

RECORD OF PROCEEDINGS
of the
HIGH COURT OF IMPEACHMENT

On the Trial of
O.P. Carrillo
Judge, 229th District Court

SENATE OF TEXAS
SITTING AS A COURT OF IMPEACHMENT

Convened September 3, 1975

Adjourned January 23, 1976

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THE SENATE OF TEXAS
SITTING AS A COURT OF IMPEACHMENT

William P. Hobby, Lieutenant Governor, President

Represented
District

Adams, Don, Jasper	3
Aikin, A. M., Jr., Paris	1
Andujar, Betty, Fort Worth	12
Braecklein, Bill, Dallas	16
Brooks, Chet, Pasadena	11
Clower, Ron, Garland	9
Creighton, Tom, Mineral Wells	22
Doggett, Lloyd, Austin	14
Farabee, Ray, Wichita Falls	30
*Gammage, Bob, Houston	7
Hance, Kent, Lubbock	28
Harrington, D. Roy, Port Arthur	4
Harris, O. H. (Ike), Dallas	8
Jones, Grant, Abilene	24
Kothmann, Glenn, San Antonio	19
Lombardino, Frank, San Antonio	26
Longoria, Raul L., Edinburg	27
Mauzy, Oscar H., Dallas	23
McKinnon, Mike, Corpus Christi	20
McKnight, Peyton, Tyler	2
Meier, Bill, Euless	10
Mengden, Walter H., Jr., Houston	13
Moore, William T. (Bill), Bryan	5
Ogg, Jack, Houston	15
Patman, William N. (Bill), Ganado	18
Santiesteban, H. Tati, El Paso	29
Schwartz, A. R., Galveston	17
Sherman, Max R., Amarillo	31
Snelson, W. E. (Pete), Midland	25
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*Resigned January 23, 1976

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RECORD OF PROCEEDINGS of the HIGH COURT OF IMPEACHMENT

On the Trial of
Honorable O. P. Carrillo, Judge, 229th District Court

FIRST DAY
(Wednesday, September 3, 1975)

In accordance with the provisions of Article XV, Sections 1 and 2 of the Constitution of the State of Texas and Articles 5961-5963, Revised Civil Statutes of the State of Texas and in obedience to the proclamation of the Honorable Dolph Briscoe, Governor of the State of Texas, the Senate met in the Senate Chamber at the City of Austin, on the third day of September, 1975, at 10:30 o'clock a.m., and was called to order by the President.

QUORUM PRESENT

The President directed the Secretary to call the roll of the Senate.

The roll was called and the following Senators were present: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

The President announced a quorum of the Senate present.

The Reverend Frank Walker, Pastor, First Southern Presbyterian Church, Austin, offered the invocation as follows:

A PRAYER FOR THE SENATE

Our Father, as we bow our heads in Prayer, may our hearts be open to your Spirit. Give us faith to believe in Prayer, and in your willingness to work in us that your will be done. Amen.

APPOINTMENT OF TEMPORARY OFFICERS

The President announced the appointment of the following as Temporary Officers of the Senate:

Secretary/Clerk-Charles A. Schnabel
Journal Clerk-Betty King
Enrolling Clerk - Mary Hobart Key
Sergeant-at-Arms/Bailiff-Tommy Townsend
Parliamentarian-Steve Bickerstaff
General Legal Counsel-Leon Jaworski

PROCLAMATION FROM GOVERNOR

The President laid before the Senate the following Proclamation from the Governor:

**PROCLAMATION
BY THE
GOVERNOR OF THE STATE OF TEXAS**

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Whereas, the House of Representatives of the State of Texas, on the 5th day of August, A.D. 1975, preferred articles of impeachment against O.P. Carrillo, Judge of the 229th Judicial District of the State of Texas; and

Whereas, a certified copy of said articles of impeachment was delivered to me on the 5th day of August, A.D. 1975; and

Whereas, under the provisions of Article XV of the Constitution of the State of Texas, and in compliance with the provisions of Article 5963 of the Revised Civil Statutes of this state, it becomes the solemn duty of the Governor of Texas, when a certified copy of articles of impeachment have been delivered to him, to call the Senate of the state to meet at a fixed time to sit as a Court of Impeachment to receive, consider and dispose of such matters.

NOW, THEREFORE, I DOLPH BRISCOE Governor of the State of Texas, by virtue of the authority vested in me by the Constitution and Laws of the state, do hereby call the Senate of the 64th Legislature to convene in the Senate Chamber at Austin, Texas, beginning at 10:30 a.m. on Wednesday the 3rd day of September, A.D. 1975, for the purpose of considering and disposing of said articles of impeachment in a fair and impartial trial.

DOLPH BRISCOE
Governor of Texas

August 15, 1975

Attest:

MARK WHITE
Secretary of State

The Proclamation was read and was filed with the Secretary of the Senate.

MOTION IN WRITING

Senator Aikin submitted the following Motion in Writing:

Mr. President:

I move that the President be authorized to appoint a committee of five (5) members to notify the Governor that the Senate is organized as a Court of Impeachment and ready to do business.

cc: Secretary of State Mark White

The Motion in Writing was read and was adopted.

The President announced the appointment of the following as a Committee to Notify the Governor and the Secretary of State: Senators Snelson, Andujar, Harris, Ogg and Williams.

MOTION IN WRITING

Senator Aikin submitted the following Motion in Writing:

Mr. President:

I move that the President be authorized to appoint a committee of five (5) members to notify the Speaker of the House of Representatives that the Senate is organized as a Court of Impeachment and ready to do business.

cc: Board of Managers
Representative DeWitt Hale, Chairman
Representative Robert Maloney, Vice Chairman
Representative Melchor Chavez
Representative Jerry Donaldson
Representative Bob Hendricks
Representative James Kaster, Jr.
Representative James Laney
Representative Lynn Nabers
Representative Richard Slack
Representative Senfronia Thompson
Representative Sarah Weddington

The Motion in Writing was read and was adopted.

The President announced the appointment of the following as a Committee to Notify the Speaker of the House and the Board of Managers: Senators Braecklein, Brooks, Clower, Doggett and Harrington.

SENATE RESOLUTION 1

Senator Adams offered the following resolution:

WHEREAS, Articles of impeachment against O. P. Carrillo, Judge of the 229th Judicial District, have been adopted by the House of Representatives of Texas and have been presented at the bar of the Senate with the request that the Senate hear and determine said charges of impeachment; now therefore, be it

RESOLVED, That said O. P. Carrillo be and is hereby notified of the fact of the presentment of said charges, and that said O. P. Carrillo be and is hereby notified that September 3, 1975, beginning at 10:30, has been set by the Senate as the time for beginning the hearing on said charges; and be it further

RESOLVED, That said O. P. Carrillo be and is hereby ordered to appear in person and by counsel at or before 2:00 p.m. on September 3, 1975 in the City of Austin, State of Texas, at the Chamber of the Texas Senate, to answer the said charges of impeachment, and be it further

RESOLVED, That the Secretary of the Senate transmit or convey to said O. P. Carrillo a copy of this resolution, a copy of said articles of impeachment, and a copy of the Governor's Proclamation convening the Senate to sit as a court of impeachment.

ADAMS
MAUZY
LONGORIA
TRAEGER
SCHWARTZ
LOMBARDINO

The resolution was read and was adopted.

AT EASE

The President announced the Senate at 10:40 o'clock a.m. would Stand at Ease awaiting the reports of the Committees.

IN LEGISLATIVE SESSION

The President called the Senate to order As In Legislative Session at 10:55 o'clock a.m. today.

GOVERNOR AND SECRETARY OF STATE NOTIFIED

The Committee to Notify the Governor and the Secretary of State that the Senate was organized and ready to transact business appeared at the Bar of the Senate and Senator Snelson for the Committee notified the President and the Members of the Senate that the Committee had performed the duty assigned it.

The Committee was discharged.

SPEAKER AND HOUSE BOARD OF MANAGERS NOTIFIED

The Committee to Notify the Speaker and the House Board of Managers that the Senate was organized and ready to transact business appeared at the Bar of the Senate and Senator Braecklein for the Committee notified the President and the Members of the Senate that the Committee had performed the duty assigned it.

The Committee was discharged.

RESPONDENT NOTIFIED

The Secretary of the Senate read the following report:

To the Texas Senate:

Pursuant to Senate Resolution No. 1 adopted by the Senate on September 3, 1975, I have this the 3rd day of September, 1975, performed the following duty in reference to the impeachment proceedings in the Senate against Judge O. P. Carrillo:

A copy of Senate Resolution No. 1 summoning Judge O. P. Carrillo to appear in person and by Counsel before the Senate of Texas on September 3, 1975 on or before 2:00 p.m., and a copy of the articles of impeachment, and a copy of the Governor's Proclamation convening the Senate to sit as a court of impeachment have this day at 10:45 o'clock been delivered by me to the Counsel for O. P. Carrillo, Arthur Mitchell.

The Counsel for the Defense advised that Judge Carrillo was having car trouble and would attempt to be here before 2:00 o'clock today.

CHARLES SCHNABEL
Secretary of the Senate

PRIVILEGES OF FLOOR GRANTED

On motion of Senator Adams and by unanimous consent, the House Managers, Judge O. P. Carrillo and his Counsel, and the Counsel for the House Managers were granted privileges of the floor.

Thereupon, Arthur Mitchell, Counsel for the Defense, his assistant, Jan Fox, the House Managers and their Counsel, Terry Doyle, were conducted to their seats by the Sergeant-at-Arms.

SENATE RESOLUTION 2

(Caucus Report)

Senator Aikin offered the following resolution:

Honorable William P. Hobby
Lieutenant Governor
Senate of Texas
Austin, Texas

Sir:

At a caucus held in the office of the Senate attended by 31 members of the Senate, the following recommendations were made, to wit:

The following officers were elected to serve for the Session of the Senate sitting as a Court of Impeachment:

Secretary of the Senate/Clerk - Charles Schnabel

Journal Clerk - Betty King

Sergeant-at-Arms/Bailiff - Tommy Townsend

Doorkeeper - Lowell Gault

General Legal Counsel - Leon Jaworski

Parliamentarian - Steve Bickerstaff

Enrolling Clerk - Mary Hobart Key

All officers and employees appointed by this caucus shall hold their office of employment for the duration of the Court of Impeachment.

It is further recommended that the Administration Committee appoint a sufficient number of custodians, messengers, pages, elevator operators, porters and other employees as may be necessary.

It is further recommended that each Senator shall be permitted to employ secretarial and other office staff at a maximum payroll of \$3,900.00 per month under the classification schedule adopted by the Caucus Report (S.R. 735) of the 64th Legislature, Regular Session.

It is further recommended that the President of the Senate be authorized to name a committee of seven. Such committee shall be designated as the Assignment Committee for the purpose of assigning employees as herein authorized and the committee shall be authorized to select sufficient additional employees including a court reporter to be assigned by it when and where needed.

It is further recommended that not to exceed 300 Journals be printed, all of which shall be prorated among the Members, Presiding Officer, Counsel and others as directed by the Chairman of the Administration Committee. In addition, 75 Journals shall be furnished to the Legislative Reference Library.

