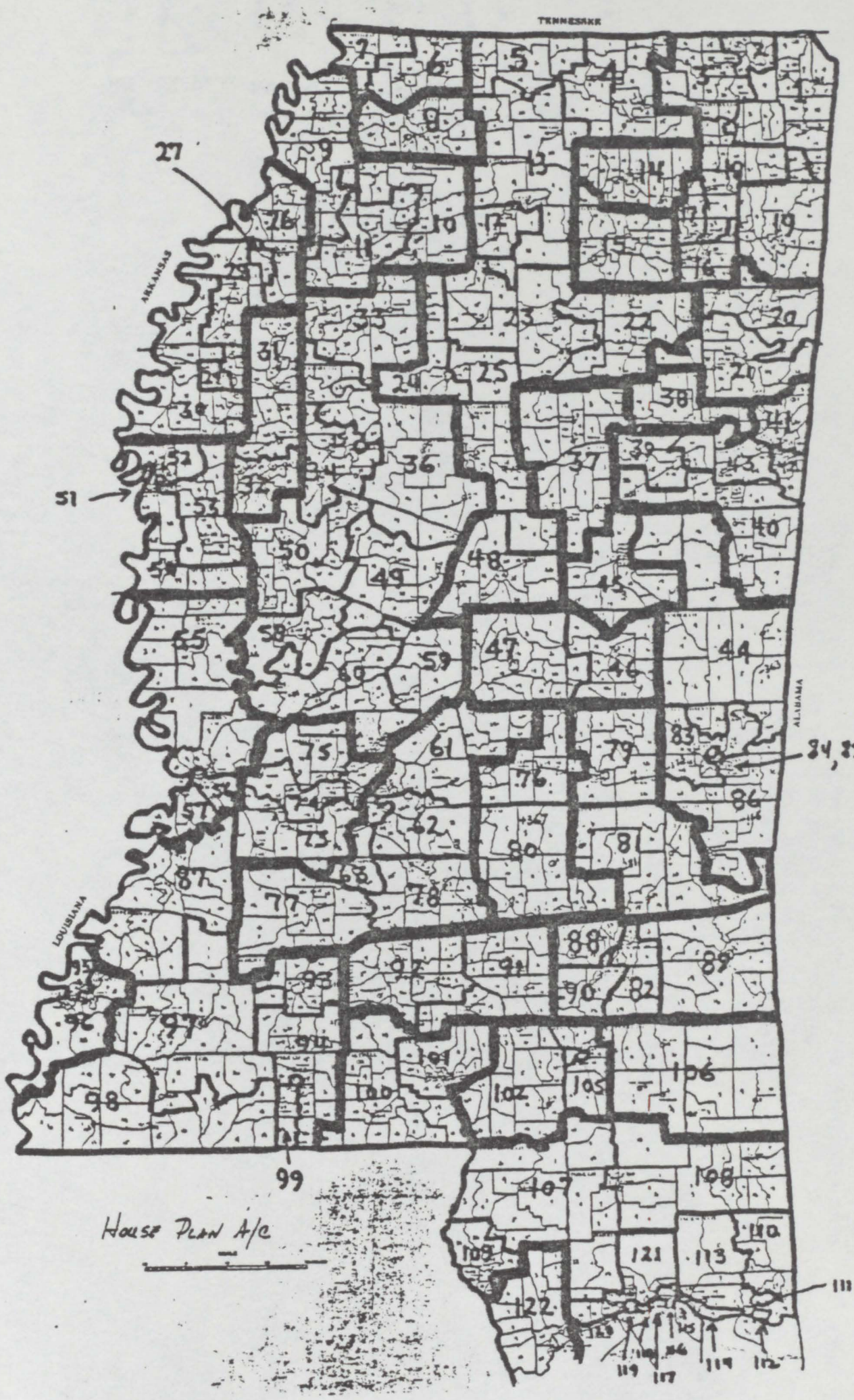
The major problem area in the Court ED Plan was the east-central portion of the State. This area, consisting of eleven counties, was heavily fragmented by the Court Plan, and there had been great dissatisfaction expressed

by the thirteen legislators from the counties involved. In addition, members from the northeastern area were also very unhappy with some of the districts in the Court Plan. This was particularly true of the legislators from Alcorn and Prentiss Counties, which had been very badly fragmented. The primary task in the creation of the Statutory Plans was to correct these problems. In other areas, attempts would be made to reunite portions of counties and to reduce the number of fragments. As many counties as possible would be brought up to maximum representational status.

To accomplish this task, the State was divided into thirty-one areas consisting of whole counties. These areas, shown on figure 30, contained from one to ten counties each. Under the Statutory Plan, all of these areas would either be made into full districts, or would be divided into multiple-full districts. Figure 31 demonstrates how the Court ED Plan (A/C) was modified to create these thirty-one areas. The planners recognized from the very beginning that the average district size would vary considerably among these areas. There was no attempt in the Statutory Plan to create the most equal set of districts possible; rather, the goal was to stay under the ± 5.00 percent deviation limit. For example, in Area 2, a ten-county area, the staffers recognized that the average district deviation for the nine districts to be drawn in that area would be + 2.268 percent. On the other hand, in the three-county Area 21, the five districts would have an average deviation

FIGURE 30

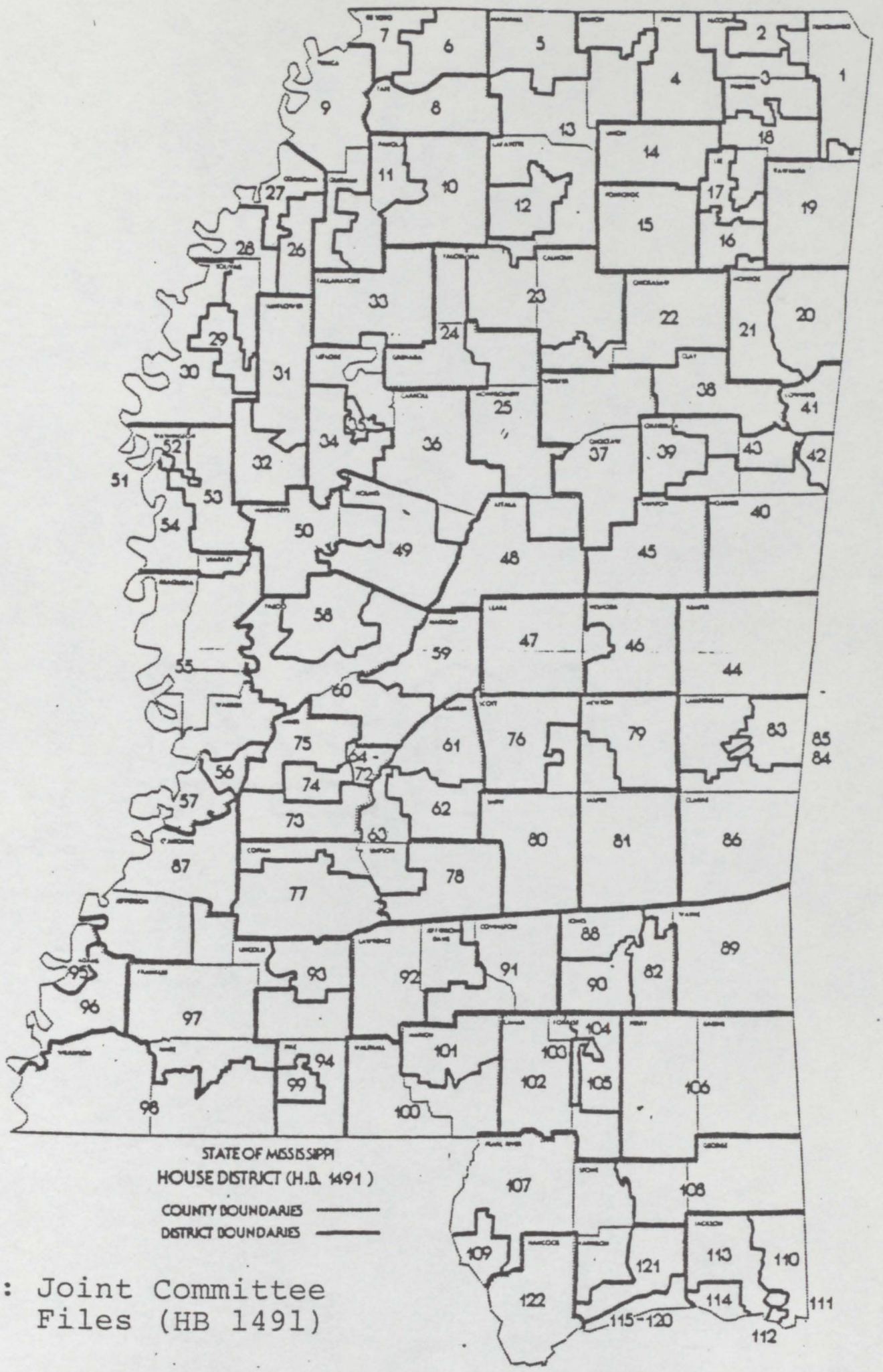
CREATION OF DISTRICT GROUPS FOR CONVERSION OF PLAN A/C TO STATUTORY PRECINCT PLAN



SOURCE: Author's Files

FIGURE 31

THE STATUTORY PRECINCT PLAN



SOURCE: Joint Committee Files (HB 1491)

of - 2.446 percent. Having formed the desired thirty-one areas--nineteen of which were both multi-county and multi-district areas--resubdivision had to take place from the configurations that were in the Court ED Plans.

Once the Court ED Plan had been literally stretched and squeezed into these thirty-one areas, many of the resultant districts now had unacceptable deviations. There were twenty-seven such districts. There was no way to redraw these districts without creating a "ripple" effect throughout many of the districts in the twenty-seven affected areas. Thus, a majority of the districts in the State had to be adjusted to fit into this plan. The result of this effort was that fourteen more counties were left without district fragments, and the total number of fragments was reduced from 110 to 66. On the 9th of December, 1977, the Statutory ED Plans for both the House and Senate were passed and sent to the Governor for his signature.

Footnotes to Chapter V

[1]The Author does not wish to infer that Dr. Morrill, in his design of Plan B, could not have balanced the populations. He was forced by the timetable to send the Plan unfinished to the staff in Jackson. The Plan was set aside for its general configuration, not excessive population deviations.

[2]House Court ED Plan A, October 6, 1977.

[3]House Court Plan A, October 14, 1977.

[4]H.B. 1491, the Statutory House Precinct Plan, March 31, 1978.

CHAPTER VI

CONNOR v. FINCH

THE OTHER PLANS

Following the most recent Supreme Court decision in the Connor litigation, the Federal District Court in Mississippi issued orders for all parties to file proposed plans. At this time the Legislature, per se, was not a party to the suit. The actual defendants were the Governor, the Attorney General, the President Pro Tempore of the Senate, and the Speaker of the House. The Legislature, however, was invited by the Court to submit a proposed plan. It should be understood that all plans requested by the Court were for that Court's use in developing a Court imposed plan, and were thus subject to the more stringent guidelines dictated for Court plans by the United States Supreme Court.

Thus, the Connor Plaintiffs, with the assistance of Msrs. Gordon Henderson and Henry Kirksey; the Justice Department, with the assistance of Mr. John Tanner; and the Legislature, with the assistance of Msrs. Morrill, Dunn, Webb, Fortenberry, and Hofeller, all set out to draw plans for the District Court. In the period between October 29th and November 4th, eight plans were filed with

the District Court. The Legislature filed an ED plan for each house, the Justice Department filed both an ED and a precinct-based plan for each house, and the Connor Plaintiffs filed a precinct plan for each house.

During the ensuing months, all of these plans, except for the Justice Department's ED Plan, were modified by further submissions to the Connor Court. The final version of the Legislature's Court ED Plan was submitted in January of 1978, the Legislature's Court Precinct Plan was submitted on March 7, 1978, the final version of the Connor Plaintiff's Plan (the Henderson Plan) was submitted on March 23, 1978, and the final version of the Justice Department's Precinct Plan (the Tanner Plan) was submitted on February 7, 1978. The Special Master, acting on behalf of the Connor Court, submitted his plan on May 18, 1978.

This chapter will examine the following three plans in some detail: the Henderson Plan (Connor Plaintiff's Plan), the Tanner Plan (Department of Justice's Plan), and the Neal Plan (the plan proposed by the Connor Court's Special Master). As previously mentioned in the chapter on the history of this redistricting, the Connor Court's Special Master was directed to submit a plan for each house to the District Court following the submission of plans by all other parties. This plan represented the best efforts of the District Court, and should be examined as an example of what difficulties the courts can get into in developing their own plans without proper technical

support. The Henderson and Tanner Plans are discussed because they were submitted in evidence in the hearings on Mississippi v. United States. The United States and their defendant intervenors (the Connor Plaintiffs) leaned heavily upon these two plans for several reasons. The first use of these plans was to present them as an example of what they considered to be a proper allocation of seats to the black areas of the State. The second use was as a Beer standard in an attempt to prove retrogression in comparison to the State's plan.[1] These plans had one characteristic in common: in terms of technical accuracy, they were all disasters.

This writer does not wish to question the motivations of any of the plan drawers involved in this redistricting. It is proper, however, to point out that many of the plans submitted to the Connor Court were technically deficient. Many of these errors appeared to be due to "bookkeeping" problems (keeping track of the populations assigned to each district). Others were due to the practice of taking the accuracy of estimates of precincts' population made for local supervisorial redistricting efforts for granted. Some were, perhaps, due to the fact that racial results were carefully watched, but total population statistics were not. Unfortunately, many errors were simply due to carelessness. One could not fault many of those persons involved for addition errors--they were all (with the exception of the State Legislature) drawing plans without

benefit of a computer. There is, nonetheless, some room to question both the motivation and expertise of some of those involved--particularly when they presented themselves in court as redistricting "experts."

A note on the District Court is also in order at this point. In its 1977 decision in Connor v. Finch, the Supreme Court admonished the District Court to take special care when constructing a plan for Mississippi in documenting the "genesis" for the population figures for each district. This admonition was, no doubt, due to the complaints from the Connor Plaintiffs and the Department of Justice regarding the deviations in the 1976 Plan. When the District Court received the 1978 plans of these same two parties, the Court instructed them to produce documentation of their asserted populations by precinct.

This request for precinct-by-precinct demographic data on the part of the District Court was motivated both out of a desire for proper documentation of the Tanner and Henderson Plans, and, perhaps, a desire to provide data for use by the Court's Master in the construction of any plans which he might draw. This request was, in all fairness, unreasonable and unnecessary. It was never necessary to determine the populations of all precincts in the State--it was just necessary to determine the populations of the districts in each plan. This requirement could have been satisfied by a listing for each proposed district of all the EDs and portions of EDs (in terms of population)

for each district. Tanner and Henderson, nevertheless, had been requested by the Connor Court to prove adequate documentation for their plans. If such a document had been compiled, both Tanner and Henderson might have corrected many of the errors in their plans. However, to the best knowledge of this author (who was in a position to have received these figures for verification), such documentation was never produced. Accurate and complete documentation of population data is a sine qua non of any redistricting plan--especially if it is to be presented in court. It could be inferred, therefore, that if the Tanner and Henderson Plans were not properly documented, the submission of these plans to the Court was never completed.

The overriding need for accurate documentation is set forth in a passage from the trial transcripts drawn from the testimony of this author. Mr. Frank Dunham, the attorney for the State of Mississippi, is questioning the author concerning the accuracy of the data in the Tanner and Henderson Plans:

MR. HOFELLER:

Let me say all of this goes to the point of showing that without proper bookkeeping, so to speak, and good maps and good enough assistants and a computer to keep it going and such, it's very difficult to keep track of all of the units involved and to present an accurate summation of the census data involved.

It's my belief that the data has to be in terms of accurate census data, even though you present the plan in a bill in terms of precincts, the data has to be reported out on an ED-by-ED basis or at least a census unit basis so that not only the

> drawer of the plan can be convinced in his mind that the data is accurate, (but) so can anyone else be convinced in (his) mind that it's accurate.[2]

This lack of accurate and convincing data was precisely the problem in Mississippi. All of the local experts were accustomed to preparing plans that combined counties into districts. In making the switch from 82 county units to more than 2,400 enumeration districts, they simply did not realize the difficulties involved until it was too late. Computers have their place in redistricting, and their most valuable application is in keeping track of the data.

It is extremely difficult for a person who is not familiar with the State of Mississippi, nor trained in the examination of redistricting plans, to make much sense of plans as complex as those for redistricting the Mississippi House. The plans are extremely difficult to critique technically. One must look not only at the demographic differences within each area, but also at the way the districts fit together to form a whole. Plans such as those produced in Mississippi are like giant jigsaw puzzles in which all the pieces must be equal in population. And, in the case of Mississippi, the pieces must "carved" out against a backdrop of counties--which are not equal in population--and racial communities. No one can know for sure what is the best way to divide up a state into 122 districts; there are probably hundreds of ways in which that State could be divided. All one can really do is try

to produce a plan that gives a proper balance of all the criteria.

Ripple Analysis of the Major Plans

Another problem in the comparison of plans is that individual districts or groups of districts cannot be lifted out of one plan and placed into another, except in those rare instances when districts or groups of districts have common boundaries in both plans. A question such as "Why did you not draw Bolivar County the way we did?", may require an answer such as "We would have had to change half the State in order to do that. Then we would have had your plan, not ours." This problem of boundaries brings into play what may be called the "ripple effect."

The "ripple effect" can be described by reference to a hydraulic system. Just as there is little give and take in a sealed hydraulic system, there is little give and take in the allowable variation from ideal district population of a district or group of districts. Just as one pushes on one end of a hydraulic line and creates pressure on the other end of the line, so if one takes excessive population from a district or group of districts, one must add back that population at another point. The same rule holds when one adds population into a district (or group of districts): one must remove that population at another point. The total "give" in the district, or group of districts, is equal to the maximum deviation times the number of districts involved. Because of this phenomenon, population

adjustments in a single district must be "rippled" through a group of districts until the excess population (or deficit) is absorbed or adjusted. This has been characterized as the "ripple effect."

The less departure allowed from absolute equality of population in the criteria governing the construction of a plan, the less room there is for changing one district without changing them all. In the Statutory House Plan, the allowable deviation from equality of population was ± 5.00 percent. Keeping this in mind, and aiming to maintain as many county lines as possible, the State's planners expanded and contracted groups of districts in order to fit them into groups of counties. In many cases, however, the planners came very near the limits of the allowable deviation. One more addition or subtraction of population would have resulted in the district passing over or under its population limit, and all the districts in the area would have required redrawing.

For the purposes of examining four plans at hand (Tanner, Henderson, Master's, and State), the State of Mississippi will be divided into areas. The perimeter of each area is established by coterminous district and county boundaries. Thus, in an area which we shall define as Coterminous County District Area (CCDA), a single district or a number of complete districts fit into a full county or a group of full counties. Within each CCDA, districts lap over county boundaries or are isolated within

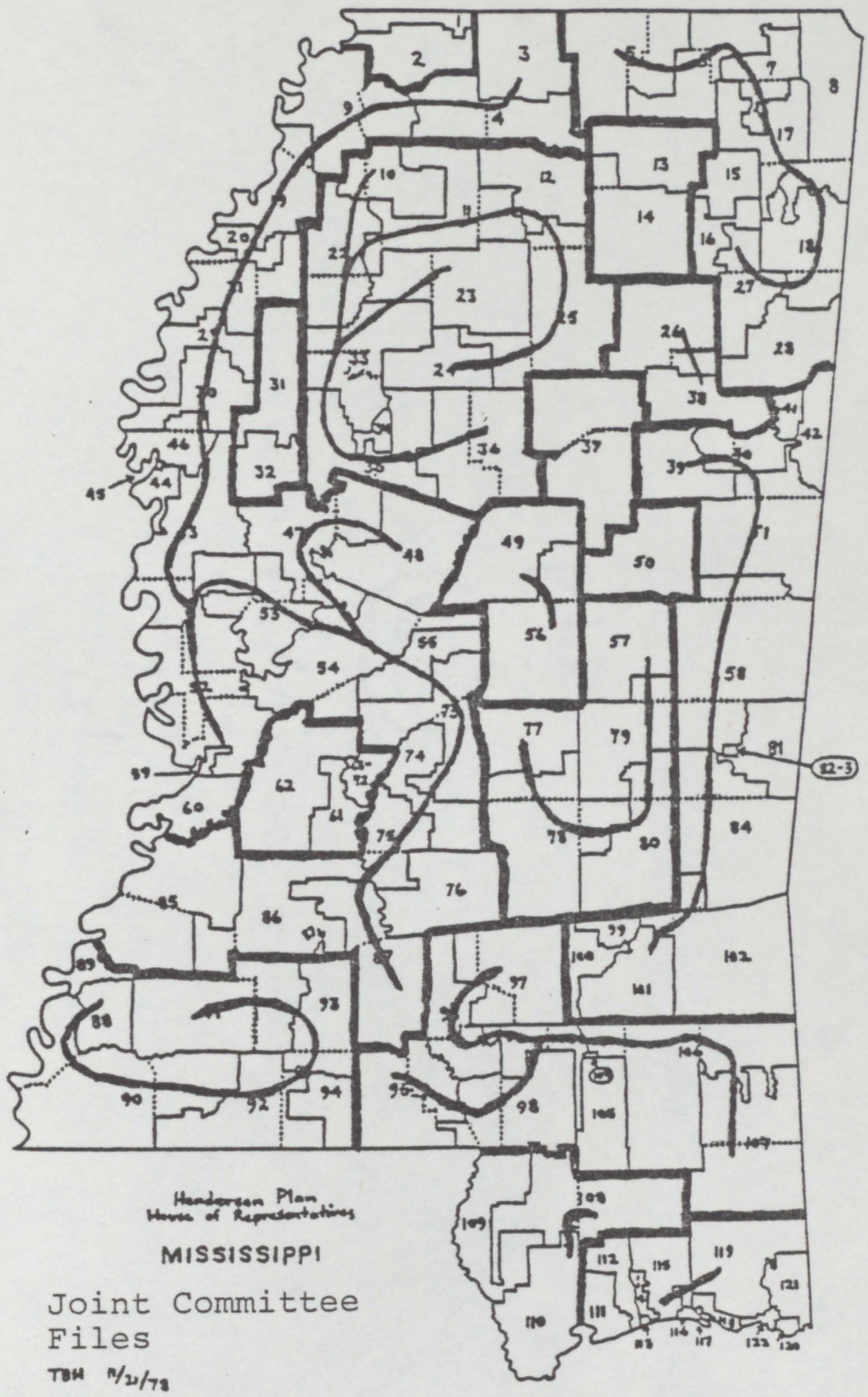
a county. Adding population to any one district within this CCDA will cause a ripple to be generated. Assuming that the ripple can travel through a CCDA with greater ease than over a CCDA boundary (a crossing of the boundary of the CCDA would go against the criterion of not breaking counties), then a ripple path (RP) may be established within the CCDA. Some ripple paths may be long, extending over a large part of the State. Others may be confined to two districts. Still others may have side ripples or eddies. At any rate, through the examination of CCDAs and ripple paths, we can analyze the possible effects of changes made in plans and in this way we can also better compare one plan with another.

The four plans under examination are shown on figures 32 through 35, with the CCDAs and ripple paths marked on each. For a further comparison, the same procedure has been followed for the House Court ED Plan, which is shown on figure 36. It should come as no surprise that, in the State Plan, the CCDAs are smaller and fewer in number, while in the House Court ED Plan the CCDAs are very large and very few in number. This is because the State Plan was allowed deviations of ± 5.00 percent, while the ED Plan was limited to ± 2.00 percent. This increase in the allowable deviation, although it involved just 544 people in each district, made a considerable difference between the two plans.

In the State Plan, the longest ripple path is in

FIGURE 32

RIPPLE PATHS IN HENDERSON PLAN

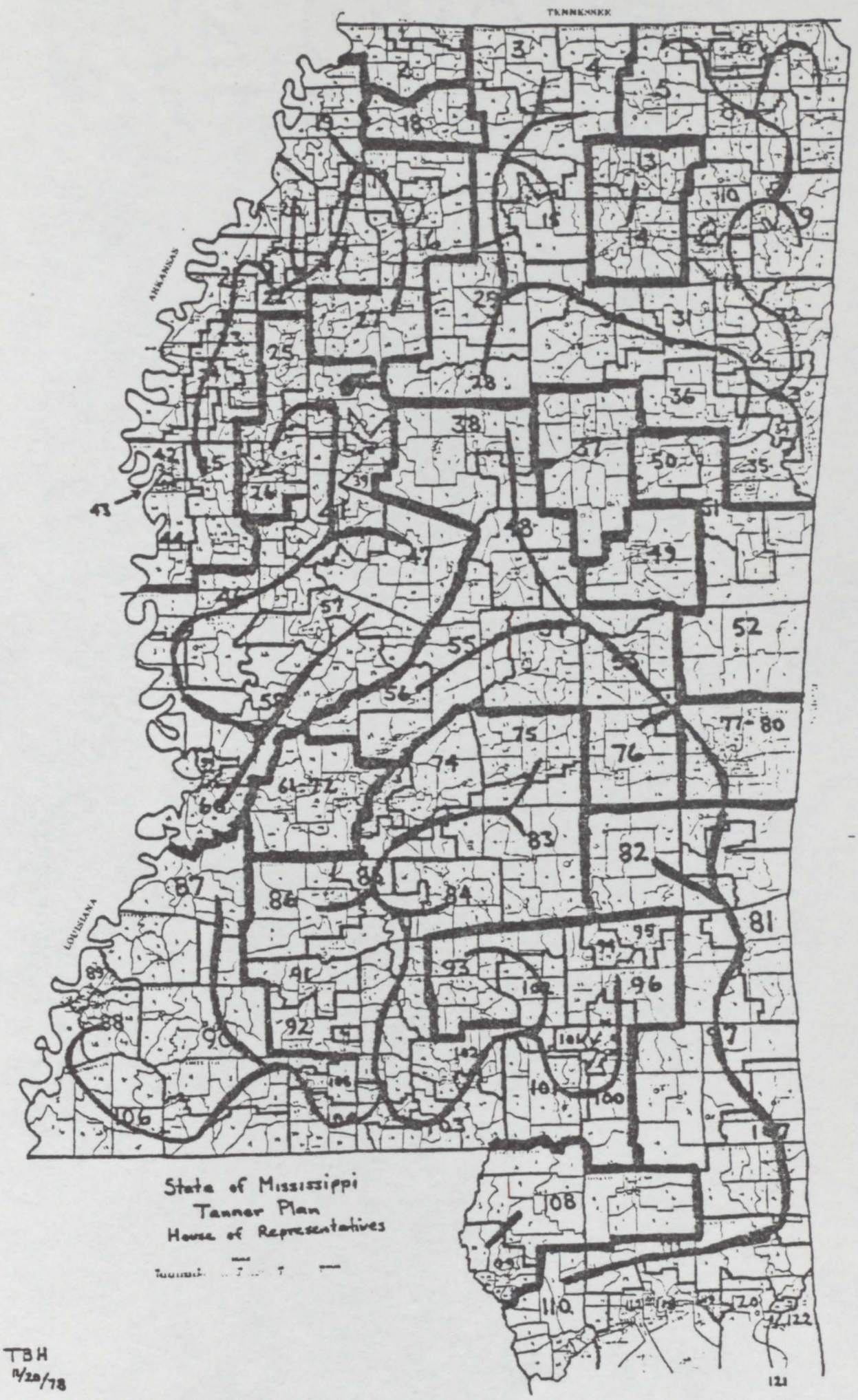


SOURCE: Joint Committee Files

TBH 11/21/78

FIGURE 33

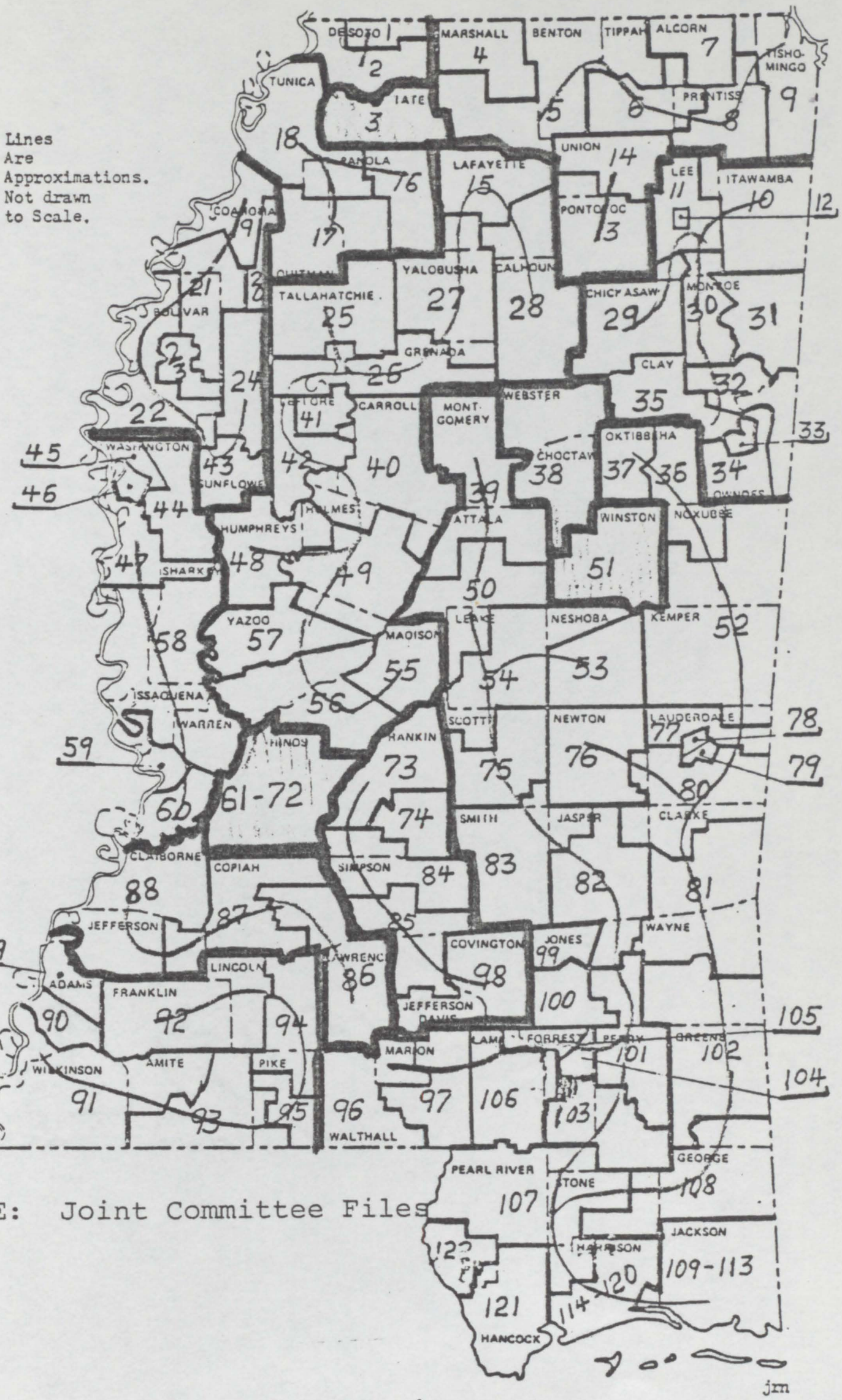
RIPPLE PATHS IN TANNER PLAN



SOURCE: Joint Committee Files

FIGURE 34

RIPPLE PATHS IN MASTER'S PLAN

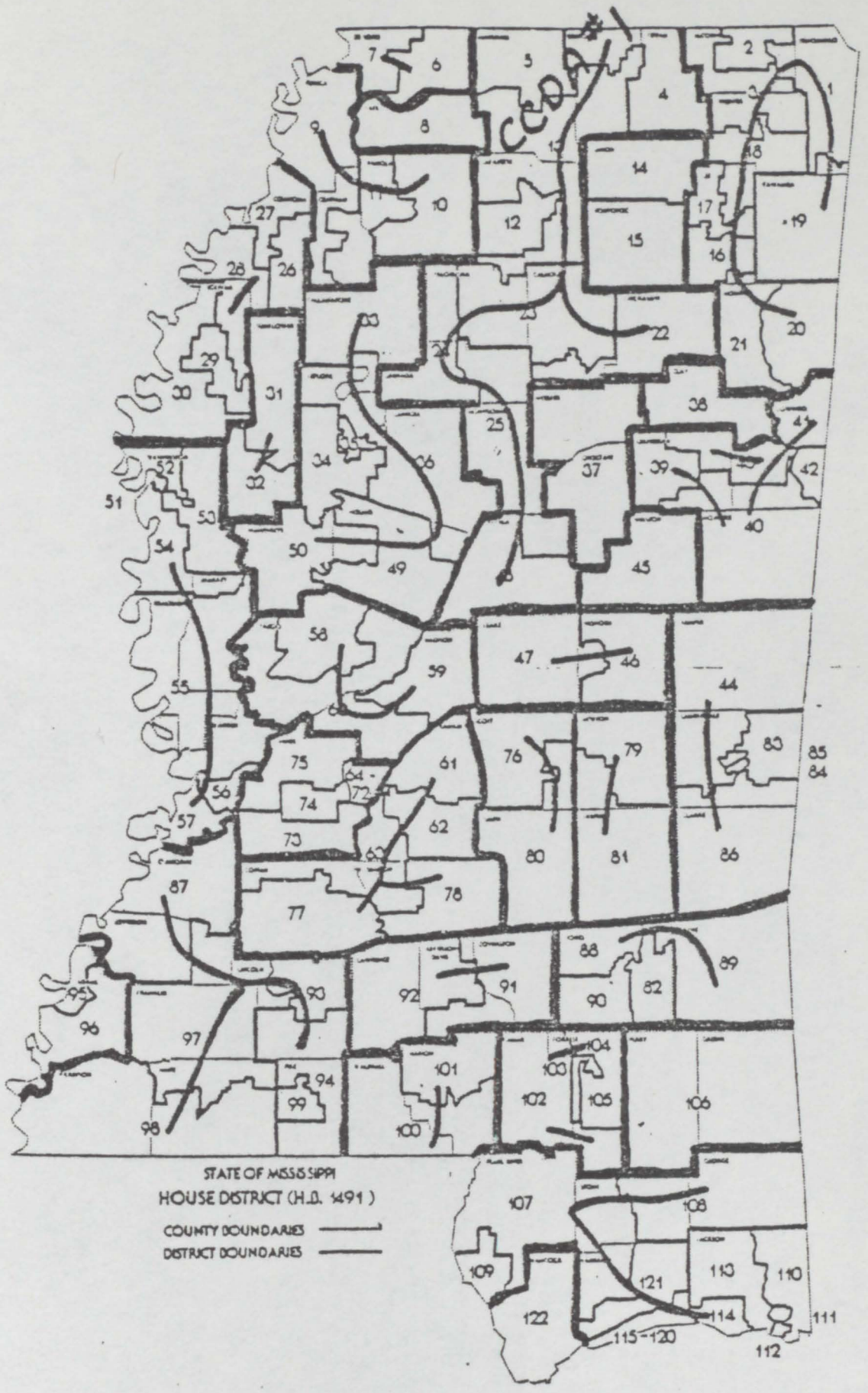


SOURCE: Joint Committee Files

jrn

FIGURE 35

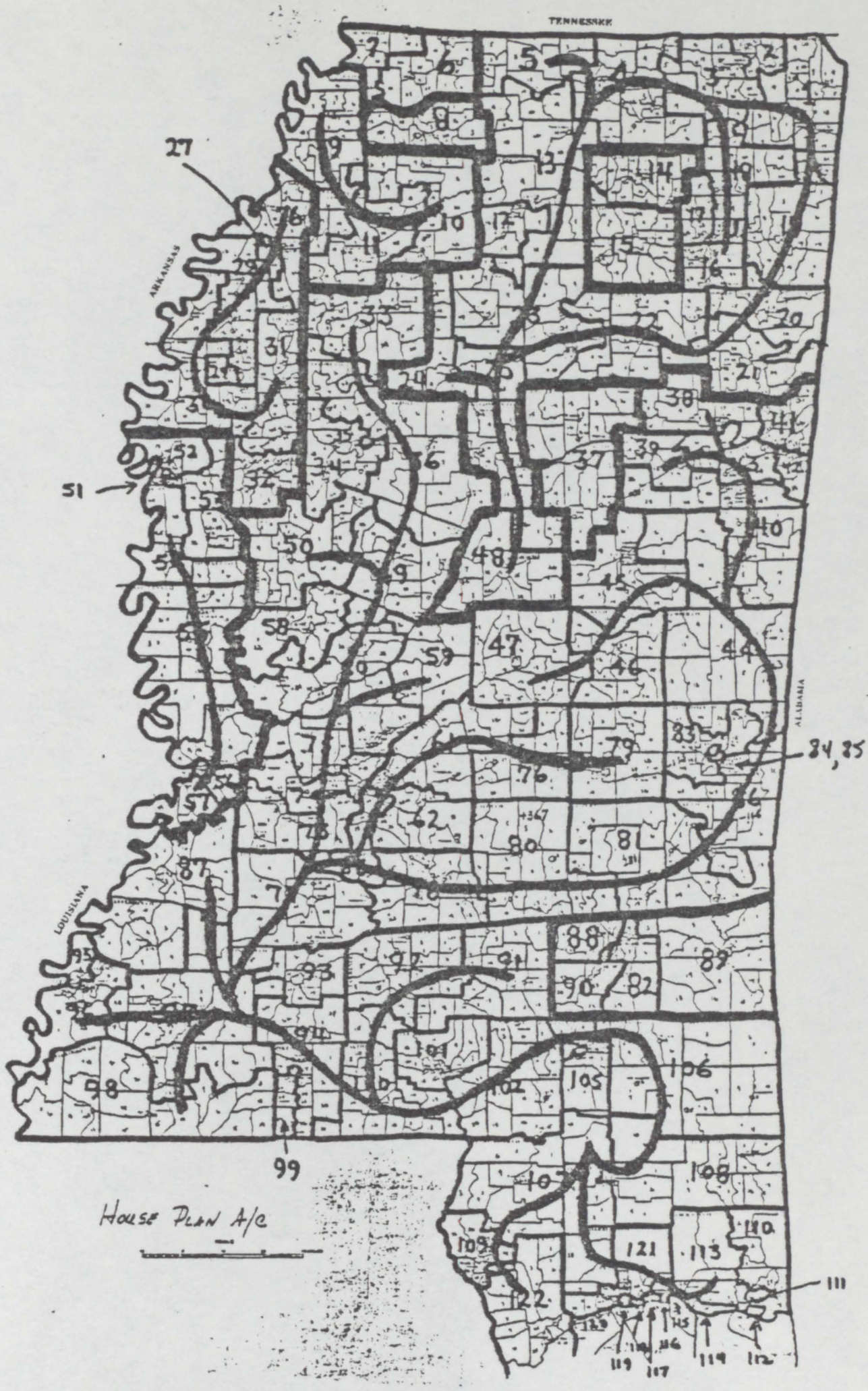
RIPPLE PATHS IN HB 1491



SOURCE: Joint Committee Files

FIGURE 36

THE HOUSE COURT E.D. PLAN



SOURCE: Joint Committee Files

CCDA 1. This RP extends from Attala County to Tippah County, with an eddy into Chickasaw County. In the State's ED Plan, there is a ripple path which begins in Jackson County, at the far southern end of the State, and sends one large eddy up to Clay County and another up to Tallahatchie County. In the Henderson Plan, the longest ripple path appears to be the one from Simpson County to Coahoma County. Tanner's ripple paths are somewhat shorter than those of Henderson, and follow wide, circular paths. The Master's Plan has two ripple paths running side by side up the eastern side of the State; these RPs are really two large eddies, both originating in Jackson County with one of them ending up in Montgomery County and the other in Oktibbeha County. The Master has another long RP extending from Madison County to Calhoun County. One can see, by overlaying the State's Plan with the RPs and CCDAs in all these other plans, that very little of the other plans could be incorporated into the State's. Many changes had to be made in the districts proposed in these other plans before seven of the altered districts could be incorporated into the State's Plan to construct a Compromise Plan.

Specific Problems in the Tanner and Henderson Plans

A second method of comparing all the plans is by judging the accuracy of each. In October and November of 1978, following the hearings in Mississippi v. United

States, the author, assisted by Mr. John Beyers (from the staff of the Rose Institute of State and Local Government, Claremont Men's College) began a detailed examination of the population figures presented by Msrs. Tanner and Henderson with the final versions of their plans. This examination was performed at the request of counsel for Mississippi and was initiated for two reasons. The first was the conclusions drawn by Dr. Richard Morrill after his detailed examination of the Tanner and Henderson Plans as they were originally presented to the Connor Court in 1977.[3] Dr. Morrill, both in his conversations with the Joint Committee staff and in his deposition in the Connor case, expressed the opinion that the Tanner and Henderson Plans were inaccurate. In several cases, even county populations were incorrect. In Dr. Morrill's deposition, for example, the following exchange took place:

DR. MORRILL:

> When I add up the population of the parts of districts in Washington County in the Plaintiff plan, the population which is attributed to Washington County totals 73,000, but there's only 70,000 people. So somehow in the plan, precincts may have been counted twice or something because there's not enough people to go around in Washington County for all those districts. In the case of . . .

MR. LEONARD:

> Did you say Washington County?

DR. MORRILL:

> Washington County. . . . The same thing happens in Yazoo County in the Plaintiff plan. There are 27,000 people in Yazoo

> County, but there are 30,000 people attributed to it. And the problem there, I think you can see, is that--I think it's South City Hall precinct--is included twice in two different districts. So . . .

MR. MC CRATH:

> Have you made a comparison of the Department's (Justice) plan in that regard in Yazoo County?

DR. MORRILL:

> As I recall, I have looked at that, and I think that it adds up all right. Well, no, there's a problem in the Department of Justice's plan too, in Yazoo County of discontiguous precincts in the city . . .[4]

Dr. Morrill indicated numerous problems with both plans.

The second factor which alerted the State to possible accuracy problems was a cursory examination by this author, the results of which were covered in his rebuttal testimony in Washington, D.C. This author found obvious errors in both plans. Further examination by this author revealed many errors in the two plans.[5]

A comparison of the first version of the Henderson Plan, as submitted to the Connor Court, with the final version reveals that 71 of the 122 House districts were, somehow, changed in their configurations or in their statistics. These 71 districts represent 58.2 percent of all the House districts. In many cases, although the district descriptions remained unchanged, both the black populations and the total populations cited for the districts were altered. Some of these changes reflect adversely on the methodology, the statistical credibility, and, perhaps,

also the intentions of Henderson.

For instance, although the precinct of Police Station was contained in District 45 in the first Henderson Plan, it was dropped in the final version. Despite the loss of this precinct, however, the population cited for District 45 in the final plan actually increased from 18,195 to 18,250, while the black percentage cited for the district also increased from 66.48 to 73.78. According to Henderson, then, the precinct of Police Station contains a negative total population of 55 persons and a negative black population of 1369 persons. These remarkable figures made their appearance, moreover, after Henderson had assured the Connor Court that the Plaintiffs possessed accurate information on precinct populations.

A second example of Henderson's doubtful methodology is contained in District 86. Between the time the first version was submitted and the time the final version was ready for submission, Dr. Henderson mysteriously located nine more persons in this district, while at the same time discovering 164 more blacks. (The overall description of the district, however, was not changed.) This statistical "sleight of hand" pushed Henderson's computation of the black percentage in the district from 49.30 percent to 50.14 percent--thus enabling him to count this district as a black majority district.

We see another example of questionable methods in Henderson's District 85. In this district, which contains

no split EDs, the black population cited in the first version of the Henderson Plan was 13,522; in the final version it was 13,811. This change in statistical data was made without any alteration whatsoever in the configuration of the district.

In the Henderson Plan, deviations were found of up to 54.36 percent in excess of ideal district population, and up to 68.36 percent below ideal district population. Thus, Henderson's Plan contains a total deviation of 122.72 percent. Moreover, this total deviation was accompanied by numerous examples of deviations in excess of the acceptable standard of 10 percent from highest to lowest district. These figures for the Henderson districts examined in detail are found on table 7.

In the Tanner Plan, deviations of up to 24.74 percent above, and 28.28 percent below, the ideal district population were found. Thus, Tanner's Plan contained a total deviation of 53.02 percent. Tanner's total deviation, too, was accompanied by numerous examples of deviation in excess of the acceptable standard of 10 percent from highest to lowest district (see table 8).

It should be pointed out also that Mr. Tanner omitted precincts throughout the State from his plan, while listing other precincts more than once. For example, he failed to place Amite County's SD 5 in any district, but listed the same County's SD 3 in both District 90 and District 106. Similarly, in Pike County, Precinct 18 was assigned to both

TABLE 7

HENDERSON PLAN HOUSE DISTRICTS
DEVIATIONS IN EXCESS OF 15% FROM IDEAL

District Number	Population	Deviation	Percent Deviation
6	21,861	3,690	20.30
11	21,503	3,332	18.33
12	15,290	-2,881	-15.85
18	14,839	-3,332	-18.33
90	21,198	3,027	16.65
99	5,748	-12,423	-68.36
101	28,049	9,878	54.36
104	21,612	3,441	18.93
105	14,453	-3,718	-20.46
118	21,098	2,927	16.10
120	21,956	3,785	20.82
122	13,741	-4,430	-24.37

SOURCE: Joint Committee Files

TABLE 8

TANNER PLAN HOUSE DISTRICTS
DEVIATIONS IN EXCESS OF 10% FROM IDEAL

District Number	Population	Deviation	Percent Deviation
1	16,268	-1,903	-10.74
10	20,058	1,887	10.38
25	22,668	4,479	24.74
26	13,031	-5,140	-28.28
29	14,120	-4,051	-22.29
34	14,446	-3,725	-20.49
35	16,198	-1,973	-10.85
59	20,204	2,033	11.18
60	16,353	-1,818	-10.00
73	20,109	1,938	10.66
94	20,555	2,384	13.11
96	15,944	-2,227	-12.25

SOURCE: Joint Committee Files

District 90 and District 105. The Precinct of South Greenwood in Leflore County was not assigned to any district; nor do two precincts in Harrison County--North Bay and outside Long Beach--appear in any district.

Mr. Tanner likewise failed to provide adequate geographic descriptions of the districts he created. In Calhoun County (Districts 29 and 30), Neshoba County (Districts 53 and 77), Covington County (Districts 93 and 102), and Wayne County (Districts 81 and 97), Tanner claimed he was unable to ascertain the precinct lines. However, he presented a district without alternative geographic descriptors, namely, metes and bounds. This defect is comparable to selling a piece of land without a boundary description.

