

DECLARING HERBERT R. O'CONNOR TO BE A DULY ELECTED SENATOR FROM THE STATE OF MARYLAND

MAY 13 (legislative day, MAY 10). 1948.—Ordered to be printed

Mr. JENNER, from the Committee on Rules and Administration, submitted the following

REPORT

[To accompany S. Res. 234]

The Committee on Rules and Administration, to whom was referred the petition of D. John Markey, contesting the election of Herbert R. O'Connor as Senator from Maryland for the term beginning January 3, 1947, having considered the same, has adopted the report of its Subcommittee on Privileges and Elections as follows:

REPORT OF THE SUBCOMMITTEE ON PRIVILEGES AND ELECTIONS, TO THE COMMITTEE ON RULES AND ADMINISTRATION, RE MARKEY AGAINST O'CONNOR

Your Subcommittee on Privileges and Elections, to which have been referred the various petitions of D. John Markey, contesting the election on November 5, 1946, of Herbert R. O'Connor, for a seat in the United States Senate representing the State of Maryland, has had the matter under continuous consideration and respectfully reports as follows:

D. John Markey was the candidate for the above office on the Republican ticket and Herbert R. O'Connor, then Governor of the State of Maryland, was the candidate thereon on the Democratic ticket. The secretary of state of the State of Maryland certified to the United States Senate that of the 472,232 votes cast for United States Senator, D. John Markey (contestant) received 235,000 and Herbert R. O'Connor (incumbent) received 237,232.

Thereupon, Herbert R. O'Connor was administered the oath as a United States Senator from the State of Maryland on January 4, 1947, and is now serving in that capacity.

On November 30, 1946, contestant served formal notice on the incumbent of his intention to contest the reported election; a copy thereof was sent to the Secretary of the United States Senate. On December 10, 1946, contestant filed with the Special Committee to Investigate Campaign Expenditures (1946) his preliminary sworn petition alleging "that there were errors and irregularities in said election affecting the results which, if corrected, would show that petitioner received a majority of the votes cast." In view of the fact that "the laws of Maryland make no provision for a recount of votes cast in a general election for United States Senator," contestant requested "the Senate to employ its power and:

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authority for the purpose of effecting a fair and lawful recount of all ballots cast at said election."

Subsequently, on December 31, 1946, after the recount of votes cast on the voting machines in Baltimore City and Montgomery County (as hereinafter reported), contestant filed with the Secretary of the United States Senate his formal sworn petition, setting forth the general grounds of his contest and praying the United States "Senate to employ its full power and authority for the purpose of effecting a fair and lawful recount of all ballots cast at said election."

Said petition was referred to your Committee on Rules and Administration on January 6, 1947. A full text thereof appears in the appendix as exhibit 1.

Subsequently, on February 18, 1947, during the course of the test recount of five counties (as hereinafter reported) contestant filed a supplemental sworn petition with your Committee on Rules and Administration, praying that a fair and lawful recount of all paper ballots cast at said election throughout the State be ordered "forthwith."

Incumbent's only petition was thereafter filed with your Committee on Rules and Administration on April 10, 1947, "with respect to" contestant's petitions of December 31, 1946, and February 18, 1947. After referring to a prospective report of the subcommittee staff on the subject of irregularities observed during the recount, the petition continued:

"Your petitioner confidently expects that while such report may show technical noncompliance on the part of some officials with some of the provisions of the election laws, it will conclusively show that the contestant Markey did not suffer any prejudice thereby and that there was no fraud or intentional noncompliance on the part of such officials or anyone else in connection with this election."

Incumbent's petition closed with the prayer that, *inter alia*, "no further action be taken by this committee on the petition of the contestant Markey; that a State-wide recount be had of all ballots" until the committee completed its review of the ballots protested to date during the five-county recount (hereinafter reported)

Thereupon, April 15, 1947, contestant filed a supplemental unsworn petition by way of answer to incumbent's petition, and again urged the committee to proceed immediately with the recount of all of the remaining paper ballots cast in the State.