It is further recommended that all salaries and expenses herein authorized to be incurred and paid for shall be paid out of the per diem and contingent expense fund of the 64th Legislature as follows: The Senate shall request the State Comptroller of Public Accounts to issue general revenue warrants for payment of the employees of the Lieutenant Governor's office, the Lieutenant Governor, members of the Senate, and employees of the Senate Committees upon presentation of a payroll account signed by the President of the Senate and the Secretary of the Senate; for payment of employees of the Senate, except as provided in Section 20 of the Legislative Reorganization Act (Article 5429f, Vernon's Texas Civil Statutes), upon presentation of the payroll account

signed by the Chairman of the Administration Committee and the Secretary of the Senate; and for the payment of materials, supplies and expenses of the Senate, including travel expenses for members, employees and witnesses subpoenaed by the Court of Impeachment, upon vouchers signed by the Chairman of the Senate Committee on Administration and the Secretary of the Senate/Clerk of the Court.

It is further recommended that pursuant to Article 5429c-3, Vernon's Annotated Texas Statutes and Article 35.27, Sec. 3 of the Code of Criminal Procedure that subpoenaed witnesses be provided actual expenses not to exceed \$25.00 per day and round trip mileage at 12 per mile and provided further that pursuant to Article 5963, Sec. 4 Vernon's Annotated Texas Statutes and Article III, Sec. 24 of the Texas Constitution the members shall receive a per diem of \$30.00 per day and round trip mileage as prescribed in the General Appropriations Bill on a weekly basis.

It is further recommended that no employee of the Senate shall, during the time he or she is employed, furnish to any person, firm or corporation any information other than general information furnished the public pertaining to the Senate/Court and they shall not without permission receive any compensation from any person, firm or corporation during their employment by the Senate and any employee found guilty of violating this provision shall be immediately discharged.

Except as provided herein, and where not in conflict with the rules of the Court of Impeachment, the provisions of the Caucus Reports of the 64th Legislature are in effect.

It is further recommended that no employee of the Senate/Court except those whose official duties require them to work upon the floor of the Senate, shall have access to the floor unless that employee shall have been requested by a Senator, the Lieutenant Governor, or the Secretary of the Senate/Clerk to come on the floor for some official duty, after the performance of which he shall immediately leave the floor of the Senate. The Sergeant-at-Arms/Bailiff is specifically ordered to see that this provision is carried out.

Only those who have the privileges of the floor during the session of the Court shall be permitted on the Senate floor for a period of thirty minutes prior to the time the Senate/Court convenes. The Sergeant-at-Arms/Bailiff is instructed to enforce this rule and to permit only those having the privileges of the floor to enter or remain on the Senate floor during such thirty minute period.

Respectfully submitted,

AIKIN
Chairman of the Caucus

SNELSON
Secretary of the Caucus

The resolution was read and was adopted.

ARTICLES OF IMPEACHMENT

The President laid before the Senate the following resolution:

HOUSE RESOLUTION 161**A RESOLUTION IMPEACHING O. P. CARRILLO, DISTRICT JUDGE
FOR THE 229TH JUDICIAL DISTRICT OF TEXAS, AND
PREFERRING ARTICLES OF IMPEACHMENT AGAINST HIM**

BE IT RESOLVED by the House of Representatives of the State of Texas, That O. P. Carrillo, judge of the district court for the 229th Judicial District of the State of Texas, is impeached and that the following articles of impeachment be exhibited to the senate:

Articles of impeachment exhibited by the House of Representatives of the State of Texas in the name of itself and of all the people of the State of Texas against O. P. Carrillo, judge of the district court for the 229th Judicial District of the State of Texas, in maintenance and support of its impeachment against him.

ARTICLE I

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to have Duval County pay for groceries, to which he was not entitled, for his personal use and benefit.

ARTICLE II

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo used his official powers in a manner calculated to subvert the principles of democratic government and obstruct the fair and impartial administration of justice, thereby bringing the district court for the 229th Judicial District of Texas into scandal and disrepute to the prejudice of public confidence in the judiciary of the state.

This conduct included but was not limited to one or more of the following:

(1) in the case of Clinton Manges versus M. A. Guerra, et al., Cause No. 3953 in the district court for the 229th Judicial District of Texas, which involved a party with whom O. P. Carrillo had numerous financial ties, he refused to recuse and disqualify himself;

(2) in the case of State of Texas on relation of Jose R. Nichols versus Archer Parr, Cause No. 8890 in the district court for the 229th Judicial District of Texas, which involved the suspension and removal from office of a former political ally with whom O. P. Carrillo had publicly split and who was involved in heated competition for political control of the governmental entities in Duval County, he refused to recuse and disqualify himself;

(3) he conspired with others to improperly influence the membership and proceedings of the grand jury of Duval County impaneled in February, 1975;

(4) he conspired with others to dominate and control the Benavides Independent School District by arbitrarily suspending from their offices his political opponents on the school district board of trustees and appointing his political allies as replacements.

ARTICLE III

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo acted alone or conspired with others to divert the services of governmental employees to his personal benefit when he was not entitled to receive those services.

This conduct included but was not limited to one or more of the following:

(1) Cleofas Gonzalez, while employed and being paid by Duval County, worked in the Farm and Ranch Store, which was a partnership between O. P. Carrillo and another;

(2) Pat Gonzalez, while employed and being paid by Duval County, worked in the Farm and Ranch Store, which was a partnership owned by O. P. Carrillo and another;

(3) Francisco Ruiz, while employed and being paid by Duval County, worked as a welder on O. P. Carrillo's property;

(4) Oscar Sanchez, while employed and being paid by Duval County, worked in the construction of a reservoir on O. P. Carrillo's ranch;

(5) Patricio Garza, while employed and being paid by Duval County, worked on O. P. Carrillo's ranch.

ARTICLE IV

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to misapply government equipment, which he was not entitled to use, to his personal benefit.

This conduct included but was not limited to one or more of the following:

(1) the use of a backhoe owned or leased by the Duval County Water Control and Improvement District in the construction of a private building on his property;

(2) the use of equipment owned or leased by Duval County in the construction of a water reservoir on his property;

(3) the use of a truck, mounted with post-hole digging equipment, owned or leased by Duval County in the construction of fences on his property;

(4) the use of welding equipment and supplies owned or leased by Duval County to make repairs on his property;

(5) the use of trucks owned or leased by Duval County to haul equipment and materials to his property for his private use.

ARTICLE V

While holding office as district judge for the 229th Judicial District of Texas and, prior to that, while simultaneously holding office as county attorney for Duval County and a member of the board of trustees for the Benavides Independent School District, O. P. Carrillo conspired with public officials and others to violate the constitution, oaths of office, statutes, and public policy against public officials doing private business with governmental entities they serve.

This conduct included but was not limited to the sale of goods and services and the rental of equipment, either directly from the Farm and Ranch Store, an entity owned by O. P. Carrillo and another public official, or by sham transactions through Zertuche General Store and other business entities, to various governmental entities in Duval County when O. P. Carrillo and close relatives with whom he had a joint economic interest served as officers of those governmental entities.

ARTICLE VI

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo filed false and fraudulent financial statements with the Secretary of State for Texas.

ARTICLE VII

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to charge and collect money from governmental entities for rentals of equipment that did not exist and for rental of equipment that the governmental entities did not use.

ARTICLE VIII

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to defraud Duval County by causing county funds to be paid to Arturo Zertuche, who was not entitled to receive the funds.

ARTICLE IX

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to defraud Duval County by causing county funds to be paid to Roberto Elizondo, who was not entitled to receive the funds.

ARTICLE X

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to defraud Duval County by causing county funds to be paid to Patricio Garza, who was not entitled to receive the funds.

* * *

In all of this, O. P. Carrillo has acted in a manner contrary to the trust reposed in him as district judge and is guilty of gross violations of the constitution and statutes of this state, of the duties of his office, and of the Code of Judicial Conduct. By such conduct he has rendered himself unfit to hold the office of judge of the district court for the 229th Judicial District of Texas and he warrants trial and conviction, removal from office, and disqualification from holding any future office in this state, and the house of representatives, saving to itself the liberty to exhibit additional articles of impeachment against O. P. Carrillo at any future date, if it decides any are necessary, requests that O. P. Carrillo be required to answer the articles of impeachment against him.

Canales

Bill Clayton
Speaker of the House

I hereby certify that H.S.R. No. 161 was adopted by the House, as amended, on August 5, 1975, by the following vote: Yeas 128, Nays 16.

Dorothy Hallman
Chief Clerk of the House

The President requested the Counsel for the Respondent to waive a full reading of H.S.R. 161 at this time with the understanding that there would be a full reading at such time as the Senate resolved itself into a High Court of Impeachment.

Mr. Mitchell, Counsel for the Respondent, waived the reading at this time.

SENATE RESOLUTION 3

Senator Adams offered the following resolution:

BE IT RESOLVED BY THE SENATE OF TEXAS, That Justice Joe R. Greenhill, Chief Justice of the Texas Supreme Court, is invited to attend the session of the Senate, sitting as a court of impeachment, and to administer the following oath to

the Lieutenant Governor, serving as presiding officer of the court:

YOU DO SOLEMNLY SWEAR OR AFFIRM THAT YOU WILL IMPARTIALLY TRY O. P. CARRILLO, JUDGE OF THE 229th JUDICIAL DISTRICT OF TEXAS, UPON THE IMPEACHMENT CHARGES SUBMITTED TO YOU BY THE HOUSE OF REPRESENTATIVES AND A TRUE VERDICT RENDER ACCORDING TO THE LAW, AND THE EVIDENCE, SO HELP YOU GOD. and be it further

RESOLVED, That the following oath be administered by the presiding officer of the court to each Senator:

YOU, AND EACH OF YOU, DO SOLEMNLY SWEAR OR AFFIRM THAT YOU WILL IMPARTIALLY TRY O. P. CARRILLO, JUDGE OF THE 229th JUDICIAL DISTRICT OF TEXAS, UPON THE IMPEACHMENT CHARGES SUBMITTED TO YOU BY THE HOUSE OF REPRESENTATIVES AND A TRUE VERDICT RENDER ACCORDING TO THE LAW, AND THE EVIDENCE, SO HELP YOU GOD. and be it further

RESOLVED, That the following oath be administered by the presiding officer of the court to each court interpreter:

YOU (AND EACH OF YOU) DO SOLEMNLY SWEAR OR AFFIRM THAT YOU WILL CORRECTLY INTERPRET AND TRANSLATE FOR PROCEEDINGS ON THE TRIAL OF O. P. CARRILLO, ON IMPEACHMENT, SO HELP YOU GOD. and be it further

RESOLVED, That the following oath be administered by the presiding officer of the court to each court transcriber:

YOU (AND EACH OF YOU) DO SOLEMNLY SWEAR OR AFFIRM THAT YOU WILL CORRECTLY TRANSCRIBE AND REPORT ALL OF THE PROCEEDINGS ON THE TRIAL OF O. P. CARRILLO, ON IMPEACHMENT, SO HELP YOU GOD.

ADAMS
MAUZY
LOMBARDINO

The resolution was read and was adopted.

SENATE RESOLUTION 4

Senator Adams offered the following resolution:

BE IT RESOLVED BY THE SENATE THAT THE FOLLOWING SPECIAL RULES OF IMPEACHMENT GOVERN IN THE IMPEACHMENT TRIAL OF O.P. CARRILLO, JUDGE OF THE 229th JUDICIAL DISTRICT

Rule 1. Court of Impeachment. At 10:30 a.m., on the 3rd of September, 1975, the Senate of the State of Texas shall meet for the purpose of resolving itself into a court of impeachment to receive the appearance or answer of the Honorable O.P. Carrillo, Judge of the 229th Judicial District, against whom articles of impeachment have been preferred by the House of Representatives of the State of Texas.