Both the Connor Plaintiffs and Justice claimed that more black seats were created in their plans than in the State's Plan; and in this respect it is true that the Tanner and Henderson Plans compared favorably with the State's Plan. However, analysis of the Tanner and Henderson Plans shows that many of the majority black seats they created are found in the North Delta Area of Northwest Mississippi, and that the seats were made possible only by the excessive fragmentation of the sixteen counties in this part of the State.

The State's Plan maximized representation in fourteen of the sixteen North Delta counties. The Tanner Plan maximized representation in ten of the sixteen counties. The

Henderson Plan maximized representation in only two of the sixteen. When a plan departs from the neutral criterion of maintaining county integrity, and uses awkward configurations in order to create more black seats, it could be construed as a gerrymander in favor of the maximization of black seats. Such gerrymandering activity clearly exceeds the constitutional requirement of avoiding the dilution of black voting strength.

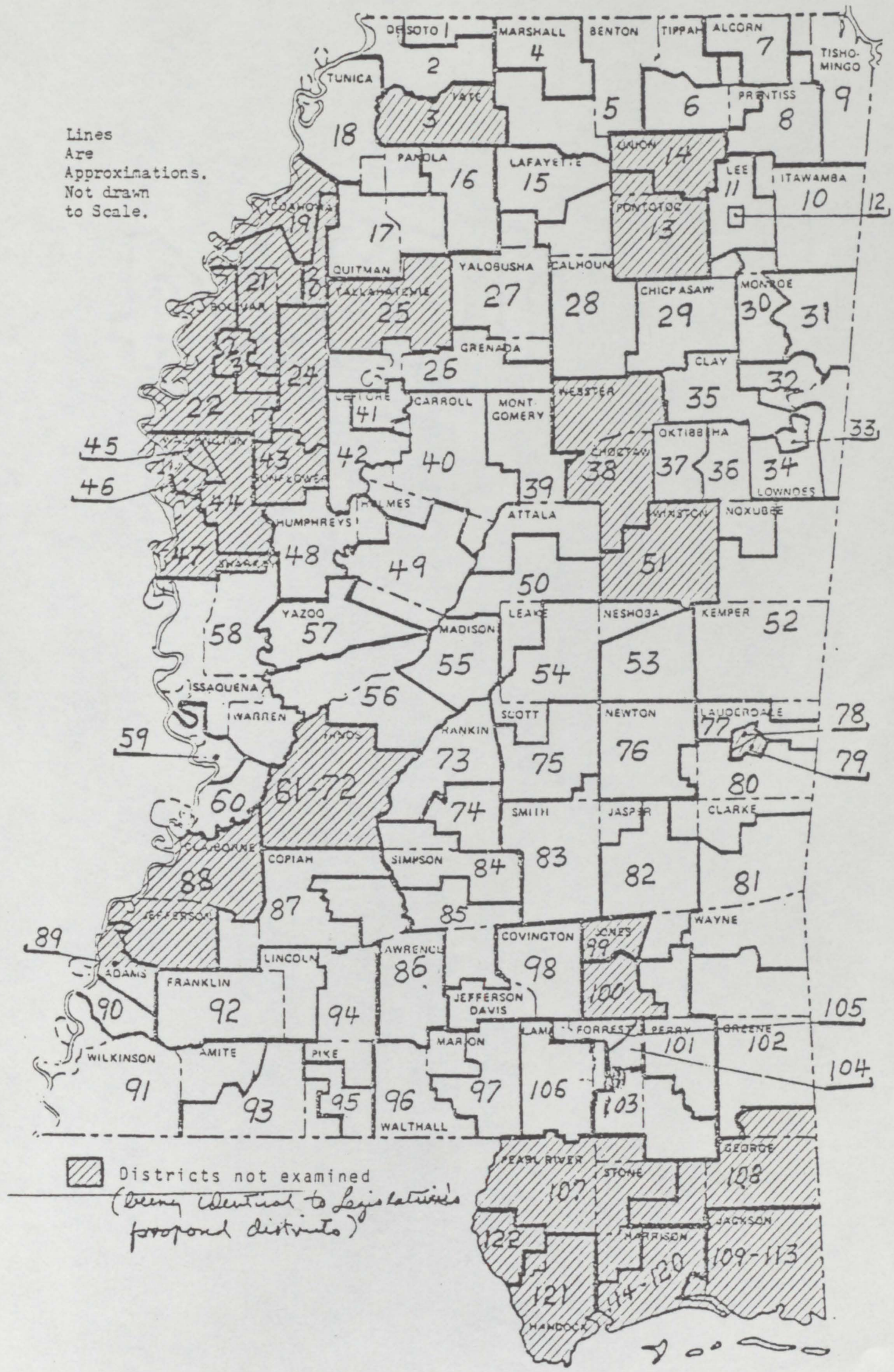
The Court's Plan

The Plan of the Special Master was described by the Master as a hybrid of the State's, the Henderson, and the Tanner Plans. This appears to be the case. However, the Special Master made serious statistical errors merging the three plans. In figure 37, we can see that the shaded districts were adopted from the State's Plan. The Master offered the Court alternate solutions for Hinds County (twelve districts) and Warren County (two districts).

In rough terms, the Plan appeared to have been composed of approximately 26 percent of the State Plan, 6 percent from Henderson's Plan, 9 percent from Tanner's Plan, 19 percent from all plans or alternatives from all plans, and 40 percent original construction of the Master. Almost all of the districts drastically reconfigured by the Master were in rural areas. It is interesting to note that many of the same general problems occurred in the Master's Plan that caused objections to be raised by Justice against the State's Plan. Yet in Justice's objections to

FIGURE 37

DISTRICTS IN THE MASTER'S PLAN TAKEN FROM HB 1491



SOURCE: Joint Committee Files

the Master's Plan filed with the Connor Court, many of these objections were not raised.[6] Analysis of the Master's Plan by the staff of the Joint Committee revealed that 28 of his districts varied by more than 4 percent from ideal district size. The highest district was + 12.18 percent and the lowest was - 21.36 percent. This amounted to a total deviation of 33.54 percent. It is amazing to note that neither Justice nor Connor Plaintiffs raised objections to these excessive deviations, even though they raised objections to the State's total deviation of 10 percent. This is probably due to the fact that (1) they did not examine the plan for violations of "one man, one vote," and (2) they were only interested in racial percentages and this plan solved all problems which they felt were constitutionally important in nature in terms of racial representation (not "one man, one vote")--as compared with the State's Plan.

At any rate, the Master's Plan could have been corrected to fit the Court guidelines. In fact, Committee staff made suggestions (along with criticisms) that would have corrected most of the problems. A detailed critique of the Master's Plan appears in the Appendix. This plan was set aside, however, when the Connor Court ordered the parties to the Connor v. Finch lawsuit to attempt to reach a settlement in the summer of 1978. When the Connor Court was again forced to act--at the direction of the Supreme Court in April of 1979--the Master turned to the

Compromise Plan, which had been certified by the Committee staff as statistically correct. The Master, however, chose to modify Rankin County from its configuration on the Compromise Plan. In so doing, he created one district which has a deviation of 6.1 percent.

Footnotes to Chapter VI

[1]See discussion of Beer in chap. III under the heading "Section 5."

[2]Mississippi v. U.S., trial transcript p. 1472.

[3]Dr. Morrill is a Professor of Geography, University of Washington, and was Special Master for redistricting in that State in 1971.

[4]Deposition of Dr. Morrill, Connor v. Finch, pp. 27-29.

[5]The Court Master's Plan will be discussed later.

[6]See Appendix A for critiques of Master's Plan.

CHAPTER VII

MISSISSIPPI V. UNITED STATES:

THE CASE OF THE DEFENDANTS

The first section of this chapter will deal with the complaints that both the defendant and the defendant intervenors made against the actual redistricting plan for the House of Representatives (HB 1491).[1] Later in the chapter, an examination of the other issues brought before the Court--such as the interpretation of previous court cases--will be made.

The complaints against HB 1491 fell naturally into two groups. The first group consisted of complaints about the differences between HB 1491 and the Compromise Plan. These differences provided the only grounds on which the defendants might rightfully have questioned the constitutionality of HB 1491. The other group of complaints consisted of all the other issues that the defendants threw in as superfluous additions to a weak case.

As we have already seen, both the Connor Plaintiffs and the State of Mississippi agreed to the Compromise Plan. The Attorney General of the United States also agreed to approve this plan (even though his approval was not necessary under Section 5 for a Court settlement).

When asked at the final hearing of the case whether the Compromise Plan was constitutional, the United States Attorney agreed that it was. This was a position that the Court knew the Attorney General's office must take, since it was highly unlikely that they would give their approval to an unconstitutional plan in settlement of the Connor case. The Court then reasoned that if the United States contended the Compromise Plan was constitutional, but HB 1491 was unconstitutional, then the aspects of HB 1491 which made it unconstitutional could be discovered by finding the differences between the two plans. Essentially, the United States fell into a trap of its own making. They had demanded the introduction of the Compromise Plan into evidence over the objections of the State of Mississippi, but, in so doing, they had invalidated 90 percent of the evidence which they presented in the case. This blunder, together with the allegation by the intervenors' witnesses that they would have preferred any court settlement to a plan passed by the Legislature is probably why they lost the case.[2]

It was surely not enough for the United States to contend that just because the Compromise Plan was agreeable to them while HB 1491 was not, that this fact alone, a priori, proved that HB 1491 was unconstitutional. At the very least, they would have to have presented some good reason for their complaints against HB 1491. Furthermore, they would have to have proven the validity of their

complaints.

The paramount issue in the case concerned what constituted a district in which the black voters could expect to "elect a candidate of their choice."[3] The Connor Plaintiffs and the United States introduced conflicting and confusing testimony before the Court on this issue. The confusing nature of their arguments is best demonstrated by the briefs presented to the Court.

The position for the United States was as follows:

> Generally, today, a district should contain a black population of 65 percent or a black VAP of 60 percent to provide black voters with an opportunity to elect a candidate of their choice. However, subsequent to the 1970 Census, a significant out-migration of blacks from Mississippi--particularly from rural portions of Mississippi--has occurred. Therefore, if the 1970 Census data is used, a rural district should contain a 71.1 percent black total population or a 66.2 percent black VAP to allow black voters a 50/50 chance to elect a candidate of their choice, whereas an urban district should contain a 65.7 percent black total population or a 60.5 percent black VAP.[4]
>
> Under the facts of this case, districts generally should contain no less than 60 percent black voting age majorities to provide black voters with a realistic opportunity to elect a candidate of their choice. The necessary percentage may be higher in a rural area or slightly lower in an urban area in which there is a politically active and geographically identifiable and contiguous black community placed entirely within one district.[5]

Mayor Charles Evers stated that:

> . . . a black candidate would not have a realistic chance of gaining election if opposed by a white candidate unless the constituency had a black voting age population of 60 to 75 percent.[6]

Expert testimony concludes that for blacks to have a viable chance to elect a candidate, an urban district should contain a 59.7 percent black VAP and a rural district should contain a 60 percent

> black VAP. However, such testimony cautions that because of a net out-migration of blacks from Mississippi . . . where 1970 Census figures are used, an urban district should contain a black total population of 65.7 percent and a black VAP of 60.5 percent, while a rural district should contain a black population of 71.1 percent and black VAP of 66 percent.[7]

It is difficult to believe that anyone would make a major issue of the difference between a 59.7 percent VAP and a 60.0 percent VAP. It is also doubtful that any qualified statistician would declare that a 0.3 percent population difference in rural versus urban districts would make the difference between winning and losing a House seat. Even a sample much larger than the one cited in court would have a confidence interval of 1 percent or greater. Moreover, the error in calculating the VAP for any given district (assuming precincts were split) would certainly be greater than .3 percent. To go on record as advocating such a degree of precision simply suggests a marked lack of statistical expertise.

The United States also claimed that the gap between winning and losing a rural versus an urban district had increased in some areas due to "out-migration" of rural blacks. Thus, they claimed that a 60.5 percent VAP was required to win an urban area, while a 66.0 percent VAP was required in a rural area--a difference of 5.5 percent. Yet, there was no proof presented that whites were not departing the rural areas in equal numbers to blacks. And, if out-migration was to be taken into account, surely the <u>total</u> population figures ought to be adjusted

accordingly, along with the black percentages, if the districts were to conform to the one person, one vote rule.

The United States closed its brief with the following statement:

> However, the Court should not use 1970 data (sic) census data to the exclusion of other factors such as population shifts which have occurred since 1970, the size of the district, as well as the relative political abilities of the black or the white voters included in the district . . . all are critical in considering whether the reapportionment "designedly or otherwise" dilutes black voting strength.[8]

It is interesting to note that the chief technical witness for the United States, in his testimony before the Court, made the following statement in regard to the factor he would use in the construction of a redistricting plan:

(Mr. Leonard, Attorney for the State, questioning):

QUESTION: "Now, how about voter apathy among blacks. Would you consider that?"

(Dr. James W. Loewen, Director of Research for the Center for National Policy Review, Catholic University School of Law, answering for the United States):

ANSWER: "I don't think so. I would consider that in assessing the plan, I guess, but not in drawing it."

QUESTION: "How about education among blacks?"

ANSWER: "No."

QUESTION: "How about the political expertise or acumen of the black community?"

ANSWER: "I don't know how that could be measured, you know, in a statistically viable manner, other than just hearsay."

QUESTION: "It's kind of amorphous, you can't really get your hands on it, is that the idea?"

ANSWER: "Well, yes."[9]

Dr. Loewen also had the following exchange with Mr. Leonard:

QUESTION: "And I believe you already said that you would take some cognizance of the availability of black incumbents in other offices to run (for the Legislature). So that would be some kind of factor?"

ANSWER: "No, I didn't say I would take that into account in drawing the plan."

QUESTION: "You would not?"

ANSWER: "I don't know if I would or not. I really don't know."

QUESTION: "You're not sure?"

ANSWER: "Correct."

QUESTION: "Would you take into account the political activity of blacks within the particular area that you were focusing on to reapportion?"

ANSWER: "All of the factors that you have been mentioning, the political activity and availability of the incumbent, and so on, I think that I would not be able to take into account. For

> one thing, it is difficult to do it statistically, and I would want a plan that's statistically correct. I would have to say at most I don't know."[10]

In his testimony, Dr. Loewen drew the conclusion that it was difficult to quantify much of the data that the United States claimed should be used in drawing a plan. He said that he would not use much of it. He then went on to state that he would have, and did, use the same data to judge a plan that he would not have used to draw that same plan. It appears, then, that he would place the State of Mississippi in an utterly untenable position. He would have them draw a plan using one set of data, and then have it judged by another--with the latter data being of a nature that is difficult to quantify, and some of it being just plain hearsay.

At any rate, the United States' own expert (Dr. Loewen) set a black VAP percentage of 60.5 percent in an urban area, and 66 percent in a rural area, as constituting a district in which a black candidate would have a 50/50 chance of winning.[11] The D.C. Court accepted a 60 percent VAP as the minimum figure for a black district in its opinion in this case.[12] Bearing these three percentages in mind, we can now examine the differences between the State's Plan and the Compromise Plan to determine if the differences did indeed represent a constitutional violation on the part of the State.

Seventeen districts in HB 1491 were modified in order to win approval of the Compromise Plan by the Connor Plaintiffs and the United States. These seventeen changes took place in seven sets of districts. Each of these seven areas will now be discussed in turn. Before beginning this review, however, one additional point should be made. It is presumed that neither the Connor Plaintiffs nor the Justice Department in constructing any of their plans intended to discriminate on the basis of race. Furthermore, it is presumed that they did not present any plans which they believed had the effect of discrimination. Therefore, if an unintentional discriminatory effect is found in any of their plans, the effect does not prove an intent. This is an important conclusion, as will be demonstrated throughout the remainder of this chapter.

Hinds County

The United States contended that the State's three western districts in this county were discriminatory. They also claimed that these districts--numbers 73, 74, and 75--were "gerrymanders." They contained black VAP percentages of 31.86, 29.38, and 39.21. The Compromise Plan contained the following VAP percentages for the same three districts: 73 was 59.07 percent, 74 was 26.17 percent, and 75 was 15.33 percent.

The State contended that these districts were compact, and that they followed generally the lines which were dictated by the Federal Court in 1975.

According to the United States' own standard, Compromise District 73, being situated in a rural part of Hinds County, fell 5.97 percentage points short of being a black district. Also, the configuration of these three districts in the Compromise Plan, which was designed to put more blacks in District 73, resulted in under-representation of the voters in Districts 74 and 75--where extensive population growth, in comparison to a very slight growth in the area of District 73, has taken place since 1970.

It follows from these facts that, while the State could have created an "influence" district for blacks in this area, the resulting malapportionment would have been unconstitutional in effect. The HB 1491 districts are not strangely shaped by any objective standard. Finally, since the Federal Court in 1975 dictated the configuration for this area, the burden of proof must be on the United States to prove that a plan conforming to that configuration is unconstitutional--especially when it adds an additional black seat to the Court configuration.

Warren County

The United States contended that HB 1491 split the black community in the City of Vicksburg, and that this community, if merged with rural blacks to the north, would create a black district. The districts in question are 55, 56, and 57. The United States also contended that these districts in HB 1491 were irregular in shape, indicating a gerrymander. The black VAP percentages in the three dist-

ricts were as follows: 55 was 48.23, 56 was 47.10, and 57 was 28.39. The black VAP percentages in the Compromise Plan, on the other hand, were as follows: 55 was 44.64, 56 was 56.22, and 57 was 20.17.

The State contended that the districts were not highly irregular in shape, and that their configuration resulted from a rational State policy of forming city/rural districts. The State further contended that district 56 was not a black district anyway.

The facts are that: (1) the configuration in the Compromise Plan was more compact; (2) neither configuration was excessively irregular--particularly as pertains to District 55; (3) a district could have been created totally within the City of Vicksburg, which would have had a black VAP of 53.33 percent (based on EDs); (4) according to the Loewen standard, this possible Vicksburg district, being 7 percent rural and 93 percent urban, would need a black VAP of 60.88 percent to be a black district; and (5) Compromise Plan (CP) District 56 fell 4.66 percent short of the lower Loewen limit for a black district. Thus, while the State may have unwisely split up black political influence in Warren County, it did not prevent the formation of a viable black district.

Leflore County

The United States contended that the State split the black community in the City of Greenwood. They further contended that this black community should have been

combined with the rural blacks in the northern end of the County to form a stronger black district. The districts in contention were House Bill 1491 Districts (HP) numbers 34 (black VAP 64.26) and 35 (black VAP 37.72). The United States contended that Compromise Plan (CP) District 35 (black VAP 71.72) was constitutional and black, while HB-35 was not black. The United States concluded that HB-35 was a gerrymander.[13]

The State contended that CP-35 was less compact than HB-35, and contended that all other configurations for this County were less compact than HB-35. The State also contended that HB-35 combined blacks from Greenwood with blacks from the rural area because this created a better black district than would have resulted if whites from the City were to have been combined with rural blacks. The State contended that HB-35 was a black district.

The facts are that the best district that could have been formed within the City of Greenwood would have had a 53.61 percent BVAP; that the State's Plan was the most compact; that the only way the State could have raised the BVAP (Black Voting Age Population) percentage would have been to fragment the City of Greenwood further (as was the case in CP-34 and CP-35); and that HB-34, being 31.5 percent urban and 68.5 percent rural, required only a black VAP percentage of 64.26 to qualify as a black district according to the Loewen standard. As it turned out, HB-34 met the Loewen standard and passed the Court's criterion

of 60 percent BVAP by 4.26 percent. HB-35 was a black district and was constitutional.[14]

Adams County

The United States contended that the State, in creating HB-95, deliberately kept the BVAP percentage at just 60.63. They contended that CP-95, with a black VAP of 66.45, was a black district, while HB-95 was not. The State claimed that HB-95 met the 60 percent BVAP criterion, and was, therefore, sufficiently black.

Applying the Loewen standard, with HB-95 being 20 percent rural and 80 percent urban (Natchez), this district should have had a black VAP of 61.6 percent. Thus, although its BVAP was .5 percent above the Court's standard, HB-95 fell 1 percent short of being a black district under Loewen. This district probably should have contained a few more blacks, but a difference of 1 percent in one district is hardly enough to justify throwing out an entire plan.[15]

Marshall County

The United States contended that the black VAP of 56.02 in HB-5 was too low, and that in this district the State should have followed the Connor Plaintiffs' configuration, which resulted in a BVAP of 61.25 percent (State's figure). The United States also claimed that the State was obliged to fragment the City of Holly Springs and to follow the lines of the supervisorial districts.

The State contended that the district of the Connor

Plaintiffs was not compact and was a gerrymander. They contended that HB-5 was essentially the same as District 3 in the Justice Department's Plan, which had a black VAP of only 55.83 percent. Finally, they contended that the Justice Department could not logically claim that another party's district was unconstitutional, by either intent or effect, if it were better than the one in their own plan.

In arguing against the districts in this County, the United States clearly erred. In effect, they branded their own plan for this County as unconstitutional. Moreover, using the Loewen standard again, the CP-5 BVAP of 62.04 does not constitute a black district. CP-5 was 20.4 percent urban and 79.6 percent rural, requiring a BVAP of 64.88 percent to make it a black district; CP-5 was 2.84 percent under that standard, even though it was 2.04 percent above the Court's standard.[16]

Panola, Quitman, and Tunica Counties

The United States contended that HB-9, HB-10, and HB-11 fragmented concentrations of black voters in the northern portion of this three-county area. The United States also complained that these districts were oddly shaped and malapportioned. By inference, they claimed that CP Districts 9, 10, and 11 were more compact, and were constitutional, while the State's were not.

The State, on the other hand, contended that HB-9 was a black district, and that HB-10 and HB-11 were as black as they were required to be. The State pointed out

that changes made in these districts by the Compromise Plan actually resulted in decreases of the black VAP percentages in HB-9 and HB-11--from 63.48 percent to 62.68 percent (- 0.8 percent) and from 46.47 to 45.90 (- 0.57), respectively, without any significant increase in the black VAP percentage of HB-10 (the increase was from 41.74 to 43.52, up 1.78). The State further pointed out that HB-10 and HB-11 were not black districts by any standard, and that changes of one or two percentage points would not have made any difference in this situation.

The fact is that under the Loewen standard, the change in configuration in these three counties between the State and Compromise Plans lowered the black VAP in the only black district of the three. This change, therefore, should not have taken place. It should also be pointed out that the Tanner Plan (DOJ) fragmented this three-county area to a much greater extent than did HB 1491. The Tanner Plan also created a district equivalent to HB-9 (Tanner 19) which weakened the district equivalent to HB-9 from a black VAP of 63.48 percent to 61.87 percent. The Henderson Plans for these counties were even worse, with districts containing black VAP's of 51.33 percent, 45.59 percent, and 53.17 percent. On this issue, the United States was clearly throwing stones at its own glass house.

De Soto County

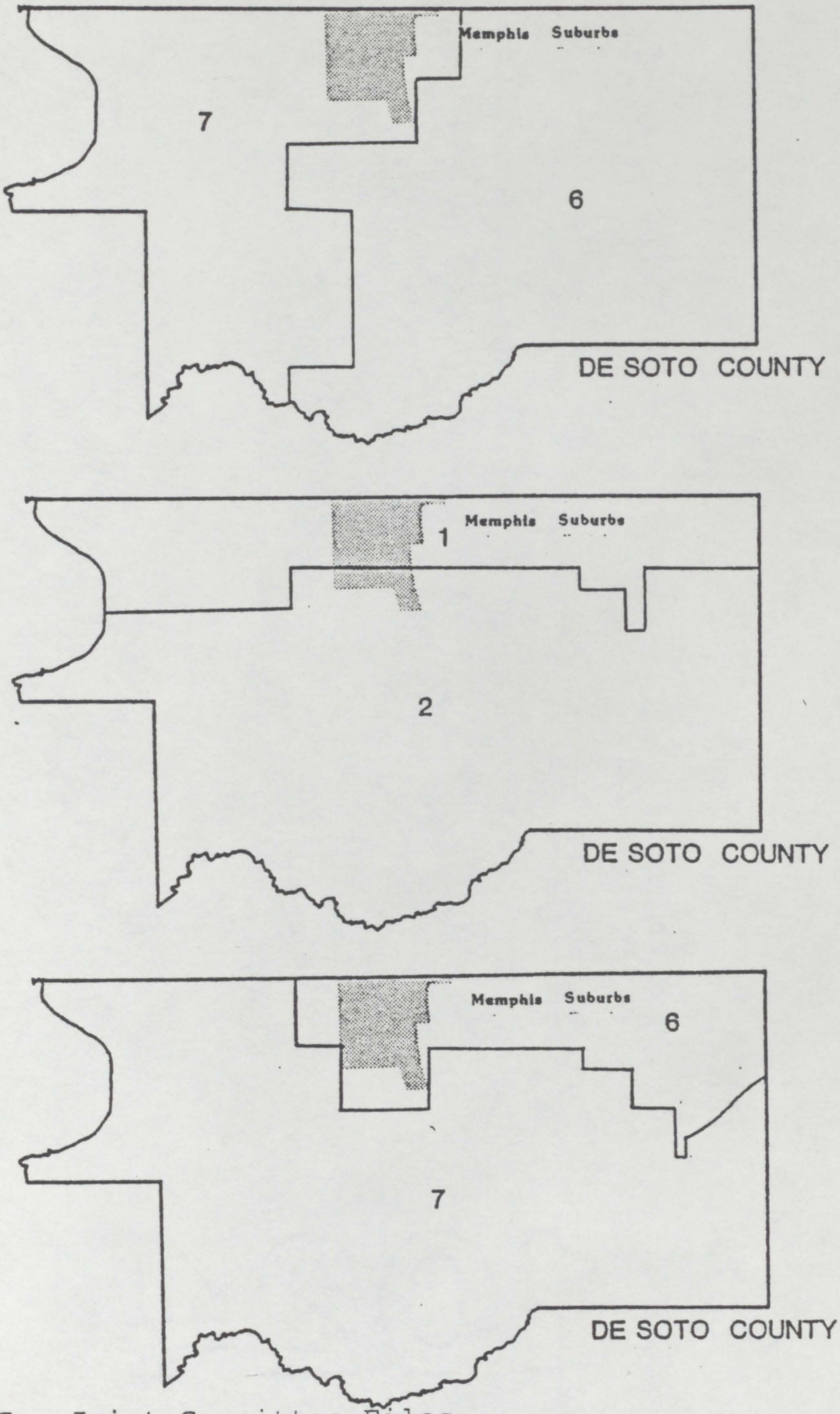
Having broken the glass house in Panola, Quitman, and Tunica Counties, the United States proceeded to raze it to

its foundations in De Soto. Here, the Justice Department contended that HB 1491 split a "concentration" of rural blacks, while this "concentration" was left intact by CP-6 and CP-7. (The Connor Plaintiffs even contended that their districts in this County were more compact than the State's. Figure [38] demonstrates that this configuration was absurd.) Further, the United States held that raising the black VAP from 41.87 in HB-6 to 43.74 in CP-7 would have given blacks significantly more influence in elections in this area.

The State contended that complaints in this County were groundless. The truth is, that by the changes in HB 1491 resulting in the Compromise Plan, the Connor Plaintiffs were attempting to improve the Compromise Plan statistics for the upcoming court battle. These changes raised the total black percentage of HB-6 from 48.36 to 50.07, thus giving the Compromise Plan one more black district and a better set of statistics with which to confuse the issue. Also, both the Justice Department and the Connor Plaintiffs should have been aware that the Southhaven area in northern De Soto County is one of the fastest growing areas in the State. Indeed, De Soto County may well rate three districts in 1980. Thus, if the line between Districts 6 and 7 were drawn in an east-west direction--as it was by both Henderson and Tanner--the result would be a malapportionment of the County without the result of anything more than a marginal gain for black influence.

FIGURE 38

THE STATE, HENDERSON, & COMPROMISE PLANS FOR DE SOTO COUNTY



SOURCE: Joint Committee Files

Thus, out of seven challenges to the State's Plan, only one of them resulted in a change in the number of black districts, as determined by either the Court's standard or by Loewen's standard. The challenges in Marshall County, in the Quitman-Panola-Tunica County area, and in De Soto County were clearly without merit. The cases in the other four areas were marginal at best. While it is true that the State might have constructed different districts in these four areas, the United States failed to prove intent to discriminate in any one of these areas. Furthermore, in only one area (Adams County) could the United States prove that the configuration of the district made any crucial difference in black voting power--even by their own standards. The Court concluded that a difference of one seat out of 122 was not significant enough to declare the State Legislature's plan to be discriminatory. It remains to be seen what the Supreme Court will say concerning this issue.

In Mississippi v. United States, the United States brought forth nine more complaints concerning the composition of the State's districts in HB 1491. These complaints differed from those discussed above in that all of the features of HB 1491 that were complained about were later retained in the Compromise Plan--a plan which the United States has conceded to be constitutional. The complaints in question concerned the Justice Department's contention that the State's district lines had split up concentrations of

of blacks, with the effect of minimizing the influence of black voters in district elections.

In light of the nature of Justice's complaints, it is interesting to note that there is no legal definition of what constitutes a "concentration," nor is there a standard for determining when such a concentration becomes constitutionally important. Also, given Dr. Loewen's contention that the minimum black VAP percentage must be 60 percent for blacks to have even a 50/50 chance of winning an election, it would be helpful to have some definition of what the marginal difference is between 55 percent and 50 percent, or between 50 percent and 45 percent, and so on. It might be presumed that after the percentage drops below 50, then each additional one point decline is probably less and less important.

It should also be emphasized that there was a difference in philosophy between the experts who drew the State's Plans and Mr. Tanner. Mr. Tanner seemed to have believed that every ED in the State should have been examined as each district was drawn--or at least that is the conclusion that can be drawn from a close examination of his plans. The State's experts felt that neutral criteria should be the primary determinants of the configurations in rural areas, particularly in cases involving the possible fragmentation of counties. The State experts contended that it was not their duty to make race the overriding concern in every one of the State's districts. Where there was the

possibility of making significant differences in black voting strength, districts were to have been shaped accordingly. Otherwise, other considerations could have been applied.

Even allowing for an honest difference in opinion, many of the Department of Justice's complaints seem illogical, and were probably brought forward simply in an effort to add bulk to the Justice Department's arguments. Each of these complaints will be discussed below.

Harrison County

The Justice Department, in their plan (referred to hereafter as the Tanner Plan), created a black district in the City of Gulfport.[17] (By black, it is meant that blacks made up over 50 percent of the total population.) This district, TN-114, had a black VAP of 47.49 percent. The Department of Justice's complaint was that although a similar district had appeared in House Plan A/C (District 119, with a black VAP of 51.87 percent), it did not appear in HB 1491. The State, realizing that A/C 119 was extremely awkward in shape--and could not, within the configuration of the total plan, be created in precinct form--had simply dropped the district from the Statutory Plan. The dropping of this district should not have been a "burning" issue, since the Connor Plaintiffs, facing similar configuration problems, had not attempted to draw a black district in Gulfport either. If Henderson had not discriminated, neither had the State.

Jones County

Jones County presented another case in which the Tanner Plan and the Henderson Plan differed. Tanner combined the black precincts of Laurel with a number of rural black precincts to create a 51.97 percent BVAP district. The highest BVAP district that Henderson had created in Jones County, however, was 29.48. Obviously, the civil rights activists did not see the creation of this black district as a "burning" issue in Mississippi.

Wilkinson and Amite Counties

Justice contended that the State split up a concentration of blacks in Amite to create HB-98. They also contended that Tanner's Plan was better--a difficult position to defend when one realizes that the black percentage in HB-98 was higher than it was in Tanner's Plan.

Copiah County

Here, the United States contended that the black community in Copiah County was divided by the State's Plan. In fact, the blacks were spread out all over the county. Mr. Tanner simply wished to draw attention to the fact that his Copiah County district TN-86 had a black VAP of 52.16 percent, while the State's HB-77 had a black VAP of only 44.18. What Justice failed to point out, however, was that Henderson's Plan for Copiah County divided the blacks to a greater extent than did the State's Plan. Even though it took in a heavily black area of neighboring Jefferson

County, Henderson's district had a BVAP of only 45.02--just 0.84 percent higher than the State's district. It should also be made clear that Tanner's District 86 was made possible only by the construction of TN-85--the most irregularly shaped district of all those presented in any plan in this case (see figure 39, The Tanner Plan).

Jackson County - City of Moss Point

Here again was a case of much ado about nothing. HB-111 had a BVAP of 36.76 percent, while TN-121 had a BVAP of 39.12. This difference of 2.36 percent, in a district where the BVAP falls only in the 35-40 percent range, cannot be very significant. The Deparment of Justice's complaint was made to look weaker by the fact that Tanner's district was not even contiguous. Perhaps the State could have switched a precinct, but this hardly seemed a significant problem at the time, especially in comparison to the incumbency problems in Jackson County. At any rate, if a 39.12 percentage was all that important, then why was Justice willing to drop HB-35 in Leflore County (in constructing the Compromise Plan) from 37.72 to 31.93, in order to raise an already black district in that county to an even higher BVAP percentage?

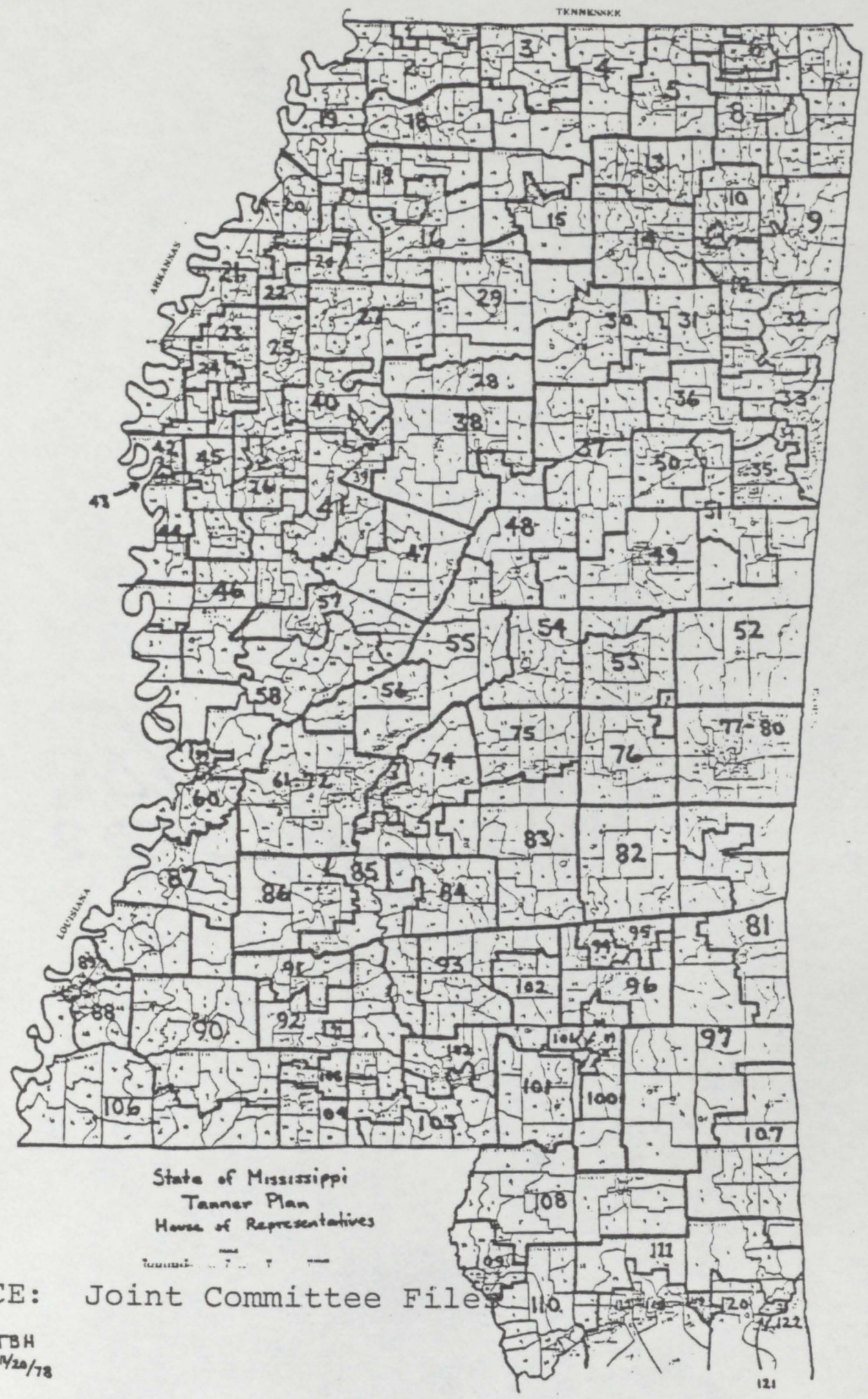
Kemper and Lauderdale Counties

(East Central Mississippi)

Here Justice was unhappy with the fact that the State combined Kemper County with the northwest corner of

FIGURE 39

THE TANNER HOUSE PRECINCT PLAN



SOURCE: Joint Committee Files

TBH
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Lauderdale County, instead of the northeast corner. What they failed to mention was that Henderson combined exactly the same area in Lauderdale County with Kemper County. (He then added three more precincts from Lauderdale which had only an 18 percent BVAP.) Justice also failed to inform the Court that HB 1491 contained the only district in eastern Mississippi with a BVAP in excess of 60 percent. This was HB-40 in Noxubee, Oktibbeha, and Lowndes Counties, with a BVAP of 63.68 percent. In these counties, the nearest that Tanner came to HB-40 in terms of BVAP was TN-52, with a BVAP of 51.98. Perhaps this is an example in which Justice broke up a black concentration.

Madison and Yazoo Counties

In this area, the State was simply trying to build one full district within each of the counties of Yazoo and Madison. Neither the Tanner nor the Henderson Plan assigned either of these counties a fully contained district. The State's HB-58 was compact and so was HB-59. In fact, HB-59 was the highest BVAP percentage district in the two-county area contained in all the plans. Certainly the State's combination of the Ridgeland-Madison area with Yazoo County was no worse than Tanner's combination of that area with northern Madison County, northwestern Leake County, and Southwestern Attala County. Also, the State intended that HB-60, which splits Yazoo County, should take in all the black areas of the county that it could. Justice simply had its facts wrong. The "black concentration" mentioned

in Justice's brief involved only 1,200 persons, and of these only 42.85 percent were actually black. Such figures are hardly significant.

Washington County

In this County, all of the parties drew the same black district in the City of Greenville. When the Department of Justice's attorneys, in their brief, congratulated their Department and the Connor Plaintiffs for creating this district, they failed to mention that the State had created the exact same district. The issue in Washington County, therefore, must have concerned the County's other three districts. A comparison of these districts in the various plans is shown in figures 13 to 15.

In this instance, Justice may have had a legitimate complaint. There are clear indications from the shape of the State's districts that they had been constructed in order to give a district to each of the three incumbents. The State could have drawn a plan that would have created one additional 55 percent or better black VAP district in Washington County. Under Loewen's standard, none of these districts in any of the three plans would have qualified as a black district. Even TN-45 fell 6.7 percent short of the required 66 percent BVAP--and it is a rural district. Finally, it should be pointed out that in the Compromise Plan, the Justice Department did agree to the State's configuration in Washington County. Perhaps, however, the State should pay careful attention to the 1980 Census

figures when it redistricts this area in 1981.

One conclusion to be drawn from this discussion is that some of the issues raised by the Justice Department--such as those involving Moss Point, Amite, Copiah, Kemper, and Madison-Yazoo--are totally without foundation. Other of the Department of Justice's complaints, including those concerning districts in Gulfport and in Washington and Jones Counties, have a degree of legitimacy, but certainly do not raise grave constitutional issues. A passage from the testimony of John Tanner indicates that the Department of Justice, in bringing up numerous unimportant issues, was simply trying to throw superfluous arguments into the case. Tanner, it will be recalled, was the analyst of HB 1491 for the Justice Department. In rehearsing the litany of "problems" with HB 1491, Tanner stated the following under examination by Mr. Scadron, the attorney for the Justice Department:

> TANNER: Finally, in Neshoba County, Neshoba County containes the only really significant number of American Indians in the State of Mississippi. There are not enough Indians to comprise their own district, or control a district.
>
> THE COURT: What tribe are they?
>
> TANNER: I believe those are Chocktaw (sic) Indians. I'm not certain of that, Your Honor. District 47, Leake County, cuts right through the largest concentration of American Indians in the State of Mississippi, thus separating them from the rest of the Indians. It's a relatively small matter, but in this one area where there are a significant number of Indians . . .

THE COURT: What percentage do the Indians have in Neshoba County?

TANNER: I'm not sure of that number, Your Honor.

THE COURT: It's pretty small, isn't it?

TANNER: I would think it would be about 10 percent, but the number is increasing. I just feel that this sort of split is gratuitous. You shouldn't go out of your way really to split off that area, especially since . . .

THE COURT: They (the State) might have done it in order to even up the size of the districts. I don't know.

TANNER: Well, some area of Neshoba County must be taken out in combining it with Leake County, which is just as good as anything else.

MR. PARKER: 1,603 Indians.

THE COURT: What's that?

MR. PARKER: 1,603 American Indians listed in Neshoba County in the 1970 Census, Your Honor.

(a break to discuss the nature of precincts in Neshoba County)

THE COURT: You're taking on the cause of the Indians now, are you? I think you ought to stick to your original proposition of showing that these various changes resulted in a dilution of black voting strength.

It seems to me if we're going to get into the Indians, particularly with only a thousand people in the entire Neshoba County, you're weakening the credibility of your testimony. You lose your objectivity.[18]

Somewhere along the line, it seems, the Justice Department itself had lost its credibility--and its objectivity. Judging from their criticisms of HB 1491, and the way in which they presented the facts in the case, they

certainly seem not to have been interested in an objective appraisal of the State's Plan.

Let us now turn to the Justice Department's and Intervenor's other technical objections concerning HB 1491. Their first objection was based on a contention that "The Mississippi Legislature departed from its own neutral guidelines in promulgating the statutory plan at issue here."[19] There is nothing wrong with this contention, except that the State's criteria were mis-stated in the briefs opposing the State Plan. Connor Plaintiffs listed the following as the State's "neutral" criteria for the drawing of districts: (1) creation of black majority districts, (2) avoidance of fragmentation of black population concentrations, (3) creation of compact districts, (4) preservation of political subdivisions, (5) equality of population. In writing up this list, Connor Plaintiffs did not draw the necessary distinction between neutral and constitutional criteria (see discussion on criteria in Chapter III). They also mis-stated the intent and content of three out of the five criteria. Finally, they distorted the facts about HB 1491 and the other parties' plans in order to strengthen a weak position. The five criteria are reviewed below:

Creation of Black Districts

The criterion followed by the State in this regard was not the "creation of black districts." It was, rather, the avoidance of racial dilution. The creation of black districts is just one of the ways in which dilution is

avoided. Moreover, the fact is that the Defendants et al did not produce even one significant instance where a black district could have been created by the State, but was not. It is true that there were some districts that came close to falling into this category, but none of these districts provided solid evidence of State malfeasance.

Compactness

Here, Connor Plaintiffs stated that the inability of the Chairman of the Joint Committee to define compactness was prima facie evidence that the criterion was not followed. Such a contention is patently absurd. There is no nationally accepted standard by which the compactness of any district may be measured. Certainly the most compact district would be a circle. Beyond that, however, compactness is "in the eyes of the beholder." Connor Plaintiffs also ignored the fact that it was not the Chairman who drew the districts. Their question about compactness should have been put to the technical consultants, not to a legislator. Furthermore, an examination of the Tanner and Henderson Plans shows that their districts are no more compact than those of the State. The fuzzy map that Tanner submitted to the Court along with his Plan does not even begin to do justice to the irregularly shaped districts in his Plan. Dr. Henderson did not even submit a map to the Court. Again, it seems, we have a case of the defendants throwing rocks through the walls of their own glass house.[20]

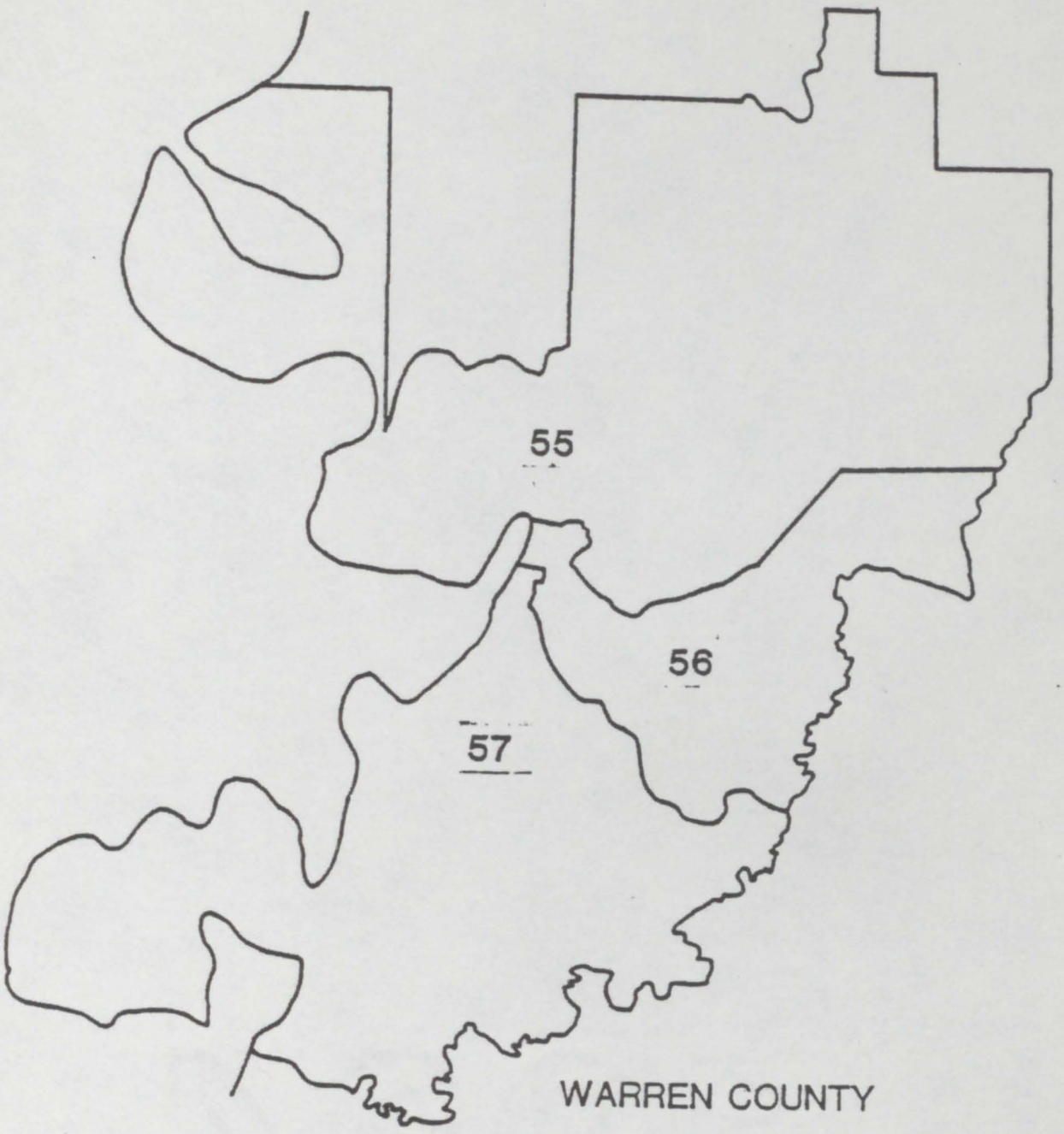
In attacking HB 1491, Connor Plaintiffs asserted that the districts in west Hinds County were ". . . not regular in shape, showing an intent to gerrymander. Most obviously, the House districts in Warren and rural Hinds Counties are irregular in shape and are overly elongated. . . ."[21] Figures 40, 41, and 42 show the shapes of the districts in Warren County as they appeared in the Plans of the State, Tanner, and Henderson. Figure 43 shows the State's rural Hinds County districts. The reader must draw the obvious conclusion that the State's districts were not unreasonably shaped. Rather, the Tanner and Henderson Plans were the ones that had irregularly shaped black districts. This gives rise to the suspicion that the real racial gerry-mandering in the redistricting process was on the part of the Justice Department and the Connor Plaintiffs. These "gerrymanders" were performed in an attempt to maximize black seats--an act in direct conflict with the ruling of the Supreme Court and with the briefs of both the Department of Justice and the Connor Plaintiffs.