The consideration of this contest initially by the special committee and since January 18, 1947, by your subcommittee has resolved itself into four phases: First, the examination of all of the voting machines used in the State of Maryland and verification of the votes cast thereon; second, the conduct of a test recount of 5 counties using paper ballots; third, the conduct of the recount of the 17 remaining counties using paper ballots; and, fourth, the investigation of apparent irregularities for the purpose of determining the existence of fraud. Your subcommittee, therefore, has divided its report into four parts and will discuss each one under its respective heading.

I. THE EXAMINATION OF ALL OF THE VOTING MACHINES USED IN THE STATE OF MARYLAND AND VERIFICATION OF THE VOTES CAST THEREON

Contestant's petition of December 10, 1946, referred to a decision of the Board of Supervisors of Elections of Baltimore City to clear the machines on December 16, 1946, and stressed the necessity for an immediate investigation and verification of the figures shown thereon before the board's proposed action might be consummated.

The special committee, having first ascertained that the laws of the State of Maryland did not, in fact, provide for a recount as desired by contestant, forthwith dispatched investigators to make a verification check of all voting machines used in that election in the State of Maryland. Voting by machine is confined to Baltimore City and Montgomery County, where approximately 47 percent of the entire vote of the State is cast.

The voting-machine tabulations, comprising 943 machines, representing 28 wards and 471 precincts located in Baltimore City as well as 148 voting machines in Montgomery County, which were used in the 1946 contested election, were checked by the committee investigators in the presence of representatives of contestant and incumbent and an official of the board of supervisors of elections.

The verification check commenced on December 13, 1946, and completed on December 19, 1946, disclosed 8 discrepancies involving 416 votes in Baltimore City, and 1 discrepancy involving 10 votes in Montgomery County. The 9 discrepancies erroneously accredited incumbent with a total of 426 votes, which, when corrected, reduced his purported majority at that time from 2,232 to 1,806.

None of these errors, however, were found to have occurred on machines which had been carelessly sealed or involved circumstances from which the inference of fraud might be drawn.

II. THE CONDUCT OF A TEST RECOUNT OF FIVE COUNTIES USING PAPER BALLOTS

At its meeting on December 31, 1946, the special committee ordered contestant to furnish an affidavit containing a list of five counties in the State of Maryland using paper ballots, wherein it was alleged that the greatest number of irregularities and discrepancies occurred, in the order of their importance. The sworn list supplied by contestant on January 9, 1947, listed the following counties in the order named: (1) Anne Arundel, (2) Prince Georges, (3) Baltimore, (4) St. Marys, and (5) Howard. Thereafter, at the request of counsel for the parties, your subcommittee authorized the substitution of Cecil County for Baltimore County.

The committee planned to recount all of the ballots in each of those counties for the purpose of testing the truth or falsity of the charges made by the contestant; and, if in the opinion of the committee, the changes, if any, in the committee's recount from the totals previously reported, substantially reduced the lead of incumbent, a State-wide recount would be considered. On the other hand, if no substantial change resulted, a further recount in other counties would be abandoned.

In furtherance of these plans, counsel for contestant and incumbent, together with committee representatives, met in Washington and agreed upon general procedure for the conduct of the recount.

Before the commencement of the five-county recount, and, in anticipation of the expiration of the special committee on January 31, 1947, and, in consequence of contestant's petition of December 31, 1946, having been referred to the Committee on Rules and Administration in accordance with the provisions of the Legislative Reorganization Act, the special committee transferred its files in this contest to the Committee on Rules and Administration, which, in turn, assigned them to this Subcommittee on Privileges and Elections. The special committee's report on its activities in connection with this subject appears in the appendix as exhibit 2.

Your subcommittee thereupon reviewed and concurred in the actions of the special committee with reference to its decision to proceed with the five-county recount.