Rule 2. Court and Court Officers. The Senate of the State of Texas sits as the court of impeachment. The members of the Senate serve as the members of the court. The President of the Senate, or a member of the Senate designated by the President, serves as the presiding officer of the court. The Secretary of the Senate serves as clerk of the court. The Sergeant at Arms of the Senate serves as bailiff of the court. A person to serve as general legal counsel to the court is elected by the court to advise the presiding officer

- and members of the court on questions of law or rule arising on the trial of impeachment. The President of the Senate may appoint additional officers of the court as he deems necessary.
- Rule 3. Parties and Appearance. Judge O.P. Carrillo and the House Board of Managers are the parties to the trial of impeachment. The parties and their counsel shall be admitted to appear and be heard on the impeachment. They have access to the floor of the Senate at all times, except when the doors of the Senate have been closed for deliberation, and are to be provided seats on the floor of the Senate near the President's chair. The appearance of the parties or their counsel is to be indicated in the record of the proceedings for each session of the impeachment trial. The bailiff shall maintain a daily register of all persons admitted to the floor of the Senate, except members and officers of the court.
- Rule 4. Authority of the Court. The Court has the power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, process, precepts and judgments, to preserve order, and to punish for contempt to the same extent as district courts or as provided in Article III, Section 15 of the Constitution of 1876, as amended and as it existed on August 18, 1975, and to make all lawful orders, rules and regulations which it may deem essential or conducive to the ends of justice. The bailiff, under the direction of the court or the presiding officer thereof, may employ such aid and assistance as may be necessary to enforce, execute and carry into effect the lawful orders, mandates, writs, process and precepts of the Senate sitting as a court of impeachment.
- Rule 5. Authority and Duties of the Presiding Officer. (a) The presiding officer of the court shall have power to make and to issue, by himself or by the clerk of the court, all orders, mandates, writs, process and precepts authorized by these rules or by the court, and to make and to enforce such regulations and orders in the Senate as the court may authorize or provide.
- (b) The presiding officer shall direct all necessary preparations in the Senate and shall direct all forms of proceedings and all forms during the trial not otherwise provided for by resolution or written motion of the court.
- (c) All questions of evidence, including questions of relevancy, materiality, or repetition of evidence, and all incidental questions, shall be decided observing the established rules of evidence in this State as nearly as applicable. The presiding officer shall rule on each question or at his option shall submit the question to a vote of the court. The ruling of the presiding officer stands as the ruling of the court unless a member of the court asks that the question be decided by a vote of the court, in which case the question is to be submitted to the court for decision without debate by members of the court.
- Rule 6. Motions of the Parties. All motions, objections, requests or applications made by the parties or their Counsel are to be addressed to the presiding officer, and, if required by the presiding officer or any three members of the court, are to be committed to writing and read by the clerk of the court. The presiding officer shall rule on each such motion, objection, request or application or at his option shall submit the question to a vote of the court. The ruling of the presiding officer stands as the ruling of the court unless a member of the court asks that the question be decided by a vote of the court, in which case the question is to be submitted to the court for decision without debate by members of the court.
- Rule 7. Closed Court Deliberation. The sessions of the court are to be open, unless the court votes that the session be closed while the court deliberates. No action may be taken in a closed session of the court. A motion to close a

session of the court may be acted on without objection, or if an objection is raised, the question is to be submitted to the court and decided without debate by members of the court. Only members of the court and the presiding officer, general legal counsel, clerk, and bailiff of the court are permitted in a closed session of the court, unless the court votes in open session to invite other persons. If any person is invited in this manner, the parties and their counsel also must be invited.

Rule 8. Decisions of Court. Except as provided otherwise in this manner, all motions by members of the court and all questions to the court are to be decided on the vote of a majority of the members present and without debate by members of the court. The yeas and nays may be required by three members of the court.

Rule 9. Votes. No member of the court may vote or have a vote recorded on any question unless present at the time such vote is taken. No member may be paired.

Rule 10. Proceeding Records. The record of the proceedings shall be prepared and presented to the Journal Clerk of the Senate for printing in the Daily Journal as early as possible each day. A copy of the journal must be provided to each member of the court, the presiding officer of the court, and to the parties and their counsel.

Rule 11. Administration of Oaths. (a) The following oath is to be administered to the presiding officer of the court, and thereafter by the presiding officer to each member of the Senate:

“You (and each of you) do solemnly swear or affirm that you will impartially try O.P. Carrillo, Judge of the 229th Judicial District of Texas, upon the impeachment charges submitted to you by the House of Representatives and a true verdict render according to the law, and the evidence, so help you God.”

(b) The following oath is to be administered by the presiding officer, or the clerk of the court at the direction of the presiding officer, to each person employed by the court to interpret or translate for a witness appearing in the impeachment proceedings:

“You (and each of you) do solemnly swear or affirm that you will correctly interpret and translate for proceedings on the trial of O.P. Carrillo, on impeachment, so help you God.”

(c) The following oath is to be administered by the presiding officer, or the clerk of the court at the direction of the presiding officer, to each person employed by the court to transcribe or report the impeachment proceedings:

“You (and each of you) do solemnly swear or affirm that you will correctly transcribe and report all of the proceedings on the trial of O.P. Carrillo, on impeachment, so help you God.”

Rule 12. Comments by Court Members. No member of the court may discuss or comment on any matter relating to the merits of the proceedings before the court, except with other members of the court and the presiding officer of the court.

Rule 13. Commencement of the Trial. At 2:00 p.m., on the 3rd of September, 1975, Judge O.P. Carrillo shall in person or by counsel appear in the court and file answer in writing to the articles of impeachment preferred against him. The answer shall be filed with the clerk of the court of impeachment. If Judge Carrillo is served and fails to appear in person or by counsel, or appearing, fails to file answer to the articles of impeachment, the trial shall proceed as on a plea of not guilty. If Judge Carrillo appears in person or by counsel and announces not ready to file an answer, commencement of the

- trial may be postponed on the motion of a member of the court decided by the vote of a majority of the members of the court present, the yeas and nays of the vote entered on the record. Subsequent postponements of the commencement of the trial may occur on the motion of a member of the court adopted by the vote of a majority of the members of the court present, the yeas and nays of the vote entered on the record.
- Rule 14. Call of the Senate; Privileges of the Floor. (a) The court shall proceed as a court of impeachment as though under a call of the Senate. While the court is in session, no member of the court may be absent from the Hall of the Senate without the written permission of the presiding officer. For the purpose of these special rules of impeachment, the Hall of the Senate consists of the Senate Chamber, the Sergeant-at-Arms room, the Senate reception room, the Senate cloak room, the back hall, the Lieutenant Governor's committee room, and the corridors and rooms within the prescribed area.
- (b) No person is permitted on the floor of the Senate Chamber while the court of impeachment is in session except for those persons listed in Rules 2, 3, and 4 above, plus staff of the parties or their counsel, such additional persons as may be appointed or designated under Rules 2 or 4 above, and the press as authorized in these rules.
- Rule 15. Action on Pleadings. The Senate, having resolved itself into a high court of impeachment, shall proceed to the consideration of the articles of impeachment, and shall continue in session from day to day (Sunday excepted), subject to recess or adjournment for a period ordered by the court, until final judgment is rendered, and so much longer as may be needful. The clerk of the court shall read the articles of impeachment and the answer, if any, of the respondent. All dilatory pleas and motions properly heard before evidence is introduced on the merits are first to be heard and disposed of, and are to be decided by the vote of a majority of the members of the court present, the yeas and the nays of the vote entered on the record. The party presenting such pleas or motions is entitled to open and conclude the argument thereon. The court shall vote separately on each such plea or motion.
- Rule 16. Burden of Proof. If, after decision on pleas and motions under Rule 15, there remain any issues to be tried, the trial proceeds. The burden of proof is beyond a reasonable doubt, and is put upon the managers of the House of Representatives who are entitled to open and conclude the presentation of evidence and argument in the case.
- Rule 17. Witnesses. (a) Each person appearing as a witness in the impeachment proceeding shall be administered an oath. Each witness is to be asked if he or she objects to taking an oath that includes the term "so help me God."
- (b) If a witness does not object, the presiding officer shall administer the following oath:
- "You (and each of you) do solemnly swear or affirm that the evidence you give upon this hearing by the Senate of Texas of impeachment charges against O.P. Carrillo shall be the truth, the whole truth, and nothing but the truth, so help you God."
- (c) If a witness objects, the presiding officer shall administer the following oath:
- "Understanding the pains and penalties of perjury, you (and each of you) do solemnly swear or affirm that the evidence you give upon this hearing by the Senate of Texas of impeachment charges against O.P. Carrillo shall be the truth, the whole truth, and nothing but the truth."

(d) Witnesses may be examined by only one person on behalf of the party calling them and cross-examined by only one person on behalf of the other party, save by leave of the court. If a member of the court wishes a question to be put to a witness, house manager, or counsel for either party, the question must be reduced to writing and be put by the presiding officer, or by the general legal counsel or clerk of the court at the direction of the presiding officer. Such questions must be put only after completion of both direct and cross-examination of the witness.

- Rule 18. The Rule. (a) Witnesses on both sides are to be sworn and placed in the custody of the bailiff and removed from the Senate Chamber to a place where they cannot hear the testimony of other witnesses. This is termed placing witnesses under the rule.
- (b) Members of the court, parties, and their counsel are excused from the rule. The court by vote may excuse other witnesses from the rule.
- (c) Witnesses under the rule must be attended and all reasonable wants provided. The court may vote to allow a witness under the rule to go at large, but no witness under the rule may be allowed to hear any testimony.
- (d) Witnesses under the rule must be instructed that they are not to converse with each other or with any other person, except counsel for the parties, concerning the proceedings before the court and are not to read any report of or comment on testimony before the court. A person violating such instructions may be punished for contempt.
- Rule 19. Court Deliberation After Final Argument. After conclusion of argument, the court shall deliberate on the articles of impeachment. The deliberation is in open session unless on motion of a member of the court the court decides on a vote of a majority of the members present to close the session.
- Rule 20. Submission of the Final Question. An article of impeachment is not divisible. Voting occurs separately on each article. After an article has been read, the final question is put "Shall this article of impeachment be sustained" and each member of the court, as his name is called, shall rise in his place and answer yea or nay, which vote shall be entered on the record. Once voting has commenced on the merits of any article of impeachment voting must be continued until completed on all articles of impeachment unless the court adjourns for a period not to exceed twenty-four hours or adjourns sine die. If an article of impeachment is not sustained by the votes of two-thirds of the members of the court present, a finding of acquittal is entered as to that article. If an article of impeachment is sustained by the votes of two-thirds of the members present, a finding of conviction is entered as to that article. The vote by which an article of impeachment is sustained or rejected may not be reconsidered.
- Rule 21. Judgment of Acquittal. If no article of impeachment is sustained, a judgment of acquittal is entered. The presiding officer shall appoint a committee of members of the court to prepare a final judgment disposing of all issues in accordance with the decisions of the court. The judgment is entered on the record of the court and a certified copy is deposited in the office of the Secretary of State.
- Rule 22. Judgment of Conviction. If any article of impeachment is sustained, the presiding officer shall appoint a committee of members of the court to prepare a final judgment disposing of all issues in accordance with the decisions of the court. Parties or their counsel may present argument on the final judgment on the motion of a member of the court and the vote of a majority of the members of the court present. A motion to instruct the committee to extend the judgment to include disqualification from holding any office of honor, trust, or profit under this state is adopted only if

approved by the votes of two-thirds of the members of the court present. The written report of the committee is to be filed with the clerk of the court and read in full. The question occurs on adoption of the report and each member of the court, as his name is called, shall rise in his place and answer yea or nay, which vote shall be entered on the record. The report is adopted if approved by the votes of two-thirds of the members of the court present. If the report is finally rejected, the presiding officer shall discharge the committee and appoint a new one to prepare a final judgment which shall be considered in the same manner as the first report. Adoption of the committee report constitutes the pronouncement of judgment by the court and a certified copy of the judgment is to be deposited in the office of the Secretary of State. The judgment must extend to removal from office and may extend to disqualification from holding any office of honor, trust or profit under this state.

