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A STUDY OF DOCUMENTARY EVIDENCE IN ELECTION FRAUDS

(TATTLE-TALE TALLIES)*

KATHERINE KEELER†

Can you tell the tracks of a running deer from those of a walking deer? Can you tell whether the wind has blown from North or South during a snowstorm? Can you tell machine sewing from hand sewing?

It takes no Sherlock Holmes to answer these questions affirmatively. Ordinary observation and experience teach that different ways of doing things produce differences in results. And, in addition, they yield certain evaluations of impersonal or material evidence as

*In the latter part of 1933, Mr. John Cashen, Jr., was appointed by the Board of Election Commissioners of Cook County as a Special Prosecutor of Election Clerks and Judges who served in precincts that had yielded, according to the "Heller-Hasten" recount of votes for municipal judges, fraudulent returns in the November, 1932, elections. The writer was called upon by Mr. Cashen to examine some eighty tally sheets (from forty precincts). Of these eighty, all but six plainly showed, by characteristics discussed in this article, that they had not been entirely recorded directly from a "call" of votes—which is the only legally authorized procedure. Testimony on this type of evidence was offered in the Cook County Courts both by this writer and by Herbert J. Walter of Chicago.

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compared to whimsical human testimony: for instance, we learn that a series of tracks will tell us more, if we look, than can the startled hunter to whom we might listen; we learn that the silent curve of snow on one side of a tree is more reliable than what an old lady, doddering at her window, might tell us; and that monotonous regularity of stitching is more informative than the sales talk of a penurious linen vendor.

Observation and inference, not a great deal more complicated than that involved in the above problems, will yield the answer to a question that has variously concerned the County Court of Chicago for at least six months of this year.

A recount of votes cast in the November, 1932, election of municipal judges indicated that various frauds had been perpetrated by election clerks and judges who had been selected to record the public vote. Subsequent investigation led to an examination of the tally sheets to determine whether or not they contained any mute evidence which might explain the discrepancies between the returns recorded by the election officials and those disclosed by recounts made by the Election Commissioners and in the open court. The principal question thus involved was: "Were tally sheets made directly from a call of votes or were they made independently of a call?" And it is the purpose of this discussion to direct attention to the tally sheets themselves rather than to the testimony of the so-called "respectable citizens" who made the tally sheets and "who were actually there."¹

First examine the differences in the two procedures involved and then examine the differences in their results.

I. Procedure involved in tallying directly from a call:

No matter what special rules or circumstances attend the honest tallying of votes, the normal procedure is essentially this: ballots are unfolded one by one, and all the names of candidates receiving votes are read—or "called." As each name is called a tally mark is made on a tally sheet after that particular name. Ordinarily all the votes on one ballot are called and recorded before any votes on another ballot are called.

In this procedure the chief concern of the clerk is to put each tally mark after the proper name, and his attention in this respect must be given to each tally mark separately, as soon after the name

¹Reference is to a statement of the Court (Judge J. K. Van Keuren) in evaluating testimony rendered in a trial involving this question on March 27, 1934.

is called as possible. The essential characteristic of the procedure is the comparatively laborious recording in irregular vertical sequence of the tally marks.

II. *Procedure involved in tallying independently of a "call"—
i. e., in making a "dummy" tally.*

The concern of the call tallier—to give a tally mark to each name as the name is called—is not the concern of the "dummy" tallier whose task is merely to put after each name a certain quantity of tally marks. Often this quantity has already been established, either by an honest call tally or by some more arbitrary method, before the dummy tally is begun. Sometimes it has not been pre-established, but is determined by the whim of the tallying clerk, who is thereby relieved of even the concern of getting any special number of tally marks after the name.

Relieved of the constraint of following the laborious vertical path of a "call" the clerk who makes the "dummy" tally follows the path of least resistance. The path of least resistance is usually the path of habit and, in this case, it is, to every writer of occidental script, a regular, horizontal path from left to right.²

Bear in mind the chief differences in the two procedures of filling tally sheets: the call tally is made in irregular vertical sequence, necessarily slow and painstaking in order that each mark be made after the proper name; the dummy tally is made in regular horizontal sequence upon which the only constraint (and this constraint does not exist in every case) is to halt the series of tallies after each name when the pre-established number of tally marks has been made.

