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DOCUMENTARY EVIDENCE INVOLVED IN AN ELECTION DISPUTE

(INDENTED AND EMBOSSED CROSS MARKS ON BALLOTS)

KATHERINE APPLGATE KEELER[†]

Tracks and trails in themselves are apt to be of limited interest to the student of criminology. Some facts relative to whence they come and whither they go are necessary to their complete interpretation. The following discussion deals with tracks on paper: the imprints left on public documents by the fraudulent marking of ballots. Meaningless by themselves, these imprints are important evidence when considered in relation both to prevailing election procedure and to the specific circumstances surrounding their discovery. What may seem to be a tedious account of a local election dispute is therefore offered as the best means of orienting the reader so that the subsequent detailed discussion of the documentary evidence can be understood. It might also be remarked that, in the examination of the varied types of documentary evidence in election disputes, election procedure and its normal results and errors must always be considered.

On November 6, 1934, in Lake County, Illinois, was held an election for county offices, including that of county clerk. For that office one Russ Alford was the Democratic candidate and one Lew Hendee was the Republican candidate to succeed himself.

Hendee, in his capacity as county clerk, received the election returns and the ballots on the day following the election and, with two assistants, proceeded to canvass the returns from the various county precincts. Shortly thereafter Alford commenced a mandamus suit in the Circuit Court of Lake County against Hendee and his assisting canvassers protesting that they had fraudulently reported the votes cast for county clerk in two precincts, thereby altering the total vote from a majority for Alford to a majority for Hendee.¹ From an examination of the original sheets, poll books

[†] Examiner of Questioned Documents, Scientific Crime Detection Laboratory, Northwestern University School of Law. The writer was called upon by Mr. J. E. Bairstow, attorney for the contestant Alford, to make the examinations discussed in the following article.

¹ Circuit Court Judge Ralph J. Dady presided. Alford stated that the true

and evidence, the trial court decided that the canvassing board had fraudulently reported the vote of two precincts; it held that the true returns showed Alford elected and ordered Hendee to issue a Certificate of Election to Alford. The Appellate Court of Illinois upheld these findings.²

During the pendency of the mandamus suit in the Circuit Court, Hendee had petitioned the County Court of Lake County³ for a recount of the votes from the ballots. This suit lay dormant while the mandamus case was taken to the Appellate and Supreme Courts and, after Hendee's defeat in the mandamus case, a recount of the ballots was started in the County Court on Dec. 2, 1935.

Where the ballots had been kept, and in whose custody, between the election date, Nov. 6, 1934, and Dec. 18, 1934, when they were impounded by the County Court for the purposes of the recount, is a fact to be considered in relation to the condition of the ballots at the time of their examination by the writer in 1936. On the night of the election the ballots were taken to Hendee's office and guarded by special guards. On November 7, in the official custody of the county clerk, Lew Hendee, they were placed in a room located between the county clerk's office and a vacant room adjoining the treasurer's office. The vacant room was accessible not only by the treasurer's office but by a staircase leading up from a vacant downstairs room. Guards sat in Mr. Hendee's office to prevent access to the ballots through the county clerk's office and made excursions to inspect the other entrance. Under this protection the ballots remained until impounded on December 18, 1934.

The recount reduced Alford's majority and resulted in a gain

returns from Precinct Deerfield 2 gave him 309 straight votes but that the canvassing board credited him with but 115, although it had reported 309 for every other Democratic candidate. He stated that the true returns from Precinct Avon 2 gave Hendee only 62 split votes instead of the 162 reported by the canvassing board. The effect of this on the totals is as follows:

	Alford	Hendee
Official returns and court's findings.....	18,675	18,528
Alterations by canvassers.....	-194	+100
	<hr/>	<hr/>
Fictitious canvassing totals.....	18,481	18,628

² People, ex rel. Alford v. Hendee, 279 Ill. App. 521. Alford had served summons on the canvassing board on November 15 and the board adjourned the next day. It answered Alford's application for a mandamus by denial and by claim that the board had completed its work and could not be called upon to alter it. The Appellate Court found that the evidence "clearly showed that the board acted fraudulently in canvassing returns" and "could not defeat the purpose of the suit by attempting to adjourn and claiming that it had ceased to exist." Hendee's appeal to the Supreme Court was denied.