- Rule 23. News Media. In order for the public to be properly informed, representatives of the news media are to be provided space in the Senate Chamber and are to be allowed to cover the proceedings of the Senate sitting as a court of impeachment, subject to the following:
1. A person seeking admission to the Hall of the Senate as a representative of the news media shall present to the Senate Committee on Administration fully accredited credentials from his or her employer showing that he or she is engaged primarily in reporting the sessions of the court of impeachment. If the committee determines that the credentials are within the contemplation of this provision, the committee shall certify the name of the applicant to the presiding officer of the court who shall issue a pass card to the person, and this pass card must be presented on each occasion when the person seeks admission to the Hall of the Senate while the court is in session. Pass cards issued under this provision are not transferable. Persons admitted to the Hall of the Senate under this provision shall proceed directly to and shall work in appropriate convenient seats or work stations, the assignments to be made by the Senate Committee on Administration.
 2. A representative of the news media may not be inside the bar of the Senate while the court of impeachment is in session.
 3. Interviews, press conferences, and other contacts between representatives of the news media and members of the court, officers of the court, members of the House of Representatives, counsel, witnesses, or parties may not be conducted in the Hall of the Senate while the court is in session.
 4. Flashbulbs, strobes, floodlights, and other special lighting may not be used in the Senate Chamber while the court is in session in such a way as to interfere with the proceedings. Motion picture and television cameras must operate from assigned fixed positions and may not be assembled or disassembled while the court is in session.
 5. The Senate Committee on Administration shall prescribe regulations necessary to enforce this rule and to provide for the orderly coverage of the sessions of the court of impeachment by the news media. These regulations shall take into account the right of the public to be informed of the events of the trial, the rights of the person against whom articles of impeachment have been preferred, and the necessity that the business of the court be conducted without disruption or undue distraction. The Senate Committee on Administration shall enforce the provisions of this rule and the regulations it prescribes.
- Rule 24. Service of Subpoenas. The presiding officer is authorized on the request of one of the parties or their counsel to issue subpoenas compelling persons to attend or to produce writings or other items before the court. Subpoenas

shall be served by the bailiff, a person designated by the bailiff, or a peace officer and may be served anywhere within the State of Texas. Subpoenas are to be served in person or by certified or registered mail, but where it is impractical to secure service in such manner, subpoenas may be served by leaving a true copy at the usual place of business of the person to be served, by delivering a true copy to any one over sixteen years of age at the person's usual place of abode, or in any other manner which will be reasonably effective to give the person notice.

Rule 25. Form of Subpoena.

SENATE OF TEXAS
COURT OF IMPEACHMENT

No. ____

TO THE BAILIFF OF THE COURT OF IMPEACHMENT OR ANY
PEACE OFFICER OF THE STATE OF TEXAS

GREETING:

You are hereby commanded to summon _____

to appear in person before the SENATE OF TEXAS sitting as
a COURT OF IMPEACHMENT as authorized by PROCLAMATION OF
THE GOVERNOR which will meet at the SENATE CHAMBER in the
CAPITOL BUILDING in AUSTIN, TEXAS, on the __ day of

_____, A.D., 19__, at __ m. o'clock,
then and there to testify and the truth to speak on behalf
of _____ in the cause which is before
the Court, in which the House of Representatives has
impeached O.P. CARRILLO, and there to remain from day to
day until discharged by the Court.

Said witness is further commanded to produce at
the said time and place the following books, papers,
documents or other tangible things as described
below: _____

_____.

Herein fail not, but have you this writ in due time before the Court with your
return thereon, showing how you have executed the same.

Issued and given under my hand this ____ day of
_____, A.D., 19____.

William P. Hobby, President of the
Senate and Presiding Officer of
the Court of Impeachment

Charles Schnabel, Clerk of the Court

OFFICER'S RETURN ON SUBPOENA

Came to hand on the ___ day of _____,
 A.D., 19 __, at ___ o'clock __ m., and executed on
 the ___ day of _____, A.D., 19 __, at
 ___ o'clock __ m., by delivering a true copy of
 this subpoena to _____

the within named witness, at _____
 in _____ County, Texas.

 Bailiff or any Peace Officer of the
 State of Texas

- Rule 26. Rules of the Senate. The rules of the Senate, 64th Legislature, prevail in matters occurring during the sitting of the Senate as a court of impeachment unless in conflict with these special rules of impeachment.
- Rule 27. Suspension or Amendment of the Rules. These special rules of impeachment govern during the trial of this impeachment proceeding. The rules may be suspended on the vote of two-thirds of the members of the court present, the yeas and nays of the vote entered in the record. The rules may be amended on the vote of two-thirds of the members of the court present, the yeas and nays of the vote entered in the record, after written notice of the proposed amendment has been given in the open court for twenty-four hours.
- Rule 28. Witness Immunity. No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined in the court of impeachment, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous. Any person called upon to testify or to give testimony or to produce papers upon any matter under inquiry before the court of impeachment, who refuses to testify, give testimony or produce papers upon any matter under inquiry upon the ground that his testimony or production of papers would incriminate him, or tend to incriminate him, shall nevertheless be required to testify and to produce papers but when so required, over his objections for the reasons above set forth, such person shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he truthfully testified or produces evidence, documentary or otherwise. Any person testifying before the court of impeachment shall have the right to counsel.

ADAMS
 TRAEGER
 MAUZY
 LOMBARDINO

The resolution was read and was referred to the Committee on Administration.

SENATE RULE 103 SUSPENDED

On motion of Senator Adams and by unanimous consent, Senate Rule 103 was suspended in order that the Administration Committee might consider S.R. 4 at 1:00 o'clock p.m. today.

RECESS

On motion of Senator Aikin the Senate at 11:05 o'clock a.m. today took recess until 2:00 o'clock p.m. today.

AFTER RECESS

The President called the Senate to order at 2:00 o'clock p.m. today.

The House Managers and Counsel and Judge O. P. Carrillo and Counsel were present and seated at the seats assigned to them by the Sergeant-at-Arms.

REPORT OF STANDING COMMITTEE

By unanimous consent, Senator Adams submitted the following report for the Committee on Administration:

S.R. 4

**SENATE RESOLUTION 4
ORDERED NOT PRINTED**

On motion of Senator Adams and by unanimous consent, S.R. 4 was ordered not printed.

SENATE RESOLVED INTO A HIGH COURT OF IMPEACHMENT

Senator Aikin submitted the following Motion in Writing:

I move that the Senate of Texas at this time resolve itself into a high court of impeachment to consider the charges preferred by the House of Representatives of the State of Texas against O. P. Carrillo, Judge of the 229th Judicial District.

The Motion in Writing was read and was adopted.

PRESIDENT: The next order of business is the administration of the oath to the presiding officer by the Honorable Joe Greenhill, Chief Justice.

JUSTICE GREENHILL: Governor Hobby, would you please raise your right hand. Rather than repeating the oath after me simply say I do if you do at the finish.

You do solemnly swear that you will impartially try O. P. Carrillo, Judge of the 229th Judicial District of Texas, upon the impeachment charges submitted to you by the House of Representatives and a true verdict render according to the law, and evidence, so help you God.

THE PRESIDENT: I do.

THE PRESIDENT: The next order of business is the administration of the oath by the Chair to members and officers of the Court. In order to establish the record presence of each Senator in the Chamber it will be necessary at this time for the Secretary to call the roll.

The roll was called and the following Senators were present: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

THE PRESIDENT: The Court will stand at ease to await the attendance of absent Members.

The Senate will come to order. Will Members of the Senate take their seats for the administration of the oath.

Will the Senator from Travis take his seat; the Senator from Jasper; the Senator from Bexar, Senator Kothmann.

The record will reflect that all Members of the Senate are in the chamber and in their seats. Will each Member of the Senate rise, raise your right hand, say the words "I do" after I repeat to you the following oath.

You, and each of you, do solemnly swear or affirm that you will impartially try O. P. Carrillo, Judge of the 229th Judicial District of Texas, upon the impeachment charges submitted to you by the House of Representatives and a true verdict render according to the law, and the evidence, so help you God.

THE PRESIDENT: Now will the transcribers and interpreters please take you place before the Secretary of the Senate's table. Will the transcribers come forward first, please.

Each of you raise your right hand, say the words "I do" after the following oath: Whereupon, the following oath was administered by Lieutenant Governor Hobby to the transcribers and court reporters. Court Reporters: Terry Bradshaw, Phyllis Knight and Glenda Fuller; Transcribers: Pat Sykes, Liz Herbert, Libby Weed, Jeanne Patterson, Susan Williams and Joan Wilson.

You (and each of you) do solemnly swear or affirm that you will correctly transcribe and report all of the proceedings of the trial of O. P. Carrillo, on impeachment, so help you God.

THE PRESIDENT: All of the interpreters please come forward. Each of you raise your right hand, say the words "I do" after the following oath.

Whereupon, the following oath was administered by Lieutenant Governor Hobby to the interpreters, Mark Szuchman and Lolly Garcia.

You (and each of you) do solemnly swear or affirm that you will correctly interpret and translate for proceedings on the trial of O. P. Carrillo, on impeachment, so help you God.

THE PRESIDENT: Now will the Officers of the Court appointed by the Chair earlier today mentioned in the Caucus Report please come forward. Raise your right hands, please.

Whereupon, the following oath was administered by Lieutenant Governor Hobby to the Officers of the Court, as contained in the Caucus Report.

You (and each of you) do solemnly swear or affirm that you will faithfully perform your duties on the trial of O. P. Carrillo, on impeachment, so help you God.

APPEARANCES

Honorable John L. Hill, Attorney General of Texas; Honorable Terry Doyle, Counsel for the Board of Managers; Honorable John Odam, Assistant Attorney General of Texas; Honorable Liz Levatino, Assistant Attorney General of Texas, on behalf of the Board of Managers.

Judge O. P. Carrillo, Respondent.

Honorable Arthur Mitchell; Honorable Richard Haynes; Honorable Jan Fox, Attorneys for Respondent.

THE PRESIDENT: The Chair lays out Senate Resolution 4 on Second Reading. The Secretary will read the caption.