These differences in procedures of speed, sequence and constraint are responsible for various differences in results, as follows:

- (1) Call tally marks show deliberate execution. Dummy tally marks evidence rapid execution.
- (2) Each call tally mark is made independently of every other one on the same line. Dummy tally marks are sometimes made in such rapid series that the finish of one is connected

²There is, of course, nothing to prevent the "dummy" tallier from simulating "call" tallies. This discussion presupposes that simulation has not occurred and therefore it is applicable only to the identifying of tallies as "dummy" when they have been made in horizontal succession—which is an impossible procedure in the making of a "call" tally. The wide distribution of this discussion might encourage simulation, but that hazard does not impress the writer as being a very threatening one.

with the beginning of the next on the same line, or indicates "anticipation" of the next.

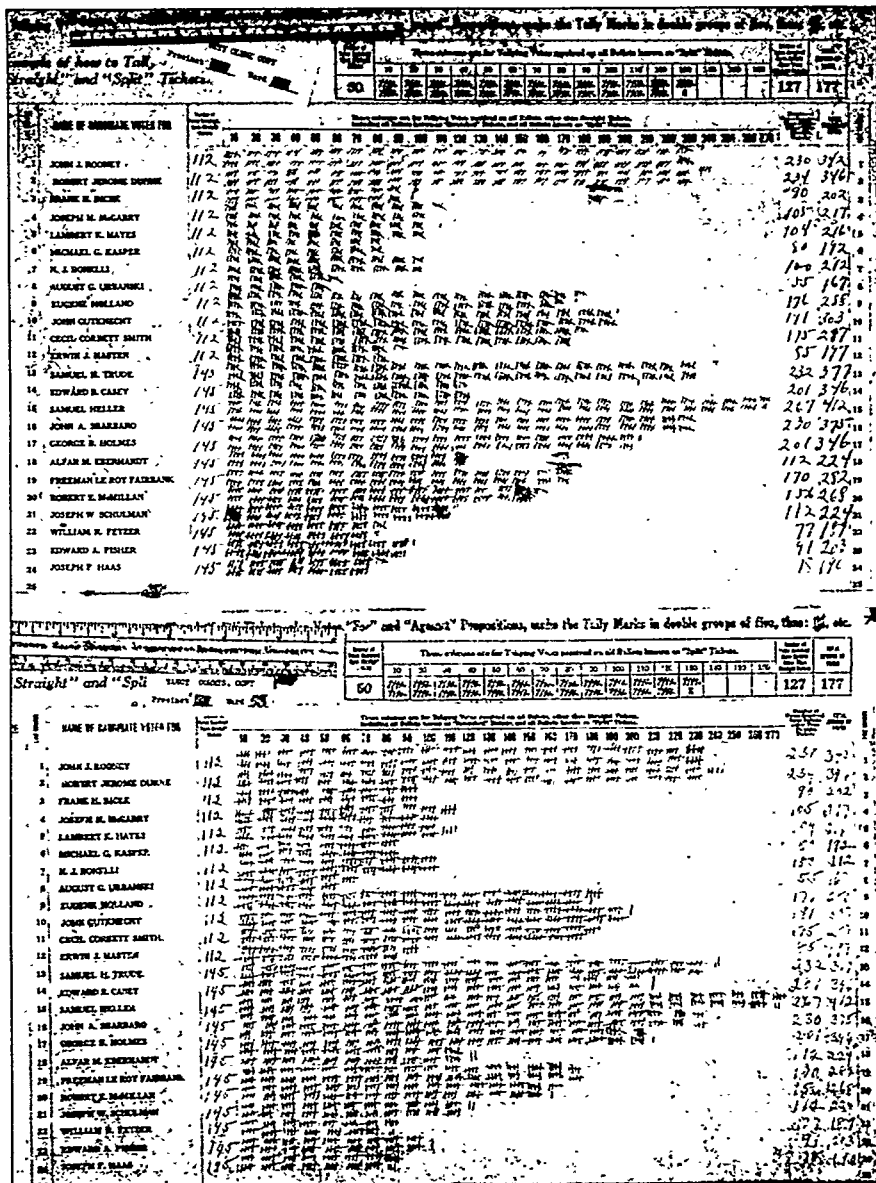
- (3) "Call" tallies on one line bear no regular relationships to each other: that is, they appear irregular in such features as alignment, spacing, slant, pressure, etc. "Dummy" tallies bear definite and regular relationships to each other when compared horizontally.
- (4) In a series of "call" tallies apparent changes in instrument, ink or clerk are vertically divided. In a series of "dummy" tallies the apparent changes are divided horizontally.
- (5) In the "call" tallies errors and resultant erasures tend to involve single tally marks at any place in the course of the tally. In the "dummy" tally errors and resultant erasures tend to occur at the end of the dummy series and involve groups or even large series of tally marks. Discrepancies of exactly ten between the number of tally marks after a name and the total recorded at the end of the line are common features of dummy tallies.
- (6) The final column groups of tally marks on the dummy tally are sometimes of a different type than the preceding tallies on the same line: i.e., they are markers to show how far to fill in.