³ Judge Perry L. Persons presided over the County Court.

for Hendee. Proponents for Hendee sought to reverse the count to a majority for Hendee by more or less technical objections such as relating to alleged improper initialling and a voting by students in a local seminary. With these phases of the dispute the following discussion is not concerned. It is concerned with the documentary evidence which seemed to explain the large recount gains for Hendee and losses for Alford in seven precincts:

<i>Precinct</i>	<i>Hendee Gain</i> ⁴	<i>Alford Loss</i> ⁵
Ela	15	4
Wauconda	20	2
Deerfield 3	19	0
Deerfield 4	12	9
Deerfield 6	20	4
Deerfield 9	13	2
Deerfield 12	10	7

These differences seemed too great to be attributed to the normal chance errors of judges and clerks at the polling places. In connection with the unusual Hendee gains and Alford losses in these seven precincts, it was also observed that the number of ballots left blank for the office of county clerk in these same seven precincts was, on the whole, smaller in proportion to the total ballots cast than was the same proportion in surrounding precincts. Considering these combined facts, the questions arose: was the normal proportion of ballots left unmarked for the office of county clerk reduced in these seven precincts by a fraudulent addition of cross marks for one or the other of the candidates? Did the large gains for Hendee result from this fraudulent addition of cross marks? For the answers to these questions counsel for Alford requested examination of the ballots themselves.

⁴ Examination of the ballots in each of the seven precincts discovered evidence as described in the following article which revealed that most of the gains were fraudulent; that is, achieved by the addition of cross marks before the name of Hendee on ballots left blank by the voter for the office of county clerk. A few stray gains might be reasonably accounted for by normal error of polling officials, either in miscounting, or in invalidating a ballot here and there that the county court judge ruled to be good.

⁵ Evidence revealed that some of the losses for Alford resulted from this type of fraudulently added marking: to a ballot bearing a vote for Alford an identifying mark was added, thus resulting on the recount in an invalidation of the voter's choice. See Figure 4. In some instances a gain for Hendee and a loss for Alford was effected simultaneously by the placing of a cross before the name of Hendee on a ballot which originally yielded a vote for Alford by virtue of a cross in the Democratic circle.

The Examination of the Ballots

By chance a streak of brilliant sunlight fell across the ballots from the precinct Deerfield 6, when they lay open for examination in February of 1936 in the Lake County Court House.⁶ A number had passed a brief preliminary inspection when the sunlight encountered and brilliantly revealed on one of the ballots a deep indentation in the shape of a cross, located before the name of Hendee. (The ballot bearing this indentation was referred to as Ballot 13A in the ensuing court hearing and, for convenience, will be so designated here). Nowhere else on Ballot 13A were cross marks such as this. All others were in pencil; but this one was an indentation only, bearing no lead deposit.

If two pieces of paper are placed together on top of soft padding, such as a magazine, and a cross mark is made on the top sheet, it will be found that the paper beneath it bears the same type of indented cross, as the sunlight revealed before the name of Hendee on Ballot 13A. (See Figure 1c.)

It is presumed that, in an honest election, there are no ballots marked except in the voters' booth at the polling place. Was it possible that this indented ballot, 13A, was present in the voter's booth at the time another ballot lying on top of it was marked? The watchers present during the examination replied, "Yes, in this election both a small proposition and the large regular ballot were taken into the voting booth for voting." In this case, the indentation on 13A might have resulted from the pressure of the voter's pencil as he marked the proposition ballot. If that were so, the pencil cross mark which corresponded in shape and size with the indentation on Ballot 13A would not be discovered by the document examiner, since the proposition ballots were not opened for examination.

But if this indentation were the silent track of a cross mark fraudulently added to one of the regular ballots, as the ballots lay together in a pile, then the matching mark might be discovered during the examination. A search was made and, out of all the ballots in the precinct, one alone bore a penciled cross exactly

⁶The nature of the evidence did not permit their removal to the Chicago laboratory for examination or photography. Examinations were made and photographs taken in the presence of four watchers in the Lake County Court House. Due to the superiority of oblique lighting in revealing the indentations, photographs were made using but one of the four lights that are placed in each corner of the Folmer Fingerprint Camera. This accounts for the uneven lighting shown in the illustrations.

similar in shape and size to the indentation on Ballot 13A. (See Figure 1a.) This cross was before the name of Hendee. We will refer to the ballot on which it appeared as Ballot 13.