Your subcommittee, fully realizing the seriousness and implications of a recount of this character and finding only meager precedent as a guide, of necessity gave considerable thought to its organization and procedure in an effort to provide every possible security for the integrity of the undertaking, and in order to meet the requirements of accuracy and impartiality. The recount was organized and conducted within the framework of the stipulation of the parties themselves, the full text of which appears in the appendix as exhibit 3.

A. CHALLENGERS' REVIEW OF BALLOTS

The five-county recount, comprising 28,048 and 31,291 reported votes for contestant and incumbent, respectively, commenced on January 21, 1947. All stages, including challengers, counsel, and subcommittee reviews, were concluded on May 28, 1947.

This phase of the review took place in the post office at Annapolis, Md. (for Anne Arundel County ballots), the courthouse at Upper Marlboro (for Prince Georges County ballots), while, St. Marys, Howard, and Cecil County ballots were challenged and reviewed by counsel for the parties in the post office at Baltimore, Md. The subcommittee review of these ballots was held in the Senate Office Building, Washington, D. C.

Impounded ballots and all relevant election data were checked and received from respective supervisors of elections in the presence of respective counsel and subcommittee investigators with careful observations being made and recorded of their condition and storage. They were then transported to the designated recounting station under escort of subcommittee investigators, where they were later checked by the recount units.

The recount unit consisted of a table staffed by two challengers, paid by the subcommittee, who were appointed by and represented incumbent and contestant, respectively. The number of recount units varied depending on the availability of working space and qualified personnel. Unit supervision was provided by a subcommittee investigator and the over-all supervisor was a chief investigator designated by the subcommittee.

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The challengers were carefully instructed in the procedure determined in advance by, and in pursuance of, the stipulation mutually agreed upon by both parties. Instruction was progressively altered or augmented as experience and expediency dictated and the various tabulation forms especially prepared for this recount were also modified from time to time in the interest of efficiency.

Before ballot boxes were opened they were carefully checked for the condition of their seals and any apparent irregularities. All relevant records and data were similarly checked and compared. Both challengers and their respective counsel were requested to make observations which were noted by a subcommittee investigator and tabulated.

The ballot boxes were then opened and the ballots recounted and carefully tabulated, precinct by precinct. After each ballot was unfolded and reviewed, it was placed in the appropriate one of the five boxes conveniently located on the recount unit table and labeled: (1) "Conceded to Markey", (2) "Conceded to O'Connor", (3) "Protested by Markey", (4) "Protested by O'Connor", and (5) "Not Voted Senatorially".

When a ballot was conceded to either contestant or incumbent, a stroke mark was made upon a tally sheet kept by each challenger. The ballots, on the validity of which both challengers did not agree without reservation, were "protested" by placing a circle in red indelible pencil around the item on the ballot which clouded its validity. At the conclusion of the count of each precinct, all ballots in the above-named boxes were checked to verify each challenger's tally record.

The challengers and counsel, in protesting or conceding ballots, endeavored to follow the Maryland election laws and the rulings thereunder. However, many ballots were protested because of the divergence of opinion concerning the interpretation and applicability of the law in relation to the various markings on the ballots.

The supervising subcommittee investigator recorded each precinct's count on the record provided therefor, with both challengers initialing all entries. The conceded ballots were replaced and locked in their respective ballot boxes, while protested ballots were cataloged and packaged, locked and secured under subcommittee guards. At the conclusion of the challenger review, 12,990 ballots remained protested and required counsel review.

B. COUNSEL REVIEW OF 12,990 PROTESTED BALLOTS

The 12,990 remaining protested ballots from the 5 counties were next reviewed by counsel for contestant and incumbent with definite instructions to reduce the number of protested ballots to a minimum in order to facilitate the task of the subcommittee in the final review. The subcommittee had granted counsel the privilege of participating in the recount for the sole purpose of encouraging the reduction of the number of protested ballots as much as possible by general agreement of parties.

This screening took place in the Baltimore and Anne Arundel post offices under the close surveillance and supervision of subcommittee investigators and guards, and ran concurrently, whenever the counsel for incumbent and contestant could meet, with the initial screening conducted by the challengers.