(1) There are all degrees of deliberate execution. Some persons are habitually deliberate in their writing and, even when making a dummy tally, will be deliberate. However, there are certain extremes of speed that are not attainable in making a call tally, and certain extremes of deliberation that are not characteristic of a dummy tally. These extremes can best be explained by illustration. (See figures 2, 3, 4.) Note on the "call" tallies the abrupt endings, crooked or wobbly line quality, ink gathers. Note the clean, tapering quality of the "dummy" tallies. The apparent speed or deliberation of tallying is frequently decisive criteria, especially when it is studied in connection with features of regularity as discussed later under (3).

(2) Speed and carelessness are responsible for the most striking of all features of "dummy" tallies: the tell-tale track of a dragging pen as it travels from one tally mark to another. (See figures 2 and 3.) Because "dummy" tallies are made in horizontal sequence, the path of the pen between the first four strokes of a group of five tallies is normally from the bottom of one to the top of the next. If this path is shown by the track of a dragging pen, the evidence is clear to even those who would prefer to remain blind: not only does it show that

FIGURES 1-A TO 1-F INCLUSIVE

Tallies after names of municipal judges, November, 1932 election, Chicago, Illinois. Sheets of both city and election commissioners' clerks shown in each three precincts. In each case both clerk's tally sheets bear dummy tallies over their entire area. In other words, no honest "call" record of the public vote was made on either clerk's tally sheet, in any of the three precincts.



FIGURES 1-A AND 1-B.

Purported tallies from the same vote in the same precinct by two election clerks. Horizontal changes in distribution of tally marks, dragging pen strokes from one tally mark to another, markers at the ends of lines, errors (compare tallies on line after name of Casey), erasures and other features indicate that

the marks were made in horizontal sequence, but that the succession was so rapid as to require no pause in the progress of the pen.

Just as significant as the completely connecting drag tracks are the partial drag tracks that may appear as hooks to the bottoms of any or all of the first three tallies in a group of five. If extended without a change in their direction, these hooks would coincide with the top of the next stroke. In the case of an accidental "hook" which may occur on a "call" tally, only by rare chance will it, on extension, coincide with the top of the next stroke. (Obviously, if it does not so coincide, the pen was not directly on its way to the next tally stroke.) Inasmuch as "dummy" hooks frequently appear in groups of two's or three's and within such groups are similar in weight and direction, there is no confusion between them and the occasional chance hooks of a "call" tally. (Such chance hooks may be found on call tallies of figure 4-B.)

Attempts have been made to explain the presence of dummy drag tracks by the fact that a clerk, finding himself "behind" had to make several tallies in succession to catch up. In figure 4-B is an actual illustration of such catching up. A difference between the "catching up" dummy tallies and the preceding "call" tallies is readily apparent. Unless there is such an accompanying change in the character of tallies there is no basis for believing that those with hooks are "catching up" tallies while the accompanying tally marks that do not happen to have such hooks are "call" tallies. We may consider drag tracks on tallies as additional "dummy" evidence, confirming the other "dummy" features common to them and to their un-connected or un-hooked fellow members of the same series.

The path of the pen from the fourth of the groups of dummy tallies to the fifth cross tally is a wide swing to the left, instead of the abrupt upward path that exists between the first four marks.