The indented cross on 13A and the pencil cross on 13 were irregularly shaped, with varying lengths of legs and varying angles formed at the intersection of the cross parts. They were further characterized by irregular bends. It is not likely that two exactly similar shapes of this type would be produced on two different ballots any other way than at the same time. Therefore the discovery of the matching cross on 13 excluded the possibility that the dented cross on 13A resulted from pencil pressure exerted on a proposition ballot, a sample ballot or any other document except Ballot 13. It established the fact that Ballots 13 and 13A were together when the cross before the name of Hendee was placed on 13. There is no legitimate way that these two regular ballots could have been together in the voting booth at the time of marking: the cross mark before the name of Hendee may be considered, ipso facto, a fraudulent addition.

The remainder of the ballots in the precinct were examined for indented cross marks. (Any mark made on a padded surface is indented whether it is outlined by pencil deposit or not. For convenience and brevity in this discussion the term "indented" applies only to indented marks *without* pencil deposit.) All ballots found to bear indented crosses were laid in a pile. Then all of the ballots were reexamined to discover whether or not any of them bore pencil cross marks corresponding to the indented cross marks.

The findings for one precinct, Deerfield 6, are summarized as follows: Eighteen ballots were found bearing imprints of crosses.⁷ To match each one was discovered another ballot bearing pencil crosses that corresponded in shape, size and relative position to the indented crosses. In nine instances the additions were before the name of Hendee alone; in eight, before the names of various Republicans, including Hendee; in one, before the names in both party columns, including Hendee. The net result of the added cross marks was a gain of eighteen for Hendee and a loss of one for Alford.

Findings in the other six questioned precincts were similar to those in Deerfield 6. Their review would add little to this docu-

⁷ Actually more than eighteen were discovered, because several of the eighteen were duplicated. That is, Ballots 10A, 10B and 10C all bore indentations corresponding to pencil cross marks on 10. That on 10A was quite sharp, on 10B less sharp and on 10C faint. Apparently when crosses were added to 10, 10A was directly under 10, 10B directly under 10A and 10C directly under 10B.

mentary study and would constitute statistical data of concern only to this particular case. In considering the possible origin of the added cross marks, however, it is significant that similarities in both style and type of pencil used were observed among added cross marks in different precincts.

Although in this particular case the matching of pencil cross marks on one group of ballots with indented cross marks on other ballots was sufficient to reveal the work of a wayward pencil, an analysis of features accompanying this evidence may be of further interest to the student of documentary evidence.

Had the indented cross marks not been discovered, detailed analysis of pencil differences might have been tabulated and, by themselves, revealed tampering of the ballots. Analysis of pencil differences is, of course, limited by the fact that marks from two different pencils of the same type may look alike. It is also true that a change of pencil on one ballot may legitimately occur. For these reasons, the matching pencil crosses and indentations, which could not occur by legitimate accident, were considered superior evidence and accompanying differences in pencil were merely noted as an incidental and confirming feature. In no instance were pencil differences alone made the basis for a conclusion regarding the addition of cross marks.

Despite the limitations attendant upon pencil analysis, on sixteen of the nineteen ballots listed above, the pencil used to make the added cross marks was obviously different from the one used to make the original cross marks. In other words, observable pencil differences coincided with crosses "confirmed" by indentations as distinguished from those not so confirmed.

As noted already, a number of the ballots bore crosses added before other names than Hendee's. Some were added before the names of Democrats, some in the proposition square, some in the Republican circle and some before the name of the presiding judge himself. There was but one consistency in the addition; namely, that on each ballot, the result was a gain for Hendee. Since only the office of county clerk was in dispute, cross marks added for any other candidate obviously yielded no benefit to anyone.⁸ The pur-

⁸ A dispute for the office of sheriff had already been settled by a recount for that office about a year prior to the recount under consideration. Crosses added in the Republican circle resulted in less than ten gains for the Republican candidate. This number was too small to affect the outcome of the earlier dispute, so it may be assumed that the Republican candidate for sheriff was not being considered in the fraudulent marking of the ballots.