The procedures followed during counsel review and the tabulation forms used were quite similar to those employed in the challenger review. The ballots previously protested were reviewed singly, precinct by precinct. They were either conceded to one of the parties or protested when counsel could not agree on their validity. The intense, yet commendable loyalty of counsel to the cause of their respective clients, coupled with their natural affinity to disagreement on the correct legal interpretation of the laws applying to the ballots in question, understandably delayed the ultimate conclusion of this review.

On April 24, 1947, counsel, after conceding 6,366 of the 12,990 ballots previously protested by the challengers, completed their review of the ballots in the 5-county recount.

C. SUBCOMMITTEE REVIEW OF 6,624 PROTESTED BALLOTS

The remaining 6,624 protested ballots were separated by subcommittee investigators into categories, depending on the grounds for the respective protests. Each of the categorized ballots was again inspected by counsel and an agreement was reached that each ballot was correctly classified and tabulated in preparation for final subcommittee review.

Counsel, at the request of the subcommittee, submitted detailed briefs on the interpretation and application of the laws of Maryland, and consequent rulings, in their relation to the categories of protests. Subsequently, the subcommittee

met on May 19, 1947, and heard oral arguments of counsel for the parties in elaboration of their briefs.

Subsequently, on May 20, 21, 22, 23, and 26, 1947, your subcommittee met and carefully examined each of the 6,624 protested ballots from the 5 counties, which had been separated into 19 categories, some of which had been subdivided, so as to involve in all 33 classifications. The subcommittee examined each ballot in each of the classifications and, in so doing, reached the following conclusions regarding the validity of the ballots in the respective categories in the light of a strict interpretation of the Maryland election laws, interpretations by the courts and the State's attorneys general, and the briefs of the parties:

Category 1—Ink

The subcommittee was unanimous in its conclusion that any ballot marked in ink or any ballot on which an ink mark appears on the face of the ballot should be rejected. The subcommittee thus concluded that all ballots falling in categories 1 (ink), 17 (ink dot in box with X), 18 (ink elsewhere on the ballot) should be rejected. Section 68, article 33, of the Maryland Code provides that the voter shall "prepare his ballot by marking with an indelible pencil after the name of every person or persons for whom he intends to vote and to the right thereof, in the blank space provided therefor, a cross." Further, *Duwall v. Miller* (94 Md. 697), held that the provision of the law with respect to the use of indelible pencil was "mandatory." The only exception to the foregoing conclusion of the subcommittee is where an ink mark on the ballot appears on the back of the ballot. In the latter case, the subcommittee concluded that such a ballot is valid. This latter conclusion is consistent with the decision in the case of *Coulehan v. White* (95 Md. 703), in which the court held that an ink blot on the back of the ballot did not invalidate the ballot.

Category 2A—A check mark

The subcommittee concluded that a ballot marked with a check mark either in the senatorial box or not in the senatorial box was invalid and should not be counted. The basis for the subcommittee's conclusion in this instance is the language of section 73 of article 33 of the Maryland Code which provides "if there shall be any mark on the ballot other than the cross mark in a square opposite the name of a candidate * * * such ballot shall not be counted." *Coulehan v. White* (95 Md. 703), held a check mark to be an identifying mark and rejected ballots containing such markings. Further, the Instructions of the Attorney General, 1946 (p. 268), specifically illustrate a check mark as a mark which has been held improper and which should cause the rejection of the whole ballot. The brief filed in behalf of the contestant (p. 18), and the brief filed in behalf of incumbent (p. 11), both agree that a check mark invalidates the ballot although the incumbent's brief "questions the realism of any such ruling."

Category 2B—A check mark and a line crossing the check mark

The subcommittee concluded that all ballots containing a mark as described above should be rejected. The subcommittee based its conclusion on a strict construction of section 73 of article 33 of the Maryland Code, namely, that "if there shall be any mark on the ballot other than the cross mark in the square opposite the name of the candidate * * * such ballot shall not be counted." The Instructions of the Attorney General, 1946 (pp. 267-268), also repeats the language of the above-quoted statute and directs election officials to "follow strictly * * * the instructions given below as to what ballots shall be rejected." [Italics supplied.]