Preservation of Political Subdivisions

Connor Plaintiffs again mis-stated the criterion of the State. They stated that, "Another guideline (of the State) was to preserve political subdivisions, such as counties and precincts, intact."[22] On the next page of their brief, however, they made the gratuitous statement that, "Supervisor districts also are another basic unit of government in Mississippi."[23] And finally, in their

FIGURE 40

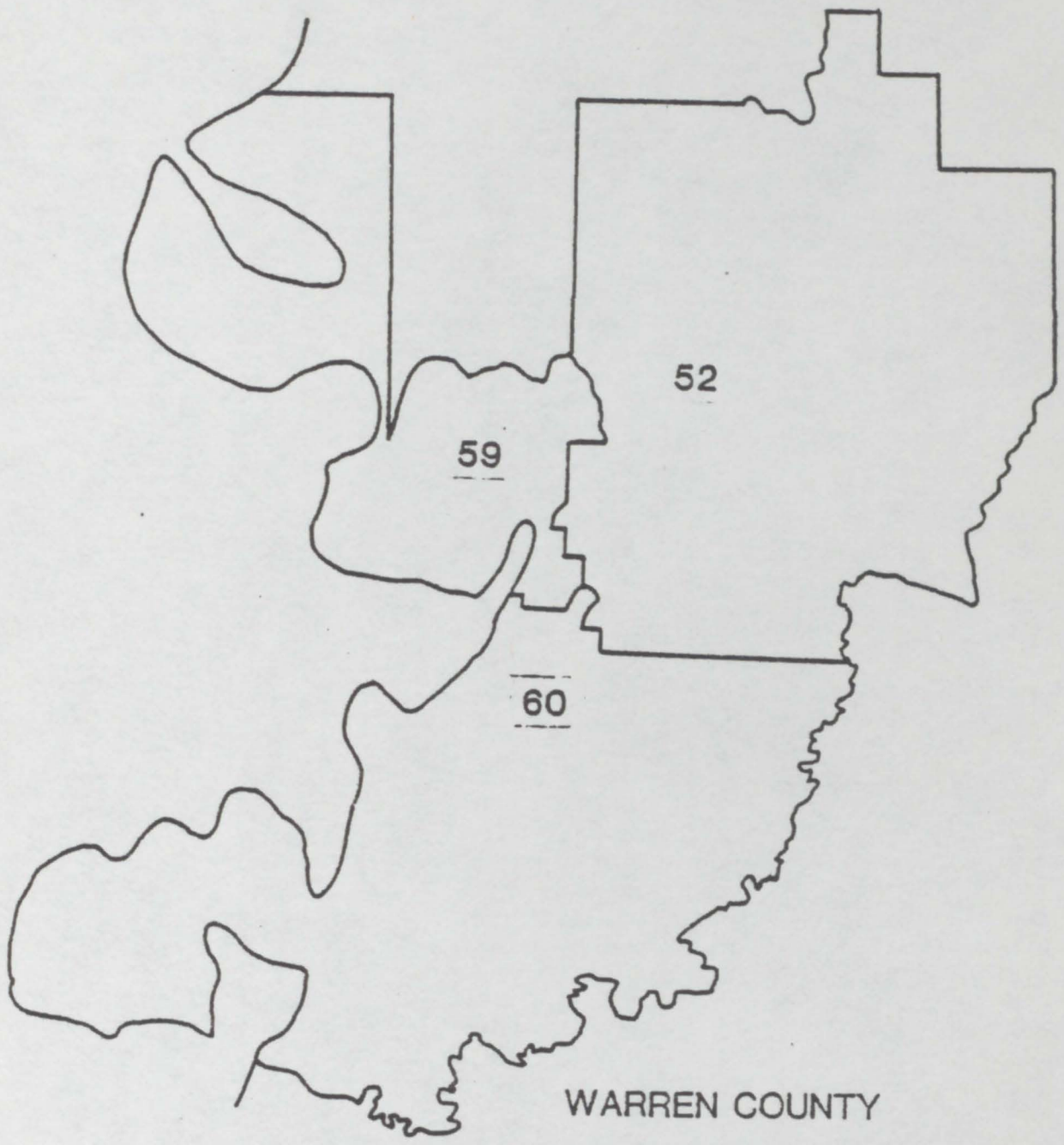
THE STATUTORY HOUSE PLAN IN WARREN COUNTY



SOURCE: Joint Committee Files

FIGURE 41

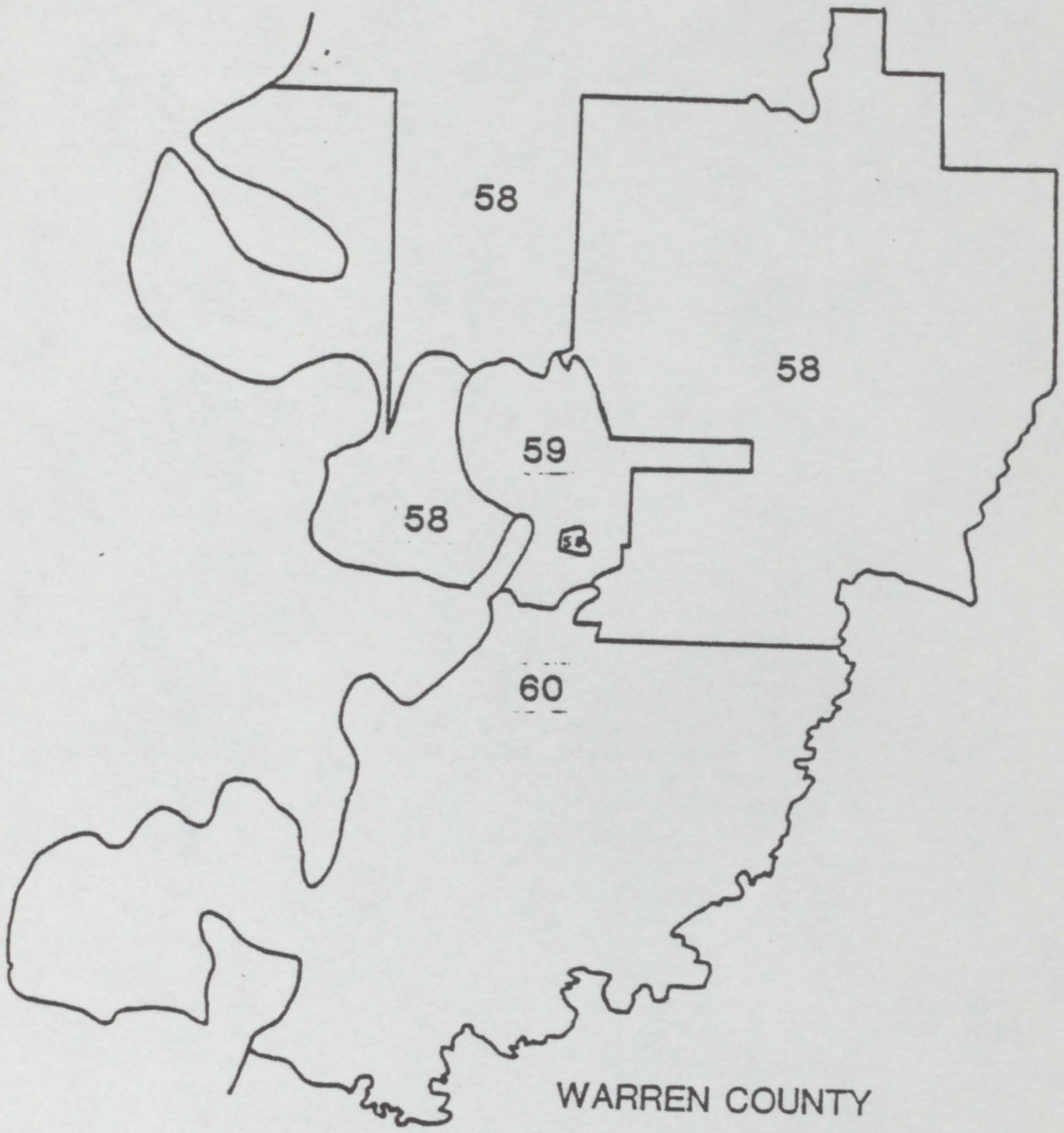
THE HENDERSON PLAN IN WARREN COUNTY



SOURCE: Joint Committee Files

FIGURE 42

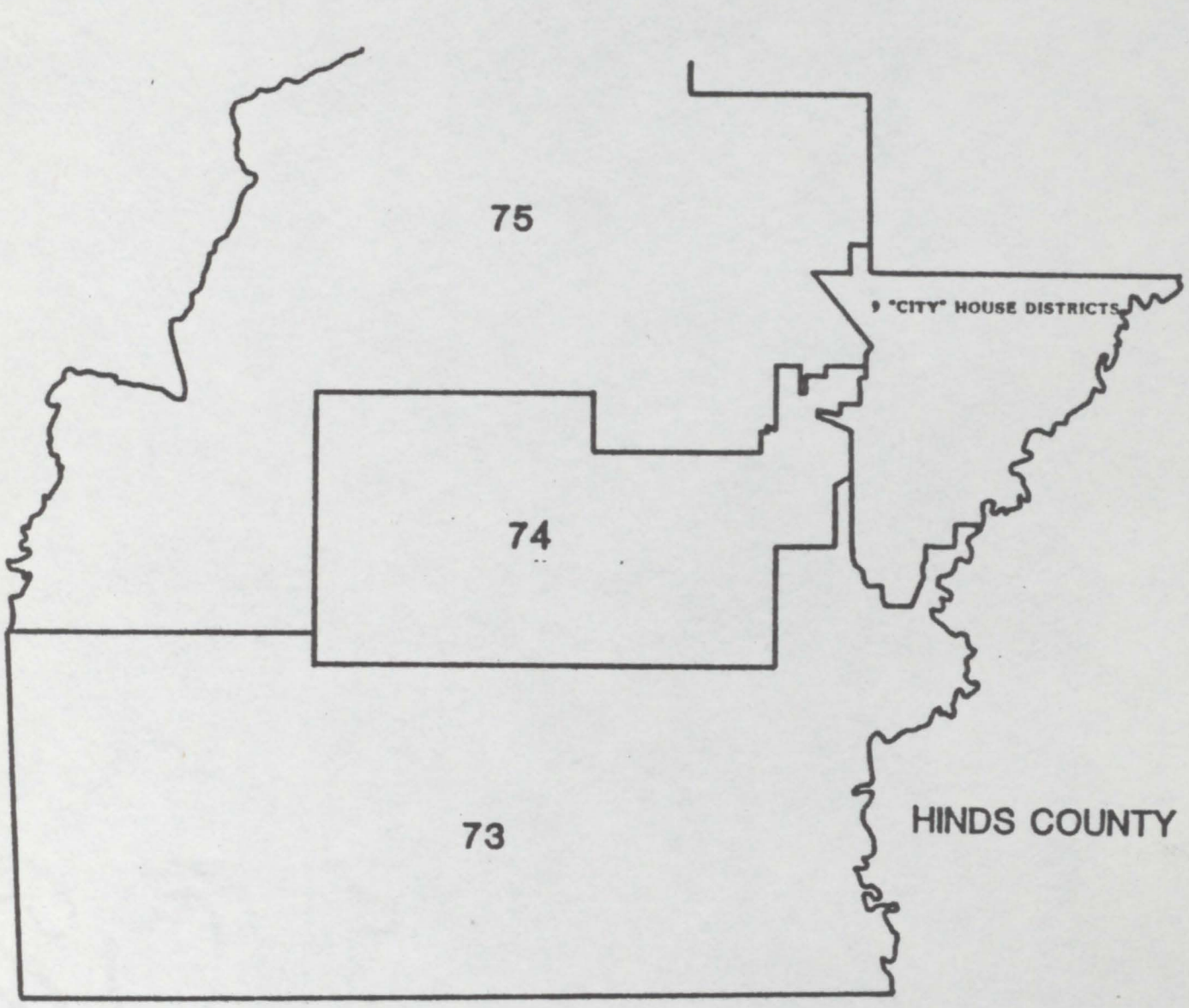
THE TANNER HOUSE PLAN IN WARREN COUNTY



SOURCE: Joint Committee Files

FIGURE 43

THE STATUTORY HOUSE PLAN IN WEST HINDS COUNTY



SOURCE: Joint Committee Files

conclusion, they widened the definition of subdivisions to include areas having "natural or historical boundary lines."[24] What they were trying to do, apparently, was to tie these points together in the reader's mind and convince the reader that the State's criterion on political subdivisions was a very broad one.

The State's criterion was actually very simple: as many counties as possible were to be left intact, and precincts were to be left intact, if doing so did not totally disrupt the general configuration required by adherence to the other criteria.

On the matter of preservation of county integrity, an examination of the plans presented by the State, Henderson, and Tanner is most revealing. On Table 6 , the counties of the State are divided into five groups. The first group includes counties with no district fragments; they are either whole or internally subdivided. In the case of some counties, however, one or more full districts can be created within their boundaries, but there is some population left over. This portion of the county containing that excess population (which is less than the size of a full district) is called a fragment. If this leftover area is attached to one district also formed out of another county, then the county in question still has maximum representation. Counties with the appropriate number of full districts plus one fragment form the second group. The third class are counties which have all the districts within them

to which they are entitled by population, but also have more than one fragment. This is not a serious departure from the guidelines, but is not as satisfactory as the lines drawn for the second group. Fourth are counties that are split, but not badly so--they still have political control over the proper number of districts. Here, a poor job has been done. Fifth, and last, are counties that are badly fractured. The table clearly shows that the State's Plan does a decidedly better job of meeting the criterion of county integrity. This is true not only as it applies to whole counties, but also to the number of counties that are at maximum representational status in the House. It is clear Mr. Parker misled the Court on this issue.

Connor Plaintiffs have also "blown" the issue of split precincts out of proportion. The following exchange took place in the courtroom between Mr. Frank Dunham (Attorney for the State) and the Author. Mr. Parker, the Connor Plaintiffs lawyer) was present and heard this testimony.

MR. DUNHAM: Now, Mr. Hofeller, since you testified earlier in the case, have you reviewed the House reapportionment bill . . ., and determined the number of precincts that were split in the entire state?

MR. HOFELLER: I went through the House bill and read the precinct-by-precinct descriptions and circled or underlined some of the precincts that were split. I believe I got them all. I counted 15, I believe, that were split.

MR. DUNHAM: How many precincts are there in the entire state?

MR. HOFELLER: I think there are approximately 2,000.

MR. DUNHAM: So what percentage of that total would be the number of good precincts?

MR. HOFELLER: I believe that would be somewhere in the neighborhood of about three-quarters of one percent.[25]

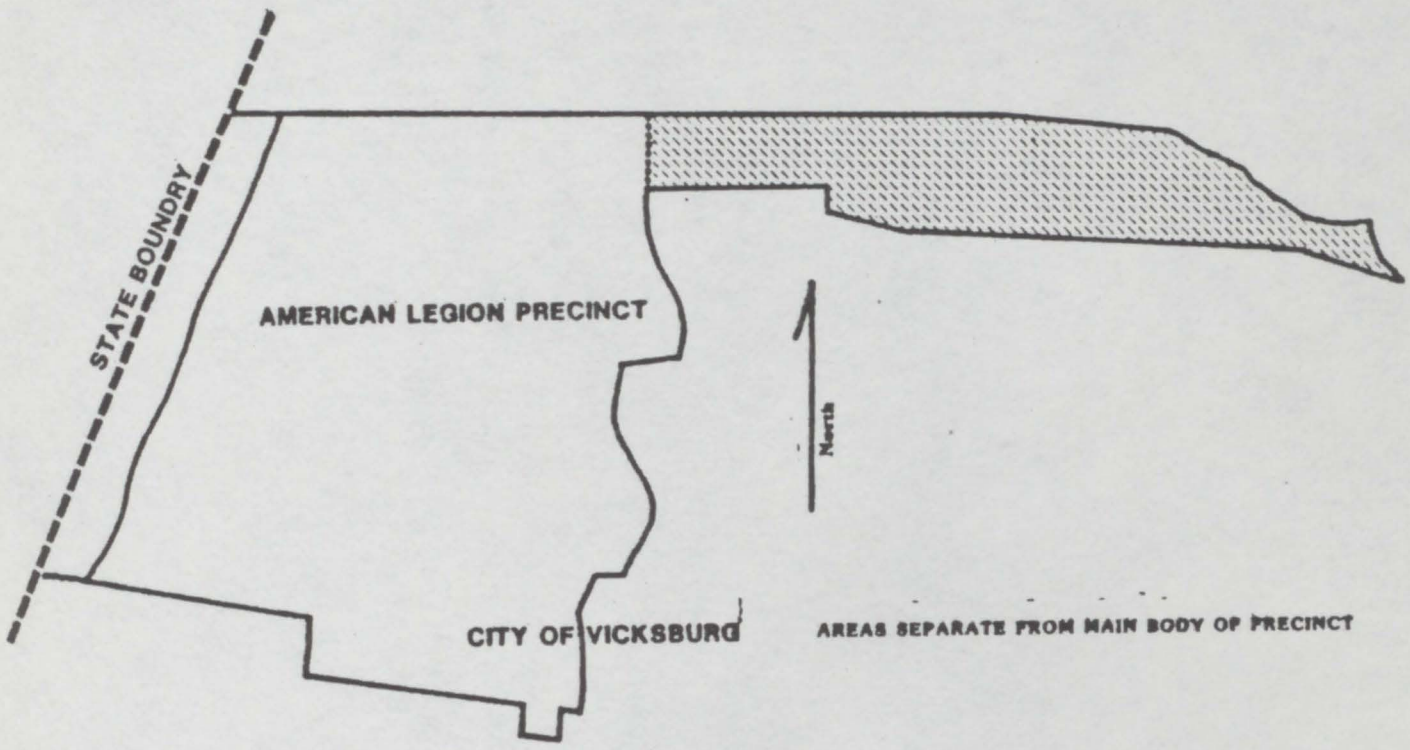
It was clear from this exchange that only 0.75 percent of the precincts were split. Connor Plaintiffs push the limits of the Court's credulity if they expect it to believe that this is a significant issue. Moreover, it should be pointed out that only one of the split precincts was put back together in the Compromise Plan. No plan should be judged unconstitutional over the splitting of one additional precinct out of 2,000!

In addition, the importance of some of these "splits" was exaggerated. For example, complaints were made about the splitting of the predominantly black American Legion Precinct in Warren County (see figure 44). All that was split off from this precinct was one end--an area containing only 486 people, of whom only 158 were black adults! Surely one should not make a constitutional issue out of the transfer of 158 blacks from one precinct to another.

Connor Plaintiffs then turned to the subjects of supervisor districts and natural and historical boundaries. It was well known that the Supreme Court spoke out against the use of Mississippi supervisor districts for legislative redistricting. It was also well known that many of these districts were severely contorted and irregular in shape,

FIGURE 44

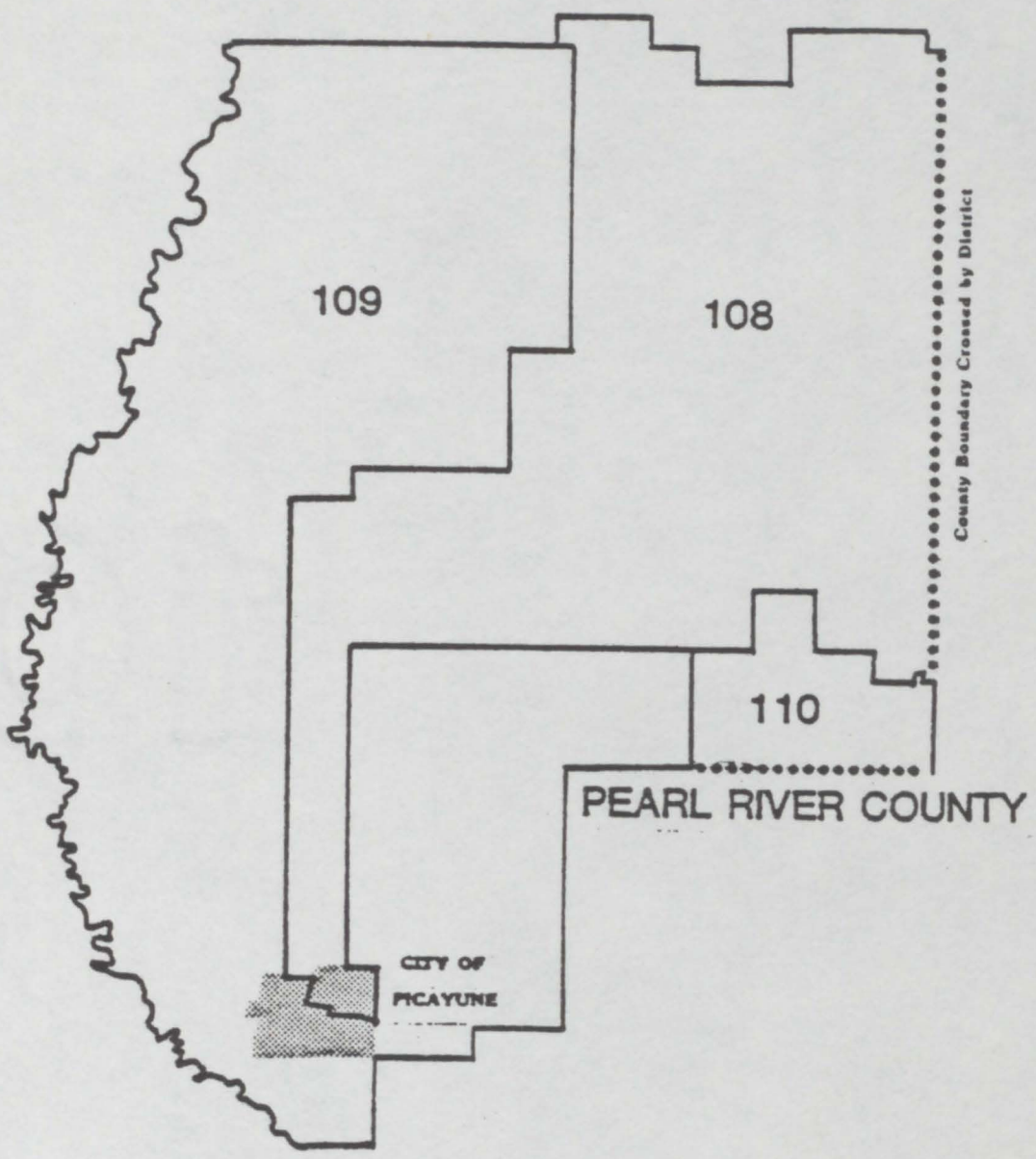
AMERICAN LEGION PRECINCT IN WARREN COUNTY
SHOWING AREA DIVIDED OFF FROM MAIN BODY
OF PRECINCT (SHADED) IN STATUTORY PLAN



SOURCE: Joint Committee Files

FIGURE 45

PEARL RIVER COUNTY IN HENDERSON PLAN



SOURCE: Joint Committee Files

and that it was not the State's policy to follow the lines of these mis-shapen districts. It was not the State, but Henderson, because he was leaning heavily on the shakey data available from local county redistricting efforts, who followed these lines in his redistricting plan; the result was districts like those shown in figure 45. If the State had built districts based on supervisorial lines, it would probably have had the strangest looking districts in the nation. Moreover, there is nothing historical about these beats; they have been forced on Mississippi's counties by an outmoded policy applied by the Federal Courts, and they have all come into existence since 1970. If Connor Plaintiffs do not object to the shapes of Mississippi supervisor districts, clearly they should not be objecting to the shapes of the State's House districts.

Regarding the role of natural boundaries in the redistricting plan, no significant testimony on the subject was ever offered in the case. The defendants, it seems, brought up the point for no good reason.

Population Equality

Connor Plaintiffs should never have brought up this issue. All the other plans, with the exception of the Compromise Plan, were court plans, not legislative plans. Therefore, they (not the Statutory Plan) required smaller population deviations. Connor Plaintiffs knew full well that different standards applied to the de minimis rule when it was exercised in the redistricting of a state by

its own legislature. The larger deviations in the State Plan clearly resulted from an effort to avoid the fragmentation of counties. Neither the Justice Department nor the Intervenors presented any evidence to prove that any malapportionment (creation of districts of unequal population) in the State's Plan resulted from an intent to discriminate, or that it led to a significant dilution of black voting strength.

Thus, one can conclude that this attack on the State's application of its own criteria was, at best, extremely weak. At worst, it was deceptive.

Only one other statement in Connor Plaintiffs' brief bears discussion. In their conclusions of law they stated that:

> Racially motivated gerrymandering of district lines is also shown when:
>
> (1) The redistricting plan unnecessarily fragments a minority community, or unnecessarily pairs black population concentrations with white population concentrations to deny black voters the opportunity to elect candidates of their choice;
>
> (2) The districts are not compact or contiguous;
>
> (3) Racial statistics are used in the drafting of the plan;
>
> (4) The district lines depart from political subdivision and natural or historical boundary lines;
>
> (5) The plan was enacted for the express purpose of protecting incumbent white officeholders.[26]

The United States et al did not prove that any concentration of blacks, large enough to elect a black, was denied a district (except perhaps in one case where the

argument was over 1 percentage point of black adult population). The Defendants did not prove that any of the State's districts were excessively irregular. They found no non-contiguous districts. They supported the use of racial statistics in drawing district lines. They found no departure from historical boundaries. And, they were unable to show any instance in which blacks were denied a winnable district in order that a white office-holder might be protected. For all these reasons, the Defendants did not win the case.

In the proposed conclusions of law submitted by the Justice Department, the following principle was asserted:

> Where there is a substantial black population which is geographically concentrated and has, therefore, potential for electing representation, of its choice, a districting scheme which fragments that population and submerges it among majority white districts, denies the minority an equal opportunity to participate in the electoral process.[27]
>
> (emphasis added)

Justice's principle as stated above required that a denial of equal opportunity to blacks required first a "substantial" black population, plus a potential for election of a black candidate. It is clear from the analysis of Justice's case and the Connor Plaintiffs' case in the preceding portion of this chapter that many of the districts about which Justice complained were not in violation of this standard.

It is the contention of this paper that Justice Department attorneys, in their criticisms of the State

Plan, repeatedly ignored their own legal criteria for judging the reasonability and constitutionality of district lines. A black population spread out over more than half a county is not a "concentration." A black population that makes up less than forty percent of a district is not "substantial." And, according to the standard set by Dr. Loewen--Justice's own expert witness--such a district (40 percent black) would not be one holding even a "potential" for electing a black representative. Thus, if the conditions for electing a black never existed in an area where the State drew its lines, then the State's Plan could not be the reason for a denial of representation for blacks; therefore, the State's Plan in that particular area does not represent a case of unconstitutional discrimination.

One more issue raised in the Justice Department briefs deserves some attention. It concerns the following conclusion of law:

> Where, as here (referring to the plans of the State), a reapportionment plan combines heavily black counties with areas which under the 1970 Census <u>appear</u> heavily black but which have experienced population shifts since 1970 and are no longer heavily black, the legislature must be <u>presumed</u> to have been aware when they approved the State's Plan that such configurations in the State's Plan would reduce black voting potential.[28]

This assertion is based upon the testimony of Dr. Loewen at the trial. Dr. Loewen, however, based his entire analysis of this issue on faulty data and faulty statistical principles. He cited a study, included in the Appendix of this paper, which does not support his own

testimony. Dr. Loewen also alluded to the use of linear analysis on his contention that he could predict current levels of black rural population. Linear analysis cannot be performed using only two population figures (1960 and 1970 Census) per census unit. What follows are excerpts from Dr. Loewen's testimony; with Mr. Schwartz, an attorney for Justice, handling the questioning:

SCHWARTZ: Given out-migration of blacks from Mississippi, is 1970 population a good basis for analyzing the voting strength of blacks in Mississippi today?

LOEWEN: No, it is not. Any competent demographer or political sociologist would want to use data that had been updated.

THE COURT: Such as?

LOEWEN: I have many demographic objections (sic) based on 1960 and 1970 Census and on '75 census estimates that project voting age population by race as of 1978.

SCHWARTZ: Could you respond to my question which I believe was how you explained your methodology in arriving at that projected total population, 1978 figure percentage of blacks in the State of Mississippi?

LOEWEN: Yes, I used the basic demographic technique called the linear projection which probably any demographer would use as a first step. Demography, of course, is a sub-branch which is connected with population, population changes.

If we would refer for a moment to the population pyramids which are on page 14 of the Defendant Intervenors Exhibit that we've been referring to. The population pyramid shows the bar for male whites of given age groups such as 40 to 44 years of age, and female whites of the same age, for male blacks and for female blacks.

> The projected technique I used was to determine the decrease in population for each of those groups and for each of those age spans or age cohorts from 1970 to 1970 (clerk should have typed 1960 to 1970).
>
> Then I obtained a ration showing how much that group had decreased or increased, and I applied that ratio to the 1970 group of the same age. In short, I found out how much, let's say, that 30 to 34 year olds had declined in number as they became 40 to 44 years old in the ten years. I then applied that same decline to 44 year olds --
>
> I then applied that ratio to the 30 to 34 year olds in 1970 to have obtained how much change there would be in that group between 1970 and 1978.
>
> I corrected those projections by using the census update which are available as of July 1st, 1975, for total population for each county.
>
> As far as I know, this is the most accurate way to do such a projection in the absence of update information by race. The census has no update estimates by race beyond 1970. And again, this conclusion was -- these conclusions are based solely therefore on the 1960 and 1970 Census by race and age, and sex and on the 1975 census update estimates.[29]

Dr. Loewen is a sociologist; he certainly is not a statistician or a demographer. It is ridiculous for him to try to project the demographic trends of one decade by using the census data for another. If it were possible to do this, we would not need a census every ten years. Dr. Loewen assumed that the same migration patterns that were in force in the 1960's would also apply in the 1970's. He also assumed that a decrease in the percentage of a certain

age group within the State would be uniform throughout the State. Dr. Loewen was unfamiliar, perhaps, with the best methods of demographic and statistical analysis. If this is the best expert advice that the Justice Department could come up with, perhaps they should hesitate before analyzing the redistricting plans of any other party.

Footnotes to Chapter VII

[1]The Connor Plaintiffs became the Defendent Intervenors in Mississippi v. U.S. Similarly, the Connor Plaintiff Intervenor (Department of Justice) became the Defendent; and the Connor Defendents (State of Mississippi) became the Plaintiff.

[2]The strategy of the State was to object to the introduction of the Compromise Plan, but then to use it to narrow the issues in the case.

[3]The phrase used by the Connor Plaintiffs and the U.S. throughout the entire case.

[4]Mississippi v. U.S., suggested findings of fact by U.S., no. 7, pp. 2-3.

[5]Ibid., suggested conclusions of law, no. 26, p. 22.

[6]Ibid., brief for the U.S., p. 13.

[7]Ibid., brief for the U.S., p. 79.

[8]Ibid.

[9]Ibid., trial transcript, p. 1442.

[10]Ibid., pp. 1439-40.

[11]Ibid., suggested conclusions of law.

[12]Accepting Dr. Loewen's unproven assertion arguments for purposes of the following discussion.

[13]HB 1491 (the State's) districts will, in the future, be referred to as HB (district number) while Compromise Plan districts will be referred to as CP (district number).

[14]HB-35 elected a white in 1979.

[15]A black won election to that seat in November of 1979.

[16]HB-5 elected a white in 1979.

[17]Tanner Plan districts will be preceded by "TP-" and Henderson Plan districts will be preceded by "HP-".

[18]Mississippi v. U.S., trial testimony, pp. 1238-40.

[19]Ibid., Defendent Intervenor's findings of fact, p. 29.

[20]Ibid., p. 30.

[21]Ibid., p. 28.

[22]Ibid., p. 30.

[23]Ibid., p. 31.

[24]Ibid., p. 40.

[25]Ibid., trial testimony, pp. 1454-5.

[26]Ibid., p. 40.

[27]Ibid., Justice's conclusions of law, p. 21 (1979).

[28]Ibid., p. 19.

[29]Ibid., trial transcript, pp. 1380-85.

CHAPTER VIII

CONCLUSIONS

Throughout the period from 1965 to 1979, there was a massive failure of the redistricting process in the State of Mississippi. Until HB 1491 and SB 3098 were passed in March of 1978, no party had successfully brought forward satisfactory plans for the 1970 redistricting of the Mississippi State Legislature--plans that were satisfactory in terms of equality of population, in terms of appropriate representation for blacks, and in terms of appropriate regard for county boundaries and precinct boundaries. Of course, no plan could have been devised that could have perfectly satisfied the goals proposed by all parties. The State's 1978 plans, however, came as close as one could have expected, given the character of a legislative redistricting process.

Clearly, the primary responsibility for a constitutionally acceptable redistricting of Mississippi rests with the Legislature. There can be no doubt that this body consistently resisted redistricting in accordance with the one man, one vote doctrine and was unwilling to create districts in which minority rights would be properly protected. It was not until 1977, when the leadership of the Legislature finally accepted reapportionment, that they

decided that they should perform their proper duty--a duty which required the Legislature to do the job correctly. It was unfortunate that, by the time this job had been completed, the lines of dialogue between the civil rights movement and the legislative leadership were so irreparably damaged that neither side could agree to a compromise which would save face for both sides. In the opinion of this writer, who was intimately involved in this process, the State Legislature came 90 percent of the way toward satisfying the important demands of the civil rights forces. It is unfortunate that the other side could not have moved 10 percent toward the Legislature's position. The fact remains, however, that the Legislature had been afforded numerous opportunities to act and had chosen to stall. One can only hope that they will perform correctly in their role in the 1981 redistricting.

The Connor Plaintiffs were not without some fault in this failure. As we stated above, they resisted compromise with the Legislature, and avoided involvement in the legislative redistricting process--even when to do so might have resulted in a settlement. The so-called Compromise Plan did not come into existence until both parties were threatened by the Presiding Judge of the District Court with a reduced number of legislators--a prospect that could not have been pleasant for either side. Connor Plaintiffs, however, should not be too severely blamed for their position. Throughout the period from 1965 until 1977, almost

all of their legitimate demands for fair black representation had been frustrated by the Legislature and the Federal District Court in Jackson.

It was to be expected, perhaps, that both the Legislature and the Connor Plaintiffs would act in the manner they did. What was unexpected was the performance of the three federal judges hearing the Connor case and the Department of Justice. The District Court failed to properly perform its judicial function. First, it failed to act. Then it failed to act soon enough. Then it failed to act correctly. Then it failed to interpret the law correctly. Then it failed to insure that it retained sufficient technical expertise to do the job. A competent court would have drawn a constitutional plan in 1973--in time for the elections. Up until 1978, the Court did not develop a solution to Mississippi's redistricting needs that was even near constitutional requirement--either in terms of population equality or racial representation. Perhaps the Presiding Judge, as a former Governor of Mississippi and a former legislator, should have disqualified himself for conflict of interest.

The United States Department of Justice should also share major responsibility for its failure to act properly. It was clear to anyone viewing the performance of this federal department that it allowed itself to be "captured" by the Connor Plaintiffs in the litigation. The Department, in some cases, assigned both legal and technical staff to

this case who were not qualified to handle a process involving major constitutional issues. The Department allowed the Connor Plaintiffs' lawyer, Frank Parker, to handle the major portion of the case and never once was able to take an independent position from him. The Department refused to give the Legislature guidance on racial redistricting standards when requested to do so. The Department could have acted to encourage compromise between the parties; but they became a cipher for one of the parties. Beating the State in Court became the main goal, not the proper redistricting of the Legislature.

The issues involved in the 1977-78 process are not simple. The proper balancing of various constitutional and neutral criteria, one against the other, is not easy. Many state legislatures and courts have grappled with these issues--and with no better success than Mississippi during the years 1965 and 1977. Yet none of the parties seems to have learned, or to have been willing to learn, from the experience of others.

What is most valuable in the study of this particular redistricting is that Mississippi's black minority was both very large and dispersed throughout the State in widely varying levels of concentration. The problem of entitlement of legislative seats in proportion to percentage of population is very difficult to judge. This was not a case, such as that found in Richmond, in which almost all the blacks were in clearly identifiable areas. This

case offers the United States Supreme Court a clear opportunity to lay down standards by which minority representation can be assured. As minorities in this nation become more and more integrated, their demands for representation will become more and more difficult to attain. The High Court should, perhaps, examine the difficulty of application of Section 5 of the Civil Rights Act to redistricting and attempt to build on the Beer standard handed down in the New Orleans case.

The major lesson to learn from the Mississippi experience is that the technical problems of redistricting, even in a smaller state, are legion. Any legislative body or court approaching such a task should make sure that it has adequate technical expertise available. This is particularly true if court challenges are expected. It is confusing enough to redistrict a state even under the best of circumstances; but when one anticipates litigation, it is vital to insure that one's data is correct and properly supported with technical evidence.

The District Court in Mississippi, once it had decided actively to involve all of the parties in the Connor litigation in the drawing of court plans, should have taken the following steps: (1) the Court should have clearly declared that only the 1970 Census data would be used--either to build districts or to determine the constitutionality of the racial makeup of those districts;

(2) the Court should have made it clear that it would not

accept an ED plan; (3) the Court should have brought all of the parties who wished to submit plans (or who were being ordered to submit plans) together to agree on the following technical items: a) the creation of a common census data format and data base, b) an agreement on a common methodology for the splitting of Enumeration Districts in order to follow precinct lines, c) the creation of a common base map set, d) the creation of a common body of computer software with which to draw plans, e) a statement by all parties of what they felt constituted racial dilution, f) a common agreement on what level of deviation from the ideal district size would be acceptable, and g) a practical common agreement about the treatment of counties in the context of the one man, one vote decisions. If this procedure had been followed in the summer of 1977, many of the arguments in court over district statistics could have been avoided. The parties could have focused on the substantive issue of the case--the racial composition of the districts. It is the contention of this author that the Court simply did not understand the technical difficulties involved in redistricting--and that they still do not understand these difficulties even after all the problems which have been encountered in the last two years.

This study has covered the history of the Mississippi redistricting process in detail from 1977 through 1979. It has explored most of the technical issues, the nature of the relevant plans presented for the House, and the

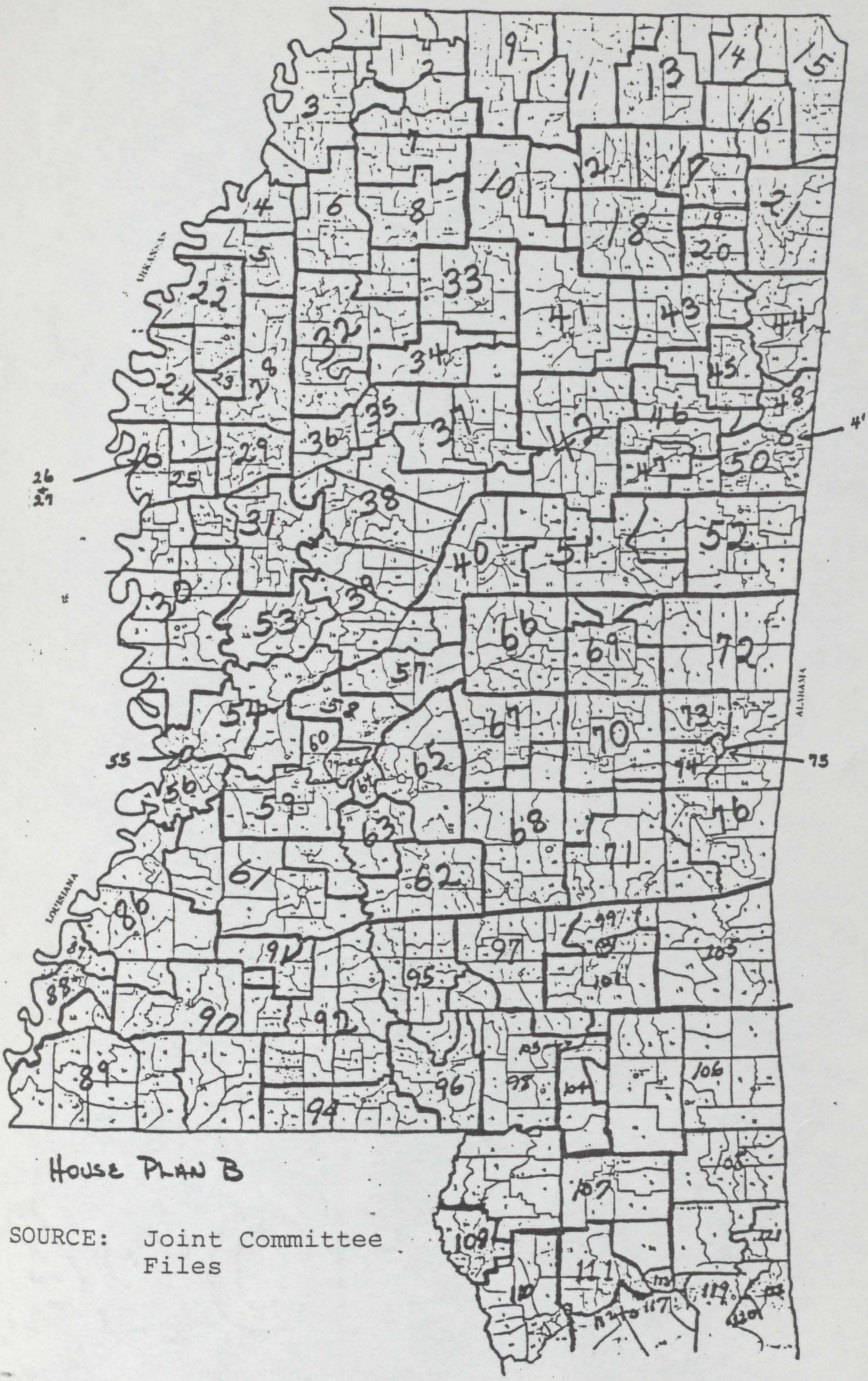
arguments presented by all parties in defense of or in opposition to the State's Plan for the lower house--HB 1491. It has dwelled in great detail on the racial issue and the problems in meeting the one man, one vote requirements as presently defined by the United States Supreme Court. Several issues could benefit from further investigation--issues not addressed in this study. The first is a detailed account of the development and defense of the plans for the upper house. The second is an in-depth study of appropriate measurements of racial representation--given the heterogeneous racial composition of the political entity which is to be redistricted. Nonetheless, it is hoped that this study will serve as a history of the Mississippi process and as an important source of information for those approaching similar redistricting situations in the 1980's.

APPENDIX

The Appendix contains illustrations of the types of gerrymanders discussed in Chapter I which are explained therein. In addition there are maps of plans and districts from the Mississippi redistricting, the report on the plan of the Mississippi Court Master (Connor v. Finch) prepared by the Joint Committee, a affidavit of William A. Allain, presently Attorney General of the State of Mississippi -- which contains a chronology of the Mississippi redistricting process from the time of the Supreme Court decision in May of 1977 to August 2, 1978, the decision of the District of Columbia Court in Mississippi v. United States and the Supreme Court decision in United States v. Mississippi handed down in February of 1980.