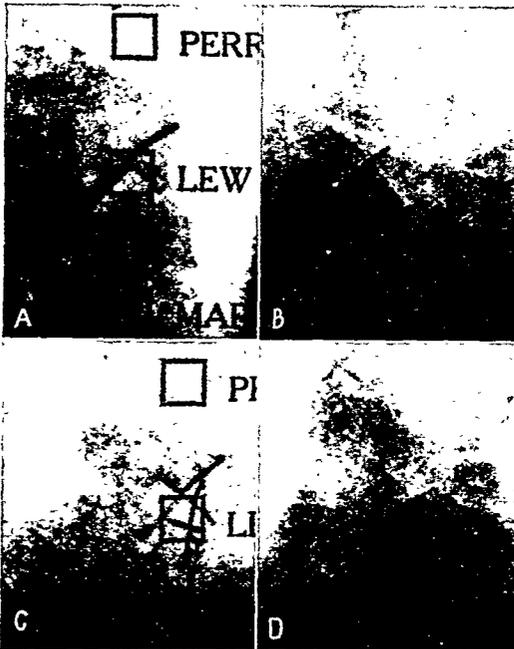


FIGURE 1.

- 1A—Cross added to Ballot 13 while it lay on top of Ballot 13A.
- 1B—Embossing produced on back of Ballot 13 by the presence of padding beneath at the time of adding the cross mark shown in 1A.
- 1C—Indentation on Ballot 13A produced by pressure of pencil executing the matching cross on Ballot 13.
- 1D—The embossing on the back of 13A. Additional padding beneath 13A (Ballots 13B, 13C, and probably others) helped to produce this embossing. Note how embossings on Ballots 13 and 13B correspond in shape and size.

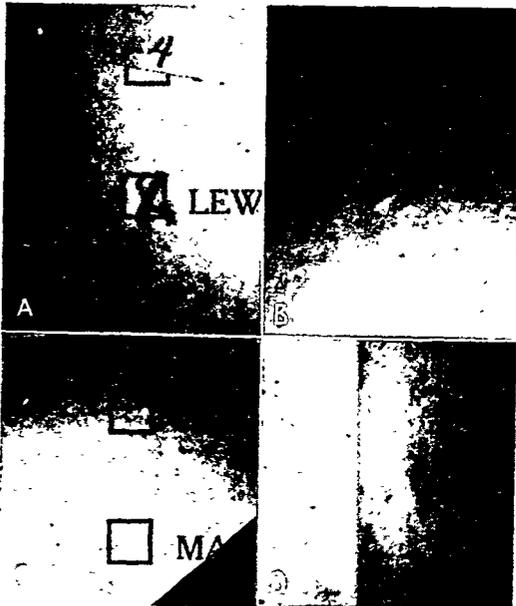


FIGURE 2.

- 2A—Mark added to Ballot 4 of Deerfield 12.
- 2B—Embossing of added mark shown in 2A.
- 2C—The indentation on the face of Ballot 4A matched the mark on Ballot 4.
- 2D—The embossing on the back of Ballot 4A was so distinct as to lead to the discovery of the less easily photographed indentation on the face. Note position of embossing outside of square as it shows through from front.