Category 2C—A check mark over which a complete cross mark has been placed

The subcommittee concluded that all ballots containing a mark as above described should be rejected. The conclusion of the subcommittee in this instance is supported by the decision in *Coulehan v. White* (95 Md. 703), wherein it was held that a ballot containing a mark which was made with more lines than are necessary for a cross in the form of a star should be rejected for the reason that the marks so used might readily be adopted for the purposes of identification. The Instructions of the Attorney General, 1946 (p. 268), also illustrates a star marking as a mark which has been held improper and which should cause the rejection of the whole ballot. The subcommittee in its conclusion again applied the language of section 73 of article 33 of the Maryland Code, namely, that "if there shall be any mark on the ballot other than the cross mark in a square opposite the name of a candidate * * * such ballot shall not be counted."

Category 3—X ou side of box

This category involves those ballots in which the X mark appears outside the candidate's box or in the square opposite a blank line reserved for a voter to write in the name of a person not printed on the ballot. The subcommittee concluded in this instance that any ballot marked as above described should be rejected. The conclusion of the subcommittee with respect to ballots falling within this category is consistent with the instructions of the attorney general (p. 268) which recites "any mark on the ballot which is entirely outside of any square or any mark in a square before which no name appears should cause the rejection of the whole ballot." The brief filed by counsel for incumbent (p. 13) recites in effect that the foregoing "has been the consistent ruling of the State law department" and further, while the brief expresses "grave doubts as to the realism" of such ruling, states "we believe it has been the general practice of Maryland election judges to reject such ballots." The instruction of the attorney general is without question predicated on the provision of section 73, article 33, of the Maryland Code, namely "if there shall be any mark on the ballot other than the cross mark in a square opposite the name of a candidate * * * such ballot shall not be counted." The brief filed in behalf of the contestant (pp. 20 and 21) cites *Duwall v. Miller* (94 Md. 697), as a decision supporting the conclusion that ballots in this category be rejected, and the brief filed in behalf of incumbent (p. 13) admits there is language in *Duwall v. Miller*, "which would suggest that such ballots should be rejected." The contestant's brief also cites (p. 21) Four Opinions of the Attorney General 53, and Twenty-three Opinions of the Attorney General 212. With respect to the latter citation, the contestant's brief recites: "In Twenty-three Opinions of the Attorney General of Maryland, when incumbent was attorney general of Maryland, supervisors of elections of Montgomery County were advised on September 9, 1938, as follows:

"Confirming telephone message of last night, it is our opinion that where there is one improper and illegal X mark on a ballot, the entire ballot must be rejected * * *. (See p. 324 of the Election Laws, 1938 edition.)"

Category 4—Smudges, erasures, corrections

The subcommittee concluded that any ballot on the face of which there appears a smudge, erasure, or correction is invalidated. The subcommittee's conclusion in this respect is supported by the decision in *Coulehan v. White* (95 Md. 703), in which the court held that blurred lines in square as if cross was rubbed and made over, or wet pencil mark rubbed with hand and cross made over was sufficient to cause the rejection of the ballot. The court in that decision also rejected ballots where the voter had voted for six councilmen and then rubbed out the cross for one of the councilmen leaving five the proper number to be voted for. In both instances the court considered that the action of the voter might be done or readily used for purposes of identification. Further, the Instructions of the Attorney General, 1946 (p. 268), recites "the judges should also reject any ballots on which a cross mark has been made and then rubbed out, leaving a blur in the square."