SECRETARY SCHNABEL: Senate Resolution Number 4, prescribing rules for the Court of Impeachment-

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: Mr. President, this is a resolution which proposes the special rules for the Court of Impeachment.

Let me just give you a very brief history of how we got here. The Administration Committee was charged by the Lieutenant Governor in the early part of August to begin developing special rules of impeachment. We met, as I recall, on the 18th of August about 10:00 o'clock a.m. and we worked until about 6:00 o'clock p.m. and we went completely through these rules, or the rules before us for consideration.

We rewrote many of them and we came back again yesterday and we wrote some other rules that were proposed. We adopted some additional proposals. It was referred to Committee this morning. We had another hearing at 1:00 o'clock. There was additional testimony before the committee at that time, there was one amendment adopted, there were two amendments presented. So that's how we arrived at this particular position today.

Let's just very briefly go through what these rules say. I hope that you have looked at them, they have been on your desk since 9:30.

Rule Number 1, simply says that we're a Court of Impeachment. Rule Number 2, simply says who the officers are. The President of the Senate is the Presiding Officer or that person that he designates, the Secretary of the Senate is the Clerk of the Court. It says that we may appoint a General Counsel.

Rule 3 grants floor privileges to the parties to the impeachment proceedings. That being the House Managers and their Counsel, the Respondent and his Counsel.

Rule 4 gives or at least states what I think is the law anyway, that this Senate sitting as a Court has a right to impose contempt upon someone violating its rules or violating its Orders and Mandates in the same manner and with the same penalties as a District Court of this state.

Rule 5 simply gives the Presiding Officer the authority to issue Writs and Mandates.

Rule 5-b simply directs the Presiding Officer to make the necessary preparations for all the forms and proceedings of the Senate as a Court of Impeachment.

Rule 5-c says that the Presiding Officer shall rule on evidentiary matters or the Presiding Officer may submit it to the Court for ruling or the Court itself on its own motion, with its own desire may rule on matters of evidence and motions.

Motions of the parties, the Presiding Officer shall decide and rule on motions of the parties to the proceedings or the Senate sitting as a Court may rule on those

motions.

Rule 7 says that the session shall be open unless closed by a majority vote. That is essentially an executive session. If it's closed it prescribes who may attend the executive session. It prescribes further that if anyone other than the members of the Court are in the executive session then both parties must be allowed to be present in the executive session.

Rule 8 simply says the decisions of the Court are by majority vote unless otherwise specified in the rules.

Rule 9 simply says that you must be present to vote and that you must be present to record a vote and that you may not pair.

Rule 10 simply says that the proceedings shall be recorded and a Daily Journal shall be prepared and submitted to you within a reasonable time.

Rule 11 is essentially what we adopted this morning and that being the oaths of the various people who have just been sworn in, that were sworn in this morning.

Rule 12 is what's been called a gag rule. And it simply says that members of this Court may not comment--no member of the Court may discuss or comment on any matter relating to the merits of the proceedings before the Court, except with each other and the Presiding Officer. That's a very important rule.

Rule 13 simply says that the trial shall commence at 2:00 o'clock p.m. and we are directed to continue with the trial and to hear the plea of the House Managers and the Counsel of the House Managers and the plea of the Counsel for the Respondent.

Rule 14 says that the Court will conduct its business as though it were under a Call of the Senate. Now that's very simple and there will be an amendment in regard to that. Let me just say this about that. When we operate as though we were under a Call of the Senate -- that simply means that the doors of the Senate are secured, and that for a member of the Court to leave the Senate Chamber he must have permission to leave the Senate Chamber. It's not a matter of sequestering the members of the Court or the Senate to be here under the threat of arrest, just simply means that the Chamber is closed and that you must have written permission to leave. It defines what the Chamber is, which includes all of the halls of the Senate as well as the halls immediately adjacent to the front and immediately adjacent to the rear of the Senate. It prescribes floor privileges. No person is permitted on the floor of the Senate Chamber while the Court of Impeachment is in session except those persons listed in Rules 2, 3 and 4, plus the staff of the parties or their Counsel. And such additional persons as may be appointed and designated under Rule 2 and 4.

Rule 15 says that the Senate shall proceed on the pleadings. It designates which party to the proceedings has the right to open and close.

Rule 16 states the burden of proof. The burden of proof is beyond a reasonable doubt and is put upon the Managers of the House of Representatives who are entitled to open and conclude the presentation of evidence and argument in the case.

Witnesses, Rule 17, simply prescribes the oath of witnesses.

It says how the cross examination is to be conducted with the direct testimony of the witnesses to be elicited by the Attorney for one side or the other, not a multiplicity of attorneys without leave of the Court. Same thing with cross examination.

Rule 18 is what is called The Rule and is familiar to attorneys that are members of the Senate, what The Rule is. I would suggest that you read this rule, I'm not going to read it to you, it's lengthy. But it's simply the invocation of The Rule as it's invoked in civil and criminal proceedings in the courthouse. It deals with the witnesses and their responsibilities and duties and obligations as witnesses after they have been sworn.

Court deliberation. At the conclusion of the argument the Court shall deliberate on the Articles of Impeachment. The deliberation shall be, it says in an open session here in the rules, there was an amendment adopted in Committee that will be presented for your consideration, that would close that session.

Rule 20 simply states how the question is put to the Senate on each article. They're not divisible. The matters to be voted on are not divisible, but each article shall be voted on separately and the question is: Shall this Article of Impeachment be sustained?

If the Respondent is acquitted on each Article of Impeachment, a judgment of acquittal shall be entered. Rule 21.

Rule 22 states if any of the Articles are sustained by the constitutional requirement of two-thirds then the Presiding Officer shall appoint a committee to prepare a judgment for the consideration of this Senate. As you know in the Constitution, if a judgment -- if the Respondent is convicted on any one Article then he is removed from office.

There is an additional possible penalty that may be imposed by the Constitution of the prohibition of ever holding public office again. It's the idea of the Committee that after -- if there is a conviction on any Article and after the committee is appointed to write the judgment, then this Court of Impeachment will consider that alternative; or the secondary penalty, by method of instruction to the Committee in writing the judgment. And if the Committee is instructed to include that additional penalty in the judgment then the Committee will do it.

Rule 23 deals with the obligations and the privileges of the media-of the press.

Rule 24 simply says who serves subpoenas.

Rule 25 is the form of the subpoena.

Rule 26 says that we are adopting the rules of the Senate of the 64th Legislature as the rules of this Court anywhere they're not inconsistent with specific rules herein.

Rule 27 requires two-thirds of the members present to suspend the rules.

Rule 28 is the method by which immunity may be granted to witnesses who feel that their testimony might impair their own liberty or their own -- the question of immunity is simply as stated in the Legislative Organizational Act.

These rules permit the members of this Court to ask questions of the witnesses propounded in writing or prepared in writing and submitted to the Presiding Officer and propounded to the witnesses by the Presiding Officer or Legal Counsel -- the questions that you ask in writing.

Now that, Members of the Senate, took a very short time. It took the Administration Committee a very long time to reach here, and I would be glad at this time to yield for any questions.

SENATOR BROOKS: Mr. President.

THE PRESIDENT: Senator from Harris County, Senator Brooks.

SENATOR BROOKS: In one portion there, Senator, you mention that there is the possible additional penalty of permanently being barred from holding public office. Could that in any way possible be mitigated? Say to be barred from holding public office for a certain number of years, or does it have to be either permanent or not at all?

SENATOR ADAMS: Senator Brooks, I would refer you to the Constitution. I think that it may not be mitigated, that it says "barred from public office", and I believe that's Section --, well, it's in the Constitution. I would refer you to the Constitution, I don't think it can be mitigated.

Any other questions? I yield for questions.

THE PRESIDENT: The Senator yields.

SENATOR McKNIGHT: Senator Adams, Rule 23, Section 4, is any portion of this amended in the Committee?

SENATOR ADAMS: Rule 23?

SENATOR McKNIGHT: Yes, sir, Rule 23, Section 4.

SENATOR ADAMS: Does that deal with privileges of the media? There was no amendment presented in Committee. There's an amendment pending by Senator Gammage from Houston.

SENATOR McKNIGHT: Thank you, Senator.

SENATOR ADAMS: Yes, sir. Any other questions?

SENATOR OGG: Does the Senator yield?

THE PRESIDENT: Senator yields.

SENATOR OGG: Senator, in Rule 17-b on Page 10, in dealing with the way questions may be propounded by members of the Court. It says that they must be impounded in writing --

SENATOR ADAMS: Propounded, Senator, propounded.

SENATOR OGG: And I would assume that those questions to be propounded would be -- we would be given adequate time for propounding them. But the main question is this, are those questions once we propounded a question to a witness -- are those questions subject to cross examination or is that going to be -- the rules are silent on it, will that be left up to the ruling of the Presiding Officer?

SENATOR ADAMS: If they're silent I would say it's left up to the ruling of the Presiding Officer.

SENATOR CLOWER: Mr. President, does the Senator yield?

SENATOR ADAMS: I yield.

THE PRESIDENT: The Senator from Jasper yields to the Senator from Dallas, Senator Clower.

SENATOR CLOWER: Senator, how would this physically come about? If I wanted to ask someone a question would I write it out and take it up to the Secretary or are there going to be Pages around here to take it up? What's going to be the physical way of doing this?

SENATOR ADAMS: Senator, I have always done things for myself. And if it were me I would write it down on the yellow tablet and walk up there and hand it to the Secretary of the Senate. And I would presume he would hand it to the Presiding Officer and then it would be propounded to the witness.

SENATOR CLOWER: Will we know in advance the list of witnesses that will be expected to be called that day or that week?

SENATOR ADAMS: I would say that would be up to the Counsel for the House Managers and Counsel for the Respondent.
Mr. President, there is a Committee Amendment.

THE PRESIDENT: The following amendment--

SECRETARY/CLERK: Senator Adams offers the following Committee Amendment to the resolution:

Amend Rule 19 to read as follows:

Rule 19. Court Deliberation After Final Argument. After conclusion of argument, the court shall deliberate in closed session on the articles of impeachment.

SENATOR ADAMS: Mr. President, I would like to yield to Senator Meier.

THE PRESIDENT: Senator from Tarrant, Senator Meier.

SENATOR MEIER: Mr. President, is the question on the Committee Amendment?

THE PRESIDENT: Yes, sir.

SENATOR MEIER: Mr. President, and Members, this Committee Amendment deals with Rule 19 in the proposed rules and deals with the question of whether the Court deliberations after final argument should be in closed session or should be in open session, or essentially should you just make that provision that says you should deliberate in closed session?

I presented this amendment to the Administration Committee a moment ago and it was adopted by a vote of four to two in the committee. The analogy as I see it, at the time the evidence is closed, is that the Senate is more closely analogous to a jury than it is to any other entity that we could point out in the legal process. And it is my judgment that it would be better to have any discussion or deliberation concerning the evidence or the law of the question be put at that time to be closed. And then after the deliberations are completed that any votes be taken as set forth in Rule Number 20 in open and by roll call vote. So the mere effect of this rule, that was approved by the Administration Committee, this amendment, is to make the deliberations closed, not to have any votes to make them closed or make them open if there is a vote, but to make them closed. And that's just like the deliberations of any jury that I know about in Federal Court or State Court or any other kind of Court. And I would urge that it's a proper amendment and ask your support.