FIGURE 46

HOUSE PLAN B

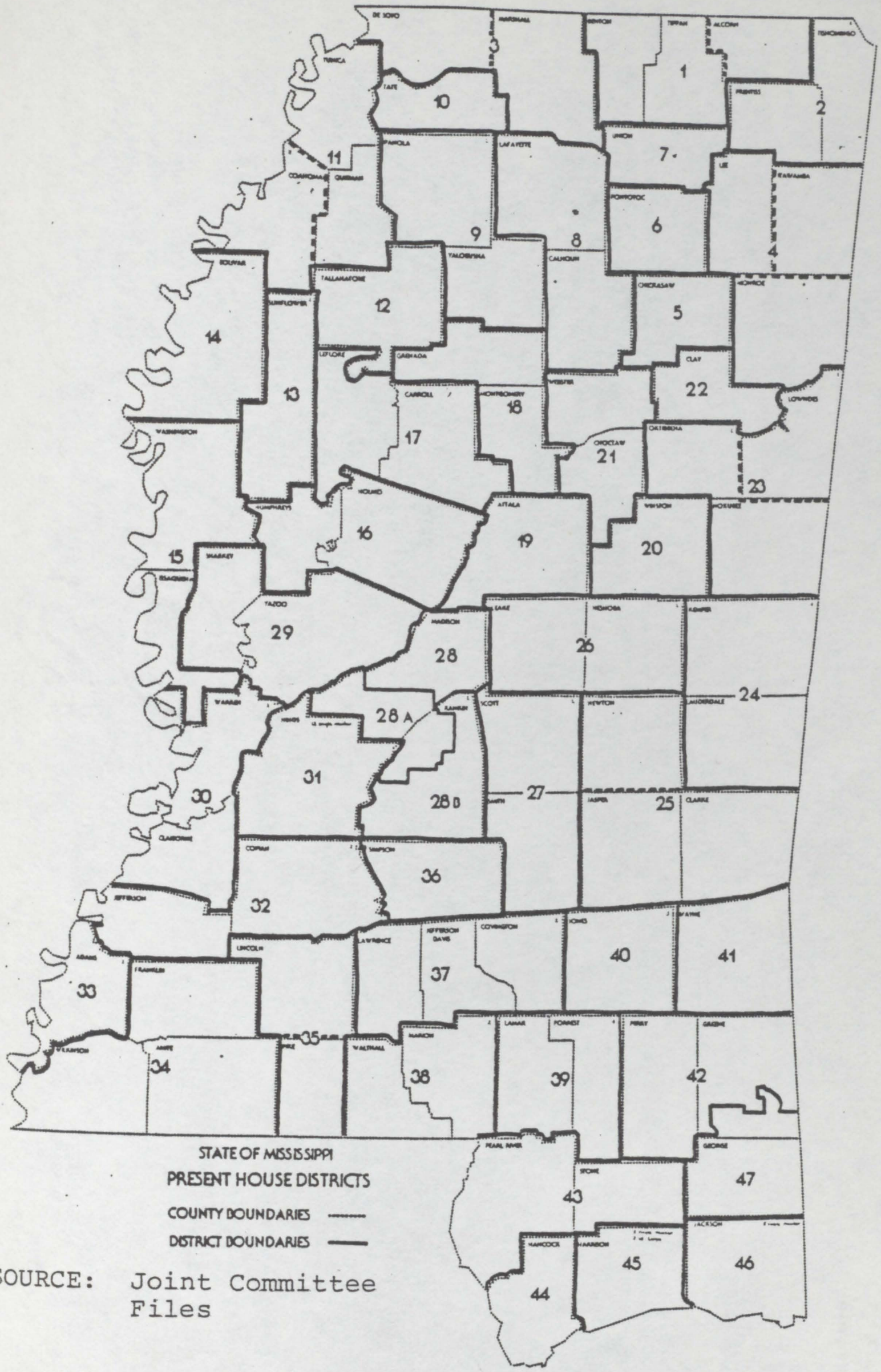


HOUSE PLAN B

SOURCE: Joint Committee Files

FIGURE 47

THE 1965 HOUSE PLAN



SOURCE: Joint Committee Files

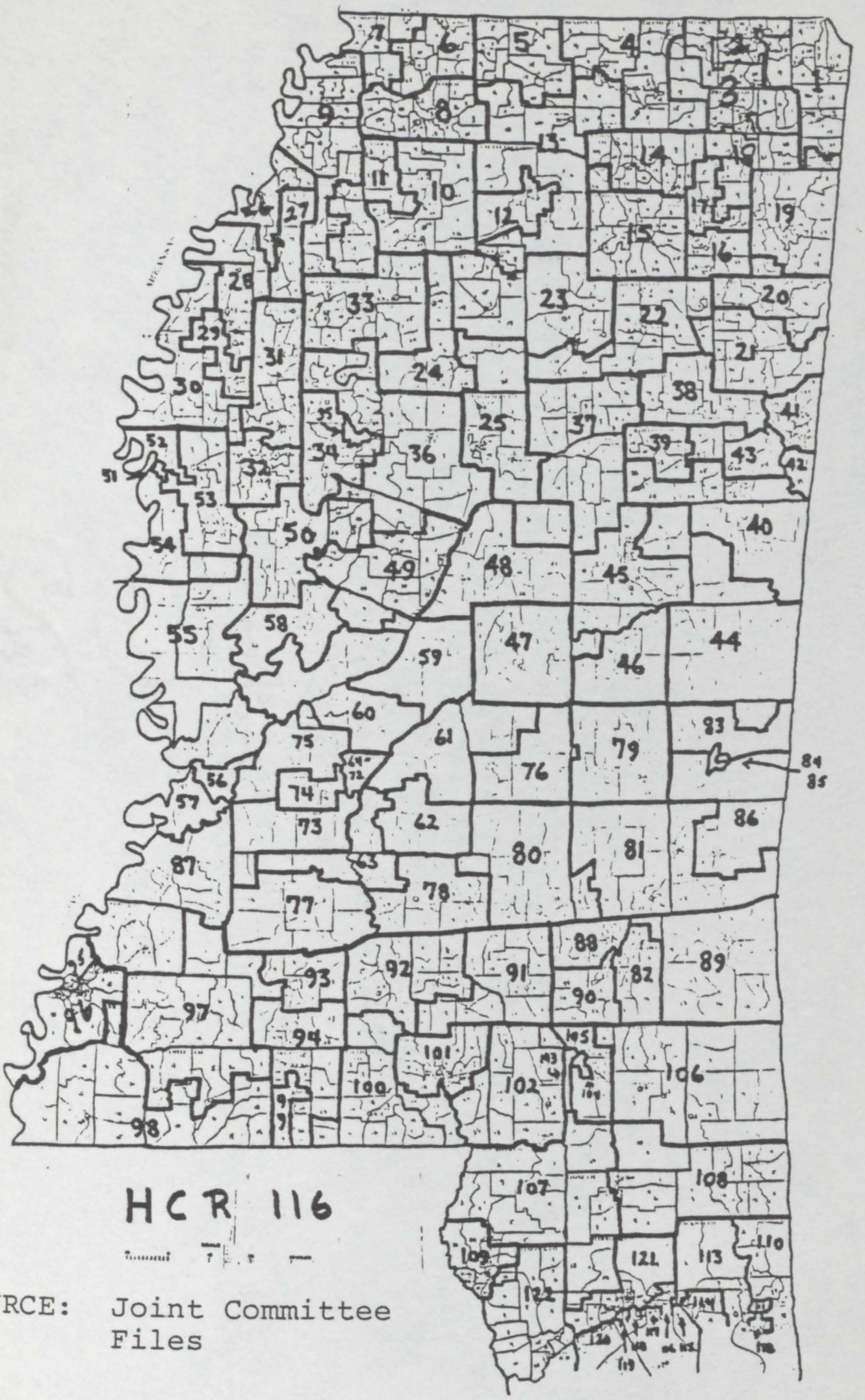
FIGURE 48

THE HOUSE STATUTORY ED PLAN

SOURCE: Joint Committee Files

FIGURE 49

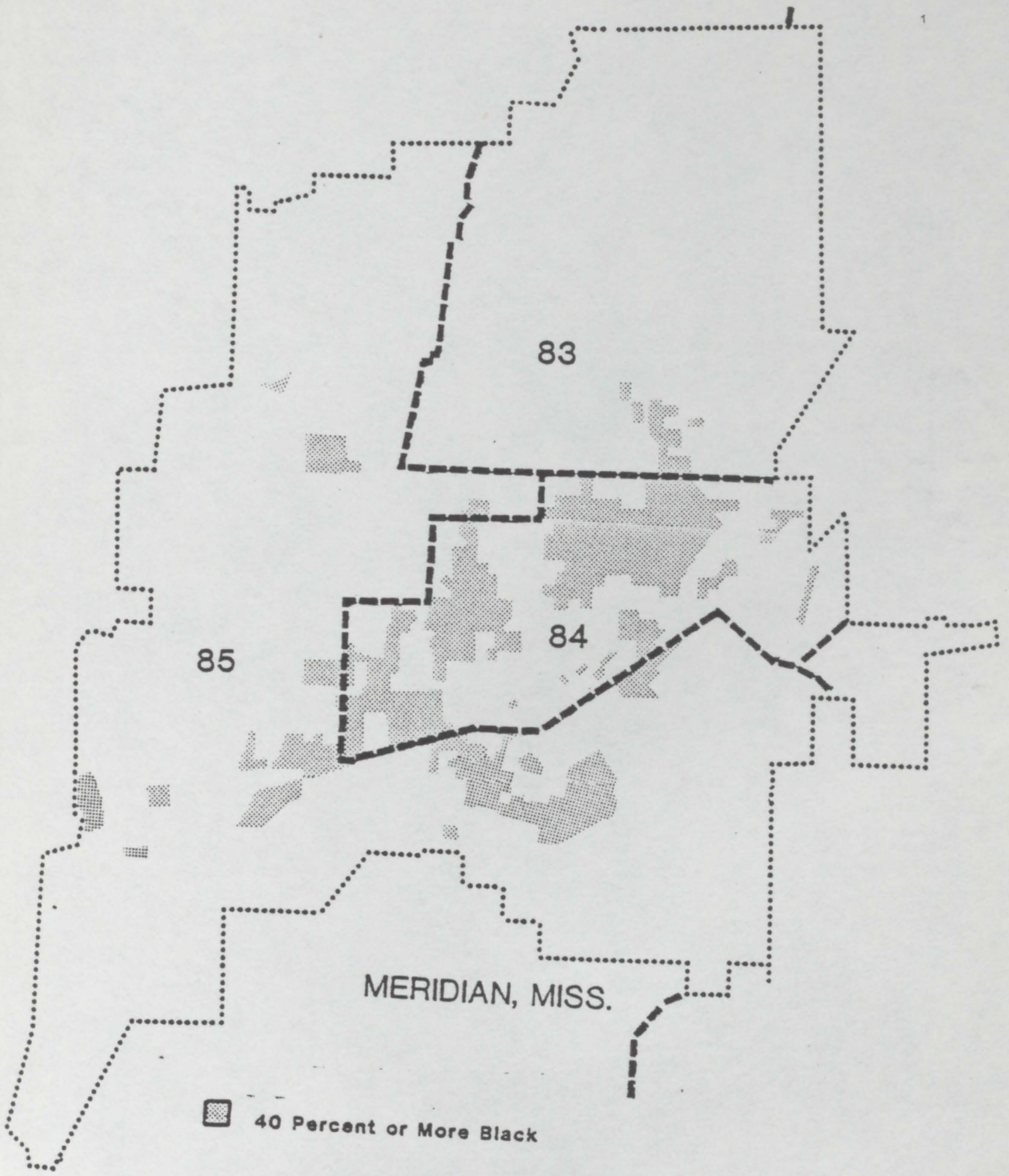
THE HOUSE COURT PRECINCT PLAN



SOURCE: Joint Committee Files

FIGURE 50

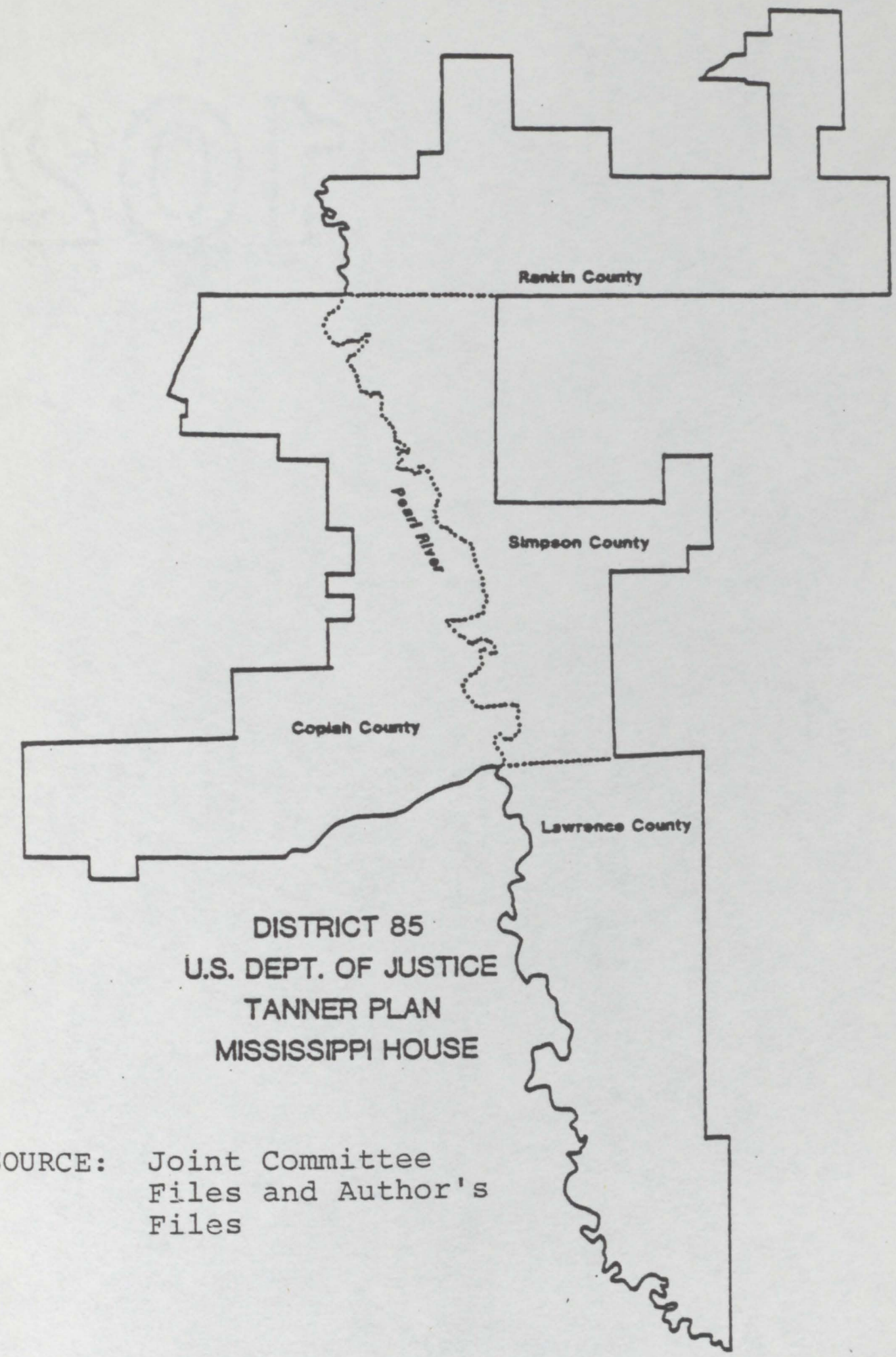
THE STATUTORY HOUSE PLAN IN MERIDIAN



SOURCE: Joint Committee Files

FIGURE 51

DISTRICT 85 IN THE TANNER PLAN



SOURCE: Joint Committee Files and Author's Files

APPENDIX

EXAMPLES OF LEGISLATIVE GERRYMANDERS

Illustrations of "the art of the gerrymander" are shown in the attached maps from California Assembly Bill No. 12, a redistricting plan authored by the Democratic majority in 1972. The plan was bitterly opposed by the Republicans, who countered with a "model redistricting plan" of their own. Finally, after a gubernatorial veto, the California Supreme Court appointed Special Masters to draw an entirely new plan.

It is worth noting that the Democratic plan provided for very low population deviations. All these districts meet rather strict criteria of "population equality."

This is a good illustration of the sophisticated use of precinct data (vote history and registration data) in district design. The greater part of the proposed District lies within Orange County, an area of traditional Republican strength; but a part of Los Angeles County is also included. Each precinct in the area that had better-than-average Democratic voting proclivity was surveyed: the best were aggregated into District 69 (sometimes referred to as the "Corydor") to secure the re-election of Assemblyman Kenneth Cory. The District stretches octopus-like through Republican territory, sending out tentacles to pick up Democrats in widely separated areas. Parts of thirteen cities and two counties are included; but none of the cities falls entirely within the District.

This is a dramatic illustration of the use of narrow, very thinly populated corridors to link centers of population many miles apart. There are three areas of heavy population in the District: at the top left and right-hand corners of the District and in the extreme tip of the curving "tail" at the bottom of the map. Each population center is located in a different county (Contra Costa, San Joaquin, and Santa Clara). The District meanders almost a hundred miles through the California Coast Range; it by-passes almost a million people in the populated areas of Alameda and Santa Clara Counties.

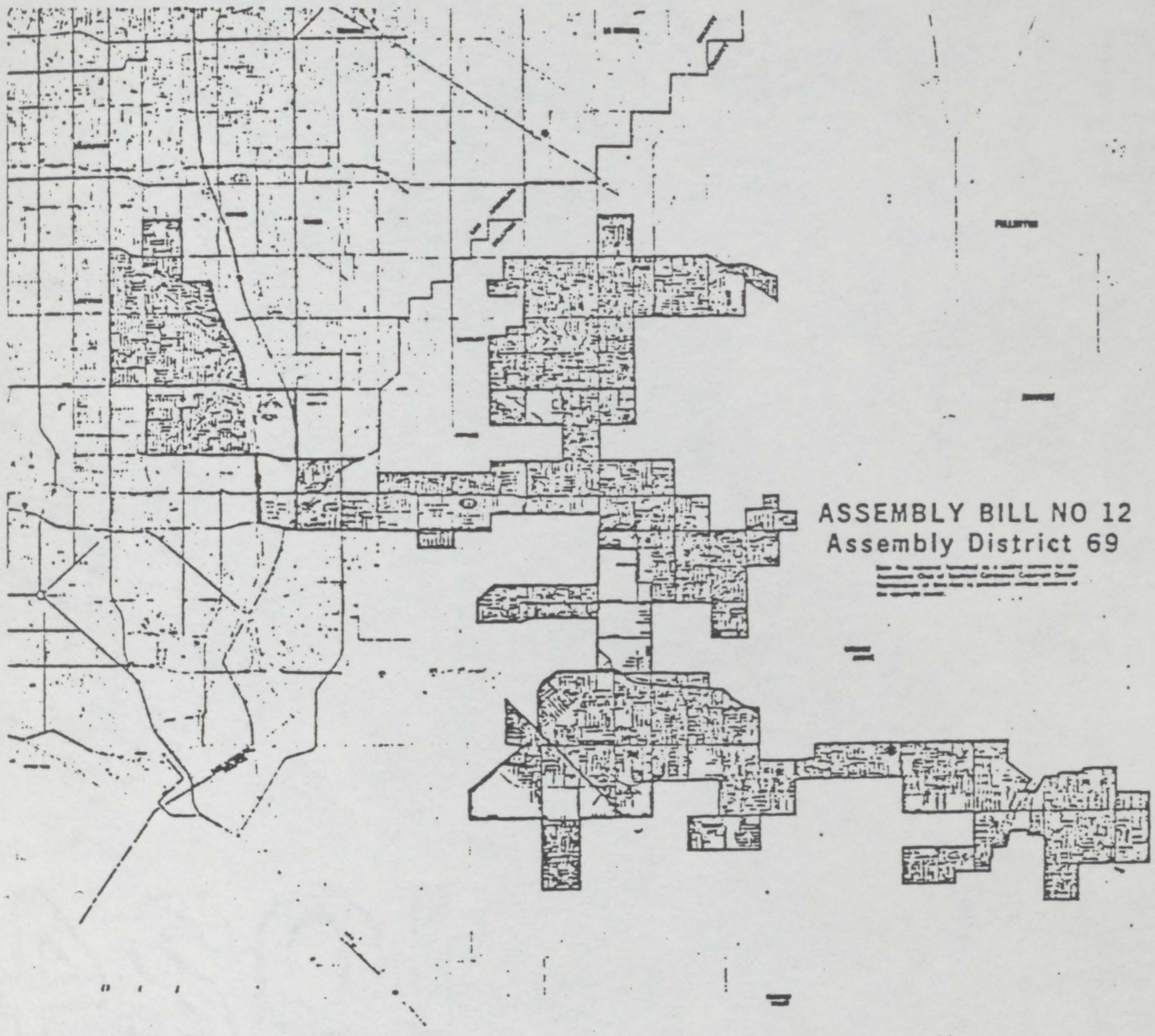
This map illustrates the practice of carving districts out of city precincts and balancing poli-

tical characteristics through the addition of agricultural areas. In this case, a virtual swathe is cut through the center of Fresno. The District was created to assure the election of a Democratic candidate and the defeat of a popular, long-term Republican incumbent (Kenneth Maddy).

The bizarre shapes of these districts (District 78 in San Diego and District 19 in the Bay Area) and their total lack of compactness illustrate other contortions that result from the reach for political advantage. District 78 assumed its shape as the result of an effort to concentrate Republican voters. District 19 is almost--not quite-- divided into three: note the impact in the neighboring district, which balloons into the 19th through a pencil-thin corridor.

FIGURE 52

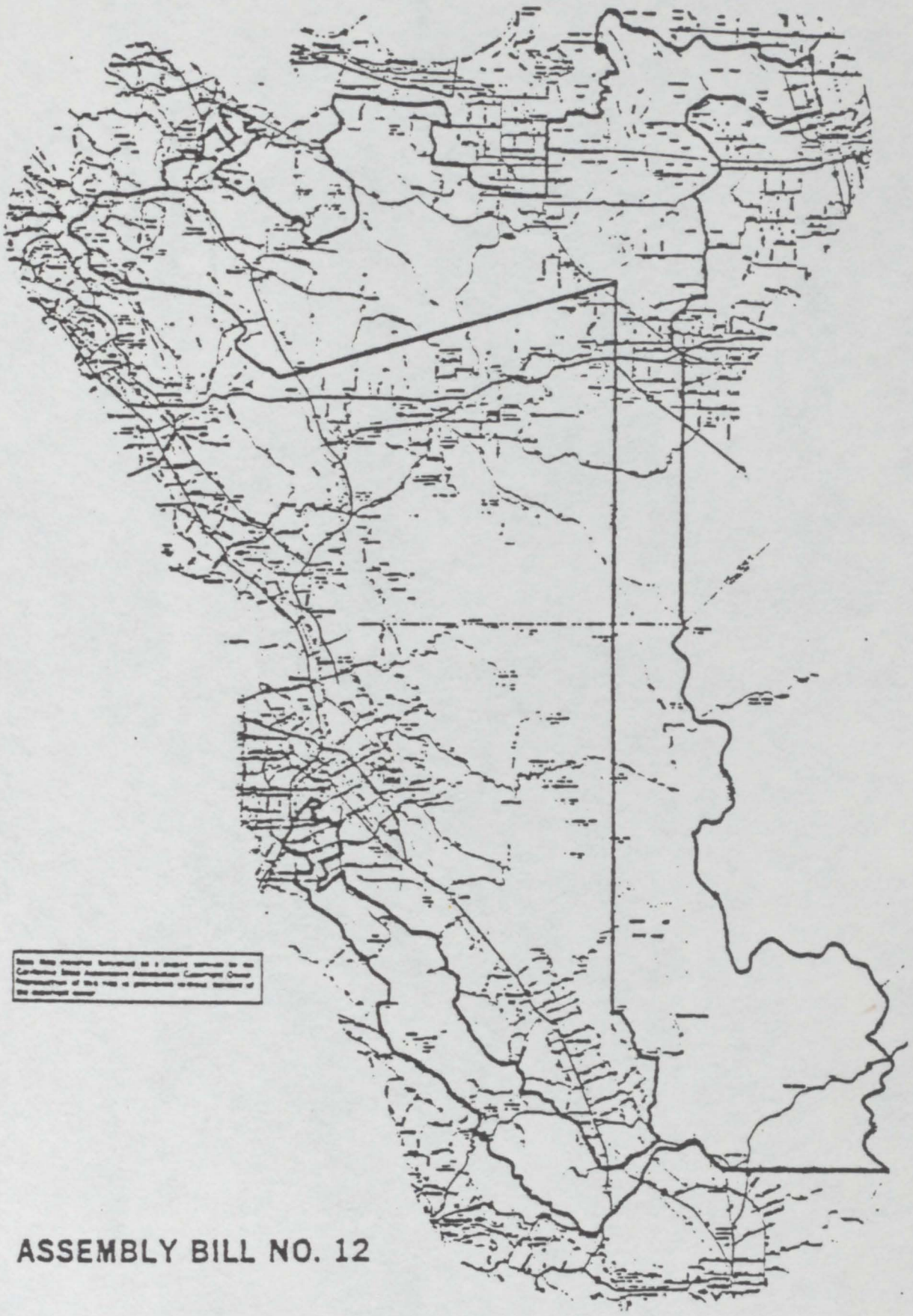
CALIFORNIA ASSEMBLY BILL 12 (1971) DISTRICT 10
"THE CORYDOR"



SOURCE: Assembly Committee on Elections and Reapportionment

FIGURE 53

CALIFORNIA ASSEMBLY BILL 12 (1971) DISTRICT 10



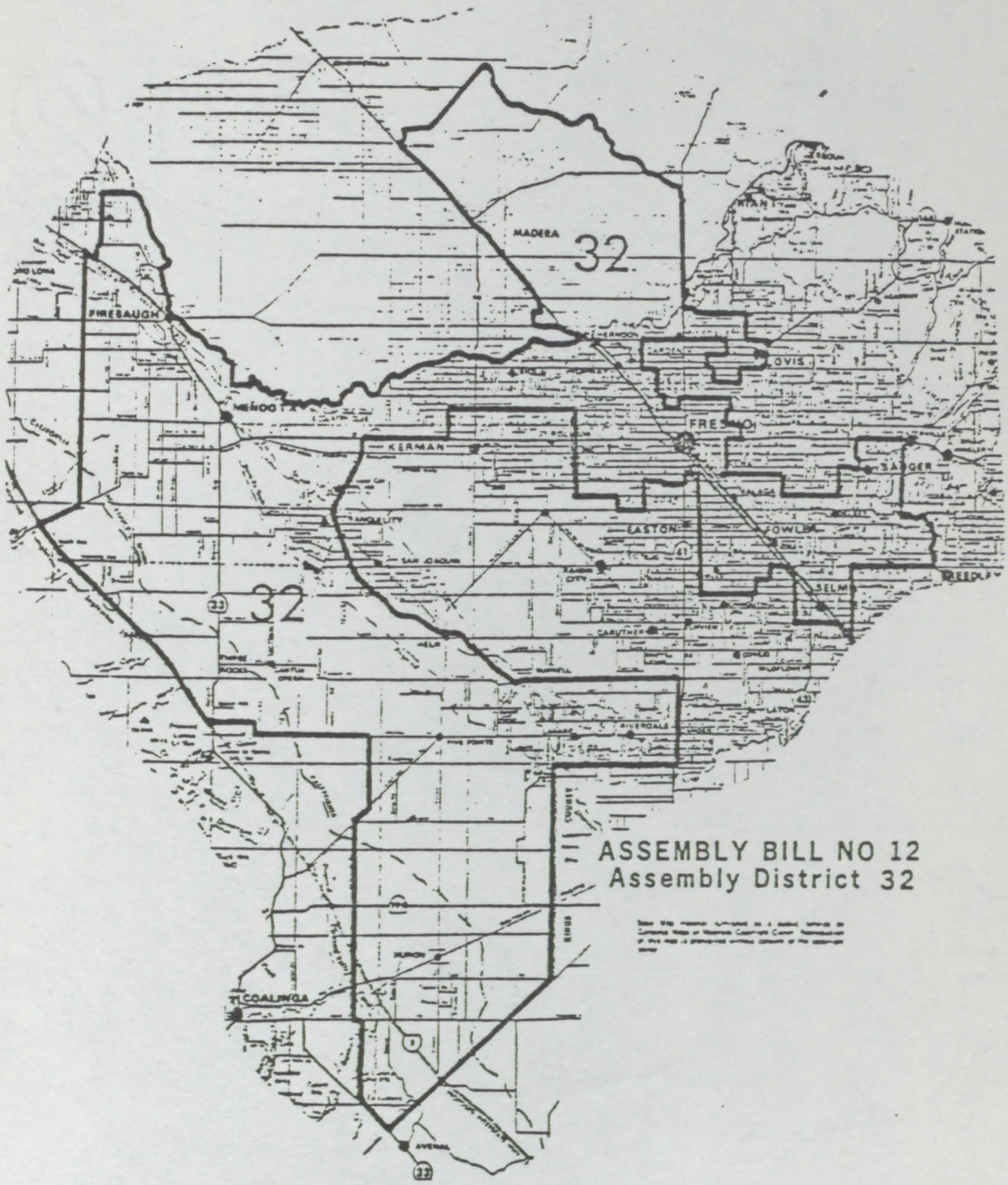
ASSEMBLY BILL NO. 12

Assembly District 10

SOURCE: Assembly Committee on Elections and Reapportionment

FIGURE 54

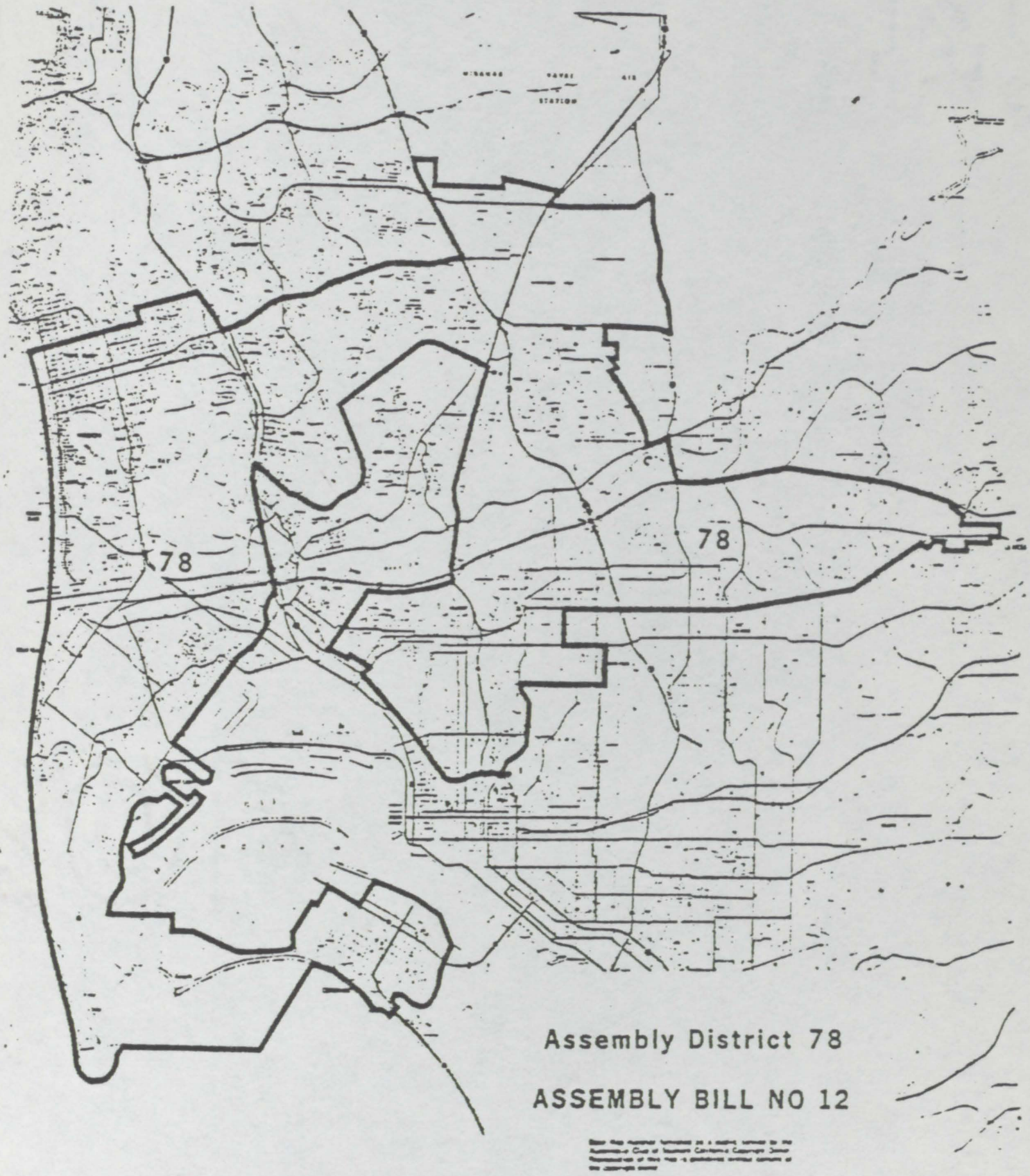
CALIFORNIA ASSEMBLY BILL 12 (1971) DISTRICT 32



SOURCE: Assembly Committee on Elections and Reapportionment

FIGURE 55

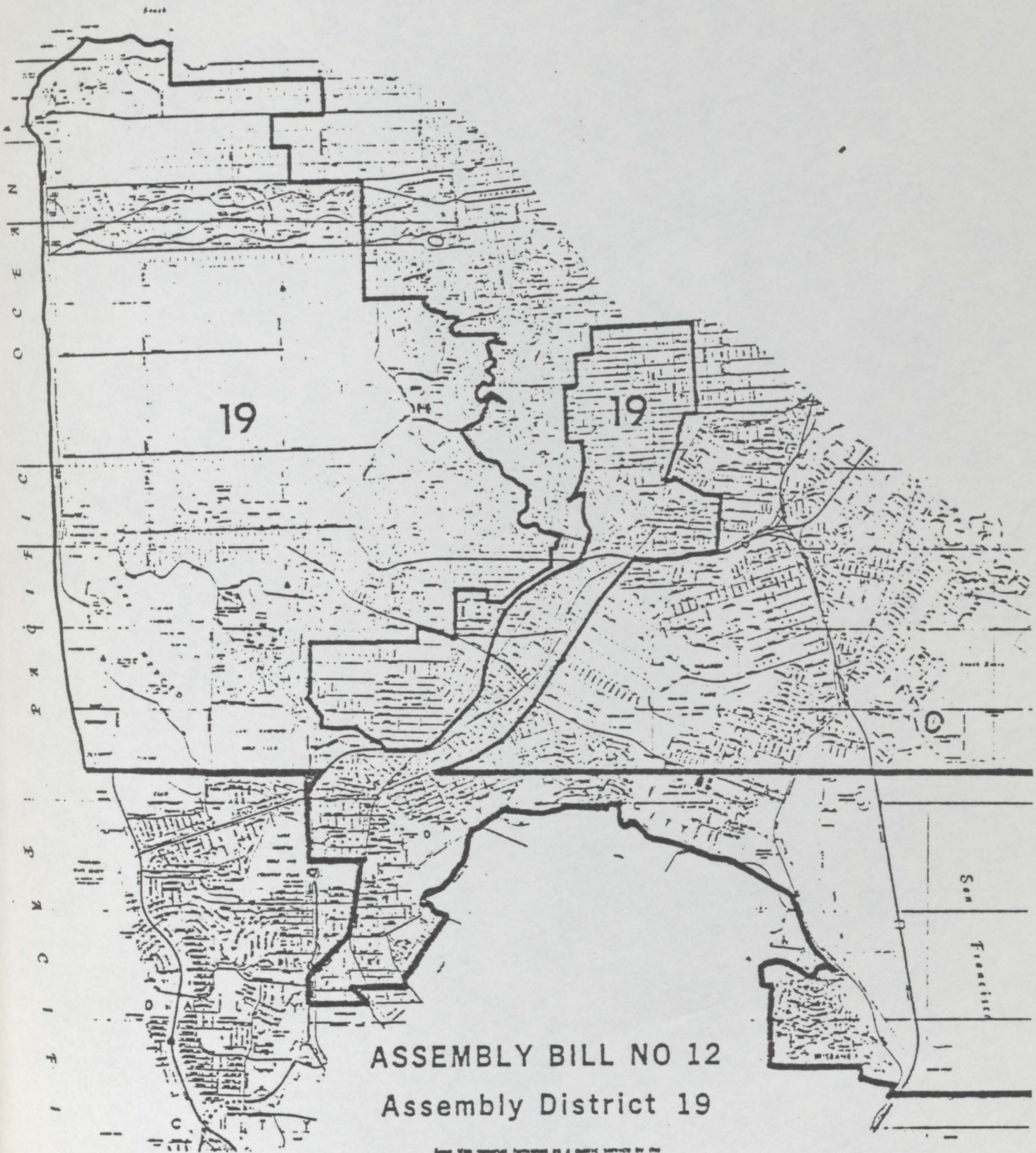
CALIFORNIA ASSEMBLY BILL 12 (1971) DISTRICT 78



SOURCE: Assembly Committee on Elections and Reapportionment

FIGURE 56

CALIFORNIA ASSEMBLY BILL 12 (1971) DISTRICT 19



SOURCE: Assembly Committee on Elections and Reapportionment

SUPREME COURT OF THE UNITED STATES

UNITED STATES ET AL. *v.* STATE OF MISSISSIPPI and AARON E. HENRY ET AL. *v.* STATE OF MISSISSIPPI

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Nos. 79–504 & 79–528. Decided February 19, 1980

The judgment is affirmed.

MR. JUSTICE STEVENS, concurring in the judgment.

In 1965 a three-judge District Court was convened in Mississippi to deal with allegations of malapportionment in Mississippi's state legislature. By 1975 an acceptable reapportionment plan still had not been formulated; nevertheless, quadrennial elections were held under a court-ordered plan.[1] In 1978 the Mississippi Legislature enacted a statutory reapportionment plan, which was submitted to the Attorney General of the United States for preclearance under the Voting Rights Act of 1965, 42 U. S. C. § 1971, *et seq.* When the Attorney General objected to the plan, the State brought this action in a three-judge District Court in the District of Columbia, seeking a declaratory judgment that the plan was in compliance with the Act. In 1979, while the Voting Rights case was still pending, the three-judge court in Mississippi entered a judgment putting into effect a reapportionment plan agreed to by all parties. *Connor* v. *Finch,* 469 F. Supp. 693 (SD Miss. 1979). That plan was essentially a modified version of the statutory plan.

Under the Voting Rights Act the task confronting the District of Columbia court was to determine whether the statutory plan had the "purpose or effect of denying or abridging the right to vote on account of race or color." 42 U. S. C. § 1973c. An impermissible effect is created whenever a reap-

[1] The history of that litigation is described at length in MR. JUSTICE MARSHALL's dissenting opinion in *Connor* v. *Coleman,* 440 U. S. 612, 614.

portionment plan has the effect of diluting existing black voting strength. See *Beer* v. *United States*, 425 U. S. 130, 141. The District of Columbia court compared the statutory reapportionment plan to the 1979 court-ordered plan in order to determine whether any prohibited retrogression had occurred. Concluding that it had not and that there was no purpose to discriminate evident in the statutory plan, the court granted the State a declaratory judgment approving the plan. Both the United States and intervenors (black voters in Mississippi) appealed. The Court today affirms, without opinion.

In my judgment the only significant issue presented on appeal is whether the statutory plan had the impermissible effect of diluting black voting strength. In his dissenting opinion MR. JUSTICE MARSHALL presents a persuasive case that there were significant discrepancies between the statutory plan and the 1979 court-ordered plan. Because I believe that the 1979 plan was not the proper benchmark to be used in determining whether there was an impermissible effect, I have no occasion to comment on his conclusion that the differences between the two plans were sufficient to constitute a "dilution" of black voting strength.

As a technical matter, the court-ordered plan was the plan "in effect" at the time the District of Columbia court decided the case.[2] Nevertheless, all of the parties to both actions realized that the statutory plan would be used in the 1979 elections if it received court approval in time. See *Connor* v. *Coleman*, 440 U. S. 612, 622 (MARSHALL, J., dissenting). Thus, in practical terms, the court-ordered plan was never more than

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[2] The statutory plan could not become effective until it was cleared pursuant to the Voting Rights Act by either the Attorney General or the three-judge court in the District of Columbia. *Connor* v. *Waller*, 421 U. S. 656. The judgment entered by the Mississippi court, on the other hand, specifically provided that the court-ordered plan was to be in "full force and effect for the 1979 regular state legislative elections and thereafter unless and until altered according to law." *Connor* v. *Finch*, 469 F. Supp. 693, 694 (SD Miss. 1979). Thus, the court-ordered plan would have remained in effect if the District of Columbia court had not approved the statutory plan.

a backup. To use such a plan as a benchmark for judging the effect of the statutory plan on voting rights seems to me to be logically indefensible. No voting rights in Mississippi were ever affected by the backup plan and thus any "changes" due to the imposition of the statutory plan could hardly have diluted those rights. Moreover, to require a state legislature to predict what court-ordered plans may be entered while a Voting Rights suit is pending and then to draw its plan to ensure that no dilution occurs seems to me to be a futile exercise clearly not required by the statute.

Thus, in my view the statutory plan was permissible under the Act so long as it did not have a discriminatory purpose and did not dilute black voting strength as it existed at the time the legislation was passed. The District Court's findings of fact make it clear that the plan met these conditions.[3] I therefore concur in the judgment affirming the decision of the court below.

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[3] The court noted that when compared to the 1975 apportionment plan that had governed the last elections, the statutory plan constituted a "clear enhancement of the position of racial minorities with respect to their effective exercise of the electoral franchise. . . ." Jur. Statement, at 32a, n. 6.

SUPREME COURT OF THE UNITED STATES

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ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Nos. 79-504 & 79-528. Decided February 19, 1980

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN and MR. JUSTICE WHITE join, dissenting.

For more than 15 years private litigants, often joined by the United States, have sought to obtain an apportionment plan in Mississippi which satisfies the requirements of the Equal Protection Clause and the Voting Rights Act of 1965. By today's summary affirmance, the Court assures that these efforts will remain to a substantial degree unsuccessful. I dissent.

I

Brought in 1965, this case has a procedural history that can charitably be described as bizarre. Both state officials and the three-judge District Court for the Southern District of Mississippi have shown a firm determination to avoid implementation of an apportionment plan which complies with constitutional and statutory requirements.[1] The case has been before this Court no fewer than eight times; we have invalidated plans proposed by the District Court on four occasions. *Connor* v. *Johnson*, 402 U. S. 690 (1971); *Connor* v. *Williams*, 404 U. S. 549 (1972); *Connor* v. *Waller*, 421 U. S. 656 (1975); *Connor* v. *Finch*, 431 U. S. 407 (1977).

In *Connor* v. *Finch*, *supra*, we ordered the District Court to draw a lawful apportionment plan "with a compelling awareness of the need for its expeditious accomplishment so that the citizens of Mississippi at long last will be enabled to elect a legislature that properly represents them." *Id.*, at

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[1] The procedural background is described in detail in my dissenting opinion in *Connor* v. *Coleman*, 440 U. S. 612, 614–621 (1979).

426. Two more years passed, and no such plan was drawn. When the case was here last Term, the plaintiffs sought leave to file a petition for a writ of mandamus to require the District Court to do what we had ordered. On March 26, 1979, the Court granted leave to file the petition, but it postponed action for 30 days, instructing the District Court to enter a plan "forthwith and without delay." *Connor* v. *Coleman*, 440 U. S. 612, 614 (1979).[2] On April 13, 1979, the District Court entered a final judgment embodying a plan agreed to by all parties.[3] Unfortunately, this settlement plan did not end the litigation.

Almost a year earlier, on April 21, 1978, the Governor of Mississippi had approved a statutory reapportionment plan designed to supersede any court-ordered plan to be produced in this litigation. The statutory plan was submitted to the Attorney General of the United States for preclearance under the Voting Rights Act of 1965, 42 U. S. C. § 1971 *et seq.* On July 31, 1978, the Attorney General entered a timely objection on the ground that the State had failed to carry its burden of proving the absence of a discriminatory purpose or effect. See 42 U. S. C. § 1973c. The State of Mississippi filed the present action in the United States District Court for the District of Columbia, seeking a declaratory judgment under the Voting Rights Act that the statutory plan did not have the prohibited purpose or effect. Ten Mississippi Negro voters intervened, urging that the statutory plan be declared invalid. On June 1, 1979, the District Court entered the declaration requested by the State, and it is that judgment which is the subject of the present appeal.

II

The legality of the statutory plan depends on whether it

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[2] I would have issued the writ immediately. See *Connor* v. *Coleman*, 440 U. S. 612, 614 (dissenting opinion).

[3] The petition for a writ of mandamus was denied on May 21, 1979; we noted that the Clerk of the District Court had "stated that all parties to the litigation have announced in open court that there will be no appeal." *Connor* v. *Coleman*, — U. S. — (1979).

has the purpose or effect of diluting Negro voting strength in Mississippi. If the statutory plan is retrogressive, it is forbidden under the Voting Rights Act. *Beer* v. *United States*, 425 U. S. 130 (1976). The District Court correctly measured the statutory plan against the present apportionment of the Mississippi Legislature, which is the settlement plan embodied in the final judgment entered by the District Court for the Southern District of Mississippi in response to our instruction to enter a plan "forthwith and without delay." [4]

The District Court's findings reveal a long history of denial of Negro voting rights in Mississippi. Official use of racially discriminatory devices such as literacy tests, poll taxes, and white primaries effectively excluded Negroes from participation in the electoral process until the passage of the Voting Rights Act in 1965. The current effects of past discrimination are manifested in serious underrepresentation of Negroes in the state legislature. Although the latest census showed that Mississippi's population is 36.8% Negro, prior to the 1979 elections there were only four Negroes in the 122-member House of Representatives and none in the 52-member Senate. Because of racial bloc voting and low Negro voter registra-

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[4] The argument that retrogression should be measured against the 1975 court-ordered plan which was in effect when the legislature adopted the statutory plan is manifestly incorrect. The mandate of the Voting Rights Act is that a plan may not be adopted if it would dilute existing Negro voting strength. There is no dispute that the 1979 court-ordered plan was the governing law at the time the court below rendered its decision. If the statutory plan were not put into effect, future elections would be conducted under the court-ordered plan. Accordingly, it is simply incorrect to suggest that Negro voting rights were not "affected" by the 1979 court-ordered plan or that a subsequent statutory plan could not dilute the rights won under that plan. To suggest, as does MR. JUSTICE STEVENS, *ante*, that the court-ordered plan that is now the law in Mississippi may be disregarded because the parties viewed it as a mere "backup" not only denigrates a final judgment of a federal court, entered at our direction after over a decade of litigation; it would also permit a state legislature freely to dilute Negro voting strength gained through any court-ordered plan under which elections had not yet been held. Such a result is plainly contrary to the Voting Rights Act.

tion and turnout. Negroes must constitute a substantial majority of citizens in a district in order to have a reasonable opportunity to elect a candidate of their choice. The court concluded that either a Negro population of 65% or a Negro voting age population of 60% was necessary to provide such an opportunity.