*Category 5A—Single line in box with candidate's name**Category 5B—Single line in blank box*

The subcommittee concluded that a single line appearing in box with candidate's name, in blank box or anywhere on the ballot invalidates the ballot. The subcommittee in this conclusion is again applying the language of section 73, article 33, of the Maryland Code which recites "if there shall be any mark on the ballot other than the cross mark opposite the name of the candidate * * * such ballot shall not be counted." In discussing this category the brief filed in behalf of incumbent (pp. 15 and 16) agrees that where such a single line appears in the senatorial box that such ballot cannot be counted because of a clear failure to comply with the law. The brief, however, argues in favor of the validity of a ballot where such single line appears elsewhere on the ballot, and concludes by stating: "We recognize that there is an explicit ruling of the attorney general to the contrary, but it is apparent that this ruling has not been actually applied by the judges of elections of either party." The brief filed in behalf of the contestant (pp. 23 and 24) cites *Coulehan v. White* (95 Md. 703), in which ballots which contained "a long pale pencil mark running about 2 inches across the page, apparently a slip of the pencil" was rejected by the court "because the marks could be used as means of identification, and we cannot say they were not."

Category 6—Incomplete cross (namely, where two lines do not in fact intersect to make a cross)

The subcommittee concluded that any ballot containing a mark as above described anywhere on the ballot should be rejected. The conclusion of the subcommittee with respect to ballots falling in this category is again consistent with its previous announced position, namely, to strictly apply the language of section 73 of article 33 of the Maryland Code as follows: "If there shall be any mark on the ballot other than the cross mark opposite the name of the candidate * * * such ballot shall not be counted." The logic of the subcommittee's conclusion is emphasized by the following: There would seem to be little difference between a marking of a check mark on the ballot and a marking where two lines do not in fact intersect to make a cross. In the case of *Coulehan v. White* (95 Md. 703), the court held that a ballot marked with a mark somewhat in the form of a check mark was invalid, and held valid a ballot marked with a cross, one leg of which was shorter than the other.

Further, the Instructions of the Attorney General, 1946 (p. 268), state that "no ballot shall be rejected solely because any part or portion of the cross mark extends beyond the square, if the point of intersection of the cross mark is within the square. A cross clearly requires an intersection of two lines and if the two lines do not intersect a mark other than a cross is formed which in the subcommittee's judgment requires the strict application of the provisions of section 73, article 33, of the Maryland Code, hereinabove quoted.

The brief filed in behalf of the contestant (p. 26) cites Eight Opinions of the Attorney General 170 on this point, the last paragraph of which reads as follows: "It seems obvious to me that, if one line does not cross the other, the two lines do not result in a 'cross mark' and, therefore, if such mark appears anywhere on the ballot, the whole ballot should be rejected."

Category 7—Stars

- A. Star where three separate lines intersect at substantially the same angles with respect to each other
- B. Star where two of the lines intersecting the third line are closer together
- C. Star made up of three or more lines but which do not follow any consistent pattern as described in 7A and 7B

The subcommittee concluded that a ballot marked as above described and which falls into either category 7A, 7B, or 7C should be rejected. The subcommittee's conclusion is based on a consistent and strict application of the language of section 73, article 33, of the Maryland Code previously referred to, namely, "if there shall be any mark on the ballot other than a cross mark in the square opposite the name of a candidate * * * such ballot shall not be counted."

The ballots so marked as to fall in category 7A have been held to be invalid in the case of *Coulehan v. White* (95 Md. 703), in which the court held that a ballot was invalid "where the mark although wholly within the square, is made with more lines than are necessary for a cross in the form of a star thus . . ." The court held that "the marks so used might readily be adopted for the purpose of identification."

Further, the Instructions of the Attorney General, 1946 (p. 268), illustrates a star marking as a mark "which has been held improper and which should cause the rejection of the whole ballot."

The subcommittee did not by its conclusion determine to invalidate any ballot on which there appeared a cross mark obviously and without question made by a split pencil point, or any ballot on which the voter was obviously and without question simply undertaking to make the two lines of the cross more distinct. The markings described in categories 7A, 7B, and 7C each involve separate third lines, and the subcommittee is of the opinion that a strict application of section 73 of article 33 of the Maryland Code, compels the conclusion that any ballots falling into these categories should be considered invalid.