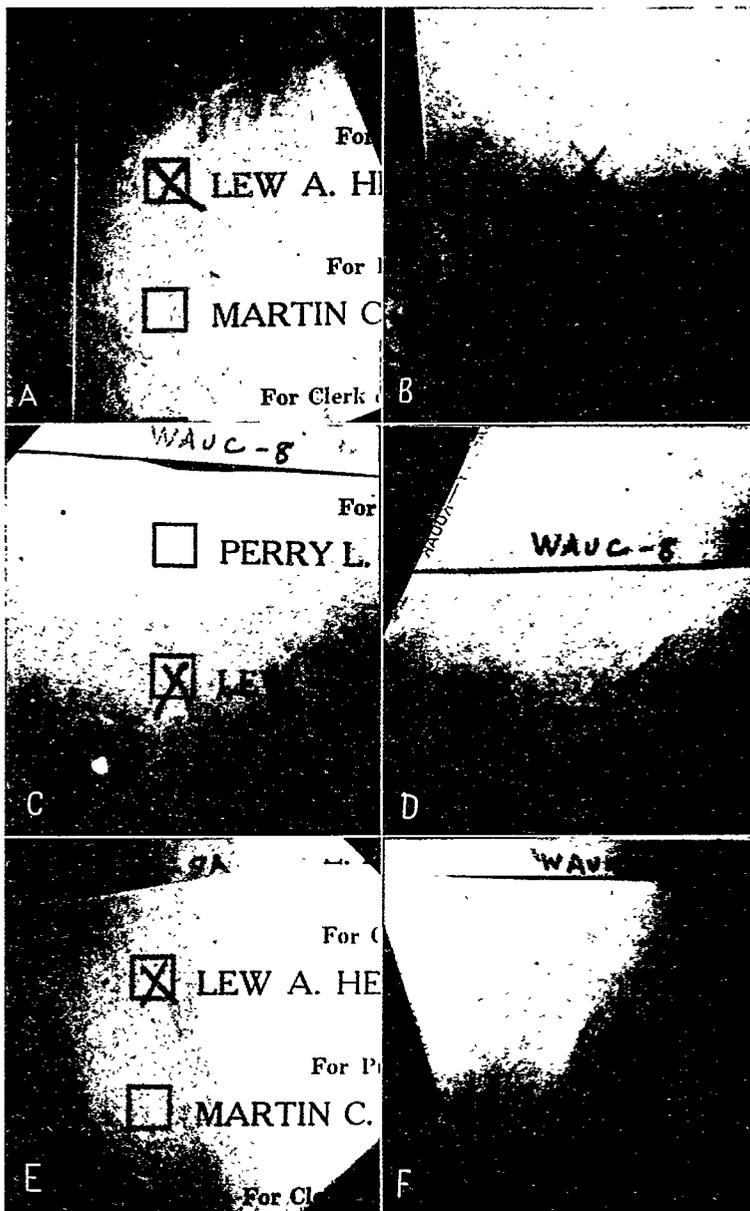


FIGURE 3.

- 3A—Cross added to Ballot 7 of Wauconda. Note heavy left to right stroke.
- 3B—Embossing on back of cross added to Ballot 7.
- 3C—Indentation and added cross on Ballot 8 of Wauconda. Lighting reveals in this photograph the heavy indentation corresponding to left to right stroke noted in 3A.
- 3D—Embossings revealed the presence of both indentation and added cross mark.
- 3E—Showing parts of indentations on Ballot 8A of Wauconda. One indentation corresponded with the cross mark added to Ballot 7 and the other with the cross mark added to Ballot 8.
- 3F—Embossings on the back of Ballot 8A which called attention of examiner to the indentations on the face. Note similarity between these embossings and those on Ballot 8 (3D). Their position with respect to the square before the