Occasionally the "dummy" tallier becomes so hasty as to practically connect the fourth and fifth marks, but usually the finish of the fourth merely anticipates the fifth. (See Figs. 2, 3, 6 and lower part of 1-B, 1-C and 1-E.) If a series of tally marks is characterized, group after group, by an even alignment of the first three tally marks (that is, all on one plane though the plane may vary from exactly horizontal) and by a pronounced dropping of the fourth tally mark, that series may be considered as having a pronounced "dummy" character. If in addition the first three marks of the groups show by drag tracks or merely by their curvature that the direction of the pen was to the right, and the fourth tally marks show that the direc-

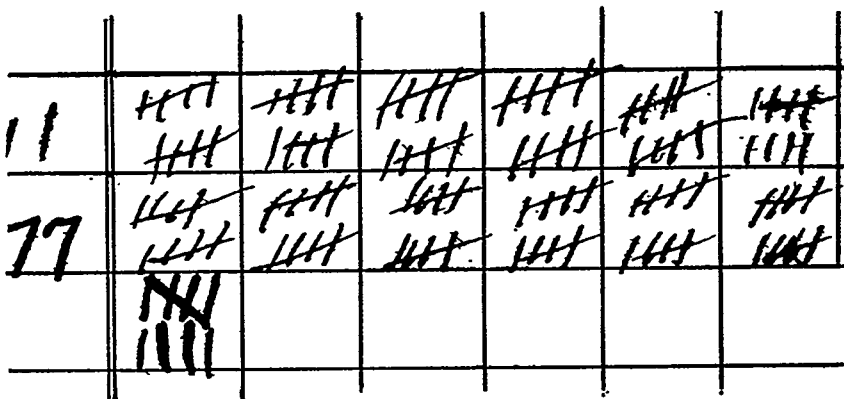


FIGURE 3-A.

Dummy tallies characterized by dragging pen strokes on top two lines. Call tallies on third line.

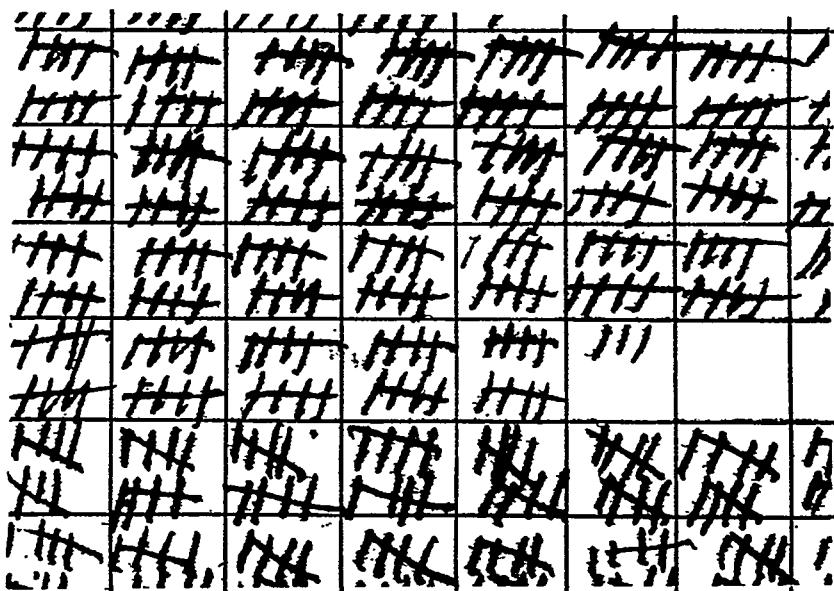
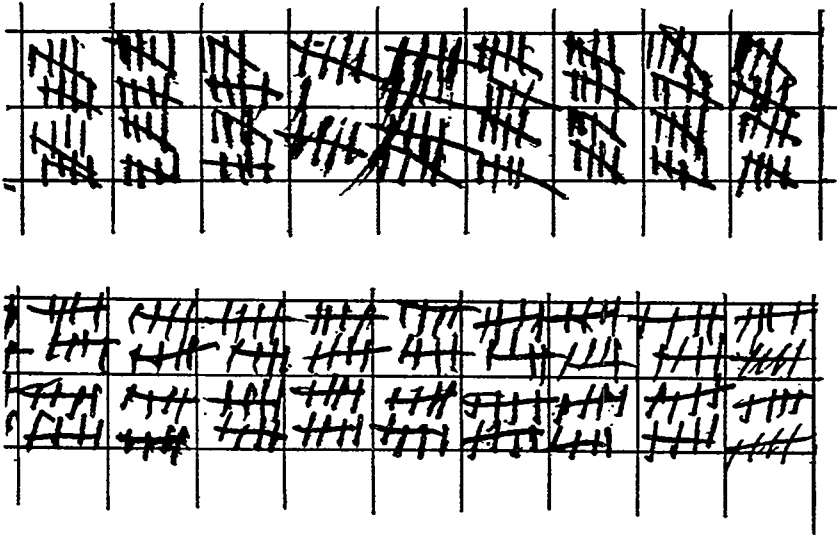