It is evident from the findings of the District Court that the statutory plan significantly weakens the voting strength of Negroes in a number of ways. The statutory plan divides and diminishes Negro population concentrations, combines them with heavily white populations, and creates oddly shaped districts for no apparent reason other than to dilute the Negro vote. Under the plan presently in effect, 49 districts contain a majority of Negro voters; the statutory plan contains only 46 such districts. As the District Court acknowledged, under "the statutory plan's redistricting of Warren County, a heavy black population concentration is divided among three proposed house districts, turning a black majority into a black minority in all three districts." Jurisdictional Statement of the United States, App. 18a–19a.

The court concluded that the elimination of three majority districts was insignificant, relying on its finding that a Negro voting age population of 60% was necessary in order for Negroes to have a fair opportunity to elect a candidate of their choice. Apparently the court reasoned that the diminution in the number of districts with a mere majority of Negro voters was not retrogressive since even under the plan presently in effect, Negro voters in those districts could not elect candidates. But a majority population gives Negroes at least some opportunity to elect a candidate of their choice; a minority gives them practically none. Indeed, in some of the counties with Negro majorities under the existing plan but not under the statutory plan, Negroes have been extremely active in city government and have a genuine opportunity to elect a candidate of their choice.[5] The District Court's mechanical

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[5] For example, in the Warren County district the community of Vicksburg has recently elected a Negro to the City Council. In addition, Bolton

application of the 60% standard eliminates that opportunity.

In a number of other districts appellees failed to carry their burden of disproving retrogression within the meaning of *Beer*. In Leflore County, for example, existing law provides for a Negro voting age population of 71.72%; the statutory plan reduces that population to 64.26%. The statutory plan fragments a heavily Negro population in that county, combining the larger portion with a white community. The record showed that because of past discrimination, Negro voting strength was severely inhibited in the county, in part because most Negroes reside in rural areas, where voter turnout is far less than in urban districts. There was testimony that a 65% Negro voting age population substantially composed of rural Negroes was insufficient to provide a fair opportunity to elect candidates. By contrast, the 71.72% population provided by the existing plan is fully adequate.

The District Court's findings show that the statutory plan fragments a number of cohesive voting districts, combining communities where Negroes have been politically active with white populations for no discernible reason. There was uncontradicted testimony that in seven districts, the statutory plan deprives Negro voters of an opportunity to elect a candidate of their choice.[6] In these circumstances, I am unable to accept

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and Edwards, primarily Negro towns in the Hinds County district, have predominantly Negro city governments.

[6] For example, in western Hinds County, a heavily Negro district under the present law is divided into three sections, each of which is combined with greater white populations in surrounding suburbs. In Marshall County, the only district that has elected a Negro supervisor is split up, and the voting strength of Negro voters in the county's house district is diluted by the inclusion of the predominantly white Holly Springs precinct. The county's Negro voting population is thus reduced from 62% to 56%. In Adams County, the statutory plan divides the only supervisors' district with a majority Negro population into two districts. The northern portion of Adams County is then combined with heavily white populations, which reduces the Negro population from almost 70% to 63%.

The District Court altogether ignored the retrogression in the electoral strength of Negro voters within the counties. This was a serious error, for county delegations to the Mississippi Legislature play a crucial role in

the conclusion that the statutory plan would not lead to a retrogression in the position of Negro voters.

The District Court acknowledged these differences between the two plans, but upheld the statutory plan nonetheless, concluding that the differences were insufficient to constitute a discriminatory effect. The Court pointed out that both plans had the same number of districts with Negro voting age populations of 60% or more, and it relied heavily on "the fact that legislative reapportionment is the preferred vehicle for reapportionment, as is reflected by the broader tolerances which are allowed to legislatures, but not to courts, in the matter of deviations from uniform population requirements." Jurisdictional Statement of the United States, App. 32a.[7] It also relied on findings that the interveners had not offered sufficient objections during the formulation of the statutory plan.

The District Court's reasoning amounts to a conclusion that there is a *de minimis* exception to the fundamental proposition that changes may not be made if they would produce a retrogression in the electoral potential of Negro voters. *Beer* v. *United States*, 425 U. S. 130 (1976). I am unable to discern such an exception in the Voting Rights Act or in any of

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local government. Legislation affecting the county is enacted by a scheme of bills of local application in the state legislature; boards of supervisors exercise little legislative power. As a result, the county delegation is largely responsible for local governance. If the statutory plan is viewed from the perspective of particular counties, it is even more difficult to account for the District Court's finding that any retrogression was "insignificant."

[7] The court also found that the State had carried its burden of proving that the statutory plan was not the product of a discriminatory intent, a conclusion that is in my view highly questionable. The unexplained discriminatory elements of the statutory plan, when combined with the State's prior history of discrimination, suggest that the State had not carried its burden. Indeed, the court entirely ignored testimony tending to show that members of the state legislature's joint reapportionment committee were aware that the statutory plan dilutes the strength of the Negro vote and that alternative configurations would preserve existing Negro population concentrations.

our decisions. Such a gloss on the Act would invite a series of changes, seemingly insignificant in themselves, which over the course of years could result in a substantial decline in Negro voting strength. Nor is the decision below justified by the principle that legislatures may deviate more broadly than courts from uniform population requirements. The Voting Rights Act flatly prohibits state legislatures from "'undo[ing] or defeat[ing] the rights recently won by Negroes'" *Beer* v. *United States, supra,* 425 U. S., at 140. Finally, the asserted failure of the interveners to offer sufficient objections to the statutory plan is wholly irrelevant to the inquiry required by the Voting Rights Act. The Act's proscription on retrogression is simply not subject to waiver. The District Court's conclusion would permit a State freely to dilute Negro voting strength whenever the Negro community is unable or unwilling to participate in the apportionment process.

By today's summary affirmance, the Court permits the rights won less than a year ago, after generations of political efforts and well over a decade of litigation, to be thwarted by recalcitrant state officials. In so doing, the Court appears to condone a novel interpretation of the law that would find a *de minimis* exception to the clear and absolute requirements of the Voting Rights Act, and sanctions the application of this new doctrine to a case in which, as the record amply demonstrates, the dilution of Negro voting strength is not *de minimis* at all, but substantial. The plan approved today ensures that the Negro voters of Mississippi will not yet obtain an apportionment plan which meets the requirements of the Act. I dissent.

APPENDIX

REPORT ON THE MASTER' PLAN FOR THE STATE OF MISSISSIPPI HOUSE OF REPRESENTATIVES

One of the greatest technical proplams facing the Reapportionment Committee has been the necessity of remaining within the bounds of the "one man - one vote" rule of the Supreme Court and still preserving the full integrety of the county boundaries in this State. In addition, when the Committee directed its staff toward the use of precincts - as opposed to enumeration districts - the problem of split census divisions was added to the reapportionment process. We have not yet found a solution to the reapportionment of the House which will totally follow precinct lines, will totally maintain counties, and yet stay within the bounds of the "one man - one vote" rule.

It is clear, upon the completion of the analysis of the Court Master's Plan, that the Master has not been able to accomplish this feat also. In his plan he has sacrificed accuracy for the purpose of county integrety. His plan is described as a hybrid of the State's, the Plaintiff's (Connor), and the Federal Government's plans. This, in fact, appears to be the case. However, there have been serious statistical errors made by him in the merging of

these three plans.

The Master appears to have accepted the Legislature's proposed districts for the shaded areas shown on Map 1. These districts, along with those of Hinds County were not included in the analysis presented herein. In addition, the districts contained in Amite, Franklin, Lincoln, Pike and Wilkinson Counties were also not included as the Committee is offering an alternate solution for these areas. Although the Master offered the Legislative solution for Warren County along with two others, an analysis of both alternate solutions for the Warren County districts is included.

This analysis was approached from the following viewpoint: Although this plan is a "precinct" plan, the statistics describing the districts should be based upon the 1970 Census -- and no other data should be brought into the analysis. This includes later censuses or approximations based upon significantly later house counts. Thus, for purposes of statistical analysis, each district is considered a combination of 1970 geographic units or portions thereof. This district lines were superimposed upon census maps and the MCD's and ED's were added together. We consider this to be the most accurate and vilid method for computing population data for all districts.

Due to time considerations, some of the district populations could not be computed. In Leflore County the two districts entirely within the county were considered as a whole unit. This was also the case for the two Rankin

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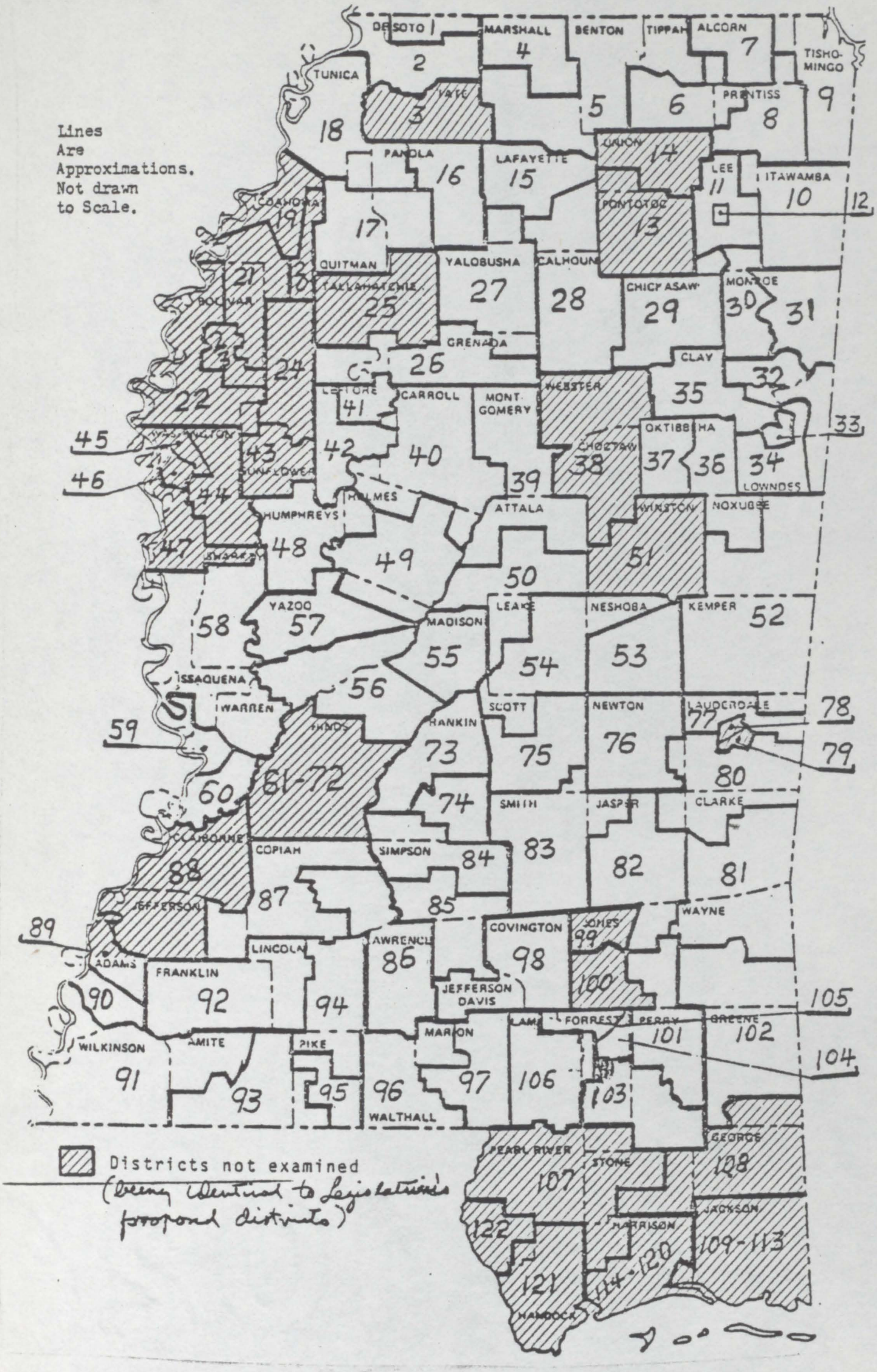

County districts, the Copiah, Lawrence, Jefferson County Districts, and the four Lauderdale Districts (77-80). In the case of districts 5 and 6, the Committee did not have a precinct map of Tippah County. Due to this fact, no check could be made for that split. In reading this report, therefore, one should not assume that these district are evenly balanced. In two of these cases, there is evidence that the populations quoted cannot be correct.

In the case of the Lauderdale County Districts, our analysis shows this area to be 1,856 persons under four ideal districts (This is within 2.55% on the average). The Master shows a surplus of 172 persons. This difference could be spread out through all the districts, or it could be in one or two districts. In the latter case, this could produce deviations in excess of 5% plus or minus. These districts should be checked before the populations assigned by the Master should be relied upon.

In Rankin County we show the area which has been formed into districts 73 and 74 to be 1,243 persons over the ideal population for two districts. If this overage is concentrated in one district, that district would be in excess of 6% over ideal population. Again, a detailed check should be made.

The Copiah-Lawrence Districts (87 & 86) appear to be close to the ideal population for two districts. If the populations are close to those stated by the Master then there will be no deviation problem. In addition, the Benton

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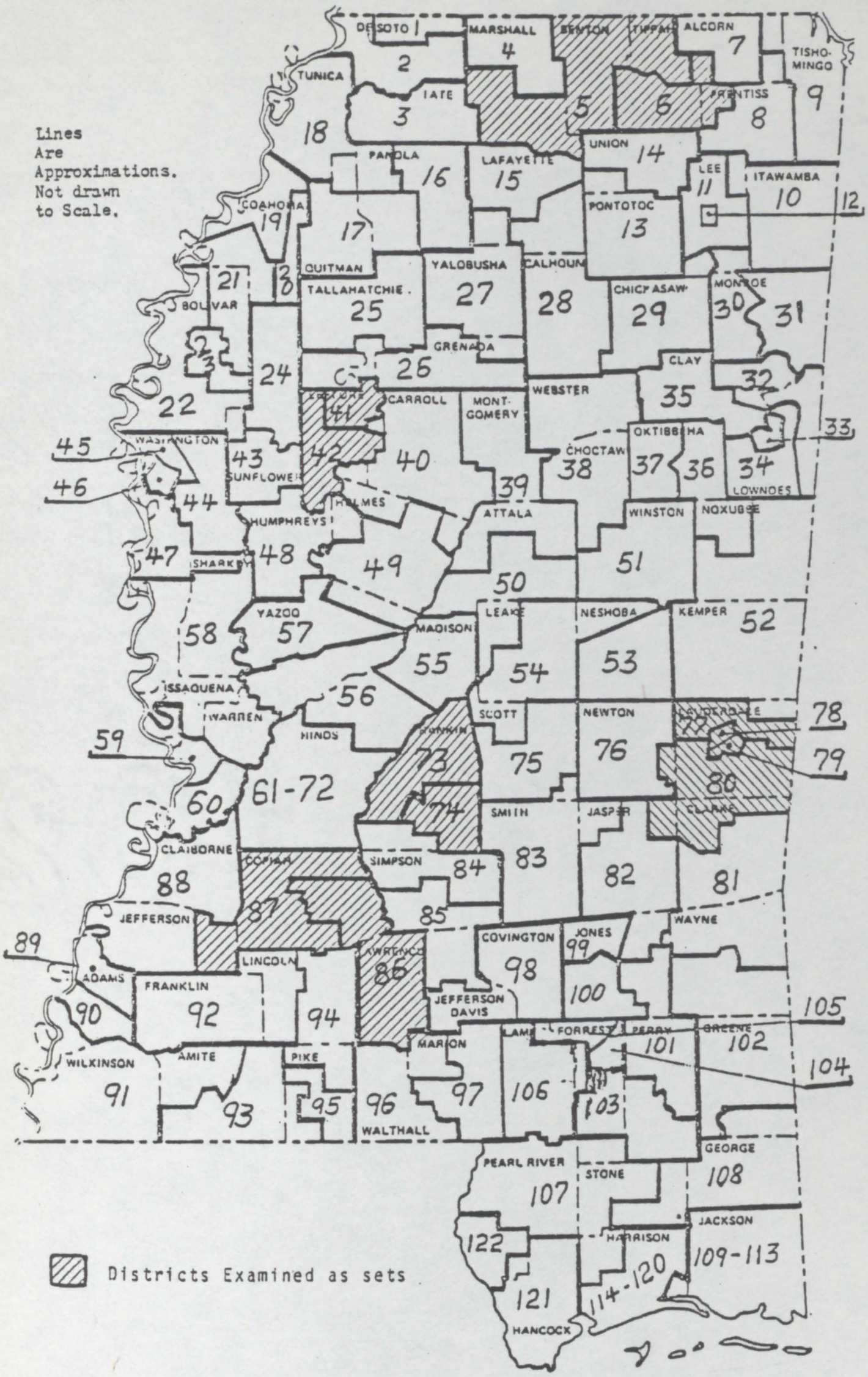

-Marshall-Tippah-Alcorn-Prentiss districts (5 & 6) appear to contain the correct number of people. However, in this case, they are sandwiched between two districts over 7% off the ideal district population.

Map 3 shows the districts which are in excess of 3% deviation from the ideal district size. Although these deviation "problems" appear to be contained in reasonably small areas of the State, the ripple effect caused by an attempt to bring them all under 4% (given just as an example) plus or minus, would cause considerable ripple effects throughout greater areas.

Map 4 shows the boundaries of "areas" in which the districts which are greatly off the ideal district size could be corrected. This analysis will procede through these areas in commenting on the problem districts.

Area A contains DeSoto County. District 1 which is -6.78 could give a precinct with about 720 persons to district 2.

Area B contains Tunica, Panola and Quitman Counties. A trade of 900 persons from District 17 to 16 would correct this problem.

Area C contains Grenada, Leflore, Carroll, Holmes Humphreys, Yazoo and Madison Counties. This excess population from the grenada County District (26) could be shifted through Leflore County to the Carroll County District(40). In addition, the Holmes County District could give up 1,800 persons to the Carroll County District.

Area D containing Marshall, Benton, Tippah, Alcorn, Prentiss and Tishomingo Counties contains two districts which are problems. District 4 should be made larger and 5 and 6 can pick up population from Alcorn County.

Area E contains Lee, Itawamba, Chickasaw, Monroe Clay and Lowndes Counties. This area contains only 673 persons in excess of 10 ideal districts. If the Monroe-Lowndes district (32) were moved farther into Monroe and the western Monroe District (30) were moved farther into Lee then this problem could be corrected.

Area F contains a large group of counties from Montgomery to Perry. There is a group of districts too small up at the northern end of this area and a group of districts too large at the bottom. This could be corrected by moving district 82 farther into Jones. There could then be three districts created within Forrest County, the Perry-Greene District could be created, and a Wayne-Jones district could be created.

Area G contains Oktibbeha, Noxubee, and Kemper Counties -- with a portion of Lauderdale. District 35 needs to "take" 1,260 persons from the Kemper County District (52) and give up an equal amount of persons to the Oktibbeha County District (37).

Area H contains Rankin, Simpson, Jefferson Davis and Covington Counties. The northern Simpson County District must acquire about 1,080 persons from each of the Rankin County Districts (73 & 74).

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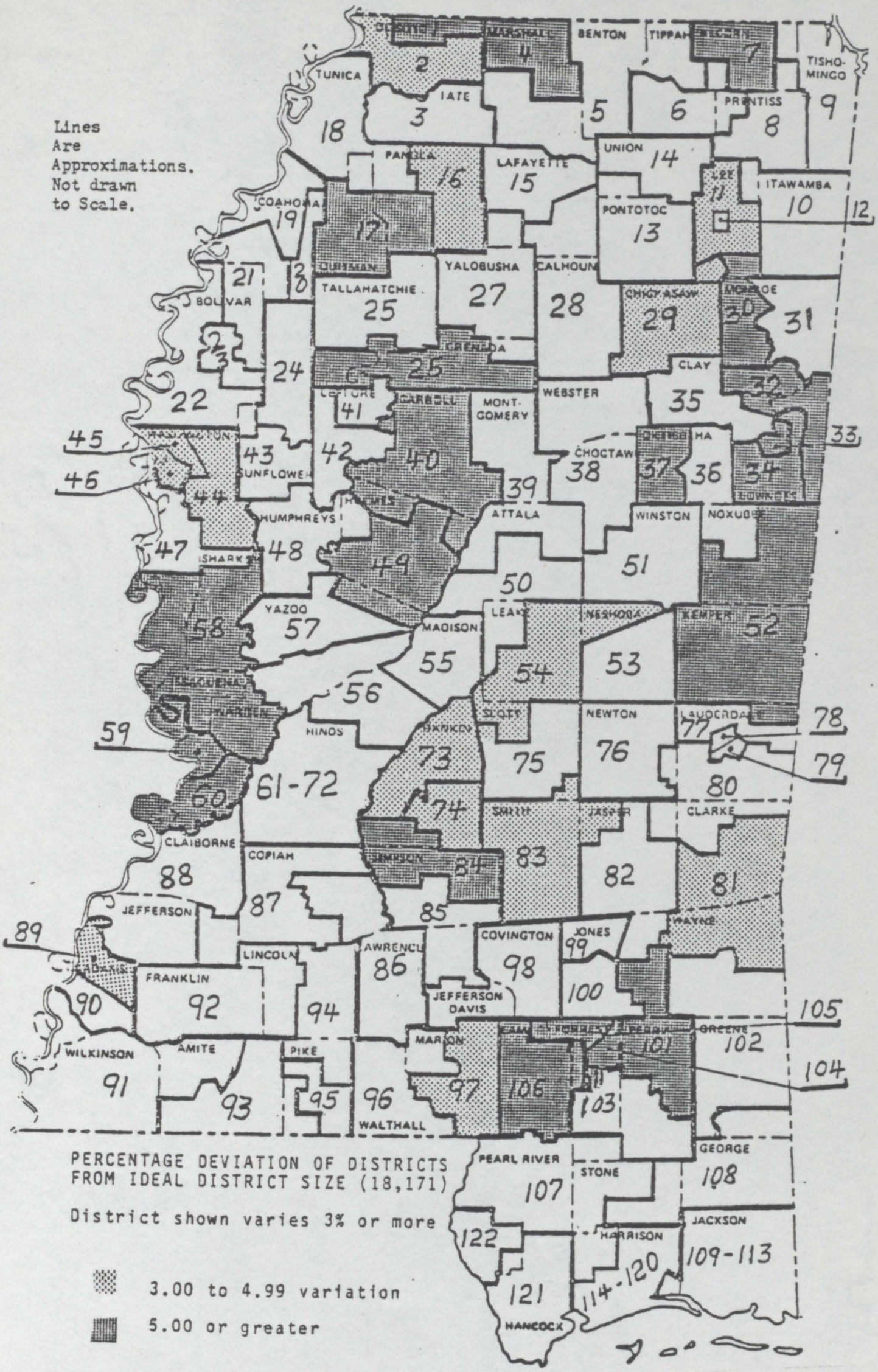

PERCENTAGE DEVIATION OF DISTRICTS
FROM IDEAL DISTRICT SIZE (18,171)

District shown varies 3% or more

3.00 to 4.99 variation

5.00 or greater

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Approximations.
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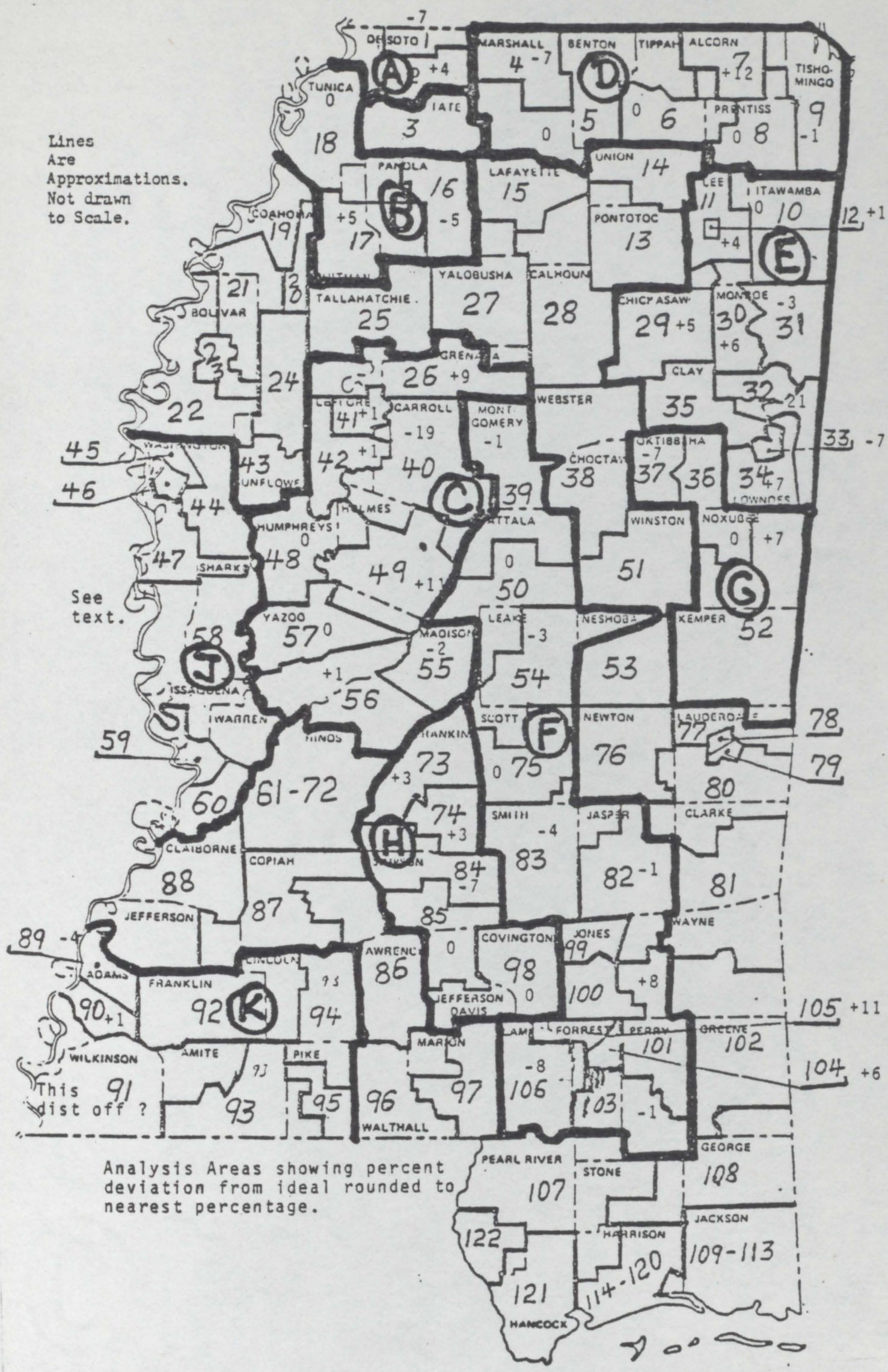
to Scale.



Analysis Areas showing percent deviation from ideal rounded to nearest percentage.

Area J contains Washington, Sharkey, Issaquena and Warren Counties. The Committee will present evidence that the Master's solutions 2A and 2B contain districts which have excessive deviations. (See last two pages of this report) For this reason plan 2C should be accepted.

Area K contains Adams, Franklin, Amite, Lincoln and Pike Counties. The Committee is presenting an alternate solution for this area.

In addition, the Committee is presenting an alternate solution for the Smith-Jasper County Districts plus suggestions for Lamar, Forrest, Perry and Greene Counties.

The Table on the next page lists the districts in the Master's Plan which exceed the ideal district population by 4% or more. Outside of Warren County, 23 districts are over or under four percent of ideal district population. If Warren Plan 2A were to be accepted, this number would rise by two to 25. If Warren 2B were to be accepted this number would rise by three to 26.

Taking the populations of the Master's districts as shown in this report, the total deviation of his plan would be in excess of 20% from top to bottom.

These excessive deviations demonstrate the difficulty in obtaining accurate population estimates when not following enumeration district boundaries. It also clearly demonstrates the difficulty encountered when not using accurate maps and not calculating population data in terms of actual census geographical units (even when following precinct

lines).

In addition to excessive population deviations, the plan contains some non-contiguous districts. Districts 32, 33, and 34 in Lowndes County are either overlapping or non-contiguous. In addition, a precinct in Lowndes County is left out of the plan. The solution 2B for Warren County contains a non-contiguous district. Here, District 59 is divided by District 58.

District 16 in Panola County is listed by the Master as being over 50% black. This district is only 47% black. The district contained in the Legislative Plan for Oktibbeha, Lowndes and Noxubee Counties in East Mississippi (Legislative Plan District 40) contains over 65% black population. It is replaced with district 52 in Noxubee, which contains only 60% black in the Master's Plan.

In Hinds County the Master's report states that Alternate Plan 3A (Connor Plaintiff) is missing precincts. Alternate Plan 3B (Justice) contains non-existent precincts and is missing precincts. Alternate Plan 3C (Legislature's) is correct and follows approximately the same line as did the Court-ordered districts in 1975. These districts were put into effect when Hinds County was changed from a multi-member district to 12 single-member districts. The Legislative Plan should be accepted in Hinds County.

Respectfully submitted,

[redacted]

DISTRICTS IN THE MASTER's PLAN FOUND TO HAVE MORE THAN FOUR PERCENT DEVIATION FROM IDEAL DISTRICT SIZE.

District Number	Population of district	Percentage off ideal
32	14,289	-21.36
40	14,660	-19.32
7	20,384	+12.18
49	20,150	+10.89
59 (2B)	20,114	+10.69
105	20,100	+10.61
60 (2A)	16,302	-10.29
58 (2A)	19,877	+9.39
26	19,787	+8.89
101	19,619	+7.97
106	16,735	-7.90
34	19,532	+7.49
33	16,816	-7.46
4	16,830	-7.38
52	19,512	+7.38
37	16,872	-7.15
84	16,925	-6.86
1	16,939	-6.78
104	19,292	+6.17
30	19,246	+5.92
17	19,093	+5.07
16	17,290	-4.85
60 (2B)	17,312	-4.73
29	18,992	+4.52
83	17,393	-4.28
2	18,946	+4.27
58 (2B)	17,427	-4.09
11	18,898	+4.00

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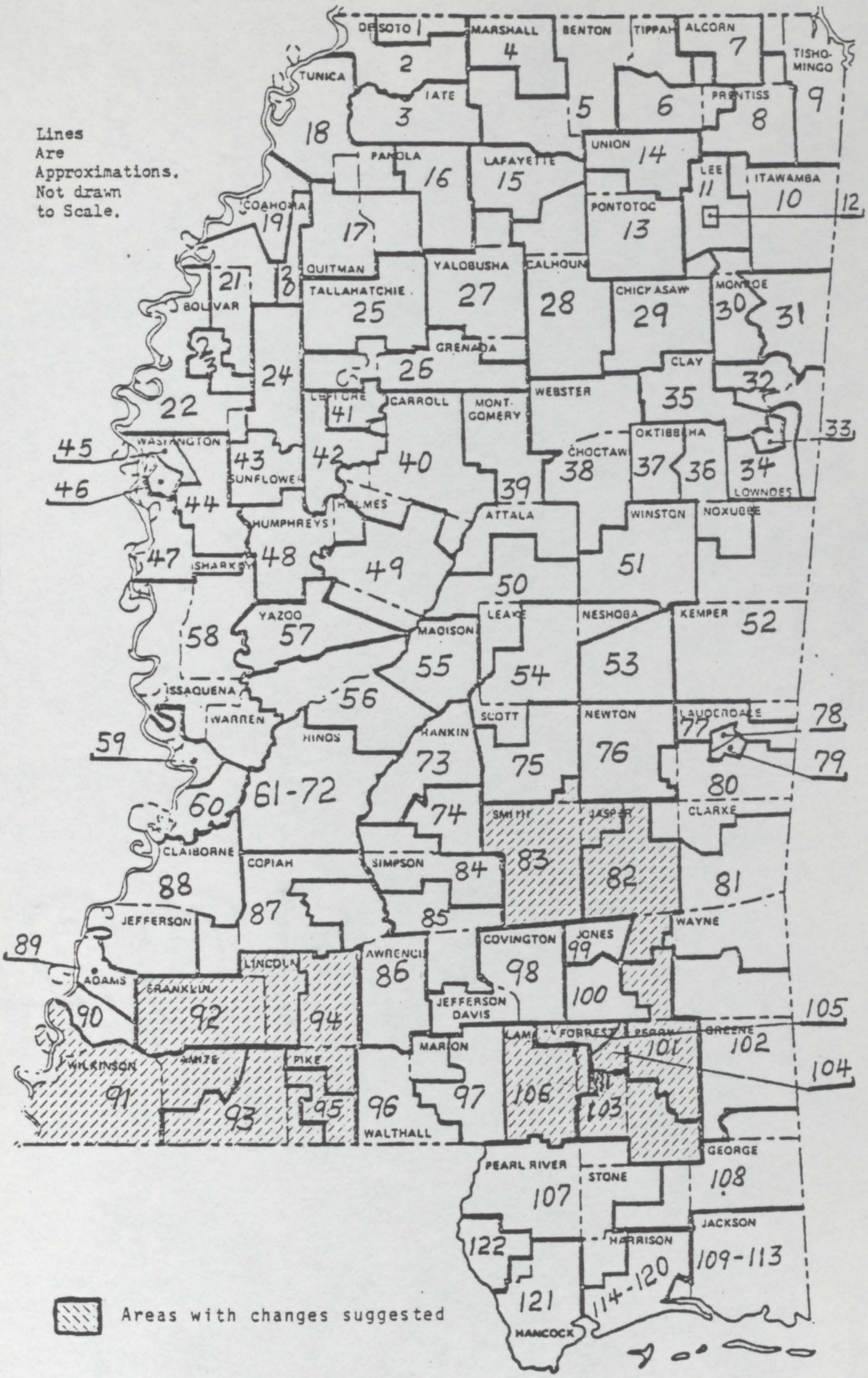

SUMMATION OF DATA - DISTS 58, 59, 60

Plan 2B for Warren County

District 58	Total Pop.	Black Pop.
Sharkey & Issaquena Counties:	9,872	6,081
Warren County	7,555	6,081
District Total	17,427	9,339
Variation from ideal district size:	-744	-4.09%
Percentage Black:	53.59%	

District 59 *		
District Total	20,114	11,960
Variation from ideal district size:	+1,943	+10.69%
Percentage Black:	59.46%	

District 60		
District Total	17,312	3,137
Variation from ideal district size:	-859	-4.73%
Percentage Black:	18.12%	

*Note: This district is divided from east to west by district 58.

SUMMATION OF DATA - DISTS 58, 59, 60

Plan 2A for Warren County

District 58		Total Pop.	Black Pop.
Warren County (North of Vicksburg)		8,735	3,437
Sharkey & Issaquena Counties		9,872	6,081
Cedar Grove Precinct (Warren)		1,270	58
District Total		19,877	9,576
Percentage Black	48.17%		
Variation from ideal district size:	+1706	+9.39%	

District 59			
North County (North of Vicksburg)		1,394	777
American Legion		6,347	3,198
Central Fire		3,416	2,679
St. Aloy.		2,390	972
Auditorium		5,167	3,835
ED 9900		22	0
District Total		18,736	11,461
Percentage Black	61.24%		
Variation from ideal district size:	+543	+2.99%	

District 60			
District Total		16,240	3,399
Percentage Black	21.27%		
Variation from ideal district size:	-1,931	-10.63%	

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 78-1425

[Filed June 1, 1979]

STATE OF MISSISSIPPI,

Plaintiff,

vs.

UNITED STATES OF AMERICA and GRIFFIN B. BELL, ATTORNEY GENERAL OF THE UNITED STATES, individually and in his official capacity,

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action was heard upon plaintiff's request for declaratory relief pursuant to section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. It concerns the validity of the Mississippi Legislature's statutory legislative reapportionment plan, Miss. Laws, 1978, Chs. 515 and 535, H.B. 1491 and S.B. 3098, enacted in March, 1978. The hearing took place September 18-27, 1978, at which a record of more than 1500 pages of oral testimony was compiled and more than 80 exhibits received in evidence. The matter has been extensively briefed by all parties. Based on this record of the evidence presented and on the applicable law, we make the following findings of fact and conclusions of law.

FINDINGS OF FACT

I. *Factual and Procedural Background:*

1. In 1965, private plaintiffs filed a complaint entitled *Connor* v. *Johnson* in the Southern District of Mississippi

(hereinafter referred to as "the *Connor* Court") challenging the constitutionality of Mississippi's 1962 legislative reapportionment plan for the Mississippi Legislature. The 1962 plan, as well as successive legislative attempts to redistrict Mississippi's legislature for the 1967 and 1971 elections, were held unconstitutional by the District Court. *Connor* v. *Johnson*, 330 F. Supp. 506 (S.D. Miss.), *supplemented in* 330 F. Supp. 521 (S.D. Miss. 1971); *Connor* v. *Johnson*, 265 F. Supp. 492 (S.D. Miss. 1967); *Connor* v. *Johnson*, 256 F. Supp. 962 (S.D. Miss. 1966). Consequently, court-ordered plans were implemented for the 1967 and 1971 elections.

2. In April, 1975, the Mississippi Legislature again attempted a reapportionment plan. The 1975 plan, although approved by the District Court, was declared ineffective by the Supreme Court until precleared pursuant to section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. *Connor* v. *Waller*, 421 U.S. 656 (1975). The Court's decision was without prejudice to a ruling by the *Connor* Court ordering the 1975 plan into effect if no other plan was formulated in time for the 1975 elections. *Id.* at 656-57.

3. On June 9, 1975, Mississippi submitted its 1975 reapportionment plan to the Attorney General for section 5 preclearance, and on June 10, 1975, the Attorney General interposed an objection to the plan.

4. On June 25, 1975, the *Connor* Court announced its intention to formulate a "temporary plan for the election of Senators and Representatives for the 1975 elections." *Connor* v. *Waller*, Civ. No. 3830 (S.D. Miss. June 25, 1975). Then, by orders of July 8 and July 11, 1975, the *Connor* Court ordered into effect an apportionment plan for the 1975 quadrennial election (hereinafter referred to as the "1975 court-ordered plan"). The 1975 quadrennial election in the Mississippi House and Senate, held in accordance with the 1975 plan, resulted in the election of the current Mississippi Legislature.

5. On November 18, 1976, the *Connor* Court formulated an apportionment plan to take effect for the 1979 quadrennial election. *Connor* v. *Finch*, 419 F. Supp. 1072, 1089 (S.D. Miss.), *supplemented in* 422 F. Supp. 1014 (S.D. Miss. 1976) (hereinafter referred to as the "1976 court-ordered plan").

6. On May 31, 1977, the Supreme Court held that the 1976 court-ordered plan was unconstitutional on malapportionment grounds and returned the matter to the District Court with instructions to draft a new plan for the 1979 elections. *Connor* v. *Finch*, 431 U.S. 407 (1977). The Court cautioned the District Court on remand to draw legislative districts that were reasonably contiguous and compact or to explain precisely why, in a particular instance, that goal could not be accomplished. *Id.* at 425-26.

7. On August 2, 1977, the *Connor* Court directed the parties and invited the Mississippi legislature to file proposed plans for its consideration.

8. On August 9, 1977, the Governor of Mississippi called a special session of the legislature to consider the establishment of a joint legislative committee for the formulation of a legislative reapportionment plan.

9. At the August special session of the legislature, a Special Joint Committee on Reapportionment (hereinafter referred to as "the Joint Committee") was created and State Representative Thomas Campbell was elected its chairman. The Joint Committee retained as its special counsel, Mr. Jerris Leonard of Washington, D.C., former Assistant Attorney General of the United States for Civil Rights.

10. For the purpose of formulating the proposed plan, the Joint Committee interviewed experts on apportion-

ment recommended by the Attorney General of Mississippi, Jerris Leonard, and Marshall Turner, Assistant Chief of the Demographic Census Staff of the United States Bureau of the Census. Of those interviewed, the Joint Committee selected Mr. Thomas Hofeller of California, Dr. Delbert Dunn of Georgia, Mr. Calvin Webb of New York, and Dr. Richard Morrill of the State of Washington. Each of those selected had prior experience in the formulation of reapportionment plans.

11. In addition to those experts selected from outside the state, the Joint Committee hired Earl Fortenberry, formerly the Director of the Legislative Services Office of the State Senate, as Director of the Joint Committee's staff. Mr. Fortenberry had previously participated in the development of reapportionment plans for the Mississippi Senate. Fortenberry in turn hired as staff five people, including two blacks who were graduate students at Jackson State University, to assist with the efforts of the Joint Committee staff.

12. In formulating the plan, Joint Committee experts and staff were instructed by Special Counsel Jerris Leonard to minimize population deviations among districts, to avoid diluting black voting strength, to create one complete district in counties whose populations were large enough for the election of a representative or senator, to avoid splitting a county into more than two segments unless two or more districts could be derived from the same county, and to create compact and contiguous districts.

13. To avoid dilution of black voting strength, staff experts looked at the general demographic makeup of the state and noted that, as a general rule, black concentrations of population existed in western portions of the state. They further noted that, with certain exceptions, counties in the eastern portion of the state contained significantly fewer blacks. The experts tried to avoid the combining of counties in the western portion of the state, which contained heavy black population concentrations, with counties from the eastern portion of the state containing heavy white population concentrations. This goal was accomplished by running the district lines from north to south rather than from east to west.

14. Avoiding dual incumbencies was another goal which the Joint Committee attempted to achieve so long as it could be accomplished while observing the criteria given to the Committee staff for devising the plan. Hofeller and Fortenberry first prepared the plan without regard to incumbency. When requests for changes emanating from a dual incumbency situation arose, solutions were checked to assure that they did not adversely impact established criteria, especially those concerning the maintenance of *de minimus* deviation and avoidance of dilution of black voting strength. As a result of changes made in the plan to avoid dual incumbency, 46 senators and 106 representatives were preserved in their respective districts while 6 senators in three districts and 16 representatives in eight districts were pitted against other incumbents for reelection.

15. The Joint Committee developed a computer data base for the plan derived from 1970 census data acquired from the Bureau of the Census. The Joint Committee chose 1970 census data because it provided neutral data considered to be as accurate as possible, available for the entire state, collected by similar methodology throughout the state, available for geographic areas within counties as well as for whole counties in the state, and easily replicated and verified for any given district or area.

16. The Joint Committee initially based its plan upon Census Enumeration District Lines (ED's) rather than precinct lines. After developing the ED plans for the House and Senate, the Joint Committee submitted the plans to the *Connor* Court. Both the Legislature and the

Court expressed a preference for a plan using precinct lines as a means of avoiding voter confusion and of eliminating the need for reregistration of voters.

17. Because of the preference expressed for precinct lines, the Joint Committee staff was directed to convert the ED plan to a precinct plan by moving the boundaries of districts based on EDs to the nearest precinct line.

18. In order to convert the plans to precinct plans the Joint Committee found it necessary to obtain data on the EDs when split by precinct lines. The Joint Committee staff would draw the "split" of an ED on a Census Bureau map of the ED and forward the map to the Census Bureau. The Census Bureau would return population figures for both sides of the line splitting the ED. The Census Bureau, however, could not provide the exact racial composition of the split. This was determined by a computerized proportional allocation of black and white population within the ED to each side of the "split" line.

19. The resulting shift from the ED-based plan to a precinct-based plan was primarily a matter of refinement. It is not disputed that the basic configurations of the districts contained in the original ED plan and those of the resulting precinct plan are thus essentially the same.

20. The process used in developing the Joint Committee's plan was open to public participation and input. On October 11, 1977, the Joint Committee conducted public hearings on those plans presented to the District Court in *Connor*, and, on November 28, 1977, the Joint Committee conducted hearings on its statutory ED plan. No hearings were conducted on the precinct plan subsequently drawn from the ED plan. The hearings of October and November, 1977, were well publicized in advance and opportunity was afforded to all interested parties to submit their suggestions and objections.

21. The Joint Committee was responsive to those suggestions ultimately submitted. Suggestions were incorporated into the plan whenever the resulting redistricting was feasible in view of other criteria governing the formulation of the plans.

22. After months of consultation, the House plan as drafted by Hofeller and the Senate plan as drafted by Fortenberry were adopted by the Joint Committee and were introduced on the floor of the legislature. These two plans, submitted as H.B. 1491 and S.B. 3098 (hereinafter referred to as the "statutory plan") were adopted without floor amendment.

23. On April 21, 1978, the Governor of Mississippi approved and signed into law the two bills, S.B. 3098 and H.B. 1491, (Mississippi Laws, 1978, Chapters 535 and 515).

24. In June, 1978, the District Court in *Connor* directed the parties to confer for the purposes of arriving at a settlement of the *Connor* v. *Finch* litigation pending in the Southern District of Mississippi. The Joint Committee participated in these negotiations. In response to the objections to the statutory plan by the *Connor* plaintiffs, the boundaries of a number of districts in the plan were altered by the staff of the Joint Committee and a settlement proposal was submitted to the Joint Committee. The Joint Committee then informally polled the members of the Mississippi Legislature (the Legislature not being in session) to determine whether this settlement proposal was acceptable. In August, 1978, a majority of both houses of the Mississippi Legislature by a vote of 80 to 18 in the House and 26 to 7 in the Senate voted in favor of accepting the *Connor* settlement plan as an alternative to the statutory plan. After this poll, the Joint Committee accepted the settlement plan and recommended to the defendants in *Connor* that they enter into a consent decree incorporating this settlement proposal.

25. On June 1, 1978, the Attorney General for the State of Mississippi, submitted the statutory plan to the Attorney General of the United States for federal preclearance pursuant to section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. By letter of July 31, 1978, the Attorney General, by his designated agent Drew S. Days, III, the Assistant Attorney General in charge of the Civil Rights Division, rendered a timely objection pursuant to section 5 of the Voting Rights Act stating that "we have been unable to conclude that the submitted plans for the Mississippi Senate and House of Representatives do not have the purpose or effect of abridging the right to vote because of race or color." Letter from Drew S. Days, III, to Mississippi Attorney General A. F. Summer, July 31, 1978.

26. On August 1, 1978, Mississippi's Attorney General received, by telephone, notification of the Attorney General's objection. The same day, the State of Mississippi filed this action against the United States and Attorney General Griffin B. Bell seeking a declaratory judgment pursuant to section 5 of the Voting Rights Act.