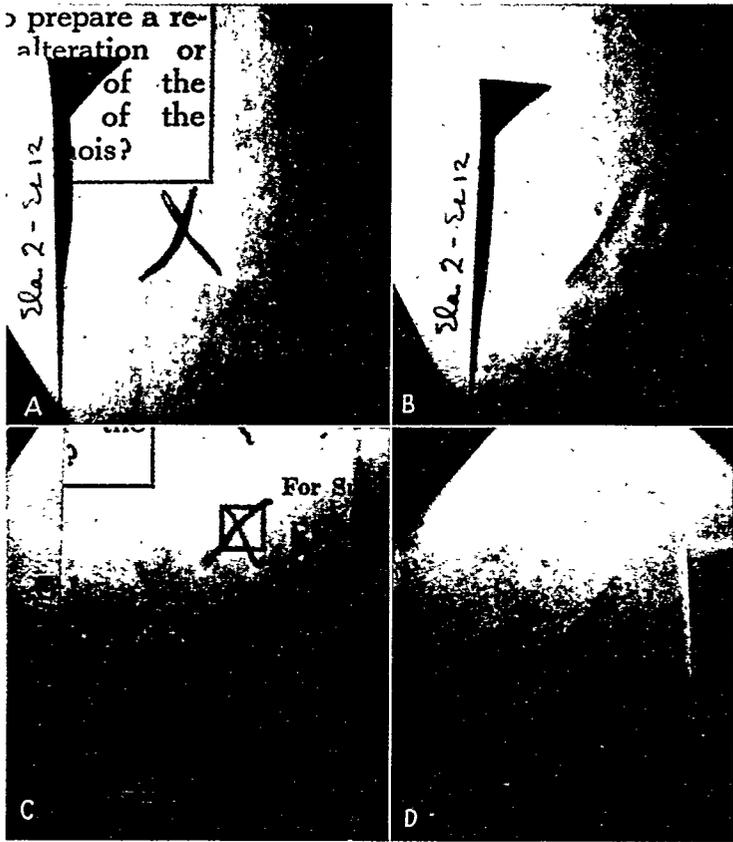


FIGURE 4.

- 4A—Cross considered to be a distinguishing mark resulted in invalidation during the recount of Ballot 2, of Ela. The ballot bore an apparently legitimate cross before the name of Alford.
- 4B—Embossing on back of “distinguishing” mark.
- 4C—Indentation on Ballot 3, of Ela, matching “distinguishing” mark on Ballot 2. The pencil crosses were discovered to be fraudulently added.
- 4D—Embossings on back of indentation and added crosses on reverse of Ballot 3.

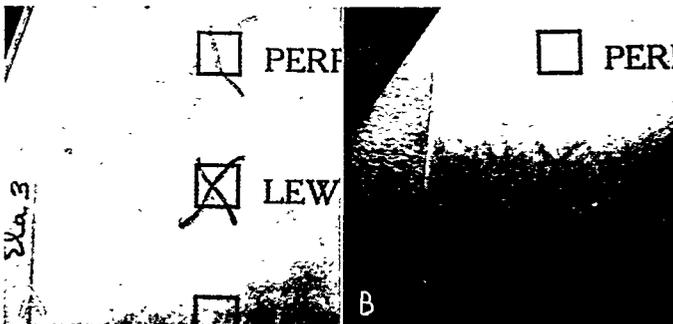


FIGURE 5.

- 5A—Crosses on Ballot 3 of Ela.
- 5B—Indentation on Ballot 4 of Ela which matched the cross before the name of

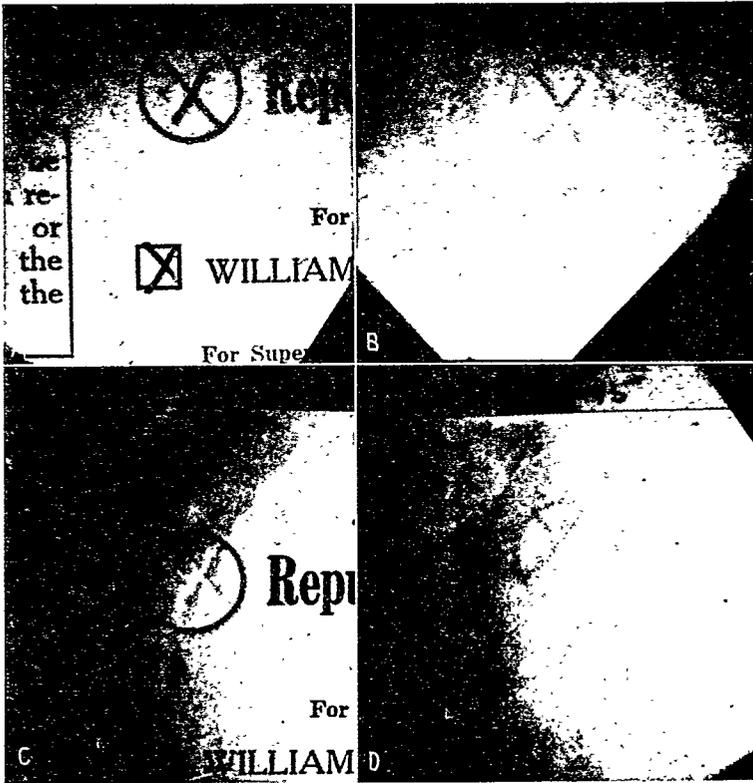


FIGURE 6.