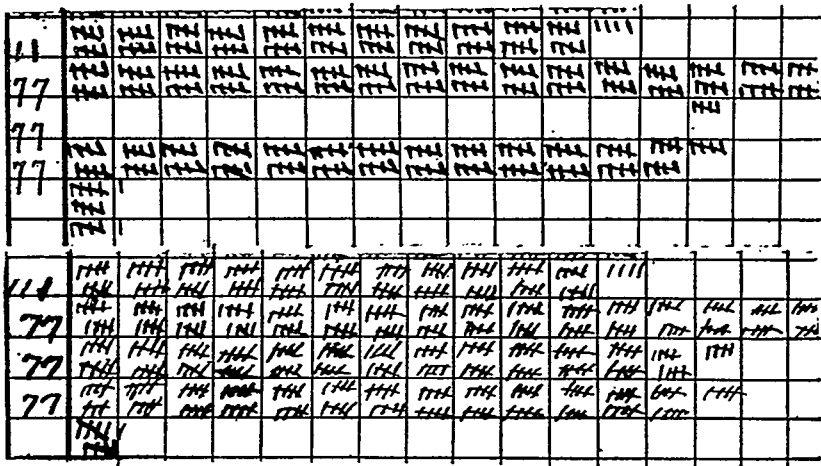
FIGURE 3-B.

Dummy tallies characterized by dragging pen strokes and by the fourth tally "anticipating" the fifth cross tally. Call tallies are on the last two lines.



FIGURES 4-A AND 4-B.

Call tallies on corresponding portions of two clerks tally sheets. Note omission of tallies in fourth column of 4-A which resulted in 4-A clerk reaching end of line ahead of 4-B clerk. Note in last column of 4-B "dummy" tallies put in in horizontal succession, apparently for the purpose of "catching up" with clerk 4-A.



FIGURES 5-A AND 5-B.

Extreme regularity in spacing, pressure, slant and length of strokes, not characteristic of call tallies. Note marker on third line which corresponds to third line of 5-B (5-A and 5-B being portions of sheets made by two clerks at the same polling place). Tallies on line 3 to precede marker were omitted.

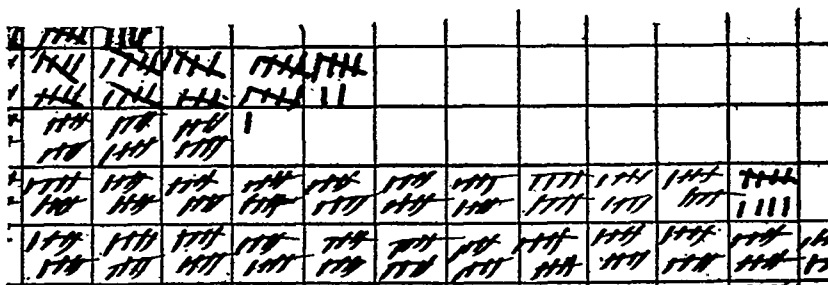


FIGURE 6.

Dummy tallies which show anticipation of the fifth left to right cross stroke by dropping of the fourth stroke.

tion of the pen was to the left, the evidence can be interpreted but one way: the series is made up of dummy tallies. The recording of a "call" involves no anticipation "horizontally" and provides no basis for making the fourth tally mark repeatedly longer or ended in a different direction that the first three; the fourth tally marks of a call tally are subject to the same chance variations in length and direction as the first, second, and third.

(3) The relationships of dummy tallies which occur on one line have already been touched upon: that is, alignment of the first three of a group of five tallies may be regular and show a motion of the pen to the right and the fourth may drop downward out of the plane of the first three and show that the direction of the pen was to the left. Dummy tallies are further related by their horizontal succession in such features as spacing, slant, and pressure. Regularity of dummy tallies is a result, like regularity of script writing, of smooth, undisturbed movement of the hand and arm from left to right. Irregularity of "call" tallies results from the necessity of grossly changing the position of the hand and arm between the making of tally marks. On a fair size tally sheet, such as used in Cook County, the entire hand and arm must undergo complete displacement between the making of any two tally marks on the same line. Regularity in these features, as opposed to irregularity, is, like deliberation, relative, and it is not always possible to rely on this criteria. However, there are certain limits to the regularity which a call tally may achieve; the regularity of the tallies in figure 5 is well beyond this limit.