27. On August 31, 1978, ten black citizens and registered voters of the State of Mississippi filed a motion to intervene as defendants and attached to their motion their proposed answer denying the material allegations of the complaint, denying that plaintiff was entitled to the relief requested, and alleging as an affirmative defense that the statutory plans "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the franchise" in violation of their rights secured by section 5 of the Voting Rights Act, and further that the statutory reapportionment plan dilutes, minimizes, and cancels out black voting strength in violation of intervenors' rights secured by the Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution. On September 18, the Court granted intervenors' motion for leave to intervene and to file their answer in intervention (order of September 18, 1978). As stated previously, this matter was subsequently heard during the weeks of September 18 through September 27. After proposed findings of fact and conclusions of law with accompanying briefs had been submitted, oral argument was conducted on January 16, 1979.

28. On March 26, 1979, the Supreme Court, upon a motion to seek a writ of mandamus, instructed the *Connor* court to issue a reapportionment plan forthwith, in accordance with its previous mandate in *Connor* v. *Finch*, 431 U.S. 407 (1977).

29. On April 13, 1979, the Southern District of Mississippi issued a final judgment in *Connor* v. *Finch* and adopted a slightly modified version of the settlement plan previously submitted to the court by the parties. It is undisputed that the resulting court-ordered plan is not substantially different from the settlement plan from which it was drawn.[1]

II. *Present Voting Conditions in Mississippi*:

30. Pursuant to its Constitution, Mississippi has maintained a bicameral legislature made up of a Senate and a House of Representatives. Members of each branch are elected quadrennially. The Constitution of Mississippi requires that the Senate consist of no less than 45

[1] The court-ordered plan of April 13, 1979, while not in existence at the time this Court heard this case, is a matter of judicial notice. Throughout these Findings of Fact and Conclusions, it is treated as substantially identical to the settlement plan and has been so conceded by all parties. Defendant United States' letter to the Court of April 17, 1979 ("Substantially the same as the settlement plan"); Defendant-intervenors supplemental memorandum of April 27, 1979 ("The court-ordered plan of April 13, 1979 orders the settlement plan into effect 'with three minor changes' which do not affect 'any of the majority black districts in the settlement plan.' ").

but not more than 55 members. Similarly, the Mississippi Constitution requires that the House consist of no more than 122 members. The Senate currently consists of 52 members and the House consists of 122.

31. Any registered voter in Mississippi can have his or her name placed upon the ballot as an independent candidate in the general election for the Mississippi legislature by presenting a petition to the appropriate body designated in the statute signed by 50 registered voters 60 days before the quadrennial general election. Miss. Code Ann. § 3260 (1972). To be elected, a candidate thus nominated needs only a plurality in a general election, Miss. Code Ann. § 3279 (1972 & Supp. 1978) *as amended* by H.B. 44 (Chapter 429, Mississippi Laws 1978). A candidate for party nomination, on the other hand, must win a majority of the votes cast in order to win the nomination of his party. Miss. Code Ann. § 23-3-69 (1972).

32. According to the 1970 census, blacks in Mississippi comprise 36.8 percent of the total population of the state and 31.5 percent of the state's voting age population (hereinafter referred to as "VAP").

33. Mississippi has in the past used such devices as the literacy test, the poll tax and the white primary to exclude its black citizens from participation in the electoral process. Indeed, until passage of the Voting Rights Act in 1965, use of racially discriminatory tests and devices effectively excluded black people in Mississippi from exercise of the franchise. *Stewart* v. *Waller*, 404 F. Supp. 206 (N.D. Miss. 1975) (three-judge court) (per curiam); *United States* v. *State of Mississippi*, 229 F. Supp. 925, 983, 987 (S.D. Miss. 1964), *rev'd and remanded*, 380 U.S. 128 (1965).

34. The effect of Mississippi's past history of racial discrimination in voting and other areas continues to affect black people in many portions of the state today, which has resulted in a generally lower participation by blacks than whites in the political process. Consequently, proportionally fewer blacks are registered to vote than whites, and black voters turn out at the polls at a lower rate than white voters.

35. Analysis of past election returns show that racial block voting has prevailed throughout the State of Mississippi. Those participating in the electoral process suggest that racial bloc voting continues to occur throughout the state today.

36. Low black voter registration and voter turn-out combined with racial bloc voting make it necessary for an electoral district in Mississippi to contain a substantial majority of black eligible voters in order to provide black voters with an opportunity to elect a candidate of their choice. It has been generally conceded that, barring exceptional circumstances such as two white candidates splitting the vote, a district should contain a black population of at least 65 percent or a black VAP of at least 60 percent to provide black voters with an opportunity to elect a candidate of their choice.

37. Recent legislative reapportionments in Mississippi have failed to meet constitutional requirements and have been marked by the racially discriminatory use of multi-member districts. *Connor* v. *Williams*, 404 U.S. 549 (1972); *Connor* v. *Johnson*, 402 U.S. 690 (1971). Such uses of multi-member districts have, in the past, tended to submerge black population concentrations in heavily white concentrations.

38. The present legislature in Mississippi was elected pursuant to a 1975 temporary court-ordered plan containing multi-member districts.

39. Only four out of 122 house seats in the Mississippi legislature today are occupied by blacks. None of the 52 senate seats is occupied by blacks.

III. *Nature of the Statutory Plan:*

40. Viewing the state as a whole, and comparing the statutory plan with the demographic distribution of population among Mississippi's 82 counties, the evidence demonstrates that the plan, in overall statistical effect, reflects the geographic distribution of black population within the state.

41. The maximum deviation of S.B. 3098 is 11.39 percent. The maximum deviation of H.B. 1491 is 10.8 percent. These are consistent with the broader tolerances allowed legislatures, but not courts, in fashioning apportionment plans.[2]

42. Mississippi's counties are unequal in population. While 30.5 percent of Mississippi's counties have a majority of black population, only 25.2 percent of the state's population live in those counties. 30.8 percent of the senate districts in S.B. 3098 have black majority populations. This percentage closely corresponds to the number of counties that have a majority black population.

43. 24.6 percent of the house districts have a majority black population. The percentage of black majority districts in H.B. 1491 is lower than the percentage of black majority districts in S.B. 3098 (30.8%) and the corresponding percentage of black majority counties (30.5%). Senate districts and counties, however, are larger geographically than the 122 house districts. The smaller house districts in H.B. 1491 contain greater densities of black population than do the larger geographic units. Black majority house districts in H.B. 1491 average 65.4 percent in black population while the corresponding figure for counties is 60.77 percent and for senate districts in S.B. 3098 is 59.3 percent.

44. The statutory plan enhances potential black voting strength when compared to the 1975 court-ordered plan. The statutory plan contains two more black VAP majority districts in the senate (10) and four more black VAP majority districts in the house (26) than the 1975 court-ordered plan. It also contains two districts in the senate with a black VAP of 60 percent or more and ten more districts in the house (14) with a black VAP of 60 percent or more. Furthermore, the statutory plan contains single-member districts only.

45. A statistical comparison of the 1975 court-ordered plan with the statutory plan demonstrates the following with regard to black voting age populatin (VAP):

% Range	1975 Plan H.B. 1491 (No. of Dists House)	H.B. 1491 (No. of Dists House)	1975 Plan S.B. 3098 (No. of Dists Senate)	S.B. 3098 (No. of Dists Senate)
40-100%	40	38	14	16
45-100%	30	30	12	14
50-100%	22	26	8	10
55-100%	11	20	1	7
60-100%	4	14	0	2
65-100%	3	7	0	0
70-100%	3	3	0	0
75-100%	2	0	0	0
80-100%	1	0	0	0
86-100%	0	0	0	0

46. The following table contains statistical comparison of the statutory plan with the settlement plan adopted by the *Connor* Court on April 13, 1979, broken down to show the number of black majority districts and

[2] Comparison of total deviations from population equality of the statutory plan with the settlement plan.

	Senate	House
State's Statutory Plan	11.39%	10.08%
Connor Settlement Plan	11.39%	9.94%

Total deviation, as used herein, is the total span of variances calculated by adding the largest plus variance and the largest minus variance.

black VAP majority districts for both the Senate and the House:

	Connor Settlement Plan (Ex. P-35)	State's Statutory Plan (Exs. P-4A 4B)
Black Pop. Majority Districts	49	46
Black VAP Majority Districts	39	36
HOUSE		
Black Pop. Majority Districts	34	30
65% +	18	15
60%-65%	5	6
55%-60%	5	5
50%-55%	6	4
Black VAP Majority Districts	28	26
65% +	9	7
60%-65%	6	7
55%-60%	7	6
50%-55%	6	6
SENATE		
Black Pop. Majority Districts	15	16
65% +	3	4
60%-65%	4	3
55%-60%	5	5
50%-55%	3	4
Black VAP Majority Districts	11	10
65% +	1	0
60%-65%	0	2
55%-60%	6	5
50%-55%	4	3

IV. *Defendant and Defendant-Intervenors' Objections to the Statotury Plan*:

47. Defendant and defendant-intervenors object, in particular, to the redistricting in the statutory plan of the following counties: [3]

STATUTORY PLAN

		SENATE		HOUSE	
NAME	COUNTY	POP.	VAP	POP.	VAP
Aaron Henry	Coahoma	same	same	same	same
Henry Kirksey	Hinds	65.44	62.93	same	same
Bennie Thompson	Hinds	42.01	35.41	46.30	39.21
Barney Schoby	Adams	same	same	63.23	60.63
David Jordan	Leflore	same	same	42.89	37.72
Fred Banks	Hinds	65.44	62.93	same	same
SETTLEMENT PLAN					
Aaron Henry	Coahoma	same	same	same	same
Henry Kirksey	Hinds	72.33		same	same
Bennie Thompson	Hinds	49.71		66.79	59.02
Barney Schoby	Adams	same	same	69.40	66.45
David Jordan	Leflore	same	same	75.77	71.72
Fred Banks	Hinds	72.33		same	same

1. *HOUSE PLAN*

(a) *Warren County*

The defendants and intervenors complain that, in the statutory plan's redistricting of Warren County, a heavy black population concentration is divided among three proposed house districts, turning a black majority into a

[3] We note that several of the defendant-intervenors find themselves in districts more heavily black under the *Connor* Settlement Plan than under the statutory plans. This fact, in addition to defendant-intervenors' preference for reapportionment by Court decree rather than reapportionment by the legislature, may largely provide the explanation for their intervention in this litigation. (See testimony of Aaron Henry, Tr. pp. 801-02).

black minority in all three districts. This expression of concern regarding the statutory configuration of Warren County was first reflected in the record during the January 10, 1978 deposition of Hofeller. This configuration was in draft form at the time of the public hearings and no objection had been raised. By that time, however, expert Hofeller's discretion was limited to simply converting the ED plan into a precinct plan. The opportunity to make basic changes to the configuration of districts was no longer open. The settlement plan, which addresses the problem, is thus only a marginal improvement insofar as blacks are concerned, a difference which would not translate into a difference in black representation. The Warren County districts in the settlement plan also remain below the 60% black VAP requisite for districts in which blacks are able to elect a candidate of their choice.

(b) *Hinds County*

The defendants and intervenors complain that the black population concentration in western Hinds County is fragmented, and the resulting three portions of that concentration are paired with greater white population concentrations in Clinton and the Jackson suburbs. In the settlement plan, the boundaries of the three districts that trisect rural Hinds County do not fracture the black concentration in the western portion of the county. As a result, the settlement plan provides a district in rural Hinds County with a 69 percent black VAP. Representative Buckley, a black member of the Joint Committee from Hinds County and the other three black house members from Hinds County, apparently never raised the question of a majority black rural district prior to the legislature's action. The present objections to the redistricting of Hinds County were not brought to the Committee's attention until December, 1977. The Joint Committee originally intended to follow existing districts in the 1975 plan, which had been approved by the federal court, and to increase the number of black VAP districts from 3 to 5. Representative Buckley objected that such a plan would spread the black population too thinly. In response to Buckley's objection, the plan was changed by reducing the number of black majority seats to four. The enhancement now sought by the defendants and intervenors is of debatable benefit and departs from the traditional plan approved by the federal court, which drew lines from east to west rather than north to south. In addition, in order to create the black VAP in rural Hinds County, the settlement plan necessarily dilutes adjacent districts.

(c) *Adams County*

Defendants and intervenors object to the statutory plan's redistricting of Adams County because the only majority black supervisor's district is split between two districts. The black voting strength in north Adams is allegedly diluted by excluding the majority black airport precinct from the north Adams district and by pairing north Adams and north Natchez with heavily white precincts. In the settlement plan, the two legislative districts that bisect Adams County leave the only black supervisor's district intact and entirely within the same legislative district, *i.e.*, district 95.

In a memorandum to the Legislative Committee on Reapportionment written by an associate of defendant-intervenors' counsel on behalf of Representative Buckley (hereinafter referred to as the "Barber Memorandum"),[4] Buckley requested a slight shift in the configuration of district 95. In response to Buckley's request, the Committee increased the black VAP in that district, but did

[4] The vast majority of the suggestions contained in the Barber Memorandum was incorporated in the statutory plan. See plaintiff's reply brief, pp. 43-45 for detail.

not realize that intervenors would not be satisfied unless the Morgantown precinct were eliminated. The resulting increase of five percent in the black VAP of Adams County by excluding the Morgantown precinct, however, would be at the expense of diluting neighborhood districts.

(d) *Leflore County*

Defendants and intervenors complain that the statutory plan fragments the southeast Greenwood black concentration. The greatest portion of that black community is paired with heavily white north Greenwood and a white majority district. The remaining black community is put in a predominantly rural district, which, although majority black, does not have a high enough black VAP to enable blacks to elect candidates of their choice. The settlement plan keeps the black population concentration in south Greenwood intact (except for one heavily black ED) and entirely within one legislative district. The districts proposed in the settlement plan, however, are less compact to a considerable degree than the districts in the statutory plan and would also divide the city of Greenwood to a greater extent. The settlement plan increases the black VAP percentage from 64.26 percent to 71.22 percent, while it diminishes the influence of the blacks residing in the adjacent district.

(e) *Marshall County*

Defendants and intervenors object that the statutory plan for Marshall County splits the only supervisors' district which has elected a black supervisor in that county and that the voting strength of the black voters in the county's house district is diluted and minimized by the inclusion of the heavily white Holly Springs precinct No. 5. In the settlement plan, the black supervisors' district is placed almost entirely within district 5 with the result that blacks comprise 62 percent of the VAP. Prior to voicing these objections, however, the intervenors had indicated to the Committee a preference for keeping the city of Holly Springs intact. The configuration now preferred by the intervenors would split the city of Holly Springs. The sole difference between the plans lies in the allocation of one precinct. The result sought by the intervenors would create a district with a black VAP 6 percentage points higher. This gain is at the expense of creating an irregular shaped district that splits the only major city in the district.

(f) *Desoto County*

Defendants and intervenors contend that the statutory plan avoids the creation of a black population majority district in Desoto County by dividing the county by a north/south boundary. The plan splits up the rural predominantly black portion of the county and includes in each district portions of the heavily white Memphis suburban area in north Desoto County. In the settlement plan, the black population concentration in rural Desoto is left intact. As a result, a majority black population district is created. The settlement plan, however, increases the black voting age population in the district it seeks to change by only 1.8 percent and fails to create a 50 percent black VAP majority. The record does not reflect when, if ever, this particular change was called to the attention of the legislature. Intervenors' initial plan, which they submitted to the *Connor* Court, is identical in its configuration of Desoto County as the statutory plan.

2. *SENATE PLAN*

(a) *Hinds County*

Defendants and intervenors contend that the statutory plan forms a "seahorse district" in its Hinds County Senate plan that pairs a portion of the central black popula-

tion with the heavily white south Jackson area. They contend that alternative plans proposed to the *Connor* Court are more compact and form black populations of over 60 percent in districts 25 and 26. There is no evidence that this change was ever called to the attention of the Committee prior to the enactment of the statutory plan. In any event, the change sought merely increases the black population in an already 60 percent black majority VAP district, a change of dubious benefit to black representation.

(b) *Holmes, Madison and Humphreys Counties*

Defendant and intervenors complain that out-migration of blacks in recent years from the Holmes, Madison and Humphreys County has resulted in decreasing the actual VAP percentage in the statutory plan's redistricting of the area to less than 60 percent. The settlement plan combines Holmes and Humhpreys counties and the northern portion of Yazoo County. Defendants and intervenors contend that this configuration is more compact and would provide black voters with a better chance to elect a candidate of their choice. The record does not reflect any evidence that the requested combination of these counties in a single district was called to the attention of the Committee staff at any time prior to the passage of the statutory plans. In any event, the settlement plan would split Madison County across the middle and would dilute the vote in Yazoo County and in north Madison. The change would result in a net decrease of one 60 percent black VAP majority district.

(c) *Washington, Sharkey and Issaquena Counties*

Defendants and intervenors contend that the statutory plan splits the heavy black concentration in north Greenville and north Washington County between two long, narrow districts, which stretch south for more than 60 miles. The resulting district 22 is majority white, and district 23, although majority black, is alleged to be so diluted that black voters are denied representation of their choice. The settlement plan creates a district that preserves much of the black population in urban Greenville intact within one district. Defendants and intervenors argue that although the settlement plan's district is only about 2 percentage points greater in black majority VAP, it provides voters with a much better opportunity to elect a candidate because it comprises an urban area where blacks are generally better organized and more politically aware. Intervenor's expert testified that any district drawn in this area would look suspicious because of the small population in the rural areas. The drafters of the statutory plans attempted to draw a more compact plan than the predecessor 1975 plan. The resulting change increases the black VAP in one district by 1.42 percent. We find that the changes in the settlement plan are not significantly different from those created by the statutory plan or ameliorative of the problem of formulating compact districts in the area.

(d) *Claiborne, Jefferson and Copiah Counties*

Defendants and intervenors object to the statutory plan's pairing of Jefferson and Claiborne counties with majority white Franklin County and the western half of Copiah County. Alternative plans submitted to the *Connor* Court excluded Franklin County or portions of Copiah. The *Connor* plaintiff's plan combined Jefferson and Claiborne with Copiah to form a district with a 55 percent black VAP. Under the statutory plan, however, the Jefferson and Claiborne County districts have a 75.77 percent black population. The intervenors conceded in their Barber Memorandum to the Joint Committee that the Claiborne/Jefferson area could not be hurt by either plan because of its high black voting age population.

48. The evidence demonstrates that the plaintiff's agents in formulating the statutory plan did not act with the intent or purpose of denying or abridging the right to vote of any citizen of Mississippi on account of race. Rather, the individuals involved in drafting and enacting the statutory plans acted with the purpose of creating black VAP majority districts.

49. The evidence demonstrates that differences in black voting strength provided in the statutory plan and in the *Connor* settlement plan are insubstantial. The statutory plan covering both the Senate and the House contains three (3) less black majority voting districts.[5] Since there are 174 districts in the Mississippi legislature this is an overall difference of 1.7 percent (1.7%). For the Senate, the statutory plan contains one (1) more black majority district than the *Connor* settlement plan. More important, both plans provide the *same* number (16) of black, VAP majority districts with a population of 60 percent or more (see Finding 36 for the significance of this fact and Table in Finding 46 for critical figures). When compared to the settlement plan adopted by the *Connor* Court on April 13, 1979, the legislative plan is not retrogressive in overall black voting strength and does not have the effect of abridging or denying the right to vote of any citizen of Mississippi on account of race.

CONCLUSIONS OF LAW

1. This Court has jurisdiction to hear and determine this case. Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c (1974 & Supp. V 1975); 28 U.S.C. § 1396(a)(2) (1976); 29 U.S.C. § 2001 (1976).

[5] In these three districts, the black majority is less than 60 percent VAP. As "influence districts," they, standing alone, do not represent a significant difference, according to the Assistant Attorney General of the United States for Civil Rights, such as to suggest an improper purpose under section 5 (Day's depo. Pltff's Ex. 25, Tr. pp. 112-115).

2. This Court has been properly convened as a court of three judges. Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c (1974 & Supp. V 1975) (hereinafter "section 5"); 28 U.S.C. § 2284 (1976).

3. All the requirements for a Rule 23(a) and 23(b)(2) defendants class action on behalf of the intervenors are met. The defendant class is defined as all black citizens and black registered voters in Mississippi qualified to vote in state legislative elections. Fed.R. Civ.P. 23(a) & 23(b)(2).

4. The Voting Rights Act of 1965, 42 U.S.C. § 1973 *et seq.* (1974), was enacted to insure the protection of rights guaranteed by the Fifteenth Amendment and "to rid the country of racial discrimination in voting." *South Carolina* v. *Katzenbach*, 383 U.S. 301, 315 (1966).

5. Section 5 of the Voting Rights Act was intended to insure that the gains thus far achieved in minority political participation would not be emasculated or destroyed through new discriminatory procedures and techniques. S. Rep. No. 94-295, at 19.

6. The State of Mississippi is a state subject to the preclearance requirements of section 5. 30 Fed. Reg. 9897 (August 7, 1965).

7. Under section 5, Mississippi may not enforce or implement any change in "any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting" unless such change has either been approved by the Attorney General, or unless Mississippi obtains a declaratory judgment in the United States District Court for the District of Columbia that such change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c (1974 & Supp. V. 1975).

8. The reapportionment plan adopted by the Mississippi Legislature in 1978 regular session, approved by the Governor on April 12, 1978, and the changes resulting therefrom are within the scope of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c (1974 & Supp. V. 1975); *Georgia* v. *United States*, 411 U.S. 526, 531-35 (1973); *Beer* v. *United States*, 425 U.S. 130, 138 (1966).

9. In an action for declaratory judgment under section 5, the burden of proof is on the plaintiff. *Georgia* v. *United States*, 411 U.S. 526, 538 (1973); *South Carolina* v. *Katzenbach*, 383 U.S. 301, 328 (1966).

10. Plantiff's burden in a suit for declaratory relief under section 5 is to demonstrate that the reapportionment plan described in S.B. 3098 and H.B. 1491 do not lead to a retrogression in the position of racial minorities, or that the proposed change fairly reflects the strength of black voting power as it exists. *Beer* v. *United States*, 425 U.S. 130, 139 n. 11, 141 (1976); *Richmond* v. *United States*, 422 U.S. 358, 362 (1975).

11. Mississippi, in meeting its burden of proof, must demonstrate that a racially discriminatory purpose was not among the factors that motivated it in devising its reapportionment plan. *Richmond* v. *United States*, 422 U.S. 358, 362 (1975).

12. A discriminatory purpose need not be express, but may be inferred from the totality of the relevant facts. *Washington* v. *Davis*, 426 U.S. 229, 241 (1976).

13. Black voting strength is impermissibly diluted when, designedly or otherwise, an apportionment scheme under the circumstances of a particular case would operate to minimize or cancel out the voting strength of racial elements of the voting population. *Burns* v. *Richardson*, 384 U.S. 73, 88 (1966); *Fortson* v. *Dorsey*, 379 U.S. 433, 439 (1965).

14. In a single-member districting plan, black voting strength may be unconstitutionally and impermissibly diluted, minimized, and cancelled out (1) when heavy black population concentrations are unnecessarily fragmented and dispersed, and (2) when black population concentrations to deny black voters the opportunity to elect candidates of their choice. *Connor* v. *Finch*, 431 U.S. 407, 421-25 (1977); *Kirksey* v. *Board of Supervisors of Hinds County, Mississippi*, 554 F.2d 139, 149 (5th Cir.) (en banc), *cert. denied*, 434 U.S. 968 (1977); *Robinson* v. *Commissioners Court, Anderson County, Texas*, 505 F.2d 674, 679 (5th Cir. 1974); *Moore* v. *Leflore County Board of Election Commissioners*, 502 F.2d 621, 622-24 (5th Cir. 1974); *Sims* v. *Baggett*, 247 F. Supp. 96, 109 (M.D. Ala. 1965) (three-judge court).

15. No state or political subdivision is required to search for ways to maximize the number of black voting age population districts. Likewise, no racial group has a constitutional or statutory right to an apportionment structure designed to maximize its political strength. *Richmond* v. *United States*, 422 U.S. 358, 370-72 (1975); *Gilbert* v. *Sterrett*, 509 F. 2d 1389, 1394 (5th Cir. 1975); *Cousins* v. *City Council of the City of Chicago*, 503 F.2d 912, 920 (7th Cir. 1974); *Turner* v. *McKeithen*, 490 F. 2d 191, 197 (5th Cir. 1973); *Howard* v. *Adams County Board of Supervisors*, 453 F.2d 455, 458 (5th Cir. 1972).

16. A legislative reapportionment plan that enhances the position of racial minorities with respect to their effective exercise of the electoral franchise cannot have "the effect" of diluting or abridging the right to vote on account of race within the meaning of section 5 unless the new apportionment itself so discriminates as to violate the Constitution. *Beer* v. *United States*, 425 U.S. 130, 141 (1976).

17. Although reapportionment plans, which are formulated with less concern for statistical accuracy and

the one-person-one-vote concept, may provide a greater number of black majority districts, departure from equal protection one-person-one-vote strictures cannot be required or justified simply as an affirmative act to maximize black voting strength. *See Regents* v. *Bakke*, 98 S. Ct. 2733, 2751 (1978); *Mahan* v. *Howell*, 410 U.S. 315, 328-30 (1973); *White* v. *Weiser*, 412 U.S. 783, 790-93 (1973).

18. *Beer* commands comparison with a preexisting plan to determine "whether the ability of minority groups to participate in the political process and to elect their choices to office is augmented, diminished, or not affected by the change affecting voting . . ." *Beer* v. *United States*, 425 U.S. 130, 141 (1976).

19. The settlement plan, adopted by the *Connor* Court on April 13, 1979, must now be considered the preexisting plan and the benchmark with which to compare the statutory plan.[6]

20. When compared with the *Connor* Settlement Plan, and taking into account the totality of criteria governing the formulation of the statutory plan and its alternatives, we conclude that the slight differences are not of such significance to find that the statutory plan is retrogressive with respect to black voting strength in Mississippi as it exists today. The proof in this case demonstrates that H.B. 1491 and S.B. 3098 would not lead to a retrogression in the current position of racial minorities with respect to their effective exercise of the electoral franchise and therefore do not have the "effect of denying or abridging the right to vote on account of race or color." This conclusion to disregard insignificant differences is further supported by the fact that legislative reapportionment is the preferred vehicle for reapportionment, as is reflected by the broader tolerances which are allowed to legislatures, but not to courts, in the matter of deviations from uniform population requirements. As the Supreme Court recently stated, "The Court has repeatedly held that redistricting and reapportioning legislative bodies is a legislative task which the federal Courts should make every effort not to preempt." *Wise* v. *Lipscomb*, 437 U.S. 535, 539 (1978).

21. Legislative reapportionment plans must be scrutinized to determine if they were enacted with the prohibited "purpose" of denying or abridging black voting strength. The prohibited "purpose" of section 5 may be described as the sort of invidious discriminatory purpose that would support a challenge to official action as an unconstitutional denial of equal protection. A law neutral on its face and serving legitimate state ends cannot be held invalid under the Equal Protection Clause without proof of discriminatory purpose. Accordingly, in examining the statutory plan, proof of discriminatory racial purpose is necessary for a finding of the "purpose" proscribed in section 5. *Washington* v. *Davis*, 426 U.S. 229, 239-48 (1976).

22. Mississippi's evidence demonstrates that the principal actors in the development of S.B. 3098 and H.B. 1491 acted with a benign purpose.[7] Defendants concede they have no evidence to the contrary and are unable to name anyone they contend acted with improper purpose.

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[6] When compared with the 1975 plan, S.B. 3098 and H.B. 1491 constitute a clear enhancement of the position of racial minorities with respect to their effective exercise of the electoral franchise because S.B. 3098 and H.B. 1491 have a greater number of black voting age majority district than did the 1975 plan and they provide higher percentages of black voting strength in those districts than did the 1975 plan. Moreover, the statutory plan is the first plan to utilize single-member districts only and avoids the diluting effect of multi-member districts.

[7] The basic configuration of the statutory plan was complete in December, 1977, well prior to the submission to the *Connor* Court of various alternative plans, which culminated in the settlement plan adopted by the *Connor* Court on April 13, 1979.

Defendant-intervenors, likewise, have failed to introduce such evidence.

23. Defendants and defendant-intervenors have suggested that incumbency concerns in the fashioning of the legislature's plans resulted in an impermissibly racially-discriminatory purpose. It is not improper, however, for a legislative body to consider incumbency in fashioning a reapportionment plan, nor does it demonstrate invidiousness, especially here where the evidence shows incumbency concerns were not permitted to encroach upon configurations designed to recognize and protect black voting strength. *White* v. *Weiser*, 412 U.S. 783, 797 (1973); *Burns* v. *Richardson*, 384 U.S. 73, 89 n. 16 (1966).

24. The implementation of S.B. 3098 and H.B. 1491 for the 1979 quadrennial legislative elections in the State of Mississippi will not have either the purpose or effect of denying or abridging the full and free exercise of the right to vote of black citizens in that state.

25. Plaintiff's prayer for a declaratory judgment preclearing S.B. 3098 and H.B. 1491 as a valid reapportionment plan for use in the 1979 quadrennial election should be granted.

26. Since the statutory plan is upheld, it shall supersede the *Connor* Court plan of April 13, 1979. *Per curiam* opinion of the United States Supreme Court in *Connor* v. *Coleman*, No. 78-1013 decided March 29, 1979, 47 U.S.L.W. 3634.

An order consistent with the foregoing Findings of Fact and Conclusions of Law has been entered this day.

/s/ Malcolm Richard Wilkey
United States Circuit Judge

/s/ J. H. Pratt
United States District Judge

/s/ [Illegible]
United States District Judge

June 1st, 1979.

June 1st, 1979.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 78-1425

[Filed Jun. 1, 1979, James F. Davey, Clerk]

STATE OF MISSISSIPPI,
Plaintiff,

vs.

UNITED STATES OF AMERICA and GRIFFIN BELL, ATTORNEY GENERAL OF THE UNITED STATES, individually and in his official capacity,
Defendants.

ORDER

Plaintiff filed this action on August 1, 1978, pursuant to 42 U.S.C. § 1973c seeking a declaratory judgment that Miss. Laws, 1978, Chs. 515 and 535, H.B. 1491 and S.B. 3098, the statutory reapportionment plan, do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. Defendants filed their answer denying that plaintiff was entitled to the relief requested, and the Court allowed ten black Mississippi voters to intervene in this action as defendants on behalf of the class of all black citizens and black registered voters of Mississippi qualified to vote in state legislative elections. The Court having held a hearing and having conducted oral argument on the matter and having issued its findings of fact and conclusions of law, it is, in accordance with the Court's findings of fact and conclusions of law, this 1st day of June, 1979., .

ORDERED, that plaintiff's prayer for a declaratory judgment that Miss. Laws, 1978, Chs. 515 and 535, H.B. 1491 and S.B. 3098, the statutory reapportionment plan, do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color is granted; and it is further

ORDERED, that this action be and hereby is dismissed.

/s/ Malcolm Richard Wilkey
United States Circuit Judge

/s/ J. H. Pratt
United States District Judge

/s/ June L. Green
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 78-1425

[Received June 8, 1979]

STATE OF MISSISSIPPI,
Plaintiff,

v.

UNITED STATES OF AMERICA and GRIFFIN B. BELL, Attorney General of the United States, individually and in his official capacity,
Defendants,

and

AARON E. HENRY, HENRY J. KIRKSEY, MRS. MARY HIGHTOWER, JOHNNIE E. WALLS, JR., CHARLES VICTOR MCTEER, FRED L. BANKS, JR., DAVID JORDAN, JAMES E. WINFIELD, BENNIE G. THOMPSON, and BARNEY SCHOBY,
Defendant-Intervenors.

NOTICE OF APPEAL

Notice is hereby given that Aaron E. Henry, Henry J. Kirksey, Mrs. Mary Hightower, Johnnie E. Walls, Jr., Charles Victor McTeer, Fred L. Banks, Jr., David Jordan, James E. Winfield, Bennie G. Thompson, and Barney Schoby, defendant-intervenors herein, appeal to the Supreme Court of the United States from the order of the three-judge district court entered in this action on June 1, 1979 which granted the plaintiffs prayer for a declaratory judgment that Mississippi Laws, 1978, Chs. 515 and 535, H.B. 1491 and S.B. 3098, the statutory reapportionment plan, do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

This appeal is taken pursuant to 42 U.S.C. § 1973(c).

/s/ Richard S. Kohn
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Attorneys for Defendant-Intervenors

Dated: June 6, 1979

CHAPTER 515

HOUSE BILL NO. 1491

AN ACT to amend Section 5-1-1, Mississippi Code of 1972, to reapportion the Mississippi House of Representatives using legislative criteria and precinct lines; and for related purposes.

Be it enacted by the Legislature of the State of Mississippi:

Section 1. Section 5-1-1, Mississippi Code of 1972, is amended as follows:

5-1-1. The number of representatives shall be one hundred twenty-two (122) and shall be elected from districts, composed as follows:

(1) District 1 shall be composed of Tishomoingo County, less the precincts of Belmont and Golden; and Glen, Farmington and East Corinth precincts in Alcorn County.

(2) District 2 shall be composed of that portion of Alcorn County not contained in Districts 1 and 3.

(3) District 3 shall be composed of the precincts of Rienzi, Biggersville, Bethel, Jacinto and Union in Alcorn County; and SD's 1, 2 and 5 in Prentiss County.

(4) District 4 shall be composed of Tippah County; and the precincts of Hopewell, Fairgrounds, Canaan, Michican City and Lamar in Benton County.

(5) District 5 shall be composed of the precincts of Barton, Byhalia, Cayce, Early Grove, Hudsonville, Mt. Pleasant, North Holly Springs No. 1, North Holly Springs No. 2, Red Banks, Slayden, South Holly Springs No. 4, South Holly Springs No. 5, Victoria, Warsaw, Watson and West Holly Springs No. 1 in Marshall County.

(6) District 6 shall be composed of SD's 1 and 5 and the precincts of Plum Point, Nesbit West and Hernando West in DeSoto County.

(7) District 7 shall be composed of SD 3 and the precincts of Southhaven East, Southhaven West No. 2, Horn Lake, Aldens, Days, Eudora and Oak Grove in DeSoto County.

(8) District 8 shall be composed of Tate County.

(9) District 9 shall be composed of Tunica County; and the precincts of Sledge, Belen, North Marks, West Marks, Darling and Mattie in Quitman County.

(10) District 10 shall be composed of SD's 1 and 4 and the precincts of Courtland, East Crowder, East Pope, West Pope, Towoco, East Batesville 2, West Batesville 1, West Sardis, North Sardis, East Sardis and East Batesville 1 in Panola County.

(11) District 11 shall be composed of SD 2 and the precincts of North Curtis, South Curtis, North Batesville, West Batesville 2 and West Batesville 3 in Panola County; and the precincts of Marks, West Lambert, Lambert and Crowder in Quitman County.

(12) District 12 shall be composed of the precincts of Oxford 4, Burgess, Taylor, Orwood, Shackleford, Higgenbotham, Airport Grocery, Oxford 5, Oxford 1, Oxford 3 and Oxford 2 in Lafayette County.

(13) District 13 shall be composed of the precincts of Hickory Flat, Ashland, Harris Mill, Winborn, Floyd and Shawnee in Benton County; the precincts of Wall Hill, Marianna, Chulahoma, Laws Hill, Lake Estates, Potts Camp, Waterford, Bethlehem and Cornesville in Marshall County; the precincts of Free Springs, College Hill, Abberville, Paris, Mullins, Springs Hill, Tula, Delay, North Tula, Pine Bluff, Denmark, Lafayette Springs, Philadelphia and Yocona in Lafayette County; and the

precincts of North East, South East and North West in Yalobusha County.

(14) District 14 shall be composed of Union County.

(15) District 15 shall be composed of Pontotoc County.

(16) District 16 shall be composed of SD 4 and the precincts of Bissell, Brewer, Shannon, Richmond, Plantersville, Tupelo 5, East Heights South, Petersburg and Kedron in Lee County.

(17) District 17 shall be composed of SD 2 and the precincts of Belden, Eggville, Gilvo, Mooreville, Auburn, East Heights North and Tupelo 3 in Lee County.

(18) District 18 shall be composed of SD 1 in Lee County; and SD's 3 and 4 in Prentiss County.

(19) District 19 shall be composed of Itawamba County; and the precincts of Belmont and Golden in Tishomingo County.

(20) District 20 shall be composed of SD's 1 and 2 and the precincts of Amory 5th, Bartahatchie, Gattman, Grubb Springs, Lackey, and that portion of Hamilton in ED's 23 and 24 in Monroe County.

(21) District 21 shall be composed of SD 4 and the precincts of Nettleton, Boyds, Bigbee, Central Grove, Willis, Wern, Aberdeen 3rd, and that portion of Hamilton in ED's 26 and 27 in Monroe County; and Nettleton precinct in Lee County.

(22) District 22 shall be composed of Chickasaw County; and the precincts of Wardwell, Bentley, Sabougla, Denton, Slate Springs, Pleasant Hill and Derma No. 4 in Calhoun County.

(23) District 23 shall be composed of SD's 1 and 5 and the precincts of Boat Landing, Pine Valley, West and Leggo in Yalobusha County; and SD's 1, 2 and 3 and the precincts of West Vardaman, East Vardaman, Loyd, New Liberty, Calhoun City No. 4 and Derma No. 5 in Calhoun County.

(24) District 24 shall be composed of the precincts of Holcomb, Oxberry, Pea Ridge, Hardy, Geeslin Corner, precinct One, precinct Four, precinct Five, precinct Six, Tie Plant and Elliott in Grenada County; and the precincts of Oakland, Tillatoba and Scobey in Yalobusha County.

(25) District 25 shall be composed of Montgomery County; SD 2 of Attala County; and the precincts of Providence, Gore Springs, Mt. Nebo, Spears, Kirkman and Futheyville in Grenada County.

(26) District 26 shall be composed of the precincts of Clarksdale No. 3, Clarksdale No. 4, Lyon, Jonestown, Mattson and Cagles Crossing in Coahoma County.

(27) District 27 shall be composed of the precincts of Friars Point, Lula, Clarksdale No. 1, Clarksdale No. 2, Clarksdale No. 5 and Coahoma in Coahoma County.

(28) District 28 shall be composed of the precincts of Roundaway, Farrell, Bobo, Sherard and Rena Lara in Coahoma County; and the precincts of Duncan-Alligator, Shelby, Mound Bayou, Merigold (that portion east of a line beginning at the southeast corner of Section 1, T24 N, R6W, south to southeast corner of Section 24, west along section line to southwest corner of Section 24, south on section line to sotuhwest corner of Section 25) and North Cleveland in Bolivar County.

(29) District 29 shall be composed of the precincts of West Cleveland, West Central Cleveland, East Central Cleveland, Boyle, Merigold (that portion west of a line beginning at the southeast corner of Section 1, T24N, R6W, south to southeast corner of Section 24, west along section line to southwest corner of Section 24, south on

section line to southwest corner of Section 25) and East Cleveland in Bolivar County.

(30) District 30 shall be composed of the precincts of Gunnison, Rosedale, Pace, Benoit, Longshot, Scott, Stringtown, Shaw and Skene in Bolivar County.

(31) District 31 shall be composed of SD's 4 and 5 and Sunflower precinct in Sunflower County.

(32) District 32 shall be composed of SD 1 and the precincts of Moorehead, Fairview, Hale, Indianola No. 2 and Indianola No. 3 in Sunflower County.

(33) District 33 shall be composed of Tallahatchie County, except Philipp precinct.

(34) District 34 shall be composed of the precincts of Schlater, North Itta Bena, South Itta Bena, Morgan City, Swiftown, Rising Sun, Southwest Greenwood, South Greenwood, Sidon and Southeast Greenwood in Leflore County.

(35) District 35 shall be composed of the precincts of East Greenwood, Central Greenwood, North Greenwood and West Greenwood in Leflore County.

(36) District 36 shall be composed of Carroll County; Philipp precinct in Tallahatchie County; West precinct in Holmes County; and the precincts of Minter City, Money and Northeast Greenwood in Leflore County.

(37) District 37 shall be composed of Choctaw and Webster counties.

(38) District 38 shall be composed of Clay County.

(39) District 39 shall be composed of the precincts of Maben, Sturgis, Bradley, Double Springs, Self Creek, Adaton, Northwest Starkville, Southwest Starkville, North Longview, South Longview, Southeast Starkville, and that portion of Northeast Starkville bounded by a line described as follows: beginning at a point where the Northeast Starkville precinct line intersects the eastern boundary of ED 7, thence northerly along said boundary to its intersection with U.S. Highway 82, thence easterly along said highway to its intersection with the eastern boundary of the Northeast Starkville precinct, thence northerly, westerly, southerly and easterly along said precinct boundary to its intersection with the eastern boundary of ED 7, the point of beginning, in Oktibbeha County.

(40) District 40 shall be composed of Noxubee County; Crawford precinct in Lowndes County; and the precincts of Sessums, Oktoc and Craig Springs in Oktibbeha County.

(41) District 41 shall be composed of the precincts of Caledonia, Air Base, Rural Hill, Caldwell School, Sale School, Lee High School, Stokes Beard (that portion outside the city corporation limits) and Brandon School (that portion north of the Columbus and Greenville Railway) in Lowndes County.

(42) District 42 shall be composed of the precincts of New Hope, Fairview School, Coleman Elementary School, Stokes Beard (that portion within the city corporation limits), Hunt School and Franklin School in Lowndes County.

(43) District 43 shall be composed of the precincts of Carrier Lodge, Mitchell Memorial School, West Lowndes, Artesia, Mayhew, that portion of Brandon School south of the Columbus and Greenville Railway in Lowndes County; the precincts of Hickory Grove, Bell School House, Osborn, and Northeast Starkville, except for that portion bounded by a line described as follows: beginning at a point where the Northeast Starkville precinct line intersects the eastern boundary of ED 7, thence northerly along said boundary to its intersection

with U.S. Highway 82, thence easterly along said highway to its intersection with the eastern boundary of the Northeast Starkville precinct, thence northerly, westerly, southerly and easterly along said precinct boundary to its intersection with the eastern boundary of ED 7, the point of beginning, in Oktibbeha County.

(44) District 44 shall be composed of Kemper County; and the precincts of Meehan, Sageville, South Nelliesburg, Valley, Obadiah, Shucktown, Pine Springs, Nelliesburg, School Gap, Post, Collinsville, Suqualena, Schamberville, Martin, Center Hill, West Lauderdale, Daleville, Lizelia, Andrews Chapel, Bailey, Prospect and Covington in Lauderdale County.

(45) District 45 shall be composed of Winston County.

(46) District 46 shall be composed of Neshoba County, excluding the New Woodland, Zephyr Hill and New Coldwater precincts.

(47) District 47 shall be composed of Leake County; and the New Woodland, Zephyr Hill and New Coldwater precincts in Neshoba County.

(48) District 48 shall be composed of SD's 1, 3, 4 and 5 in Attala County.

(49) District 49 shall be composed of the precincts of Cruger, Thornton, Lexington 4, Lexington 1, Durant, Goodman, Pickens, Ebenezer and Coxburg in Holmes County.

(50) District 50 shall be composed of Humphreys County; and Tchula precinct in Holmes County.

(51) District 51 shall be composed of the precincts of 1-1, 2-2 and 5-5 in Washington County.

(52) District 52 shall be composed of the precincts of 3-4, 4-1, 5-4, and that portion of 3-3 bounded by a line described as follows: beginning at the intersection of Hinds Street and Magnolia Street, thence southerly along Hinds Street to West Union Street, to North Poplar Street, to Alexander Street East, to Shelby Street North, to Main Street, thence along Main Street and Main Street extended to its intersection with the western boundary of precinct 3-3, thence northerly and easterly along said boundary to the point of beginning, in Washington County.

(53) District 53 shall be composed of the precincts of 5-1, 5-2, 5-3, 2-4, 4-2, 4-3 and that portion of 2-1 not contained in District 54 in Washington County.

(54) District 54 shall be composed of the precincts of 1-2, 3-1, 3-2, 1-4, 2-3, that portion of 2-1 described as follows: beginning at the intersection of State Highway 1 with Reed Road, thence southerly along State Highway 1 to its intersection with Barbara Street, thence generally westward along Barbara Street and Barbara Street extended for about 2075 feet, thence generally southerly along a line parallel to Irby Street extended for about 900 feet to the extension of Pauline Street, and thence generally westward along Pauline Street extended for about 1200 feet to Canal Avenue which is the westerly boundary of precinct 2-1, thence northerly and then easterly along the boundary of said precinct to the point of beginning; and 1-3 and that portion of 3-3 not contained in District 52 in Washington County; and the precinct of Delta City in Sharkey County.

(55) District 55 shall be composed of Issaquena County; all of Sharkey County but Delta City precinct; and the precincts of Brunswick, Redwood, Oak Ridge, Culkin, Kings and Walters in Warren County.

(56) District 56 shall be composed of the precincts of Bovina, Beechwood, Tingle, No. 6 (Pipe Fitters and Plumbers Hall), No. 4 (High School Complex B), Cedar Grove, No. 1 (City Auditorium), No. 3 (American Legion

Home) (that portion east of First North Street), and No. 2 (St. Aloysius High School) in Warren County.

(57) District 57 shall be composed of the precincts of Goodrum, Redbone, Jett, Jonestown, Yokena, No. 5 (No. 7 Fire Station), and No. 3 (American Legion Home) (that portion west of First North Street) in Warren County.

(58) District 58 shall be composed of the precincts of Valley, Benton, Free Run, West Midway, Lake City, South City Hall, Robinette, Center Ridge, North City Hall, West Courthouse, East Courthouse, East Lintonia, West Lintonia, Carter, Eden and Zion in Yazoo County.

(59) District 59 shall be composed of SD's 4 and 5 and the precincts of Canton 1, Canton 2, Canton 3, Canton 4 and Canton 5, and that portion of Canton 6 east of Highway I-55 in Madison County.

(60) District 60 shall be composed of SD 3 and the precincts of Canton 6 (that portion west of Highway I-55), Smith School and Flora in Madison County; and the precincts of Dover, East Bentonia, West Bentonia, Fugates, Deasonville, Harttown, East Midway, Mechanicsburg, Phoenix, Satartia, Enola, Fairview and Holly Bluff in Yazoo County.

(61) District 61 shall be composed of the precincts of North Pelahatchie, Leesburg, Pisgah, Fannin, Oakdale, Holbrook, Skyway Hills, North McLaurin, Flowood, West Pearson, Henry Grady, Castlewoods, Reservoir, South McLaurin, South Pelahatchie, Shiloh, Crossroads, North Pearson, Crossgates, and that portion of North Brandon precinct north and east of a line described as follows: beginning at the intersection of the southwest boundary of North Brandon precinct and the Illinois Central railroad in Section 16, then northeast and east on Illinois Central Railroad to its interestion with Richland Creek in the middle of Section 12, then south on Richland Creek to its intersection with U.S. Highway 80 and the southern boundary of North Brandon precinct in Rankin County.