Category 8—Distinguishing marks

- A. In blank box
- B. Outside of box
- C. In box with X
- D. On leg of cross
- E. Elsewhere on ballot

Category 8 includes various marks other than a cross or in addition to a cross and this category has been divided into five classifications as noted above.

The subcommittee with respect to this category considered all five classifications on the same basis and strictly applied section 73, article 33, of the Maryland

Code, namely, "If there shall be any mark on the ballot other than a cross mark in a square opposite the name of a candidate * * * such ballot shall not be counted." The subcommittee therefore concluded that *any mark* on the face of the ballot other than a cross whether it appeared in a blank box, outside of the box, in the box with an X, on the leg of the cross or elsewhere on the ballot was sufficient to cause the rejection of such ballot.

In *Coulehan v. White* (95 Md. 703), the court held that "where there is a dot in the square with the cross mark, the dot apparently made with the pencil thus [X.]" such ballot containing such a mark should be rejected "as the mark is so placed on the ballots as to be a ready means of identification." While the foregoing citation is not distinctly applicable to various markings classified under category 8, nevertheless the subcommittee can see no difference, for example, from the case where the dot or other mark appears in the box with an X or where the dot or other mark appears alone elsewhere on the ballot. In the same case (95 Md. 703) the court held that "a long *pale* pencil mark running about 2 inches across page, *apparently a slip of pencil*" was sufficient to cause rejection of the ballot "because the marks could be used as means of identification, and we cannot say they were not."

Category 9—Poorly made cross

The ballots classified in this category were, as recited in the brief filed in behalf of incumbent (p. 19), such that they "were challenged primarily on the theory that they deviated so far from the normal appearance of the cross mark that they amounted to a means of identification."

The subcommittee cannot in its opinion with respect to this category do anything except reiterate its consistent position, namely, that "if there shall be any mark on the ballot other than the cross mark in a square opposite the name of a candidate * * * such ballot shall not be counted." The subcommittee recognizes that nervousness, inexperience, and age to a measure affect the voter's marking of his or her ballot, but it is also mindful of the requirements of the Maryland law as above noted.

Category 10—Double lines

A. *Wide (double lines intersecting third line are wide apart)*

B. *Medium (the double lines intersecting third line are spaced closer together)*

C. *Narrow (the double lines intersecting a third are spaced very close together)*

The subcommittee concluded that ballots falling in category 10A, 10B, and 10C should be rejected. This conclusion is consistent with the subcommittee's conclusions with respect to category 7A, 7B, and 7C (star category). The opinion as expressed with respect to category 7 ballots applies equally with respect to this category. The subcommittee is aware of the fact that the court in *Coulehan v. White* (95 Md. 703), had before it the precise ballot classified in category 10A but did not pass upon it for the reason that the ballots of that type for each candidate in that case were equal in number. The subcommittee however is of the opinion that logic compels the conclusion that the court would have applied the same reasoning it employed in rejecting ballots marked with stars. The subcommittee again emphasizes as it did with respect to category 7 that the language of section 73, article, 33, of the Maryland Code is the basis for its conclusion.

The subcommittee further repeats its opinion as expressed in its discussion of category 7, namely, that the subcommittee by its conclusion with respect to category 10 does not intend to invalidate any ballot on which there appeared a cross mark obviously and without question made by a split pencil or any ballot on which the voter was obviously and without question simply undertaking to make the two lines of the cross mark distinct. The markings in categories 10A, 10B, and 10C each involve separate third lines and the subcommittee is of the opinion that a strict application of section 73 of article 33 of the Maryland Code compels the conclusion that any ballots falling into these categories should be considered invalid.

Category 11—Connectors

A. *Heavy (heavy line connecting two ends of a cross).*

B. *Medium (medium line connecting two ends of a cross).*

C. *Light (light line connecting two ends of a cross).*

D. *Incomplete (line connecting one end of the cross and the side of the cross).*

The subcommittee concluded that all ballots marked as above described and falling into categories 11A, 11B, 11C, and 11D should be rejected. The subcommittee's determination with respect to classifications 11B and 11C was tentative