- 6A—A cross added to Ballot 14 of Wauconda.
- 6B—The embossing of added cross on Ballot 14.
- 6C—Indentation on Ballot 15, matching cross added to Ballot 14.
- 6D—Embossing on reverse of indentation on Ballot 15.

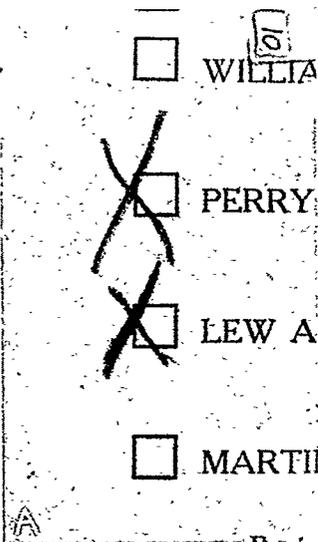


FIGURE 7.

A vote added for Lew Hendee in broad pointed pencil to Ballot 10. An original vote in fine lead before the name of Persons is retraced to obscure pencil differences.

pose of such additions appeared to be to obscure the differences between the added Hendee cross marks and the original crosses.

Ballot 10 is a fair illustration of this type of effort. On it were found: (1) two single crosses in fine lead; (2) all the remainder but one were double crosses consisting of a single fine lead cross and a broader, softer lead cross; (3) a cross before the name of Hendee unlike any of the other crosses, retraced several times in soft broad pointed lead but with no evidence of a fine single cross. (See Figure 7.)

On Ballots 10A, 10B, and 10C were indentations matching all of the marks in heavy soft lead on Ballot 10, but not one that matched the crosses in fine lead. Thus it was revealed that the heavy lead crosses were fraudulently added and, no evidence to the contrary being found, the crosses in fine lead were considered markings of the original voter. The only name carrying an added heavy lead cross unaccompanied by an apparently legitimate mark in fine lead was Hendee's.

These findings are interpreted by the examiner as follows: Ballot 10 originally bore crosses in fine lead without an expression of preference for county clerk. After the ballots in the precinct were together in a pile (10A, 10B, and 10C beneath 10) a vote for Hendee was added in heavy lead, which immediately stood out from all the fine lead crosses. To obscure the difference, the original fine crosses were retraced with the heavy pencil, except two which were apparently overlooked. The added cross for Hendee had to be retraced in order not to appear different from the retraced original crosses.

The embossing differences on the backs of the ballots materially aided the examiner in the discovery of ballots bearing fraudulently added crosses and "confirming" indentations. (See Figures 2d, 3e and 3f especially). Incidentally, embossing differences have a wide application in the field of document examination; any pencil written document suspected of bearing additions or substitutions may carry on its back evidence of the alteration. A little experiment will make the reason for this apparent. Lay a piece of paper on a hard surface and make a pencil mark. Then lay the paper on soft padding, such as a folded newspaper and make another mark. Examining the back of the paper a smooth surface will be found where the first mark was made, with prominences, or embossing, sticking out where the second mark was made.

Refer again to Ballot 13, illustrated in Figure 1a, and the pen-

cil cross marks before the name of Hendee. That cross mark was the only one on the ballot that produced an embossing on the back. (See Figure 1b.)⁹

By itself, an embossing difference on one ballot could not be considered evidence of a fraudulent addition. When, however, in not one but in eighteen ballots the cross before the name of a disputing candidate is always embossed and others are not, the group of coincidences might be considered fair proof of tampering. To go a step further, when on these same ballots pencil differences are found to coincide exactly with embossing differences the fact of fraudulent additions is irresistibly indicated. A series of accidental changes occurring simultaneously in padding and in pencil and always involving one particular name would seriously strain the laws of probability.

The combination of embossing and pencil differences together, unconfirmed by discovered matching indentations, is believed by the examiner to be indicative of fraudulent additions to ballots, and this type of evidence was the basis for opinion with reference to a few ballots where "confirming" indentations were not found on other ballots. It might be stated that matching indentations in these instances may have existed on some of the ballots examined and yet have escaped the observation of the examiner.¹⁰ As a matter of fact, several of the indentations discovered were clearly visible only when in direct sunlight that would result in the dents producing detectable shadows.