SENATOR SCHWARTZ: Mr. President.

THE PRESIDENT: Senator from Tarrant, Senator Meier yields to the Senator from Galveston.

SENATOR SCHWARTZ: I just want to be heard against the amendment at the proper time if there are no questions to the Senator from Fort Worth.

THE PRESIDENT: The Senator from Galveston.

SENATOR SCHWARTZ: Members of the Senate when the Committee adopted the rules you will note that we provided for a way that the Court could close its deliberations, both during and after the conclusion of evidence. You will find in Rule 7 a provision that says that if we decide to deliberate in a closed session that we can even

invite Counsel for either or both sides and other persons into a closed meeting, but that closed meeting must be held on an affirmative request or a motion by majority vote of the members present voting. Now to automatically close these deliberations by the adoption of this particular amendment, I think mitigates against the idea that we ought to govern by these rules and by majority vote the closed session concept during an impeachment trial. I simply think that the impeachment process should be open for all purposes at all times, to all people, except at that time when a majority of the Court sitting properly decides on a motion to close those proceedings. That's the way Rule 7 states it, that's the way Rule 19 states it. I would not like to see us simply say in this rule, as the Senator from Tarrant says, that our deliberations shall proceed in a closed session. In the first place -- and I would ask you to listen closely to this, because it may come as a surprise to you. I don't really believe that we ought to attempt to persuade each other after the close of the evidence. I think when we uniquely become jurors in the sense instead of a Court and begin to make judgments we have heard the evidence, we have heard the arguments of Counsel and we ought to go make our decision. I argued to the Administration Committee that we ought not to permit debate. As a matter of fact I ought not to have to -- well, I ought not to impose my arguments upon other Members of the Court about fact issues and credibility of witnesses, or anything, because they heard the same evidence that I heard and they have the same constitutional duty as I have to make a judgment on that evidence after I have heard the arguments of Counsel, having heard the evidence personally, having reviewed the testimony then there's no necessity for us to argue or deliberate in the common sense that one might attempt to persuade the other. And what I'm trying to argue against, number one, is any deliberation at all. I lost that battle in the committee, but I think at the close of the evidence and the close of the arguments that the motion properly made to proceed to a vote on the Articles of Impeachment would carry in this body. I don't think this body wants to listen to arguments of colleagues about an issue of impeachment, but if indeed we do issue the arguments of colleagues upon an issue of impeachment then I think first we ought to only listen to those arguments in public and second, if we choose to argue or deliberate in a closed session that we make that decision openly by a majority and affirmative vote of this body. So I ask you to vote against the Meier amendment or I think we should refuse this committee amendment. I frankly am sorry that we didn't make a greater argument in the Committee. I really was not prepared in the sense to know that we might even accept the amendment at that point or that one might have an opportunity to pass or I would have been better prepared at the time.

SENATOR ADAMS: Will the Senator yield?

SENATOR SCHWARTZ: Yes, sir, I will.

SENATOR ADAMS: It is a very simple matter to close the session this morning, is it not?

SENATOR SCHWARTZ: The simplest method in the world, Mr. Chairman.

SENATOR ADAMS: You move it and you vote it by the majority and you close it.

SENATOR SCHWARTZ: That's correct. And we ought not close the session by the rule. We ought to close the session by vote of the majority of the Senate.

SENATOR ADAMS: If you want to open it under his amendment, what have you got to do?

SENATOR SCHWARTZ: Suspend the rules by a two-thirds vote. Mr. Chairman, as always your eloquence and your understanding of the rules is unparalleled.

SENATOR MEIER: Mr. President.

THE PRESIDENT: Senator from Tarrant to close on his amendment.

SENATOR MEIER: You might gather the two votes I didn't get, you just heard from them. Senator Schwartz is always prepared and you all know he was prepared in that Committee, just as he's prepared here on the floor. But I would urge you that he has perhaps limited the application of the term "deliberation", because the term "deliberation" as used in this rule and as commonly used in talking about the functions of a body, either as a fact-finding body or as a body determining a point of law, is not limited to the question of argument in support or opposition of a given position, but rather includes an orderly and systematic evaluation of evidence apart and aside from any advocates, nature, or taking a hard firm position and attempting to convince other people to come along to your viewpoint. It includes the process of just merely sifting through and analyzing, without trying to convince. And I would contend that closing a session, talking about what has transpired in that sense is something we could all benefit from in reaching what is going to be a very weighty decision on how each member of this body should vote when it comes time to issue these Articles. And as far as the question of whether we ought to be voting to close instead of doing by adoption of the rules it's going to take, I would assume, 16 votes to adopt the amendment, Senator. And if there are 16 people for it now let's hope there will be 16 for it down the road.

SENATOR SCHWARTZ: Mr. Chairman, will the Senator yield?

SENATOR MEIER: It's always a privilege to yield, Senator.

THE PRESIDENT: The Senator from Tarrant yields to the Senator from Galveston.

SENATOR SCHWARTZ: Senator, do you really believe that there's any advantage to placing this closed deliberation in the rule, so that in order to open the deliberation we would have to have a two-thirds vote of the Members, as opposed to leaving the rule like we have it and close the session anytime we wanted with a majority vote? What is the advantage?

SENATOR MEIER: Senator, I know, as well as you know, that if you require positive action in order to close the session and much to do is made of it, as we have had made in every executive session that we have had since I have been in the Senate, only a limited period of two sessions--the point is, if you put it in the rules you have got to vote to close it, somebody's going to move to keep it open, then you have to have a roll call vote--all too much to do is made about it. Instead, my judgment is, we ought to take the calmer course and the more reasonable course and put it in the rules at this time.

SENATOR SCHWARTZ: I want to quote the Dean of the Senate, Senator. I may vote to tie your hands, but I ain't ever going to vote to tie mine.

SENATOR ADAMS: Senator, I don't think that's a fair quote.

SENATOR SCHWARTZ: The truth is that a vote for your amendment is a vote on the part of any Senator who votes for it to tie his hands with the requirements of the two-thirds vote if he wants to open the deliberations, whatever time in the distant future that we arrive at that point in deliberation, he will then be stuck with a two-thirds vote requirement to open those deliberations. If he sticks with the rule as we have it the only burden is if the Senate at that time decides to close all or a part of those deliberations they can do it by a simple majority vote. And I just want to make that point clear. And in this case I won't even vote to tie your hands, even though you would like me to.

SENATOR MEIER: Senator, I appreciate your help on my amendment. Mr. President, I move the adoption of the amendment.

THE PRESIDENT: The question is on the adoption of the amendment. A record vote is called for, Secretary call the roll.

Yeas: Andujar, Jones, Lombardino, Longoria, McKinnon, McKnight, Meier, Ogg and Traeger.

Nays: Adams, Aikin, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Kothmann, Mauzy, Mengden, Moore, Patman, Santiesteban, Schwartz, Sherman, Snelson and Williams.

THE PRESIDENT: There being 9 "Yeas" and 22 "Nays" the amendment fails.

The following amendment-

SECRETARY/CLERK: Senator Adams offers the following amendment to the resolution:

Amend S.R. 4 by striking the number 10:30 a.m. and substituting the number 2:05 p.m. in Rule No. 1.

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: We're just simply, because of consistency versus accuracy striking 10:30 a.m. out of Rule 1 and putting in 2:05 p.m., which is the time we convened in the Court of Impeachment.

THE PRESIDENT: Question on the adoption of the amendment, is there objection? The Chair hears none. The amendment is adopted.

The following amendment -

SECRETARY/CLERK: Senator Gammage offers the following amendment to the resolution:

Amend Rule 23 to strike paragraph number 4, page 15 and substitute the following:

"4. No motion picture, television, or still camera may be used in the Senate Chamber while the Court is in session."

THE PRESIDENT: The Senator from Harris, Senator Gammage.

SENATOR GAMMAGE: Mr. President and Members, this amendment is exactly what is on the face of it, it would bar cameras, whether still cameras, motion picture cameras, television cameras, from this Chamber during the proceedings. It

speaks not so much to the question of any fundamental error which may subsequently be raised as to these proceedings but to the decorum and the nature of the proceedings itself and the nature of this body sitting in this Chamber during these proceedings. We are essentially judicial, not legislative in our functions here. It's not an open forum for hot political debate, theatrics and what have you. We are here to hear the testimony of witnesses, to review evidence that is offered by both sides on the cause before us. I think that we might be consistent with the rest of the courts in this country if we eliminated from the outset any possible distractions or interference with these deliberations.

SENATOR MAUZY: Mr. President, will the Senator yield?

SENATOR GAMMAGE: I yield.

THE PRESIDENT: Senator from Dallas, Senator Mauzy.

SENATOR MAUZY: What happened to the Defendant's right to a speedy public trial?

SENATOR GAMMAGE: This trial is no less public because cameras might be barred, Senator. These deliberations may be broadcast, the media is here to cover it. Any member of the public who wishes to view these deliberations can come in the gallery and view them, watch them, watch the whole process. But we don't need the unnecessary distractions of cameras, strobe lights on the floor and what have you.

SENATOR MAUZY: Senator, who is it that has the right to a public trial?

SENATOR GAMMAGE: Every citizen in the country.

SENATOR MAUZY: No, it's the Defendant, Senator, it's not the Court.

SENATOR GAMMAGE: I said every citizen in this country who is on trial.

SENATOR MAUZY: That's correct. Well, have you sought to find out if the Respondent in this case desires your amendment?

SENATOR GAMMAGE: It's not a question of whether the Respondent in the case desires it or not, it's a question of decorum of this Body. It's a question of the nature of our function here, Senator.

SENATOR MAUZY: Whose right is it to a public trial?

SENATOR GAMMAGE: I would consider it my right as a member of this Body not to have any distractions which might draw my attention away from what we are deliberating on, my attention being given to the witnesses that are testifying, any matters of evidence that are being introduced and discussed before us.

SENATOR MAUZY: Senator, that's where you and I differ. It's not your right as a member of this Court that the Constitution protects. It's the right of this Respondent--

SENATOR GAMMAGE: I think it's the rights of all society, Senator.

SENATOR ADAMS: Mr. President.

THE PRESIDENT: The Senator from Jasper.

SENATOR ADAMS: Mr. President, I would simply say as one of the authors of the Resolution that I think this is a matter that should be left up to a vote of the Court. I don't intend to debate it one way or the other.

SENATOR SCHWARTZ: Would the gentleman yield for a question, Mr. Chairman?

SENATOR ADAMS: I yield.

THE PRESIDENT: Senator from Galveston.

SENATOR SCHWARTZ: I just ask you whether you feel as I feel, that under circumstances given a proper objection on the part of Counsel for the defense in this impeachment proceeding before this Court that you feel as I do that that would raise another question as to whether or not we might be in some error if that person desired to eliminate a part of the media from the viewing here on the floor because of any distraction. I think the question is not posed to us until when the pleadings might be filed in reply to the Articles of Impeachment. Any question that is raised as to whether or not that is the acceptable practice viewed from the standpoint of Counsel. If Counsel for Judge Carrillo should make that objection then I think again I would be inclined to vote affirmatively on your amendment, Senator, or at least vote to support such a motion. But I think as the Senator from Dallas stated that it is uniquely the right of the person accused in a judicial proceeding to raise that question. In the absence of that objection, it is our duty to provide the public speedy facility for the trial of those issues.