(62) District 62 shall be composed of the precincts of Antioch, Mayton, Puckett, County Line, Cato, Johns, Dobson, Dry Creek, West Brandon, that portion of North Brandon precinct not located in District 61, Whitfield, Spring Hill, Shoto, West Pearl, Pearl, Cunningham Heights, South Pearson, Patton Place and East Brandon in Rankin County.

(63) District 63 shall be composed of the precincts of Crystal Springs East, Carpenter and Crystal Springs West in Copiah County; the precincts of Star, Monterey, East Steens Creek, North Plain, South Plain, Cleary, West Steens Creek, Clear Branch and Mt. Creek in Rankin County; and the precincts of Pearl, Fork Church and Harrisville in Simpson County.

(64) District 64 shall be composed of precincts 41, 44, 45, 78, 79, 80, 81, 82, 83, 84, Cynthia and Liberty Grove in Hinds County.

(65) District 65 shall be composed of precincts 13, 35, 36, 37, 38, 39, 40, 42, 43 and that portion of precinct 17 not in District 66 in Hinds County.

(66) District 66 shall be composed of precincts 5, 6, 8, 9, 14, 15, 16, that portion of precinct 17 described as follows: beginning at the intersection of State Street and Ridgeway Street, proceeding north on State Street to Council Circle, thence east and south along Council Circle to Mohawk Avenue, proceeding east on Mohawk to Sherwood Drive, thence generally southeasterly along Sherwood Drive to Hawthorne Drive, thence south on Hawthorne Drive to the boundary of precinct 17, thence generally westerly along the southern boundary of the precinct to the point of beginning, precincts 32, 33 and 34 in Hinds County.

(67) District 67 shall be composed of precincts 21, 22, 23, 27, precinct 28 north of Ridgeway, precincts 29, 30 and 61 in Hinds County.

(68) District 68 shall be composed of precincts 11, 12, 20, that portion of precinct 28 south of Ridgeway, precincts 31, 55 and 56 in Hinds County.

(69) District 69 shall be composed of precincts 51, 53, 54, 57, 58, 63, 64, that portion of precinct 52 west of Prentiss, and precinct 66 in Hinds County.

(70) District 70 shall be composed of precincts 1, 2, 4, 10, 18, 19, 50, and that portion of precinct 52 east of Prentiss in Hinds County.

(71) District 71 shall be composed of precincts 47, 49, 72, 73, 74, 75, 76 and 77 in Hinds County.

(72) District 72 shall be composed of precincts 24, 26, 59, 60, 62, 67, 68, 69, 70 and 71 in Hinds County.

(73) District 73 shall be composed of precincts 89, 92, 93, 94, 95, 96, 97 and the precincts of Byram, Old Byram, Cayuga, Chapel Hill, Dry Grove, Learned, Terry, Utica 1 and Utica 2 in Hinds County.

(74) District 74 shall be composed of precincts 25, 86, 87, 88, 90, 91 and the precincts of Midway, Van Winkle No. 1, Van Winkle No. 2, Raymond 1 and Raymond 2 in Hinds County.

(75) District 75 shall be composed of the precincts of Bolton, Brownsville, Clinton 1, Clinton 2, Clinton 3, Clinton 4, 85, Edwards, North Clinton, Pocahontas and Tinnin in Hinds County.

(76) District 76 shall be composed of that portion of Scott County not in the precincts of High Hill, Lake, Usry, Salem, Langs Mill and Northeast Forest.

(77) District 77 shall be composed of all of Copiah County but the precincts of Crystal Springs East, Crystal Springs West and Carpenter.

(78) District 78 shall be composed of Simpson County, less Pearl, Fork Church and Harrisville precincts.

(79) District 79 shall be composed of Newton County, less Hazel Lawrence precincts.

(80) District 80 shall be composed of Smith County; and the precincts of High Hill, Lake, Usry, Salem, Langs Mill and Northeast Forest in Scott County.

(81) District 81 shall be composed of Jasper County; and the precincts of Hazel and Lawrence in Newton County.

(82) District 82 shall be composed of the precincts of Stone Deavours School, City Barn, Sandy Gavin School, Oak Park School, Ovett, Crotts, Tuckers, Glade, Northeast School, Myrick, Erata, Sandersville School and Courthouse in Jones County.

(83) District 83 shall be composed of the precincts of Meridian 1A, 1B, 2B, 5E, East Gap, Russell, Kewanee, Toomsuba, Dalewood, East Lauderdale, Lockhart, East Marion, Lauderdale, Ponta, Alamucha, Vimville, Marion, Odom, Bonita, Chapman, Long Creek, School Gap, South Marion, and that area outside the city of Meridian south of the South Marion precinct and west of Highway 45 in Lauderdale County.

(84) District 84 shall be composed of the precincts of Meridian 2C, 4C, 4D, 5A and 5B in Lauderdale County.

(85) District 85 shall be composed of the precincts of Meridian 1C, 2A, 3A, 3B, 3C, 4A, 4B and 5C in Lauderdale County.

(86) District 86 shall be composed of Clarke County; and the precincts of Whynot, Causeyville, Center Grove, Zero, Pickard, Carmichael, Clarksdale, Jones Store and Wanita in Lauderdale County.

(87) District 87 shall be composed of Claiborne County; and SD's 2, 3, 4 and 5 in Jefferson County.

(88) District 88 shall be composed of the precincts of Mason School, 26th Street Fire Station, Anthony's Florist, Nora Davis, Harper Transfer, Sharon, Shady Grove, Matthews, West Jones School, Calhoun, Gitano, Soso, Bruce, Centerville, Hebron, Pleasant Ridge and Blackwell in Jones County.

(89) District 89 shall be composed of Wayne County; and the precincts of Rustin and Sandersville in Jones County.

(90) District 90 shall be composed of the precincts of Lamar School, Prentiss School, Maddox School, Fairgrounds, Pendorf, Sandhill, Rainey, Pine Grove, County Barn, Union, Moselle, Shelton, Ellisville No. 1 and Ellisville No. 2 in Jones County.

(91) District 91 shall be composed of Covington County; and SD's 2 and 3 and Clem precinct in Jefferson Davis County.

(92) District 92 shall be composed of Lawrence County; and SD's 1, 4 (less Clem precinct) and 5 in Jefferson Davis County.

(93) District 93 shall be composed of SD 2 and the precincts of Fair River, Brookhaven High School, Courthouse, Ole Brook, Southeast Brookhaven, Halbert Heights, City Hall, Zetus, Lloyd Star and Northwest Brookhaven in Lincoln County.

(94) District 94 shall be composed of the precincts of Johnson, Arlington, West Lincoln, Johnson Grove, Ruth, Norfield, Bogue Chitto, Enterprise, East Lincoln and McClendon in Lincoln County; and the precincts of 4/18, 4/17, 3/16, 3/13, 3/12, 3/11, 4/19, 5/27, 5/26, 1/1, 1/2 and 1/3 in Pike County.

(95) District 95 shall be composed of the precincts of Pine Ridge, Concord, Morgantown, North Natchez, Somerset, Anchorage, Northside School and Carpenter No. 1 in Adams County.

(96) District 96 shall be composed of the precincts of Airport, Washington, Bellemont, Beau Pre, Oakland, Courthouse, ByPass Fire Station, Liberty Park, Cloverdale, Palestine, Duncan Park and Kingston in Adams County.

(97) District 97 shall be composed of Franklin County; SD 1 in Jefferson County; the precincts of Vaughn, Caseyville and Old Red Star in Lincoln County; and SD 3 and the precincts of New Zion, Zion Hill, South Gloster, Smithdale, Liberty and Tangipahoa in Amite County.

(98) District 98 shall be composed of Wilkinson County; and the precincts of East Liberty, South Liberty, Graves, Walls, Riceville, Tickfaw, Ariel, Berwick, East Centreville, Street and East Fork in Amite County.

(99) District 99 shall be composed of the precincts of 2/8, 5/25, 2/9, 2/7, 4/20, 3/14, 4/21, 3/15, 1/5, 5/22, 1/4, 5/23, 2/6, 2/10 and 5/24 in Pike County.

(100) District 100 shall be composed of Walthall County; and the precincts of Sandy Hook, Union, Hub, Pine Burr, Balls Mill, Pittman and Kokomo in Marion County.

(101) Disrict 101 shall be composed of SD's 1, 2 and 3 and the precincts of East Columbia, South Columbia and Courthouse in Marion County.

(102) District 102 shall be composed of Lamar County; and the precincts of Brooklyn, Carnes, Maxie and Rawls Springs in Forrest County.

(103) District 103 shall be composed of the precincts of Woodley School, Blair High School, Grace Christian School, Hawkins Junion High (west of Main Street), Pinecrest, Westside and Thames School in Forrest County.

(104) District 104. shall be composed of the precincts of Hawkins Junior High School (that portion east of Main Street), Jones School, East Bowie, Walthall School, Eaton School, Rowan High School, Lillie Burney School, William Carey, Dixie Pine and Camp School in Forrest County.

(105) District 105 shall consist of the precincts of Eatonville, Glendale, Petal-Leeville, Macedonia, Petal High School, Petal-Harvey School, Sunrise, McCallum, McLaurin, Forrest County Agricultural High School, Dixie, Central School and Davis School in Forrest County.

(106) District 106 shall be composed of Greene County and Perry County.

(107) District 107 shall be composed of the precincts of Elarbee, Thomas Price, Red Creek, South Central Wiggins, Perkinston and McHenry in Stone County; the precincts of Ladner, Lizana, Vidalia, West Lyman, Riceville, Advance and West Saucier in Harrison County; and the precincts of Hillsdale, Byrd Line, Hickory Grove, Caesar, Salem, Henleyfield, Gum Pond, Wolf River, Poplarville East, Oak Hill, White Sand, Buck Branch, Poplarville West, Progress, Silver Run, Savannah, Derby, Ford's Creek, McNeill and Steep Hollow in Pearl River County.

(108) District 108 shall be composed of George County; and the precincts of Bond, Central Wiggins, East Central Wiggins, Tuxechena, Flint Creek, Wisdom and Pleasant Hill in Stone County.

(109) District 109 shall be composed of the precincts of Mill Creek, Pine Grove, Picayune 4, Nicholson, Picayune 5, Carriere, Picayune 3, Picayune 2, Picayune 1 and Ozona in Pearl River County.

(110) District 110 shall be composed of the precincts of Wade, Hurley, Big Point, Orange Grove, Helena, East Escatawpa, West Escatawpa, Bayou Casotte No. 4, Bayou Casotte No. 3 and Jefferson Street in Jackson County.

(111) District 111 shall be composed of the precincts of Griffin Heights, Eastside, Moss Point No. 1, Moss Point No. 2, Moss Point No. 3, Moss Point No. 4, Elder Street and Kreole in Jackson County.

(112) District 112 shall be composed of the precincts of Bayou Casotte No. 1, Bayou Casotte No. 2, Pinecrest, Country Club, Jackson Avenue, Eastlawn, Central, North Pascagoula, Ingalls Avenue, American Legion, South Pascagoula, 11th Street No. 1 and 11th Street No. 2 in Jackson County.

(113) District 113 shall be composed of the precincts of North Gautier, Courthouse, Fire Station, Lake School, Carterville, Larue, North Vancleave, South Vancleave, Latimer, St. Martin and South Gautier in Jackson County; and D'Iberville precinct in Harrison County.

(114) District 114 shall be composed of the precincts of South Fountainbleau, Ocean Springs No. 1, Ocean Springs No. 2, Ocean Springs No. 3, Ocean Springs No. 4, Ocean Springs East, Gulf Hills, Satellite and North Fountainbleau in Jackson County.

(115) District 115 shall be composed of the precincts of Biloxi 1, Biloxi 2, Biloxi 3, Biloxi 4, Biloxi 5, Biloxi 6 and Biloxi 7 in Harrison County.

(116) District 116 shall be composed of the precincts of North Bay, Holly Hills, Biloxi 7A, and that portion of Biloxi 8 not located in District 117 in Harrison County.

(117) District 117 shall be composed of the precincts of Biloxi 9, Biloxi 10, Biloxi 11, and that portion of East Handsboro (south of Pass Christian Road), and that portion of Biloxi 8 west of Keesler Air Force Base and west of St. Charles Avenue in Harrison County.

(118) District 118 shall be composed of the precincts of West Handsboro, East Mississippi City, West Mississippi City, Gulfport 6, Gulfport 7, Gulfport 11, Gulfport 12 and part of East Handsboro (north of Pass Christian Road) in Harrison County.

(119) District 119 shall be composed of the precincts of West North Gulfport, East North Gulfport, Gulfport 3, Gulfport 4, Gulfport 5, Gulfport 8, Gulfport 9 and Gulfport 13 in Harrison County.

(120) District 120 shall be composed of the precincts of Gulfport 1, Gulfport 2, Gulfport 10, Gulfport 14, East Long Beach, West Long Beach, East Pass Christian and West Pass Christian in Harrison County.

(121) District 121 shall be composed of the precincts of White Plains, Howard Creek, Stonewall, Peace, Poplar Head, East Lyman, East Saucier, New Hope, Outside Long Beach, West Orange Grove, Pineville, DeLisle and East Orange Grove in Harrison County.

(122) District 122 shall be composed of Hancock County.

For purposes of this plan, the term "SD" shall mean supervisors district as it exists upon the date of passage of this act, "MCD" shall mean minor civil division as it existed in 1970 when the 1970 Decennial Census was taken in that county, and "ED" shall mean enumeration district as it existed in 1970 when the 1970 Decennial Census was taken in that county.

Section 2. This act shall be liberally construed to effectuate the purposes thereof and to apportion and district the House of Representatives of this state in compliance with constitutional requirements.

It is intended that this act and the districts described herein completely encompass all the area within the state. It is also intended that such districts contain all the inhabitants in this state. It is further intended that the apportionment and districting provided for in this act result in the creation of districts which are substantially equal in population. It is also intended that no district shall include any of the area included within the description of any other district.

The apportionment of representative districts and senate districts shall be deemed to be separate from each other. The invalidity of the districts of one (1) house shall not affect or require the redistricting of the other house when the districts of the other house have been found to be valid by a court of competent jurisdiction.

Section 3. (1) If the districts described in this act do not carry out the purposes thereof, because of unintentional omissions; duplications; overlapping areas; erroneous nomenclature; lack of adequate maps or descriptions of political subdivisions, wards or other divisions thereof, or of their boundary lines; street closings, changes in names of streets, or other changes of public places; alteration of the boundary or courses of waters or waterways, filling in of lands under water, accretion or other changes in shorelines; or alteration of courses, rights-of-way, or lines of public utilities or other conditions, then the Secretary of State, at the request of the Special Joint Legislative Committee on Reapportionment shall, by order, correct such omissions, overlaps, erroneous nomenclature or other defects in the description of districts so as to accomplish the purposes and objectives of this act.

(2) In promulgating such orders, the Secretary of State, in addition to achieving equality in the population of districts and insuring that all areas of the state are completely and accurately encompassed in such districts, shall be guided by the following standards;

(a) Gaps in the description of any district shall be completed in a manner which results in a total descrip-

tion of that district in a manner which is consonant with the description of adjacent districts and results in complete contiguity of districts;

(b) Areas of the state included within the descriptions of more than one (1) district shall be allocated to the district having the lowest population;

(c) Areas of the state not included within the descriptions of any district shall be allocated to the adjacent district having the lowest population;

(d) In the event that the area subject to corrected description or allocation as provided in subsections (a), (b) and (c) of this paragraph is of such size or contains such population that its inclusion as a unit in any district would result in substantial disparity in the size, shape or population of such district, then the Secretary of State may allocate portions of such area to two (2) or more districts; and

(e) In any allocation of area or correction of descriptions made pursuant to this section, the Secretary of State shall, consistent with the foregoing standards, preserve the contiguity and compactness of districts and avoid the unnecessary division of political subdivisions.

(3) Copies of such orders shall be filed by the Secretary of State in his own office and in the offices of the affected commissioners of election and registrars. The Secretary of State may adopt reasonable rules regulating the procedure for applications for orders under this section in the manner of serving and filing any notice or copy of orders relating thereto.

(4) Upon the filing of such an order, the description of any affected district shall be deemed to have been corrected in the manner provided in such order to the full extent as if such correction had been contained in the original description set forth in this act.

Section 4. The Attorney General of the State of Mississippi is hereby directed to exhaust all options under Section 5 of the Voting Rights Act of 1965, as amended and extended, in seeking to effectuate this act.

Section 5. This act shall take effect and be in force if it is finally effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Approved: April 21, 1978

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

PEGGY J. CONNOR, ET AL.,
PLAINTIFFS

and

UNITED STATES OF AMERICA,
PLAINTIFF-INTERVENOR

VS.

CLIFF FINCH, ET AL.,
DEFENDANTS

CIVIL ACTION
No. 3830 (A)

AFFIDAVIT OF WILLIAM A. ALLAIN

THE STATE OF MISSISSIPPI)
)
COUNTY OF HINDS)

WILLIAM A. ALLAIN, after first being duly sworn, deposes and says as follows:

1. I am Special Counsel for the Defendants and the Special Joint Legislative Committee on Reapportionment in the above-styled and -captioned cause and I have been actively involved in the defense of this cause since its inception. I am further personally familiar with the efforts of the defendants, the Special Joint Legislative Committee on Reapportionment and the Mississippi Legislature to respond to the Order of the United States District Court inviting the Mississippi Legislature to submit a plan for court adoption, and I am personally familiar with their efforts to fashion and effectuate a statutory reapportionment plan.

2. I have reviewed the files and records maintained by the Special Joint Legislative Committee on Reapportionment together with the calendar of events since the decision of the Supreme Court of the United States in this cause on May 31, 1977, and my review of said files, records and calendar

of events reveals that the following events and efforts took place and were made at the time and in the manner indicated.

3. On May 31, 1977, the Supreme Court of the United States reversed the decision of the three-judge District Court implementing a statewide single member district plan for the Mississippi Legislature since the districts fashioned by the Court contained excessively high population deviations in both the House and Senate plans.

4. On July 28, 1977, the Supreme Court of the United States filed its mandate with the Clerk of the United States District Court for the Southern District of Mississippi for further proceedings in conformity with its opinion, and on August 2, 1977, the District Court entered its order requiring the parties and inviting the Mississippi Legislature to file within ninety days a complete plan for the reapportionment of the Mississippi Legislature agreeable to the standards enunciated by the Supreme Court and to the extent possible with the guidelines of the District Court.

5. On Sunday, August 7, 1977, counsel for the defendants met in response to the District Court's order to prepare for the meeting with the respective election committees of the Legislature to be held on the following day.

6. On August 8, 1977, a meeting of the members of the House Committee on Apportionment and Elections and the Senate Elections Committee on Elections was held in the office of the Attorney General of the State of Mississippi for the purpose of discussing the invitation extended to the Mississippi Legislature by the Court order of August 2, 1977. On this same date certain members of the Legislature and the Mississippi Attorney General and members of his staff met with the Governor and his staff for the same purpose.

7. On August 9, 1977, the Governor issued, by proclamation, his call to the members of the Mississippi Legislature to convene in special session for the purpose of considering the invitation and responding to the Court. A copy of the Proclamation is attached as Appendix 1.

8. During the week of August 8, 1977, counsel for defendants and legislative staff members conferred to prepare a resolution to be submitted

to the Legislature to establish a Special Joint Legislative Study Committee on Reapportionment.

9. During this same period of time, the Attorney General and other counsel made contact with various demographic, computer and statistical experts throughout the United States to discuss availability and possible employment for the purpose of formulating reapportionment plans.

10. On August 12, 1977, the Mississippi Legislature convened the First Extraordinary Session of 1977 and adopted S. C. R. 502 which created the Special Joint Legislative Study Committee on Reapportionment (hereinafter referred to as "the Joint Committee"). A copy of the Resolution is attached as Appendix 2.

11. On this same date, the House adopted H.C.R. 1 which requested Congress to extend the deadline for a State to contract with the Bureau of the Census for the taking of a census count by precincts. This resolution was adopted on August 13, 1977, by the Senate.

12. On Saturday, August 13, 1977, the newly created Joint Committee met and organized. The Joint Committee created a subcommittee (hereinafter referred to as "the Subcommittee") for the purpose of interviewing and employing experts to assist in the formulation of reapportionment plans for the Mississippi Legislature. Further, the Legislature enacted H. B. 2 which authorized the Legislature to contract with the Census Bureau for the taking of the 1980 census by block count for the state at large.

13. On August 15, 1977, counsel for the defendants conferred in preparation for a meeting with the Joint Committee to discuss procedures necessary to respond to the Court's invitation.

14. On August 16, 1977, the Joint Committee met and was briefed by counsel for the defendants. The Committee voted to employ special counsel for the Joint Committee to assist the Attorney General and his staff in preparation of a reapportionment plan for Mississippi. A staff director was also employed, and counsel and staff conferred in regard to the employment of certain experts. The Attorney General continued telephone conferences and

communications with experts to be interviewed by the subcommittee.

15. On August 17 and 18, 1977, counsel for defendants and the Joint Committee, by telephone conference and communications, made preparation for a meeting of the subcommittee and certain experts in Washington, D.C.

16. On August 19 and Saturday, August 20, 1977, the subcommittee interviewed in Washington, D. C. certain experts in the field of formulating apportionment plans. The chairman of the Joint Committee at that time obtained a copy of census data for Mississippi copied directly from the master tape in the Bureau of the Census.

17. On Sunday, August 21, 1977, counsel for defendants and the Joint Committee conferred with the staff director regarding procedures for gathering statistical data necessary for the formulation of a reapportionment plan. The staff director met with certain experts retained during the interviews in Washington, D. C.

18. On August 22, 1977, retained counsel for the Joint Committee met with the Mississippi Attorney General in Washington, D. C. The staff director, associate counsel, and the chairman of the Joint Committee met with certain experts to determine the best method for the programming and utilization of the statistical census data.

19. On August 23 and 24, 1977, retained counsel conferred with members of the subcommittee and certain experts in preparation for a meeting and interviews to be held in Chicago, Illinois, on August 25, 1977.

20. On August 25, 1977, retained counsel, the Mississippi Attorney General, members of the subcommittee and staff director met in Chicago, Illinois, and interviewed certain experts in the field of formulating apportionment plans.

21. On August 26, 1977, counsel for defendants and the Joint Committee met with certain individuals to discuss the most advantageous utilization of census data necessary for the development of the plan.

22. On Saturday, August 27 and Sunday, August 28, 1977, counsel for the defendants met and conferred for the purpose of preparing for a meeting with the Joint Committee to be held on September 7, 1977.

23. On September 1-5, 1977, counsel and staff continued to prepare for the September 7, 1977, meeting of the Joint Committee.

24. On September 1, 1977, the Chairman of the Joint Committee met with representatives of the Circuit Clerks' Association to discuss any problems which might occur as a result of the development of a reapportionment plan based upon enumeration districts.

25. On September 6, 1977, counsel for defendants met with the Chairman of the Joint Committee, committee staff and certain members of the Legislature in further preparation for the meeting with the Joint Committee on September 7, 1977.

26. On September 7, 1977, the Joint Committee met with retained counsel and members of the staff of the Attorney General of Mississippi. The committee discussed the formulation of a reapportionment plan and further met with certain officials of the Bureau of the Census, including Mr. Marshall Turner, Chief of the Demographic Division of said bureau.

27. On September 8, 1977, counsel for defendants prepared memorandum on meetings held on September 6 and 7, 1977.

28. On September 12, 1977, counsel for defendants and the Joint Committee conferred with the Chairman of the Joint Committee and staff director in regard to procedures for formulating apportionment plans.

29. On September 13, 1977, retained counsel, the Mississippi Attorney General and the staff director conferred in regard to the formulation of the plans.

30. On September 14, 1977, counsel for defendants and the Joint Committee met with the committee staff regarding the proposed tenative plans and their compliance with the guidelines of the Supreme Court of the United States in the preparation for the hearings to receive comments from legislators to be held on the 27th and 28th of September, 1977.

31. On September 20, 1977, counsel conferred with the Chairman of the Joint Committee and its staff director in regard to the completed drafts of the proposed tentative reapportionment plans.

32. On September 21, 1977, a meeting was held with the Joint Committee, certain legislators and the Attorney General of Mississippi

in preparation for the legislators' hearings on September 27 and 28, 1977.

33. On September 22, 1977, a meeting of the Joint Committee was held for the purpose of reviewing the proposed tentative plans.

34. On September 23, 1977, a conference was held by counsel for defendants and the Joint Committee to discuss various legal ramifications relative to the reapportionment plans and legal research of the Mississippi constitutional and statutory provisions in regard thereto.

35. On September 26, 1977, counsel for defendants and the Joint Committee conferred with experts and staff director in regard to the reapportionment plans as they relate to the legislators' hearings to be conducted on September 27 and 28, 1977.

36. On September 27 and 28, 1977, the Joint Committee conducted hearings to secure comments of legislators on the proposed tentative plans.

37. On September 29, 1977, counsel for defendants and the Joint Committee conferred in regard to the comments received from legislators at the hearings conducted on September 27 and 28, 1977.

38. On September 30, 1977, counsel for the defendants and the Joint Committee conferred with Gerald Jones, attorney for the United States Justice Department, in regard to the tentative reapportionment plans.

39. On October 3 and 4, 1977, counsel for the defendants and the Joint Committee conferred with the staff in preparation for a meeting of the Joint Committee to be held on October 5, 1977.

40. On October 5, 1977, the Joint Committee met with counsel and staff and discussed the tentative plans and the input received during the hearings for the legislators.

41. During the week of October 3, 1977, notices of the public meetings to be held October 11 and 12, 1977, were sent to major newspapers throughout the state, and to assuretheir publication they were published as paid legal notices. In conjunction with such notices, copies of the proposed reapportionment plans were sent to the circuit clerk of each county and made available to the citizens thereof for their inspection. The notices requested the public to review the plans and present any testimony

they desired to the Joint Committee. A sample copy of a public notice is attached as Appendix 3. Additionally, a news release was sent to radio and television stations and other local newspapers throughout the State, with a request that it be broadcast and published as a public service announcement. A sample copy of a news release is attached as Appendix 4. Special effort was made to generate as much publicity as possible in black communities by having the notice and release published and broadcast by newspapers and radio and television stations covering black communities.

42. On October 6-10, 1977, counsel for the defendants and the Joint Committee conferred with the staff in preparation for the public hearings to be conducted on October 11 and 12.

43. On October 11 and 12, 1977, the Joint Committee met and conducted public hearings to receive comments from the general public in regard to the tentative reapportionment plan.

44. On October 13, 1977, counsel for the defendants and the Joint Committee conferred with the Governor and his staff relating to the call of the Second Extraordinary Session 1977 to consider a reapportionment plan for Mississippi.

45. On October 14, 1977, the Joint Committee met and voted to recommend that the Legislature create a reapportionment commission for the formulation of future reapportionment plans for the State. Further, counsel for the defendants and the Joint Committee met with Gerald Jones and certain members of his staff in regard to the tentative reapportionment plans.

46. On October 15 and 16 (Saturday and Sunday) and 17, 1977, counsel for defendants and the Joint Committee and staff prepared for public hearings to be conducted on October 18, 1977. Public notices and news releases as described above were again circulated.

47. On October 18, 1977, the Joint Committee conducted public hearings and the Legislature convened for the Second Extraordinary Session 1977 for the purpose of considering a reapportionment plan for Mississippi.

48. On October 19-21, counsel for the defendants and the Joint Committee met with the Senate and House election committees and members of both houses, and explained the reapportionment plans for the Senate and House.

49. On October 21, 1977, the House adopted H.C.R. 3 which extended the existence of the Joint Committee.

50.. On Saturday, October 22, 1977, counsel for defendants and the Joint Committee conferred with Gerald Jones in Washington, D. C. in regard to the reapportionment plans.

51. On Sunday, October 23, 1977, counsel for defendants and the Joint Committee conferred with the Chairman of the Joint Committee and its director and certain experts in preparation for continued meetings with the Legislature in regard to the reapportionment plans.

52. On October 24, 1977, counsel for defendants and the Joint Committee met with the election committees of the Legislature and conferred with certain members of both houses in regard to the formulation of a final reapportionment plan.

53. During the week of October 24-28, 1977, S.C.R. 503 and H.C.R. 4 were reported and adopted by both houses of the Mississippi Legislature. S.C.R. 503 and H.C.R. 4 are concurrent resolutions embodying a reapportionment plan for the Mississippi Legislature based upon census enumeration districts. Further, during that same week the Legislature reported and/or adopted several other important pieces of legislation concerning reapportionment, i.e., legislation extending the existence of the Joint Committee (HCR 3), and legislation establishing a commission to reapportion the Legislature after 1980 (H.B. 3).

54. On November 1, 1977, the Joint Committee staff began gathering data for and commenced analyses of plans filed by plaintiffs and the Department of Justice.

55. On November 2, 1977, counsel for the defendants and the Joint Committee began their study of plaintiffs' and the Department of Justice's plans.

56. On November 3 and 4, 1977, counsel conferred with Mr. Marshall Turner, Chief of the Demographic Division of the Bureau of the Census, regarding availability of enumeration district splits to insure the accuracy and possibility of using precincts instead of enumeration districts. On November 4, 1977, counsel conferred with the Chairman of the Joint Committee

regarding plans for reapportionment and court proceedings.

57. On Saturday, November 5, 1977, counsel reviewed reapportionment plans and conferred with Mr. Del Dunn, a member of the Joint Committee staff, regarding the impact issue and conferred with the staff director regarding maps of the plans of the plaintiffs and the Department of Justice.

58. On Sunday, November 6, 1977, associate counsel met with Professor Richard Morrill in Seattle, Washington, to further analyze the plans of the plaintiffs and the Department of Justice.

59. On November 7, 1977, analyzation of the plans of the plaintiffs and the Department of Justice by counsel and Professor Morrill continued.

60. On November 8, 1977, counsel continued analysis of plaintiffs' plans and conferred with experts and associate counsel in preparation for the meeting with experts in Atlanta, Georgia, to be held on November 11, 1977, and in preparation for the meeting of the Joint Committee to be held November 16, 1977.

61. During the second and third weeks of November, counsel conferred daily with the committee staff, experts and members of the Legislature and the Joint Committee in preparation of the evidentiary hearing in the United States District Court for the Southern District of Mississippi, to commence on November 21, 1977. These conferences were held in Atlanta, Georgia; Seattle, Washington; Jackson, Mississippi; and Washington, D.C.

62. On November 21 and 22, 1977, the evidentiary hearing was conducted on the reapportionment plans.

63. On November 23, 24 and 25, 1977, counsel conferred with experts in regard to the District Court's indication of its preference for a reapportionment plan constructed on precinct lines as opposed to a plan based on census enumeration districts.

64. During the week of November 28, 1977, counsel met with the Joint Committee, committee staff and individual members of the Legislature and commenced work on the formulation of a precinct-based reapportionment plan by moving the enumeration district lines to the nearest precinct lines and obtaining census splits from the Bureau of the Census.

65. On December 1, 1977, the Mississippi Legislature reconvened the recessed Second Extraordinary Session. On that date the House reported H. B. 6, directing the county registrars to make administrative transfers of voters rather than a reregistration thereof.

66. On December 2, 1977, H. B. 3 was adopted by the House.

67. During the week of December 5, 1977, the Legislature met and the respective election committees met and reported S.B. 2003 and H.B.9, both bills being adopted during that same week. These bills embody the statutory plans based on enumeration districts for the Senate and the House. Further, S.C.R. 507 was reported and adopted by the Legislature during that same week which directs the Secretary of State to submit to the electorate a constitutional amendment establishing a Reapportionment Commission.

68. On December 12 and 13, 1977, the deposition of the Joint Committee Chairman was taken by the plaintiffs and plaintiff-intervenor as previously authorized by the Court.

69. During the last two weeks of December 1977, the committee staff worked daily on the preparation of a reapportionment plan based on precinct lines to submit to the Court.

70. On January 3, 1978, the Mississippi Legislature convened the 1978 Regular Session.

71. During the first two weeks of January 1978, the depositions of the staff experts were taken in preparation for trial (i.e., Fortenberry, Dunn, Webb, Hofeller and Morrill).

72. During the weeks of the 16th, 23rd and 30th of January 1978, the committee staff worked on formulating the precinct plan to submit to the Court and counsel made preparation for trial which was to commence on February 14, 1978.

73. During the weeks of February 1, 6 and 13, 1978, the staff worked on and the Legislature reported and adopted S.C.R. 627 and H.C.R.'s 53 and 54. These resolutions embody the basic precinct plans tendered the Court during the February 14, 1978 hearing. Numerous meetings of the respective election committees were held throughout this period.

74. On February 14, 1978, the evidentiary hearing was held before the District Court with regard to the reapportionment plans.

75. Between February 14, 1978, and the end of that month, the staff continued to work on and perfect the precinct plan filed with the Court during the February 14, 1978 hearing, working in close conjunction with the Bureau of the Census, which was continuously providing the staff with population figures for the census enumeration district splits.

76. During the period of March 1, 1978, through March 7, 1978, the Joint Committee, staff, the election committees and the Legislature continued perfecting the precinct plan previously filed with the Court at the February 14, 1978 hearing which was reported and adopted as H.C.R. 116 by the Legislature and filed with the Court on March 7, 1978, together with supporting data.

77. Immediately upon filing H.C.R. 116, the Legislature returned to the task of formulating a statutory precinct reapportionment plan for the Mississippi Legislature to be effectuated under Section 5 of the Voting Rights Act of 1965, as amended. This task had been interrupted by the Legislature's desire to formulate a court precinct plan in view of the District Court's announced preference for such a plan.

78. The House election committee reported to the House on March 22, 1978, H. B. 1491 (House statutory precinct plan), and the Senate election committee, on March 24, 1978, reported to the Senate S.B. 3098 (Senate statutory precinct plan). On March 23, 1978, the House adopted H.B. 1491.

79. On Saturday, March 25, 1978, the Senate passed S.B. 3098.

80. During the week of March 27, 1978, the House adopted S.B. 3098, and the Senate adopted H.B. 1491.

81. On April 7, 1978, the Legislature adjourned sine die.

82. S.B. 3098 and H.B. 1491 were sent to the Governor, after having been enrolled on April 4, 1978, and after considering these bills, the Governor signed them into law on April 21, 1978. Copies of S. B. 3098 and H. B. 1491 are attached as Collective Appendix 5.

83. Immediately thereafter the staff of the office of the Attorney General of Mississippi commenced preparation of the submission of S.B. 3098 and H.B. 1491 to the Attorney General of the United States, pursuant to the direction of the Legislature.

84. On May 3, 1978, the Special Master filed his suggested plan of reapportionment for the State of Mississippi.

85. On May 9, 1978, the Special Master filed suggested alternatives for the Senate.

86. On May 11, 1978, the Special Master filed a submission revising certain House and Senate districts for Warren and Forrest Counties.

87. On May 15, 1978, the District Court entered an order instructing the Special Master to file a final proposal incorporating his plan in final form so as to include the amendments. Said order provided that all parties having objections to the Special Master's plan file such objections within fifteen days after the Special Master filed his final plan and invited the appropriate legislative committee to file objections to same, if any.

88. On May 18, 1978, the Special Master filed with the Court the above-mentioned reapportionment plan.

89. Immediately thereafter, the Joint Committee staff, the office of the Attorney General of Mississippi, and retained counsel for the committee and defendants commenced review and analysis of the plan filed by the Special Master. During this same period of time, the State was continuing to gather supporting data for its Section 5 submission.

90. On June 1, 1978, the State of Mississippi submitted to the Attorney General of the United States S.B. 3098 and H.B. 1491 together with extensive and comprehensive supporting data for Section 5 clearance. A copy of the Submission Statement (without its accompanying appendices) is attached as Appendix 6.

91. On June 2, 1978, the defendants and the Joint Committee filed their objections to the plan previously filed by the Special Master.

92. On June 12, 1978, the District Court entered an order requesting the parties to meet in settlement conference within fifteen days of the entry of said order in which they were requested to explore every reasonable possibility for the entry of a consent decree terminating this litigation.

93. The Joint Committee and defendants continued to review the Special Master's plan and the plans submitted by the plaintiffs and the Justice Department in preparation for the meeting with plaintiffs and the Justice Department.

94. On June 22, 1978, attorneys for the plaintiffs, Justice Department, and the State met pursuant to the above-mentioned order of the District Court.

95. On June 23, 1978, the Joint Committee met to consider the initial proposals presented by plaintiffs and the Justice Department during the negotiation session held on June 22, 1978. Further, in the afternoon of the 23rd another meeting was held with attorneys for the Joint Committee, the defendants, the Justice Department, and the plaintiffs.

96. During the first full week of July, counsel for the defendants and the Joint Committee continued to negotiate with counsel for the plaintiffs and the Justice Department. It was necessary during this period of time to recall the Joint Committee experts in order to analyze the proposals presented and to rearrange certain districts in order to accommodate such proposals.

97. On July 12, 1978, counsel for all parties and for the Joint Committee again had a formal conference for the purpose of attempting to finalize a compromise as to the reapportionment plans.

98. After the above-referred to meeting, counsel for the parties and Joint Committee continued to negotiate and the experts continued to redraw certain districts. On July 25, 1978, counsel for all parties and the Joint Committee again met for formal negotiations.

99. On July 26, 1978, counsel for the defendants, the Joint Committee and plaintiffs had an informal meeting for the purpose of furthering the above-referred to negotiations.

100. On July 27, 1978, counsel for the defendants and the Joint Committee met informally with counsel for the plaintiffs in furtherance of the negotiations. Further, notice was mailed to all members of the Joint Committee that a committee meeting would be held on August 2, 1978, at which time the proposals of the plaintiffs and the Justice Department would be submitted to the committee for final action. Also the Mississippi Attorney General sent a letter to the Attorney General of the United States requesting a personal conference to discuss the Section 5 submission. A copy of the letter (dated July 26, 1978) from Attorney General A. F. Summer to Attorney General Griffin Bell is attached as Appendix 7.

101. By letter of July 28, 1978, Gerald Jones, Chief of the Litigation, Civil Rights Division, Department of Justice, responded to Attorney General A. F. Summer's request made to the United States Attorney General Griffin B. Bell to meet with him personally. Gerald Jones advised that a meeting could be arranged with an appropriate representative of the Attorney General to discuss S.B. 3098 and H.B. 1491. A copy of this letter is attached as Appendix 8.

102. On July 31, 1978, Attorney General A. F. Summer, by letter of that date, advised Gerald Jones that his response would not provide the forum requested. A copy of this letter is attached as Appendix 9.

103. On August 1, 1978, Attorney General A. F. Summer was telephonically advised by Gerald Jones that a letter from Assistant Attorney General Drew Days, III,had been mailed wherein an objection had been interposed to S.B.3098 and H.B. 1491.

104. Immediately upon the conclusion of the telephone conversation referred to in Paragraph 103 above, Attorney General A. F. Summer directed his Special Counsel in Washington, D. C. to file in the District Court of Washington, D. C. a complaint for Section 5 declaratory relief. A copy of this complaint is attached as Appendix 10. An amended complaint correcting typographical errors is to be filed on August 3, 1978.

105. While I cited above only the key events and efforts which occurred and were carried out on specific dates, I am further aware that throughout the entire period of time since the Supreme Court's decision of May 31, 1977, that the staff of the Joint Committee, the attorneys for the defendants and the Joint Committee and members of the Mississippi Legislature have worked continuously in a diligent, expeditious and competent manner in responding to the Orders of the United States District Court for the Southern District of Mississippi by preparing plans, reviewing plans of plaintiffs and the Special Master, participating in good faith in Court-directed settlement negotiations, and concurrently drafting, enacting and pursuing under Section 5 the Legislature's statutory reapportionment plan which I believe to be best for the people of the State of Mississippi. Further, affiant saith not.

William A. Allain

William A. Allain

SELECTED BIBLIOGRAPHY

Books

BAKER, Gordon E. Reapportionment Revolution: Representation, Political Power, and the Supreme Court. Philadelphia Book Co., 1966.

BECKER, Theodore L. The Impact of Supreme Court Decisions. New York: Oxford, 1969.

BINGHAM, Richard D. Reapportionment of the Oklahoma House of Representatives: Politics and Process. Legislative Research Serial No. 2, 1972.

BONNOR, James C., and ROBERTS, Lucien E., eds. Studies in Georgia History and Government. Athens: The University of Georgia Press, 1940.

BOYD, William J. D., ed. Apportionment in the Nineteen Sixties. New York: National Municipal League, 1967.

BOYD, William D., and SILVA, Ruth C. Selected Bibliography on Legislative Apportionment and Districting. New York: National Municipal League, 1963.

BROMAGE, Arthur W. American County Government. New York: Sears Publishing Company, 1933.

BUSHNELL, Eleanor, ed. Impact of Reapportionment on the 13 Western States. Salt Lake City, Utah: University of Utah Press, 1970.

COMMON CAUSE. Reapportionment: A Better Way. Washington, D.C.: Common Cause, 1977.

_____. Toward a System of Fair and Effective Representation: A Common Cause Report on State and Congressional Reapportionment. Washington, D.C.: Common Cause, 1977.

These items are available, the first free and the latter for $2.00, by writing to: Issue Mail, Common Cause, 2030 "M" St., N.W., Washington, D.C. 20036.

CONGRESSIONAL QUARTERLY. Representation and Apportionment: Response of the Nation to the Supreme Court's Landmark Decisions on State Legislative Apportionment and Congressional Districting. Washington, D.C.: C.Q. Service, 1966.

Also see CQ Weekly, cumulative indexes.

COUNCIL OF STATE GOVERNMENTS, THE. The Book of the States. Chicago: Annual.

_____. Legislative Apportionment in the States. Chicago: Issued at irregular intervals.

_____. Reapportionment in the Seventies. 1973.

_____, and NATIONAL LEGISLATIVE CONFERENCE. Reapportionment in the States. 1972.

DAVID, Paul T., and EISENBERG, Ralph. Devaluation of the Urban and Suburban Vote. Charlottsville: University of Virginia Bureau of Public Administration, 1961.

_____. State Legislative Redistricting. Chicago: Public Administration Science, 1962.

DIXON, Robert G. Democratic Representation: Reapportionment in Law and Politics. New York: Oxford University Press, 1968.

DUNAWAY, Wayland F. A History of Pennsylvania. Boston: Houghton, Mifflin, 1930.

ELLIOTT, Ward E. Guardian Democracy: The Supreme Court and Reapportionment. Cambridge: Harvard University Press, 1974.

FERRELL, Joseph S. Cases and Materials on Local Apportionment. Chapel Hill: Institute of Government, University of North Carolina, 1965.

GOLDBERG, Edward M. The Constitutional Law and Politics of Legislative Apportionment. Unpublished Ph.D. dissertation, University of Pennsylvania. Philadelphia: 1965.

GOLDWIN, Robert A., ed. Representation and Misrepresentation. Chicago: Rand McNally & Company, 1968.

GRAZIA, Alfred De. Essay on Apportionment & Representative Government. American Enterprise, 1963.

GRIMES, Alan P. Equality in America. New York: Oxford University Press, 1964.

HACKER, Andrew. Congressional Districting 54. Washington: The Brookings Institution, 1964.

HAMILTON, Howard D., ed. Legislative Apportionment: Key to Power. New York: Harper and Row, 1964.

HANSON, Royce. The Political Thicket. Englewood Cliffs: Prentice-Hall, 1966.

HAVARD, William C., and BETH, Loren P. The Politics of Misrepresentation. Baton Rouge: Louisiana State University Press, 1962.

JEWELL, Malcolm E., ed. The Politics of Reapportionment. New York: Atherton Press, 1962.

LARSON, James E. Reapportionment and the Courts. Tuscaloosa: Bureau of Public Administration, University of Alabama Press, 1962.

LEE, Calvin B. T. One Man, One Vote. New York: Charles Scribner's Sons, 1967.

LUCE, Robert. Legislative Principles. Boston: Houghton, Mifflin, 1930.

_____. Legislative Problems. New York: Da Capo Press, 1971.

MC KAY, Robert B. Reapportionment: The Law and Politics of Equal Representation. New York: Clarion Press, 1970.

MC MAHON, John V. L. An Historical View of the Government of Maryland. Baltimore: F. Lucas, Jr., 1831.

NATIONAL MUNICIPAL LEAGUE. Court Decisions on Legislative Apportionment. 13 vols. New York: 1962.

NEVINS, Allan. The American States During and After the Revolution. New York: The Macmillan Co., 1924.

O'ROURKE, Terry B. Reapportionment: Law, Politics, Computers. Washington, D.C.: American Enterprise Institute, 1972.

POORE, Benjamin P. The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States. 1878.

REED, Alfred Z. Territorial Basis of Government Under the State Constitutions. Columbia University, Studies in the Social Sciences Ser. No. 106, 1968. Repr. of 1911. AMS Pr.

ROBECK, Bruce W. Legislators & Party Loyalty: The Impact of Reapportionment in California. University Press of America, 1978.

ROSSITER, Clinton. Seedtime of the Republic. New York: Harcourt, Brace and World, Inc., 1953.

SCHMECKLEBRIER, Lawrence. Congressional Apportionment 132. Washington, D.C.: Brookings Institution, 1941.

SCHUBERT, Glendon, ed. Reapportionment. New York: Charles Scribner's Sons. 1965.

SHAPIRO, Martin M. Supreme Court and Constitutional Rights: Readings in Constitutional Law. Scott F., 1967.

STACKPOLE, Everett S. History of New Hampshire vol. 3. New York: American History Society.

STAMBER, Richard L. County Board Reapportionment Handbook. Madison: University of Wisconsin, University Extension Bookstore, 1971.

THORPE, Francis Newton, ed. The Federal and State Constitutions, Colonial Charters and Other Organic Laws. 7 vols. Washington, D.C.: U.S. Government Printing Office, 1909.

TWENTIETH CENTURY FUND. One Man - One Vote. New York: 1962.

TYLER, Gus, and WELLS, David I. The New Gerrymander Threat 78. American Federationists 1-7, 1971.

U.S. Advisory Commission on Intergovernmental Relations. Apportionment of State Legislatures. Washington, D.C.: 1962.