Unfortunately the value of sunlight was not appreciated by the court. Regrettably content with the dimmer light before him the presiding judge failed to examine in sunlight, for himself, the indentations testified to, yet he delivered himself of a criticism of ". . . her inability even in this well lighted Court Room to locate marks on certain Ballot Exhibits to which she had previously testified, without going to a sun-lighted window near the witness stand" This attitude seems incredibly unenlightened considering the fact that many courts have not only willingly looked through magnifying glasses with the aid of artificial light at evidence not clear to the unaided eye but have ruled that such assistances to vision may be admitted for the use of jury men.

⁹ A metal shelf in the voting booth favored the absence of embossings on the back of marks by voters.

¹⁰ The number of ballots examined in each precinct ranged from 351 to 711. This large number materially increased the chance of some indented ballots escaping notice.

The evaluation of photographs by the same court, although ambiguous, seems also to manifest a distaste for any device that might make the evidence more easily discernible: "Counsel who called this witness stresses the photographs in evidence as convincing proof of the correctness of her contention, but those familiar with modern photography well know how the slightest impression which cannot easily be ascertained or noticed by, or discernible to, the naked eye, may be developed, enlarged and greatly magnified." Having thus summarized the usefulness of photographs the court cast them aside from further consideration.¹¹

The evaluation of the matching indentations from this jurist might also be a matter of interest but unfortunately his opinion failed to include any direct reference to them. The following sentence briefly summarized his digest of the evidence reviewed in this article: "The character of the markings mentioned by the witness, retracings in some instances and marks by different lead pencils for candidates on both Republican and Democratic tickets to which she testified, are not sufficiently convincing to permit the Court to invalidate the ballots mentioned." The court stated that "the law requires a contestant (Hendee) who relies upon the probative value of the ballots cast, to show that they were so kept that there was no reasonable opportunity for tampering with them."

Some confusion as to just why he should disregard the evidence offered as proof by Alford's counsel that the ballots had not been properly preserved apparently existed in the mind of the court. Grasping at the theory that they were inaccessible to tampering he became involved in a dilemma:

"In attempting to reconcile the evidence in this record, which might be thought by some to be conflicting, the Court will not invade the realm of suspicion, conjecture or unfounded speculation. Assuming her opinion to be well founded that certain ballots were tampered with after the same were marked by voters, I see no reasonable theory under the record by which this could have been done unless it occurred while the ballots were in the polling places and before they were recorded, folded and sealed in the sacks in which they were returned to the then County Clerk."

¹¹ Curiously enough, counsel for Hendee objected to the introduction of the photographs on the grounds that they were unnecessary inasmuch as he, the court, or any one else could see the marks and indentations which they represented. In fact he objected to the presence of the witness on the grounds that what she was testifying to (i. e., the cross marks and matching indentations) were so obvious that anyone could see them and therefore the assistance of an expert was uncalled for.

Proceeding with an assumption that the ballots were not accessible for alteration between election day and their impounding by the court, the court continued:

“Judges and clerks of election are presumed to act as the law requires and to give full faith and credit to the opinions expressed by this expert of keen and active imagination concerning these markings complained of would be to impugn the honesty and good faith of the judges and clerks who served in the seven precincts mentioned. . . . Accordingly, the apparent mistakes of the judges and clerks in the count for Hendee in these seven precincts will be ignored and the totals given him, respectively, on the recount of the ballots, will stand as then found.”

The court declared Alford elected with a majority of 35.¹² The hearing was ended with these words from the bench, “To you, Mr. Hendee, I express my personal regrets; and to you, Mr. Alford, my official or judicial congratulations.”

¹² The recount had given Hendee 18,478 and Alford 18,625. The court found that 29 should be added for Hendee and 26 for Alford by agreement with reference to 55 ballots in Avon 1. Because all students in the Seminary were held to be unqualified voters, 50 were deducted from Hendee and 159 from Alford, on the basis of a proportioning of their primary party registrations. Objections by proponents for Hendee to improper initialings were overruled. Thus Alford's majority of 35 was determined.