Do you agree with that, Senator?

SENATOR ADAMS: Senator, if that is the question, I think you might be asking the wrong man the question, because I have a concern and it became a concern of mine at a discussion that was had -- I can't recall exactly when it was, maybe it was in the Senate Caucus, about the possibility of claiming, if there is a conviction, the possibility of claiming cumulative error even though no objection was imposed at the time. And I -- that speaks to me.

I think you're asking the wrong man the wrong question. You intended to ask a friendly question of a friendly Senator and you --

SENATOR SCHWARTZ: I know as a member of the Administration Committee this question came up in our concern as a Committee and Counsel was present and there was no objection raised at the time. Now whether or not that constitutes a waiver is a matter for some other judicial body to make some determination about. But I would simply point out for this record that there was a consideration of this issue and that we are not now operating under these rules or any objection that was raised by Counsel.

SENATOR ADAMS: You're correct, Senator Schwartz, that the question did come up. The only objection that I heard when the question came up -- and, of course, the Committee record will stand in its own body -- was that one of the Counsel didn't want lights in his face when he was questioning witnesses periodically. But as I recall, Counsel for the Respondent had no objections.

SENATOR SCHWARTZ: I want to clarify the record as to that, because all the members of the Senate not being of the Administration Committee would have no way of knowing that we considered this possibility. We asked Counsel for the Respondent and there was no objection at the time.

SENATOR ADAMS: I'm sorry, I misunderstood your question.

THE PRESIDENT: Senator from Harris, Senator Mengden.

SENATOR MENGDEN: Are we at that stage of the proceedings where we can submit questions in writing to the President to ask Respondent -- his Counsel a question?

THE PRESIDENT: Would your question have relationship to the pending amendment, sir?

SENATOR MENGDEN: Yes.

SENATOR ADAMS: I would say that we don't have an amendment at this moment.

THE PRESIDENT: We don't have an amendment to prohibit it either.

SENATOR ADAMS: That's right.

THE PRESIDENT: What question did you desire to submit, Senator?

SENATOR MENGDEN: The question that I have written is, would the President or the proper authority ask the Respondent, his Attorney, if either or both object to the wording of Section 4, Rule 23 as it now reads?

THE PRESIDENT: If you will send that forward, I will find that out for him at this time.

SENATOR GAMMAGE: Mr. President.

THE PRESIDENT: Senator from Harris, Senator Gammage.

SENATOR GAMMAGE: I don't have a question in writing, if the Chair requires that I will bring a question up, at the same time I will propound another question to the Respondent and his Counsel, whether or not they have any objections to the language of the referred amendment.

THE PRESIDENT: I will propound both of those questions in that form if you like.

SENATOR GAMMAGE: If they do have an objection, if they do indeed want the cameras present then I will withdraw my amendment.

THE PRESIDENT: The Chair will propound Senator Mengden's question first to the Attorney for the House Board of Managers, Mr. Doyle. Mr. Doyle, do you object to the present provisions of the proposed Rule 23?

MR. DOYLE: Mr. President, Members of the Senate, the position that the Board of Managers has taken from the beginning is that we simply request that whatever rules the Senate adopts with respect to the news media, that it enforce those rules to see that the trial is carried out in a manner which is befitting a Court. Obviously, if you completely eliminate the electronic media and photographs then you have gone to the nth degree to see that you have no interference from outside sources.

The Board of Managers recognizes that this is not an ordinary trial. This is only the third one of these in a hundred years. And the Board of Managers recognizes that perhaps the method of handling the news media is likely to be different in this forum than in a District Court or Appellate Court in the State of Texas.

All we've asked and all we ask at this time is that whatever rule you adopt be one which is consistent with the significance of what the Senate is about to do and frankly I would prefer not to take a position other than that. And that's the position we took at the first meeting of the Administration Committee and at the second meeting of the Administration Committee and before the Senate today.

THE PRESIDENT: Mr. Doyle, will you now respond to Senator Gammage's question, specifically to your position on the pending amendment?

MR. DOYLE: Mr. President, I think that my answer or the statement I just made sets out my position. I don't want to take a position on an amendment that could later have some legal significance attached to it, simply because I don't think it's proper. It's not in the nature of an adversary question that goes to the merits of this litigation. And the position that I take with respect to Senator Gammage's question or anybody else's question is that whatever rules you adopt we simply ask that that rule be enforced to carry out this trial in a manner which is befitting the matter before this Court. And I would prefer not to say one way or another.

THE PRESIDENT: Thank you, Mr. Doyle.

Which of the Counsels for the Respondent will respond. Mr. Mitchell, will you respond, first, to Senator Mengden's question, which is: is the present wording of Section 4, Rule 23 -- would you state your position on that.

MR. MITCHELL: Mr. President, Members of the Court, our position is that as the rule stands is satisfactory, keeping in mind the extremes of disruption of orderly trial procedure such as explicated by courts in cases such as the Estes case. And on the other hand, as observed by Counsel representing the Board of Managers that this is not strictly a judicial proceeding. Whatever rule's adopted we would like a rule that does not interfere with the orderly presentation of the case. That would probably be a rule midway between total exclusion and rampant use of the Courtroom as the proceedings develop.

THE PRESIDENT: Mr. Mitchell, would you now respond to Senator Gammage's request for expressing your position on the pending amendment.

MR. MITCHELL: We have no objection to Section 4, I believe it is, Mr. President, as written.

THE PRESIDENT: Do you have a position on the pending amendment, sir?

MR. MITCHELL: Section 4 as is pending, Mr. President -- our opinion would be that no motion picture, television or still cameras may be used in the Senate Chamber while the Court is in session if to do so would be to disrupt the orderly processes of the Court. So as to destroy the judicial attitude and the judicial

atmosphere which should prevail.

That, Mr. President, not to beg the question, is sort of total exclusion.

THE PRESIDENT: Does Mr. Mitchell's response satisfy you, Senator Gammage and you, Senator Mengden?

SENATOR GAMMAGE: (Nodding head affirmatively.)

SENATOR MENGDEN: (Nodding head affirmatively.)

THE PRESIDENT: Does that elicit the information you wished to elicit? Senator from Harris, Senator Gammage, to close on his amendment.

SENATOR GAMMAGE: Mr. President and Members, as Counsel for the Respondent expressed, it's their position that they would agree with the language in the propounded amendment to the extent that it would apply insofar as it might interfere with the deliberations or the decorum of these proceedings. I submit that the language of the proposed amendment is unequivocal, it's firm and it excludes any possibility of such interference and ask for an "aye" vote.

THE PRESIDENT: Question on adoption of the amendment. A record vote is called for, Secretary call the roll.

Yeas: Adams, Andujar, Farabee, Gammage, Harrington, Harris, Jones, Longoria, McKnight, Meier, Ogg and Patman.

Nays: Aikin, Braecklein, Brooks, Clower, Creighton, Doggett, Hance, Kothmann, Lombardino, Mauzy, McKinnon, Mengden, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent: Moore.

THE PRESIDENT: Being 12 "Yeas" and 18 "Nays" the amendment is lost. The following amendment.

SECRETARY/CLERK: Senator Meier offers the following amendment to the resolution:

Amend Senate Resolution No. 4 by striking from the title in Rule 14 the words "Call of the Senate;" leaving as the title "Privileges of the Floor" and striking the first two sentences of subparagraph (a) so that the Rule deals only with the subject matter in subparagraph (b) concerning privileges of the floor; and in subparagraph (a) concerning a definition of this term "the floor."

THE PRESIDENT: Senator from Tarrant, Senator Meier.

SENATOR MEIER: Mr. President, earlier, I think there was some discussion about the reason for the language -- the restrictive language being in here concerning this session operating like we were operating under a Call of the Senate was because there might be some question of federal due process in the event a member was absent for some limited period of time and then yet called upon to vote on the Articles of Impeachment at the end of the trial. Well, that's just not the law.

The law is, in fact, that testimony can be taken outside the presence of anyone that's accused and that a vote can be taken irrespective of whether or not the Jury heard all of the evidence of the witnesses. And that is in fact the very case that I found

in the library, after having met with the Committee a moment ago. It was a 1974 case, United States of America against Hay. It's a Federal District Court case, it cites as its authority outstanding decisions of Mattox against the United States, which was rendered in 1895. And if it's been the law that long there's no reason I can see why we ought to in the words of Senator Aikin, "tie our hands" to the extent of voting now to operate under the stringent rule of putting ourselves under a Call, when there's no constitutional due process question involved. I just urge you that that's not the situation, that if we vote now to put ourselves under a Call anytime there's one member absent, as we had here a moment ago -- it took us a little while to get started, from 2:00 o'clock to 2:30, because some of us didn't get back in here right at 2:00 o'clock. This entire trial could be exactly like that if there was one person absent and someone raises an objection, "Well, we can't proceed now, because there's one person absent. We're operating under a Call, therefore we ought to send somebody after that person." I think we're only tying our own hands in how we have to operate. Certainly we all ought to be here to listen to every bit of testimony, to listen to everything that's said, but we all know that that's not going to be the case. There's no way that 31 Members of this Senate are going to be here everyday of the trial if it lasts anywhere from four to six weeks as everybody I have heard talk about it talks about it.

SENATOR CLOWER: Senator, will you yield?

SENATOR MEIER: Yes, I will yield, Mr. President.

THE PRESIDENT: The Senator from Tarrant yields to the Senator from Dallas, Senator Clower.

SENATOR CLOWER: If someone is absent and we're operating under a Call we can still continue to proceed, can't we under the rule?

SENATOR MEIER: We can, Senator, but if someone raises an objection, anyone of the parties -- if anyone of the parties raises the objection and you don't vote for it, then you're not operating under your rules in the sense that you haven't put a Call on and had that person come in. And then you do get down to raising the due process question that was the very thing that was asserted in the first place for adopting this stringent, hand-tying rule.

SENATOR CLOWER: If we have a quorum we can continue to proceed under the rules.

SENATOR MEIER: Senator, I would call your attention to the language of Rule Number 4 of the Senate's Rules, because there it states that even when a quorum is shown to be present the Senate may proceed with the matters upon which the Call is ordered or may enforce and await the attendance of as many of the absentees as it desires to have present.

SENATOR CLOWER: In other words, we wouldn't have to cease deliberations simply because someone was not here, we could go forward. Isn't that correct, under the rules?

SENATOR MEIER: It's correct to the extent that if you're going to go under the impression that if you're going to have objection made and you put on a Call and you don't go after somebody that you're committing an error. That's what I'm saying, Senator.

SENATOR CLOWER: Well, that's not the only reason for that rule.

SENATOR MEIER: That's the reason that was given today earlier, you heard it, you were sitting there the same as I was.

SENATOR CLOWER: Well, the Administration Committee met many hours. I do know that the rule seems to be reasonable to me that we should operate under a Call like this to keep as many people here as possible. If for some reason there are not enough here we already have the mechanism to go get them and bring them back, but we can go forward regardless of whether or not there's one or more members absent as long as we have a majority here, a quorum present.

SENATOR MEIER: Senator, I will put my record of attendance beside anyone's, but I just don't think we ought to go into this with our head in the sand attitude, that everybody is going to be here everyday and if somebody is absent and if we go forward when they're absent that you're going to be raising this Constitutional question. I think we can eliminate the Constitutional question by just simply not mentioning this in our rules going in.