The relative regularity of a series of tallies and their relative speed of execution should be weighed together. Extreme regularity involves a diminishing of speed but, when the diminished speed fails

as criteria, increased precision and regularity in spacing, length, slant, alignment and pressure of the tally marks may preclude the possibility of their having been made with a complete displacement of the hand between every two tally marks on the same line.

If the speed of dummy tally marks is so extreme as to diminish regularity to the extent that their relative regularity is unreliable criteria, the speed in itself becomes so apparent as to preclude the possibility that a "call" has been followed. (Fig. 1-C.)

(4) If the recorder of a "call" tally began tallying with green ink and then switched to blue ink, the green tally marks would appear irregularly distributed up and down the tally sheet in the first column after a number of different names. If the recorder of a "dummy" tally used first green ink and then blue, all the tallies after the first names would be green and all those after the last names would be blue. Somewhere in between, one candidate might receive first green and then blue tallies.

This serves to roughly illustrate what is meant by vertically and horizontally distributed changes in tallies. Of course, there may be variations in series on one sheet: that is, the first half may be "call" tallies and the last half dummy tallies. In such a case, a vertical division would occur between the call series and the dummy series, yet changes might also be distributed horizontally within the dummy series. Likewise the top and bottom sections of ballots may be called separately on the basis of a party division (which procedure, though irregular, may be adopted due to honest stupidity). In such a case a horizontal division of characteristics would result. When horizontal divisions of characteristics do not correspond to conceivable divisions in "calling" they can be explained only by "dummy" (horizontal) succession.³ (See Figs. 1.)

(5) Each tally mark of a call tally is made independently of every other. That is, it is put on a line with reference to a name that has been called and which appears at the beginning of the line. The most usual error is to put the tally mark after the wrong name. If the clerk realizes that he is in error, a correction is made by scratching out the single tally mark or remembering not to record the next one that should appear in that column. Scratched single

³Election officials on trial accounted for horizontally divided types of tally marks by the use of a system of counting by teams, which, they stated, would save time. One team of a judge and clerk of opposite political parties counted one type of ballot and the other team counted smaller ballots. Each team copied the other's results. Subsequent tests made by the Chief Clerk of the Board of Election Commissioners proved that more time is saved by complying with the statute than by dividing up into teams.

tally marks are characteristic of call tallies, but not of "dummy" tallies. The error in "dummy" tallying usually occurs at "overshooting" the specified limit. Unless the limit is marked the clerk may continue his dummy series too far. This calls for an erasure or scratching. The crossed out and erased tallies at *ends of lines* are typical "dummy" errors. There is no reasonable accounting, on the basis of a call tally procedure, for the putting of a *series* of tallies after the wrong name. (See Figs. 1-A, 1-E, 1-F.)

An honest call tally may include an error of one, two, three, or even four tallies after a single name, due to the occasional displacement in the wrong column of a tally mark. But it would be an extremely rare chance for one clerk to record exactly ten more tallies after one name than a second clerk had tallied when both clerks were tallying from the same call. (In Cook County two clerks are provided to tally from the same call at every polling place.)

If one or both tally sheets are made up of dummy tallies, discrepancies of ten are likely to happen; ten tallies are placed in each column and, in copying, it is very easy to fall short one column or go one column too far, due to a misreading of the column number. (In figure 1-A is an error of 81 after the name Casey. In figure 1-E are errors of 10 after McGarry and Holland. In figure 1-F are errors of 10 after Heller and Fisher.)

(6) To prevent the "overshooting" already discussed, it is a common practice to put markers at the ends of tally series. (See figures 1-B, 1-E, and 6. In figure 5-A is a marker for tallies that were omitted.) These markers usually consist of *all the tally marks in the last column* of each line of tallies. The striking difference of these markers from their predecessors has called forth quaint explanations: such as, that they are expressions of relief at the finish of a tedious task. A little reflection usually reveals the inapplicability of such explanations.

When two tally sheets are made at each polling place—as they are in Cook County—they should be compared with each other. If one appears to be an honest call tally throughout, the other may be accepted as an "honest" dummy copy—a result of fatigue, or laziness, which may be regarded as irregular, but not dishonest. If, however, *both* bear dummy tallies over corresponding areas and a recount also shows gross inaccuracy of count, the election judges and clerks have manifestly violated a public trust. (See figures 1-A to 1-F.)