U.S., The Library of Congress Legislative Reference Service. Apportionment of Local Political Subdivisions and Judicial Districts. Washington, D.C.: 1965.

_____. Apportionment of State Legislatures. Washington, D.C.: 1965.

_____. Congressional Districting and Legislative Apportionment: Selected References. Washington, D.C.: 1965.

_____. Legislative Apportionment - Statistics. Washington, D.C.: 1965.

WALDRON, Ellis. Legislative Reapportionment. Montana: Constitutional Convention Committee, Montana Constitutional Convention, 1971-72.

WARDEN, Moxley, compiler. Congressional Districts in the 1970s. Washington, D.C.: Congressional Quarterly, Inc., 1973.

Articles

ADAMS, Bruce. "The Unfinished Revolution: Beyond 'One-Person, One-Vote.'" National Civic Review 67 (January 1978): 19-25.

AUSTIN, Robert Jackson. "The Redistricting Process After One Man-One Vote: The Case of Virginia." Ph.D. dissertation, University of Virginia, 1976.

BAKER, Gordon E. "New District Criteria." National Civic Review 57 (1968): 291-97.

_____. "Redistricting in the Seventies: The Political Thicket Deepens." National Civic Review 61 (June 1972): 277-85.

BALL, Howard. The Warren Court's Conception of Democracy: An Evaluation of the Supreme Court's Apportionment Opinions. Cranbury, N.J.: Fairleigh Dickinson University Press, 1971. (Same title as a Ph.D. dissertation, Rutgers University, 1970.)

BEISNER, Edward N. "A Comparative Analysis of State and Federal Judicial Behavior: The Reapportionment Cases." American Political Science Review 62 (1968): 788-95.

_____. Status of a Malapportioned Legislature." Dickinson Law Review 72 (1968): 553.

BILLINGSLEY, Keith R., and DUNN, Delmer E. "Apportionment in the 1970s: The States and the Bureau of the Census." State Government 47 (Summer 1974): 180-84.

BOYD, William J. D. "Apportionment and Districting: Problems of Compliance." National Civic Review 60 (April 1971): 199-203.

_____. "Apportionment and Redistricting: Problems of Compliance." National Civic Review 60 (May 1971): 253-58.

BUCHANAN, Christopher. "GOP Hopes for Seat at Redistricting Table." Congressional Quarterly Weekly Report 36 (July 29, 1978): 1933-36.

_____. "States Seek Ways to Make Redistricting Less Partisan." Congressional Quarterly Weekly Report 35 (November 26, 1977): 2481-83.

BULLOCK, Charles S. III. "Redistricting and Congressional Stability, 1962-1972." Journal of Politics 37 (May 1975): 569-75.

BURKS, Stephen Wheeler. "The Influence of Reapportionment on the Distribution of State Aid to Education." Ph.D. dissertation, Michigan State University, 1973.

CASJENS, Robert S. "The California Senate: The Impact of Reapportionment on its Educational Policy Decisions." Ph.D. dissertation, Claremont Graduate School, 1974.

CELLER, Emanuel. "Congressional Apportionment - Past, Present, and Future." 17 Law and Contemporary Problems 268 (1952).

"CENSUS and Apportionment: States' Gains and Losses in House Seats as Projected from Preliminary 1990 Data." Congressional Quarterly Weekly Report 28 (1970): 2193-96.

CHO, Yong Hyo, and FREDERICKSON, George. "The Effects of Reapportionment: Subtle, Selective, Limited." National Civic Review 63 (June 1974): 357-62.

CHUMLEA, Wesley. "Congressional Redistricting in Texas: Pattern for the Seventies." Public Affairs Comment 18 (November 1971): 1-6.

"CONGRESSIONAL Districts: A Special 1972 Election Report." Congressional Quarterly Weekly Report 29 (March 26, 1971): 643-71.

COOMER, James Chester, Jr. "The Impact of Reapportionment on the Tennessee Legislative Process: An Analysis of the Tennessee General Assembly, 84th and 85th Sessions." Ph.D. dissertation, University of Tennessee, 1975.

DAUER, Manning J., and MAGGIOTTO, Michael A. "The Status of Multi-Member Local Districts in State and Local Government." National Civic Review 68 (January 1979): 24-27.

DE LONG, Dennis Richard. "Reapportionment, Representativeness, and Rural County Legislators in New York State." Ph.D. dissertation, S.U.N.Y. at Albany, 1978.

DIXON, Karl H. "Reapportionment and Reform: The Florida Example." National Civic Review 62 (November 1973): 548-53.

DIXON, Robert G., Jr. "'One Man, One Vote': What Happens Next?" National Civic Review 60 (May 1971): 259-65.

DYE, Thomas R. "Income Inequality and American Politics." American Political Science Review 63 (1969): 157-62.

EISENBERG, Ralph. Guide to County Redistricting. Charlottsville, Virginia: Institute of Government, University of Virginia, 1970.

ERIKSON, Robert S. "The Partisan Impact of State Legislative Reapportionment." Midwest Journal of Political Science 15 (February 1971): 47-51.

ERIKSON, R. S. "Malapportionment, Gerrymandering, and Party Fortunes in Congressional Elections." American Political Science Review 66 (December 1972): 1234-45.

FEIG, Douglas G. "Expenditures in the American States: The Impact of Court-Ordered Legislative Reapportionment." American Politics Quarterly 6 (July 1978): 309-24.

FREDERICKSON, George H., and CHO, Yong Hyo. "Sixties' Reapportionment: Is It Victory or Delusion?" (United States: Based on Conference Paper). National Civic Review 60 (1971): 73-78.

GAZELL, J. A. "One Man, One Vote; Its Long Germination." Western Political Quarterly 23 (Summer 1970): 445-62.

HARDY, Leroy C., and SOHNER, Charles P. "Constitutional Challenge and Political Response: California Reapportionment, 1965." Western Political Quarterly 28 (December 1970): 733-51.

HEATH, Robert, and MELROSE, Robert H., Jr. "New Lawmakers? Few Changes Evident in the Composition of Pennsylvania's Legislature After Redistricting." National Civic Review 58 (October 1969): 410-14.

HILL, A. Spencer. "The Reapportionment Decisions: A Return to Dogma." Journal of Politics 31 (February 1969): 186-213.

JONES, Murel Matthews, Jr. "The Impact of Annexation-Related City Council Reapportionment on Black Political Influence: The Cities of Richmond and Petersburg, Virginia." Ph.D. dissertation, Howard University, 1977.

KATZ, Ellis. "Apportionment and Majority Rule." Publius 1 (no. 1, 1971): 141-61.

KENNEDY, Cornelius B. "The Reapportionment Decisions: A Constitutional Amendment Is Needed." A.B.A.J. 123 (1965).

KENTON, Carolyn L., and WANAT, Susan W. "Reapportionment: The Issues." State Government 45 (Autumn 1972): 214-21.

KNIGHT, Barbara B. "The States and Reapportionment: One-Man, One-Vote Reevaluated." State Government 49 (Summer 1976): 155-60.

KNOKE, David, and HENRY, Constance. "Political Structure of Rural America." Annals of the American Academy of Political and Social Science 429 (January 1977): 51-62.

KUGISAKI, Craig. Hawaii Constitutional Convention Studies, 1978: Article 3, v. 2, Reapportionment in Hawaii. Honolulu, Hawaii: Hawaii Legislative Reference Bureau, May 1978.

LEBEDOFF, D. "Essential Reform: Redistricting." Harper 253 (October 1976): 16.

LE BLANK, Hugh L. "Voting in State Senates." Midwest Journal of Political Science 13 (1969): 33-57.

"LEGISLATURE Struggles with Reapportionment Problems Behind the Scenes (California)." California Journal 11 (June 1971): 68-74.

LEHNE, Richard C. "New York Reapportionment: The City and the State." Maxwell Review 8 (Winter 1971-72): 27-32.

_____. "A Public Policy in the Empire State: Reapportionment, 1964-1966." Ph.D. dissertation, Syracuse University, 1969.

_____. "Shape of the Future: Suburbs Seen as the Biggest Bloc in Congress for the First Time After 1970 Reapportionment." National Civic Review 58 (September 1969): 351-55.

MC DOWELL, James Lynn. "Changes in the Apportionment System: The Illinois General Assembly." Ph.D. dissertation, University of Illinois, 1972.

MORILL, R. L. "Redistricting Revisited." Association of American Geography Annual 66 (December 1977): 641-45.

NIEMI, R. G., and DEEGAN, J., Jr. "Theory of Political Districting." American Political Science Review 72 (December 1978): 1304-23.

NORAGON, Jack L. "Congressional Redistricting and Population Composition, 1964-1970." Midwest Journal of Political Science 16 (May 1972): 295-302.

O'ROURKE, Timothy Gerald. "A Comparative Analysis of the Impact of Reapportionment on Six State Legislatures." Ph.D. dissertation, Duke University, 1977.

ORR, Douglas M., Jr. "The Persistence of the Gerrymander in North Carolina Congressional Redistricting." Southeastern Geographer 9 (November 1969): 39-54.

PADILLO, Fernando V. "Legislative Gerrymandering of California Chicanos." Ph.D. dissertation, University of California at Santa Barbara, 1977.

POLSBY, Nelson W., ed. Reapportionment in the 1970s (published for the Institute of Government Studies). Berkeley, California: University of California Press, 1971.

PULSIPHER, Allan G., and WEATHERBY, James L., Jr. "Malapportionment, Party Competition, and the Functional Distribution of Governmental Expenditures." American Political Science Review 2 (1968): 1207-19.

"REAPPORTIONMENT, 1971 (Congressional and State Legislative Districts)." Public Affairs Research Analysis (January 1971) 1-16.

REAPPORTIONMENT in the States. Lexington, Kentucky: Council of State Governments, June 1972.

"REDISTRICTING: Intervention of U.S. District Court in Illinois." Congressional Quarterly Weekly Report 29 (October 23, 1971): 2180-85.

ROBECK, B. W. "Legislative Partisanship, Constituency, and Malapportionment; The Case of California." American Political Science Review 66 (December 1972): 1246-55.

_____. "Urban-Rural and Regional Voting Patterns in the California Senate Before and After Reapportionment." Western Political Quarterly 23 (December 1970): 785-94.

ROBERTSON, James. "Reapportionment and Minority Political Power." Civil Rights Digest 4 (Spring 1971): 2-6.

ROSSOTTI, Jack Edward. "Measuring Some Effects of Apportionment on State Policy Outcomes, 1957-1969." Ph.D. dissertation, Syracuse University, 1972.

RUBERTI, Ernest Michael. "The Diversity of Interest Principle: A Proposal for an Apportionment System." Ph.D. dissertation, Syracuse University, 1971.

RUTKOWSKI, Conrad P. "State Politics and Apportionment: The Case of New York." Ph.D. dissertation, Fordham University, 1971.

SALZMAN, Ed. "Masters' Redistricting Outlook." California Journal 4 (October 1973): 333-38.

SCHWAB, Larry Minard. "The Effects of the Court Ordered Redistricting and the 1970 Reapportionment and Redistricting on the U.S. House of Representatives." Ph.D. dissertation, Case Western Reserve University, 1975.

SHARKANSKY, Ira. "Reapportionment and Roll Call Voting: The Case of the Georgia Legislature." Social Science Quarterly 51 (June 1970): 129-37.

SILVA, Ruth C. "Compared Values of the Single- and Multi-Member Legislative District." 17 Western Political Quarterly 504 (1964).

SINGLETON, Julius Allen. "The Effects of Reapportionment on the Oklahoma House of Representatives." Ph.D. dissertation, Texas Tech University, 1970.

SLINGSLEY, Stephen D. "Community the Key: This Principle Should Be Kept Paramount with Population Equality in Legislative Redistricting." National Civic Review 58 (February 1969): 61-66.

SMITH, George Bundy. "Reapportionment and Black America: A Study of the Effect of Reapportionment on the Election of Blacks to American Legislatures." Ph.D. dissertation, New York University, 1974.

SMITH, Stephen N. "Legislative Reapportionment in Kansas in the 1960s: A Case Study." Ph.D. dissertation, University of Kansas, 1970.

SOKOLOW, A. D., and BRANDSMA, R. W. "Partisanship and Seniority in Legislative Committee Assignment: California After Reapportionment." Western Political Quarterly 24 (December 1971): 740-60.

STEINBACH, C. "New and Improved Census." State Government 51 (Winter 1978): 17-19.

"SUBURBS Will Be the Biggest Gainers After 1970 Census." Congressional Quarterly Weekly Report 27 (November 21, 1969): 341-46.

THEOBALD. H. Rupert. "Equal Representation in Wisconsin: A Study of Legislative and Congressional Apportionment." Ph.D. dissertation, University of Wisconsin, 1972.

TODD, John Richard. "Reapportionment and Legislative Outputs: A Florida Case Study." Ph.D. dissertation, University of Florida, 1971.

TYLER, Gus, and WELLS, David I. "The New Gerrymander Threat." American Federationists (1971): 1-7.

USLANER, E. M. "Comparative State Policy Formation, Interparty Competition, and Malapportionment: A New Look at V. D. Key's Hypothesis." Journal of Politics 40 (May 1978): 409-32.

VAN METER, Donald Stuart. "The Policy Implications of State Legislative Apportionment: A Longitudinal Analysis." Ph.D. dissertation, University of Wisconsin, 1972.

VOCINO, Thomas Joseph. "Assessing the Impact of the 1965 Reapportionment on the Politics and Policies of the Illinois General Assembly." Ph.D. dissertation, Southern Illinois University, 1973.

VOCINO, Thomas. "Urban Representation and Key Legislative Positions: Another View." Virginia Social Science Journal 9 (April 1974): 1-10.

WELLS, David I. "'Affirmative Gerrymandering' Compounds Districting Problems." National Civic Review 67 (January 1978): 10-12.

_____. "The Impact of Gerrymandering: The 1972 Elections." American Federationist 79 (February 1972): 14-20.

_____. "Redistricting in New York State: It is a Question of Slicing the Salami." Empire State Report 4 (October-November 1978): 9-13.

WHEELER, Charles N., III. "Reapportionment Begins Now!" Illinois Issues 4 (August 1978): 7-14.

Articles in Legal Periodicals

ADAMS, Bruce. "A Model State Reapportionment Process: The Continuing Quest for 'Fair and Effective Representation.'" Harvard Journal on Legislation 14 (June 1977): 825-904.

ADAMS, J. P. "Legislation by Census: The Alabama Experience." Alabama Law Review 21 (Spring 1969): 401.

"APPORTIONMENT: Past to Future." Montana Law Review 33 (Winter 1972): 101.

"APPORTIONMENT Problems in Local Government." Notre Dame Lawyer 49 (Fall 1974): 671-85.

"AT-LARGE Voting Dilution Claims: The Fifth Circuit Requires Racially Motivated Discrimination." Cumberland Law Review 9 (Fall 1978): 443-55.

ATLESON, James B. "The Aftermath of Baker v. Carr--An Adventure in Judicial Experimentation." 51 California Law Review 535 (1963).

AUERBACH, Carl A. "The Reapportionment Cases: One Person, One Vote--One Vote, One Value." Supreme Court Review (Chicago: University Chicago Press, 1964): 1-87.

BAKER, G. E. "One Man, One Vote, and 'Political Fairness' --or, How the Burger Court Found Happiness by Rediscovering Reynolds v. Sims." Emory Law Journal 23 (Summer 1974): 701-23.

BARBER, K. L. "Partisan Values in the Lower Courts: Reapportionment in Ohio and Michigan." Case Western Reserve Law Review 20 (1969): 401.

BAYH, B., et al. "Symposium." Harvard Journal on Legislation 6 (1969): 127.

BELSKY, M. H. "Reapportionment in the 1970s--a Pennsylvania Illustration." Temple Law Quarterly 47 (Fall 1973): 3-37.

BLACK, Charles. "Inequities in Districting for Congress: Baker v. Carr and Colegrove v. Green." The Yale Law Journal 72 : 13-22.

BLACK, Charles L., Jr. "The Proposed Amendment of Article V: A Threatened Disaster." 72 Yale Law Journal 957 (1963).

"BURGER Court and Reapportionment: From One Person, One Vote to One Corporation, Many Votes." Georgetown Law Journal 62 (Fall 1974): 1001-18.

CASPER, G. "Apportionment and the Right to Vote: Standards of Judicial Scrutiny." Supreme Court Review (1973): 1-32.

CARUSO, L. R. "Rocky Road from Colegrove to Wesberry: Or, You Can't Get There from Here." Tennessee Law Review 36 (Summer 1969): 621.

"CHALLENGES to At-Large Election Plans: Modern Local Government on Trial." University of Cincinnati Law Review 47 (1978): 64-77.

"CHAVIS v. Whitcomb: Apportionment, Gerrymandering, and Black Voting Rights." Rutgers Law Review 24 (Spring 1970): 521.

CLEM, Alan L. "Guidelines for Solving the Representation Riddle." 8 S.D.L. Review 109 (1963).

CLINTON, R. N. "Further Explorations in the Political Thicket: The Gerrymander and the Constitution." Iowa Law Review 59 (October 1973): 1-47.

"COMPENSATORY Racial Reapportionment." Stanford Law Review 25 (November 1972): 84.

"COMPENSATORY Racial Redistricting: United Jewish Organizations of Williamsburgh, Inc. v. Carey." Southwest Law Journal 31 (Winter 1977): 1143-49.

"CONGRESSIONAL Redistricting: Missouri Again Fails to Meet Constitutional Requirements." Missouri Law Review 35 (Spring 1970): 246.

"CONSTITUTIONAL Challenges to Gerrymanders." University of Chicago Law Review 45 (Summer 1972): 845-81.

"CONSTITUTIONAL Law--Congressional Districting--'One Man-One Vote' Demands Near Mathematical Precision." DePaul Law Review 19 (Autumn 1969): 152.

"CONSTITUTIONAL Law--Congressional Reapportionment--Equal Representation Requirement Requires a Good Faith Effort to Achieve Absolute Equality." Villanova Law Review 15 (Fall 1969): 223.

"CONSTITUTIONAL Law--Discrimination as to Localities--County Apportionment." Case Western Reserve Law Review 19 (1968): 766.

"CONSTITUTIONAL Law--Due Process--Non-Retrogressive Reapportionment Plan Upheld." Marquette Law Review 60 (Fall 1976): 173-85.

"CONSTITUTIONAL Law--Elections--Representative Government--in Apportioning Its Legislative Districts, a State May Deviate from One Man, One Vote If It Can Show a Rational State Policy and Maintain Substantial Equality." University of Cincinnati Law Review 42 (1973): 788-94.

"CONSTITUTIONAL Law--Equal Protection--At-Large Election of Parish Officials Unconstitutionally Dilutes Voting Strength of Black Voters Where There Persist the Effects of a State Policy that Has Historically Hindered Participation of Blacks in Electoral Process." Alabama Law Journal 26 (Fall 1973): 163-76.

"CONSTITUTIONAL Law--Local Reapportionment--'One Man, One Vote' Held Applicable to Special-Function Units of Local Governments." Villanova Law Review 16 (November 1970): 158.

"CONSTITUTIONAL Law--Mahan v. Howell (93 Supreme Court 979)--Forward or Backward for the One Man-One Vote Rule." DePaul Law Review (Summer 1973): 912-25.

"CONSTITUTIONAL Law--Multimember Districting as a Violation of Equal Protection." Wisconsin Law Review (1970): 552.

"CONSTITUTIONAL Law--One Man, One Vote--Application to Election of School District Trustees." Land & Water Law Review 7 (1972): 289.

"CONSTITUTIONAL Law--Reapportionment." Vanderbilt Law Review 21 (1968): 1104.

"CONSTITUTIONAL Law--Reapportionment--Compensatory Racial Reapportionment but No Right to Community Unity." Suffolk University Law Review 9 (Summer 1975): 1496-1511.

"CONSTITUTIONAL Law--Reapportionment--Legislative Consideration of Race in Reapportionment Allowed Where State Districting Plan Directed and Approved by Attorney General under Federal Statute and Resulting Districts Not Unfairly Prejudicial to White Group." Georgetown Law Journal 63 (July 1975): 1321-35.

"CONSTITUTIONAL Law--Reapportionment--Potential Dilution of Minority Voting Strength Not Within Area of Constitutional Review." St. Mary's Law Journal 7 (1975): 447-54.

"CONSTITUTIONAL Law--Reapportionment--a Substantive Constitutional Right to Minority Representation in the Legislature?" North Carolina Law Review 50 (December 1971): 104.

"CONSTITUTIONAL Law--Reapportionment--Variation of 16.4 Percent in the Population of Districts of a State Legislature Held Constitutional." Cumberland-Samford Law Review 4 (Fall 1973): 387-93.

"CONSTITUTIONAL Law: State Apportionment--a Still Emerging Standard for Equal Protection." University of Florida Law Review 25 (Summer 1973): 829-37.

"CONSTITUTIONAL Law--Supreme Court Declares New Standard of Proof for Groups Alleging Submergence in a Multi-Member Election District." Seton Hall Law Review 3 (Fall 1971): 178.

"CONSTITUTIONALITY of the Use of a One Unit-One Vote Rule by Maturing Councils of Governments." Utah Law Review 1971 (Spring 1971): 94.

COOK, B. B. "Judicial Roles and Redistricting in Kansas." Kansas Law Review 17 (April 1969): 391.

"COUNCILS of Governments Mark Their Initial Escape from Equal Apportionment." Connecticut Law Review 7 (Spring 1975): 529-51.

"DISCRIMINATORY Effects of Elections-at-Large: The 'Totality of Circumstances' Doctrine." Albany Law Review 91 (June 1978): 363-87.

DIXON, R. G., Jr. "Computers and Redistricting." See "Symposium on Legislative Reapportionment."

_____. "Warren Court Crusade for the Holy Grail of 'One Man-One Vote.'" Supreme Court Review (1969): 219.

DIXON, R. G., Jr., and HATHEWAY, G. W., Jr. "Seminal Issue in State Constitutional Revision: Reapportionment Method and New Standards." William & Mary Law Review 10 (Summer 1969): 888.

DOBSON, D. "Reapportionment Problems." North Dakota Law Review 48 (Winter 1972): 281.

DOODY, J. J. III. "Equal Protection and Connecticut's Regional School Boards: The Parameters of 'One Person, One Vote.'" Connecticut Bar Journal 51 (September 1977): 243-65.

EDWARDS, Charles P. "Theoretical and Comparative Aspects of Reapportionment and Redistricting: With Reference to Baker v. Carr." 15 Vanderbilt Law Review 1265 (1962).

EDWARDS, James M. "The Gerrymander and 'One-Man, One-Vote.'" New York University Law Review 46 (November 1971): 879-99.

"ELECTION Law - Multimember Districts." Annual Survey of American Law (1978): 91-112.

"ELECTIONS--Reapportionment--Section 5 of the Voting Rights Act of 1965, Which Requires Prior Approval by Federal Officials of Changes in State Voting Laws, Held Applicable to Reapportionment Plans of State Legislatures." Indiana Law Review 7 (1974): 579-91.

ELLIOTT, W. "Prometheus, Proteus, Pandora, and Procrustes Unbound: The Political Consequences of Reapportionment." University of Chicago Law Review 37 (Spring 1970): 474.

ENGSTROM, R. L. "Supreme Court and Equipopulous Gerrymandering: A Remaining Obstacle in the Quest for Fair and Effective Representation." Arizona State Law Journal (1976): 277-319.

"EQUAL Protection in Legislative Apportionment: A New Double Standard." North Carolina Central Law Journal 5 (Spring 1974): 308-26.

"EQUAL Protection of the Laws--Reapportionment--Multimember Districting of County Governing Bodies May Work Unconstitutional Dilution of Minority Voting Strength." Harvard Law Review 87 (June 1974): 1851-60.

"FAIR and Effective Representation: Power to the People." Hastings Law Journal 26 (September 1974): 190-214.

"FEDERAL Courts - Supervisory Power - Court Ordered Legislative Apportionment." Duquesne Law Review 14 (Spring 1976): 521-30.

FISHMAN, C. "Reapportionment and Racial Gerrymandering." Black Law Journal 2 (Summer 1972): 103.

"FLEXIBLE Standard for State Reapportionment Cases." Fordham Law Review 42 (March 1974): 641-52.

FREIDELBAU, Stanley H. "Baker v. Carr: The New Doctrine of Judicial Intervention and Its Implications for American Federalism." 29 University Chicago Law Review 673 (1962).

GARDNER, S. "Fulle v. Dunne: The Limits of Local Reapportionment." Chicago-Kent Law Review 50 (Winter 1973): 446-64.

GILLIARD, Joseph F. "Racial Gerrymandering in the Deep South." Alabama Law Review 22 (Spring 1970): 319-48.

GORDON, J. H., and WOODWARD, J. D. "Congressional Reapportionment: The Pandora's Box of Judicial Intervention in Politics and How to Put the Lid Back On." Memphis State University Law Review 6 (Spring 1976): 104-20.

GREENE, L. S., and HOBDAY, V. C. "Short Inquiry into Tennessee County Court Apportionment by the Federal Judiciary." Tennessee Law Review 37 (Spring 1970): 528.

"GROUP Representation and Race Conscious Apportionment: The Roles of States and the Federal Courts." Howard Law Review 91 (June 1978): 1847-73.

HAGMAN, D. G., and DISCO, S. G. "One-Man One-Vote as a Constitutional Imperative for Needed Reform of Incorporation and Boundary Change Laws." Urban Law 2 (Fall 1970): 459.

HALPIN, S. A., Jr. and ENGSTROM, R. L. "Racial Gerrymandering and Southern State Legislative Redistricting: Attorney General Determinations under the Voting Rights Act." Journal of Public Law 22 (1973): 37.

HANSON, Roger A., and CREW, Robert E., Jr. "The Policy Impact of Reapportionment." Law and Society Review 8 (Fall 1973): 69-93.

HANSON, Royce. "Courts in the Thicket: The Problem of Judicial Standards in Apportionment Cases." 12 American University Law Review 51 (1963).

HARDY, L. C. "Congressional Redistricting in California, 1965-67: The Quilting Bee and Crazy Quilts." San Diego Law Review 10 (June 1973): 757-92.

_____. "Considering the Gerrymander." Pepperdine Law Review 4 (Spring 1977): 243-84.

HESS, S. W. "One-Man One-Vote and County Political Integrity: Apportion to Satisfy Both." Jurimetrics Journal 11 (March 1971): 123.

IRWIN, William P. "Representation and Election: The Reapportionment Case in Retrospect." Michigan Law Review 67 (February 1969): 729-54.

JEWELL, Malcolm E. "Minority Representation: A Political or Judicial Question?" 53 Kentucky Law Journal 267 (1964-65).

FIGURE 4
SUMMARY

T. E.	LIMITS		NUMBER OF UNITS					COST DUE TO	
	L_P PERFORM.	L_T TEST	GOOD – ACCEPTED	BAD – REJECTED	GOOD – REJECTED	BAD – ACCEPTED	TOTAL WTD	GOOD REJECTED	BAD – ACCEPTED
POOL I R=1.8	± 3.5	± 3.5							
	± 3.5	± 2.5							
	± 3.5	± 4.5							
POOL II R=3.1	± 3.5	± 3.5							
	± 3.5	± 2.5							
	± 3.5	± 4.5							

σ (1000 U.U.T.'s)=
σ (T.E. POOL I) =
σ (T.E. POOL II)=

ACCURACY RATIOS
POOL I: 1.78
POOL II: 3.11

JOHNSON, R. E. "Analysis of Weighted Voting as Used in Reapportionment of County Governments in New York State." Albany Law Review 34 (Fall 1969): 1.

"JUDICIAL Deference in the Representation Controversy: A Further Erosion of the Judiciability Doctrine." Brooklyn Law Review 44 (Fall 1977): 143-74.

"LEGISLATIVE Apportionment: The Contents of Pandora's Box and Beyond." Hastings Constitutional Law Quarterly 1 (Spring 1974): 289-309.

"LEGISLATIVE Reapportionment: A Policy Emerges." Baylor Law Review 25 (Fall 1973): 660-73.

LERNER, Richard E. "The Role of the State Judiciary in Redistricting and Reapportionment." 18 New York University Intra. Law Review 79 (1963).

LEVENTHAL, H. "Courts and Political Thickets." Columbia Law Review 77 (April 1977): 345-87.

"LIMITS to State Reapportionment through Multimember Districting." DePaul Law Review 23 (Winter 1974): 821-37.

LINDELL, G. J. "Judicial Review and the Composition of the House of Representatives." Federal Law Review 6 (1974): 84-106.

MC CLAIN, J. D., Jr. "Reapportionment Recapitulated: 1960-1970." Georgia State Bar Journal 7 (November 1970): 191.

MARTIN, P. L. "The Constitutional Status of Local Government Reapportionment." Valparaiso University Law Review 6 (Spring 1972): 237-59.

_____. "County Reapportionment in Virginia." Virginia Law Review 65 (October 1969): 1167.

_____. "Courts and Reapportionment: The Exemption of Judicial Elections." Kentucky Law Journal 62 (1973-1974): 43-57.

_____. "Local Reapportionment." Journal Urban Law 47 (1969-1970); 345.

_____. "Local Reapportionment: The Exemption of Water Management Districts." Santa Clara Lawyer 14 (Fall 1973): 31-45.

_____. "Quest for Racial Representation in Legislative Apportionment." Howard Law Journal 21 (1978): 455-79.

_____. "The Supreme Court and Local Government Reapportionment: The Second Phase." Baylor Law Review 21 (Winter 1909): 5-17.

_____. "Supreme Court and Local Reapportionment: The Fourth Phase." South Carolina Law Review 23 (1971): 749.

_____. "The Supreme Court and Local Reapportionment: The Third Phase." George Washington Law Review 39 (October 1970): 102-22.

_____. "Supreme Court and Local Reapportionment: Voter Inequality in Special-Purpose Units." William & Mary Law Review 15 (Spring 1974): 601-14.

_____. "Supreme Court and State Legislative Reapportionment: The Retreat from Absolutism." Valparaiso University Law Review 9 (Fall 1974): 31-54.

"MINORITY Challenges to At-Large Elections: The Dilution Problem.: Georgia Law Review 10 (Winter 1976): 353-90.

MITCHELL, Stephen R. "Judicial Self-Restraint: Political Questions and Malapportionment." 39 Washington Law Review 761 (1964).

MILLER, Arthur Selwyn. "Toward a Concept of Constitutional Duty." Supreme Court Review (Chicago: University of Chicago Press, 1968): 199-246.

MORRILL, R. L. "Lampadephoria on Criteria for Redistricting." Washington Law Review 48 (August 1973): 847-56.

"MULTIMEMBER Legislative Districts: Requiem for a Constitutional Barrier." University of Florida Law Review 29 (Summer 1977): 703-29.

NAGEL, Stuart S. "Applying Correlation Analysis to Case Prediction." 42 Texas Law Review 1006 (1964).

NAGEL, S. S. "Computers: The Law and Politics of Redistricting." See "Symposium on Legislative Reapportionment."

NATIONAL MUNICIPAL LEAGUE. "Beyond One Man, One Vote." National Civic Review (February 1976), and "Legislative Redistricting by Non-Legislative Agencies." (August 1967).

"ONE Foot In, One Foot Out: The Political Thicket." Urban Law Annual 7 (1974): 408-13.

"ONE Man-One Vote and Judicial Selection." Nebraska Law Review 50 (Summer 1971): 642.

"ONE Person, One Vote." North Kentucky Law Review 5 (1978): 241-69.

PARKER, F. R. "County Redistricting in Mississippi: Case Studies in Racial Gerrymandering." Mississippi Law Journal 44 (June 1973): 391.

"POLITICAL Gerrymandering: A Statutory Compactness Standard as an Antidote for Judicial Impotence." University of Chicago Law Review 41 (Winter 1974): 398-416.

"POLITICAL Representation: The Search for Judicial Standards." Brooklyn Law Review 43 (Winter 1977): 431-87.

"PROPORTIONAL Representation by Race: The Constitutionality of Benign Racial Redistricting." Michigan Law Review 74 (March 1976): 820-41.

QUINLAN, Patrick J. "Legislative Reapportionment: A Policy Emerges." Baylor Law Review 25 (Fall 1973): 660-73.

"RACIAL Gerrymandering." Chicago-Kent Law Review 51 (1974): 584-96.

"RACIAL Gerrymandering in the Deep South." Alabama Law Review 22 (Spring 1970): 319.

"REAPPORTIONMENT and Minority Politics." Columbia Human Rights Law Review 6 (Spring 1974): 107-28.

"REAPPORTIONMENT Controversy--The Process of Dilution." Memphis State University Law Review 4 (Spring 1974): 565-77.

"REAPPORTIONMENT: The Delicate Balance." Howard Law Journal 18 (1973): 184-99.

"REAPPORTIONMENT--Legislative Bodies--Significant Deviation from Standard of Substantial Population Equality of State Legislative Districts is Permissible to Provide Representatives for Two Island Counties." Michigan Law Review 67 (January 1969): 587.

"REAPPORTIONMENT--Nine Years into the 'Revolution' and Still Struggling." Michigan Law Review 70 (January 1972): 586-616.

"REAPPORTIONMENT--'One Man One Vote'--Local Government." Kentucky Law Journal 58 (Spring 1969-1970): 599.

"REAPPORTIONMENT on the Sub-State Level of Government: Equal Representation or Equal Vote?" Boston University Law Review 50 (Spring 1970): 231.

"REPRESENTATIVE Government--Constitutional Law--Elections--Deliberate Use of Race to Reapportion is Constitutional Provided It Results in No Racial Slub (sic?) or Stigma, Regardless of Compliance with the Voting Rights Act." University of Cincinnati Law Review 46 (1977): 912-23.

REULING, J. A., Jr. "Apportionment in Oregon." Willamette Law Journal 5 (Winter 1969): 203.

SCANLAN, Alfred L. "Problems of Pleading, Proof, and Persuasion in a Reapportionment Case." 38 Notre Dame Law 415 (1963).

"SECTION 5: Growth or Demise of Statutory Voting Rights?" Mississippi Law Journal 48 (Summer 1977): 818-51.

SENTELL, R. P., Jr. "Avery v. Midland County: Reapportionment and Local Government Revisited." Georgia Law Review 3 (1968): 110.

SHETH, P. S., and HESS, S. W. "Multiple Criteria in Political Redistricting: Development of Relative Value." See "Symposium on Legislative Reapportionment."

SHULMAN, W. Z. "Legislative Reapportionment: From Jackman to Davenport--End of a Decade." Rutgers Law Review 28 (1975 special issue): 272-306.

SMITH, George Bundy. "The Failure of Apportionment: The Effect of Reapportionment on the Election of Blacks to Legislative Bodies." Howard Law Journal 18 (No. 3, 1975): 639-84.

"SPECIAL Service Districts in a City-County Consolidation: Conflict between Metropolitan Reform and 'One Man - One Vote' in Indianapolis-Marion County." Indiana Law Journal 47 (Fall 1971): 101.

STARR, K. W. "Federal Judicial Invalidation as a Remedy for Irregularities in State Elections." New York University Law Review 49 (December 1974): 1092-129.

"STATE Legislative Reapportionment: A New Era." Albany Law Review 38 (1974): 798-825.

STEWART, W. H., Jr. "Reapportionment with Census Districts: The Alabama Case." Alabama Law Review 24 (Summer 1972): 693.

"STUDENT Voting and Apportionment: The 'Rotten Boroughs' of Academia." Yale Law Journal 81 (November 1971): 35-60.

"SYMPOSIUM on Legislative Reapportionment."
Dixon, R. G. "Computers and Redistricting."
Nagel, S. S. "Computers: The Law and Politics of Redistricting."
Sheth, P. S., and Hess, S. W. "Multiple Criteria in Political Redistricting: Development on Relative Value."
Rutgers Journal of Computers and Law 2 (1971): 13.

THOMPSON, W. N. "Problems of Legislative Representation: A Proposed Solution." Wake Forest International Law Review 6 (March 1970): 235.

THORNTON, J. E. "To Wean A Judge from Tyranny." Alabama Lawyer 36 (January 1975): 29-63.

"UNITED Jewish Organizations v. Carey and the Need to Recognize Aggregate Voting Rights." Yale Law Journal 87 (January 1978): 571-602.

VOCINO, J., and MORRIS, J. H. "Population Apportionment Principle: Its Development and Application to Mississippi's State and Local Legislative Bodies." Mississippi Law Journal 47 (November 1976): 943-78.

WALKER, R. E., Jr. "One-Man, One Vote: In Pursuit of an Elusive Ideal.: Hastings Constitutional Law Quarterly 3 (Spring 1976): 453-84.

WASHINGTON, Robert B., Jr. "Does the Constitution Guarantee Free, Fair, and Effective Representation to All Interest Groups Making Up the Electorate?" Howard Law Journal 17 (No. 1, 1971): 90-120.

WEINSTEIN, Jack B. "The Effect of the Federal Reapportionment Decisions on Counties and Other Forms of Municipal Government." 65 Columbia Law Review 21 (1965).

"WHITCOMB v. Chavis (91 Sup Ct 1858): A Step Forward for Multi-Member Districts--A Step Backward for Effective Representation." Indiana Legal Forum 5 (Fall 1971): 167.

WILLIAMS, N. B., Jr. "New Three-Judge Courts of Reapportionment and Continuing Problems of Three-Judge-Court Procedure." Georgetown Law Journal 65 (April 1977): 971-97.

WILLIAMSON, Charles G. "Post-Census Redistricting - A Primer for State Legislators." Kentucky Law Journal 59 (Winter 1971): 386-406.

(NOTE: Publications of the National Municipal League (for example, its Compendium on Legislative Apportionment and Court Decisions on Legislative Apportionment) and the sections on representation in the National Civic Review should be consulted. Congressional Quarterly publications (for example, Congressional Districts in the 1970s, 1974) and CQ Weekly provide detail on individual states and congressional districting. Publications of the Council of State Governments (for example, the latest edition of Book of the States and American State Legislatures: Their Structures and Procedures, rev. ed., 1977) are extremely informative. A number of U.S. Government agencies and departments publish materials that should be reviewed, including: U.S. Department of Commerce, Bureau of the Census, (see, e.g., County and City Data Book, Congressional District Data Book, Statistical Abstract of the United States); Advisory Commission on Intergovernmental Relations (see, e.g., Apportionment of State Legislatures); Library of Congress, Legislative Reference Service (see, e.g., Legislative Apportionment: The Background and Current Status of Developments in Each of the 50 States). A number of state governments have also published materials on redistricting.)

Court Cases

Aaron v. Mississippi, No. A-1067 (1979).

Abate v. Mundt, 403 U.S. 182 (1971).

Allen v. State Board of Election, 393 U.S. 544 (1969).

Alexander v. Louisiana, 405 U.S. 625 (1972).

Arlington Heights v. Metropolitan Housing Corp., 429 U.S. 252 (1977).

Avery v. Midland County, 390 U.S. 474 (1968).

Baker v. Carr, 396 U.S. 186 (1962).

Beer v. United States, 425 U.S. 130 (1974).

Beer v. United States, 374 F. Supp. 363 (1974).

Beer v. United States, 425 U.S. 130 (1976).

Briscoe v. Bell, 432 U.S. 404, 412 (1977).

Brown v. Board of Education, 347 U.S. 483 (1954).

Burns v. Richardson, 384 U.S. 73 (1966).

Burton v. Whittier Vocational School District, 587 F2d 66 at 69 (1978).

Chapman v. Meter, 420 U.S. 1 (1975).

City of Petersburg v. United States, 354 F. Supp. 1021 (1972).

City of Richmond v. United States, 422 U.S. 358, 388 (1975).

City of Rome v. United States, No. 78-1840 (1979).

Colegrove v. Green, 328 U.S. 549 (1947).

Connor v. Coleman, 425 U.S. 675 (1976).

Connor v. Coleman, 425 U.S. 675, 679 (1976).

Connor v. Coleman, No. 78-1013 (Mar. 26, 1979).

Connor v. Coleman, No. 78-1013 (May 21, 1979).

Connor v. Finch, 431 U.S. 407 (1976).

Connor v. Finch, 419 F. Supp. 1072 (S.D. Miss. 1976).

Connor v. Finch, 419 F. Supp. 1089 (S.D. Miss. 1976).

Connor v. Finch, 422 F. Supp. 1014 (1976).

Connor v. Finch, 469 F. Supp. 693 (1979).

Connor v. Finch, No. 3830A (April 13, 1979).

Connor v. Johnson, 256 F. Supp. 962 (1966).

Connor v. Johnson, 330 F. Supp. 506 (1971).

Connor v. Johnson, 330 F. Supp. 521 (S.D. Miss. 1971).

Connor v. Johnson, 402 U.S. 690 (1971).

Connor v. Johnson, 403 U.S. 928 (1971).

Connor v. Waller, 421 U.S. 656 (1975).

Connor v. Waller, 396 F. Supp. 1308 (1975).

Connor v. Williams, 404 U.S. 549 (1972).

Connor v. Williams, 396 F. Supp. 1308 (1975).

Coyle v. Oklahoma, 221 U.S. 559, 580 (1911).

Dailey v. Lawton, 425 F. 2d 1037 (1970).

Doughtery City, Georgia, Board of Education v. White, 99 S. Ct. 368 (1978).

Drum v. Scott, 337 F. Supp. 588 (1972).

East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976).

Ex Parte Fahey, 332 U.S. 258 (1947).

Farnum v. Colbert, 293 F. 2d 297 (D.D.C. 1972).

Fortson v. Dorsey, 379 U.S. 433 (1965).

Gaffney v. Cummings, 412 U.S. 735 (1973).

Gaston County, No. Carolina v. United States, 395 U.S. 285 (1969).

Georgia v. United States, 411 U.S. 526 (1973).

Gilbert v. Sterrett, 409 F. 2d 1389 (1975).

Glidden County v. Zdanok, 370 U.S. 530 (1962).

Gomillion v. Lightfoot, 364 U.S. 339 (1960).

Graves v. Barnes, 446 F. Supp. 560 (1977).

Gray v. Sanders, 372 U.S. 268 (1963).

Green v. United States, 356 U.S. 165 (1957).

Hadley v. Junior College District, 397 U.S. 50 (1970).

Henry V. State of Mississippi, No. A-1067 (1978).

Howard v. Adams County Board of Supervisors, 453 F 2d 455, 458 (1972).

Howard v. Adams County Board of Supervisors, 407 U.S. 925 (1972).

Kilgarlin v. Hill, 386 U.S. 120 (1967).

Kirkpatrick v. Preisler, 394 U.S. 526 (1969).

Kirksey v. Board of Supervisors of Hinds County, 554 F. 2d 139 (1977).

Lane County v. Oregon, 74 U.S. (7 Wall) 71 (1869).

Leopold v. Young, 340 F. Supp. 1014 (1972).

Lucas v. Rhodes, 389 U.S. 212 (1967).

Mahan v. Howell, 410 U.S. 315 (1973).

Maryland v. Wirtz, 392 U.S. 183, 205 (1968).

Mississippi v. United States, No. 78-1425 (D.D.C.).(1979).

Moore v. Leflore County Board of Election Commissioners, 502 F. 2d 621 (1974).

Moore v. Ogilvie, 394 U.S. 814 (1969).

Morris v. Gessette, 97 S. Ct. 2419 (1977).

National League of Cities v. Usery, 426 U.S. 833, 847, 851, 852 (1976).

Nevitt v. Sides, 533 F. 2d 1361 (5th Cir. 1976).

Oregon v. Mitchell, 400 U.S. 112 (1970).

Palmer v. Thompson, 403 U.S. 217 (1971).

Panior v. Iberville Parish School Board, 536 F. 2d. 101 (5th Cir. 1976).

Regents v. Bakke, 98 S. Ct. 2733 (1978).

Reynolds v. Sims, 377 U.S. 533 (1964).

Richmond v. United States, 422 U.S. 358 (1975).

Robinson v. Commissioners Court, Anderson County, 505 F. 2d. 674 (1974).

Russo v. Vacin, 528 F. 2d. 27 (1976).

Sailors v. Board of Education, 387 U.S. 105 (1967).

Sims v. Baggett, 247 F. Supp. 96 (1965).

South Carolina v. Katzenbach, 383 U.S. 301 (1966).

Sullivan v. Crowell, 444 F. Supp. 606 (1978).

Summers v. Cenarussa, 342 F. Supp. 288 (1972).

Summers v. Cenarussa, 413 U.S. 906 (1973).

Swann v. Adams, 385 U.S. 440 (1967).

Taylor v. McKeithen, 407 U.S. 191 (1972).

Texas v. White, 74 U.S. (7 Wall) 700 (1869).

Turner v. McKeithen, 490 F. 2d. 191 (1973).

United Jewish Organizations v. Carey, 430 U.S. 144 (1977).

United States v. Beer, 425 U.S. 130, 141 (1976).

United States v. Board of Commissioners of Sheffield, Alabama, 435 U.S. 110 (1978).

United States v. Giordano, 416 U.S. 505 (1974).

United States v. McKinley, 485 F. 2d. 1059 (D.C. Cir. 1973).

United States v. Mississippi, 229 F. Supp. 925 (S.D. Miss. 1965).

United States v. National Association of Real Estate Boards, 339 U.S. 485 (1950).

United States v. State of Louisiana, 225 F. Supp. 353 (E.D. La. 1963).

Volen v. Kimble, 519 F. 2d. 790 (4th Cir. 1975).

Washington v. Davis, 426 U.S. 229 (1976).

Wayne v. Rochelle, 385 F. 2d. 789 (5th Cir. 1967).

Wells v. Rockefeller, 394 U.S. 542 (1969).

Wesberry v. Sanders, 376 U.S. 1 (1964).

Whitcomb v. Chavis, 403 U.S. 124 (1971).

White v. Regester, 412 U.S. 755 (1973).

White v. Weiser, 412 U.S. 783 (1973).

Wise v. Lipscomb, 98 S. Ct. 2493, 2497 (1978).

Wise v. Lippscomb, 437 U.S. 535 (1978).

Wright v. Rockefeller, 376 U.S. 52 (1964).

Yakus v. United States, 321 U.S. 414 (1944).

Unpublished Documents

Connor v. Coleman 431 U.S. 407 (1977), Connor v. Finch, Mississippi v. United States, United States v. Mississippi. All briefs, trial transcripts, motions, depositions, and exhibits produced during the period from September, 1977, to April, 1980.

Mississippi, Special Joint Committee on Reapportionment. All computer summaries of Plans, Descriptions of Plans, Census Maps, Precinct Maps, Committee Reports, and Working Papers.