SENATOR HARRIS: Mr. President.

THE PRESIDENT: The Senator from Dallas, Senator Harris.

SENATOR HARRIS: Senator Meier, you're suggesting that if, for example, I become ill and unable to attend, certainly what Senator Clower said -- you would go forward, you must go forward. You couldn't wait until one of the members -- you do it by majority vote. Is that the way you understand the rule as promulgated?

SENATOR MEIER: Senator, what I'm saying is that if that happened then I would object to you coming in and voting.

SENATOR HARRIS: It could be objected to by either party.

SENATOR MEIER: That's right.

SENATOR HARRIS: Ultimately, if I get well and come back and want to vote and then you raise the objection --

SENATOR MEIER: I object to Senator Harris voting on Article Number 3, because he didn't hear all the witnesses.

SENATOR HARRIS: That's exactly what I -- you're attempting by your amendment to cure that.

SENATOR MEIER: That's right.

SENATOR HARRIS: You've got my support.

SENATOR MEIER: Thank you, Senator.

SENATOR ADAMS: Mr. President.

THE PRESIDENT: The Senator from Jasper.

SENATOR ADAMS: I just want to be heard against the amendment, Mr. President.

THE PRESIDENT: Okay, sir. Let me get the Senator from Guadalupe, first.

SENATOR TRAEGER: Senator Meier, isn't this the same amendment that the Administration Committee voted down unanimously when you presented it before?

SENATOR MEIER: Yes, but I was like Senator Schwartz, I didn't have quite enough time to prepare it. I hadn't gone to the library and researched the law and found the law to be 180 degrees out of phase with what apparently the Committee thought it would be.

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: Mr. President and Members of the Court, let me say to you that this big bugaboo about a Call to the Senate is not nearly what Senator Meier seems to think it is. Senator Clower -- and I'm not going to take a long time, because Senator Clower in his questions very properly pointed out the rules of the Senate in regard to a Call of the Senate. Let me say to you, Senator Harris, it doesn't cure at all what you're talking about. The Call of the Senate or the Court operating as under a Call of the Senate is -- and I will yield to you when I complete my remarks -- is simply the Court sitting here with the doors closed and with the members of the Court present, before they can leave, must have permission from the Presiding Officer. That is all a Call is, unless you further impose the obligation of going out and arresting the absent members and bringing them in. If there's a majority here during a Call of the Senate or if there's a majority here while this Court is operating under a Call, we can proceed. And the fact that we're operating with or without a Call of the Senate, Senator Harris, has nothing to do with an objection about a member voting, whether he was here to hear the testimony.

SENATOR HARRIS: Mr. President, will the Senator yield?

SENATOR ADAMS: I will yield now.

THE PRESIDENT: Senator from Jasper yields to Senator from Dallas, Senator Harris.

SENATOR HARRIS: I don't care what bugaboo--that doesn't bother me at all. I'm going to be here if I'm able to be here. But what about the problem of somebody who cannot be here for some valid legitimate reason?

SENATOR ADAMS: He can be excused from the Call.

SENATOR HARRIS: And what happens when it comes time for him to vote? He may not solve the problem of this amendment, but, he raises a valid question and you haven't satisfied me with your answer.

SENATOR ADAMS: The same thing, Senator Harris, happens whether this rule is in here or whether it is not in here.

SENATOR HARRIS: Well, how about it not being in there at all?

SENATOR ADAMS: If it's not in here it's still up to him whether he votes or not.

SENATOR HARRIS: Up to him whether he votes or not?

SENATOR ADAMS: If he were absent during part of the testimony.

SENATOR HARRIS: Well, sure, and the guy may want to come in and vote having been absent.

SENATOR ADAMS: So this rule has nothing to do with that, does it?

SENATOR HARRIS: Well, what does it have to do with?

SENATOR ADAMS: Well, it has to do with when --

SENATOR HARRIS: We have lost sight of the concept of why it's in there in the first place.

SENATOR ADAMS: No, sir, we have not. It has to do --

SENATOR HARRIS: It hasn't been explained very well.

SENATOR ADAMS: If you will sit down, I will.

SENATOR HARRIS: I'm attempting to.

SENATOR ADAMS: It has to do with when the roll is called in the morning and a quorum is present that that quorum can at least moderately be maintained through the Presiding Officer's permission to leave the Chamber. That's simply all it is.

SENATOR MEIER: Mr. President, will the Senator yield?

SENATOR ADAMS: Yes, I will yield.

SENATOR MEIER: Senator, what is a quorum?

SENATOR ADAMS: A quorum is what is defined in the Constitution as the quorum of the Senate and that's what, twenty-one members?

SENATOR MEIER: Twenty-one members. Same thing is in the rules of the Senate and in the Constitution.

SENATOR ADAMS: It's in the Constitution.

SENATOR MEIER: And in the rules of the Senate. Rule Number 1.

SENATOR HARRIS: Will the Senator yield?

THE PRESIDENT: Senator from Dallas, Senator Harris.

SENATOR ADAMS: I yield.

SENATOR HARRIS: One more question. Assuming that Senator Meier is right here -- let's just discuss this a moment --

SENATOR ADAMS: I don't even want to --

SENATOR HARRIS: Well, assume he's wrong.

SENATOR ADAMS: Okay. Let's assume he's wrong.

SENATOR HARRIS: You've already, I haven't. I'm willing to give him the benefit of the doubt. Assuming he's got some merit in his argument here about on appeal and this question being raised. Can you come up with any way to solve that? The rules don't speak to it at all, one way or the other.

SENATOR ADAMS: Unless you're willing every morning whenever we come in here to make a motion to send out and arrest any absent members that might be arrested.

SENATOR HARRIS: What if I'm unable to be here on some given morning?

SENATOR ADAMS: Sir?

SENATOR HARRIS: What if you're unable to be here on some given morning?

SENATOR ADAMS: Well, you're asking me for the way to cure it and that's the way to cure it. Every morning when we get here somebody get up and move to send out and arrest all the absent members and bring them in here. And let me say to you if you put it in here or not you can still do that with the same motion by saying I move that a Call be placed on this Court.

SENATOR HARRIS: Because the rules of the Senate are not inconsistent with the rules of the Court.

SENATOR ADAMS: Right.

SENATOR HARRIS: It's going to be one of 30 others, it sure isn't going to be me.

SENATOR ADAMS: Me either. And I would hope that every member of this Court is present every day to hear all of the testimony.

Mr. President, I will conclude my remarks with that and say that I hope the Court votes against this amendment.

THE PRESIDENT: Does the Senator from Tarrant desire to close?

SENATOR MEIER: Mr. President, I'd just say that I'm a little surprised at the attitude of my friend, the Senator from Jasper, saying that he is adamantly against what I'm saying. I'm only just quoting the law that I found in the library. He is welcome to go check.

And I will just say this to you, Members of the Senate, if the rule is not going to make any difference whether it's in there or it's not in there, then why do we want to put it in there. I'd urge you that we ought to take it out, because it can avoid the raising of a Constitutional question down the road that we won't have if it's gone.

That's it simply.

THE PRESIDENT: Question on the adoption of the amendment. Record vote is called for, Secretary call the roll.

Yeas: Andujar, Farabee, Harris, Jones, McKnight, Meier, Mengden, Ogg, Patman, Santiesteban and Snelson.

Nays: Adams, Aikin, Braecklein, Brooks, Clower, Creighton, Doggett, Gammage, Hance, Harrington, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, Schwartz, Sherman, Traeger and Williams.

Absent: Moore.

THE PRESIDENT: There being 11 "Yeas" and 19 "Nays" the amendment is lost.

The following amendment.

SECRETARY/CLERK: Senator Ogg offers the following amendment to the resolution:

Amend S.R. 4, Rules of Impeachment in the trial of O. P. Carrillo, Judge of the 229th Judicial District, Rule 9, Page 5, Line 15, by adding after the word "paired." the following:

"Any member of the Court may disqualify himself or herself from any vote if such member was unable to attend the proceeding or a portion of the proceeding relative to that question."

THE PRESIDENT: Senator from Harris, Senator Ogg.

SENATOR OGG: Mr. President and Members, it was my thinking that if situations arise due to illness, due to funerals, due to time missed when someone must be gone from this Chamber that we would be less subject to cumulative attack in the event of an appeal under the due process provision if there is a way for a member not to vote. Now the Senate Rules, I think, would, and could prevail. Under the Senate Rules I don't think we are bound to vote, but there's nothing specifically in these rules that say we are not. And it was just my thinking that if we add this and we are more specific here that it makes us less subject in case there is an appeal. It makes it less subject to an attack.

SENATOR SHERMAN: Will Senator Ogg yield?

SENATOR OGG: I yield.

THE PRESIDENT: Senator Ogg yields to the Senator from Potter, Senator Sherman.

SENATOR SHERMAN: Senator, if this amendment is adopted under Rule 20, where it suggests the method of submission of the final question--this was discussed, I think, in the Committee -- if the full membership of the Senate were present when the final vote was taken and a member chose to exercise that right, then it would still take twenty-one affirmative votes on an issue, because it provides that those members are present. Is that the effect of your amendment?

SENATOR OGG: Well, that's one effect.

SENATOR SHERMAN: That is one of the effects --

SENATOR OGG: Yes, sir, it doesn't change that, I think that's under another section. But my main concern is what if you, because of illness, death or for some reason, you miss part of the proceedings or you miss part of the arguments and you miss part of the witnesses during the trial. When that particular question arises are you qualified to vote. And I think you are subject to attack either way, if you do or if you do not vote. And I think if the rules specify that a person may disqualify himself or herself if they feel that they are not qualified to vote on it, I think merely makes it more explicit and would make it less subject to an attack in the event of an appeal.

SENATOR SHERMAN: The main reason for my question is just to point out the effect that it would have if that right is exercised. You still would need a two-thirds vote required of those who are present.

SENATOR OGG: Frankly, Senator, I think you could do it under the Senate Rules anyway, because these rules do not say anything and I think you would have the right to just not vote, to stand mute.

SENATOR ADAMS: Will the Senator yield?

SENATOR OGG: I will yield.

THE PRESIDENT: Senator from Harris yields to the Senator from Jasper.

SENATOR ADAMS: Under any rules a member of the Senate or a member of the Court can just not vote, can't he?

SENATOR OGG: Well, Senator, that's my interpretation of the rules, yes, sir, because in -- I believe it's Rule --

SENATOR ADAMS: Why are we putting in all of this surplus language?

SENATOR OGG: I believe it's in Rule 24 or Rule 25, where it says that the Rules of the Senate of the 64th Legislature shall prevail in the event that these rules are silent.

SENATOR ADAMS: So you're withdrawing your amendment?

SENATOR OGG: No, sir; no, sir, I merely think, Senator, as I explained to you before -- I merely think that this makes it a little more explicit. I think it specifies in these particular rules if someone does want to disqualify themselves. I think it would be better with it in there than with it not in there.

SENATOR ADAMS: Mr. President.

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: May I be recognized against it?

THE PRESIDENT: The Senator from Jasper.

SENATOR ADAMS: Mr. President and Members of the Senate, the Constitution of this State requires that for any Article of Impeachment to be sustained it must be sustained by a two-thirds vote of the Members present. And I don't think that we ought to have any rule that would encourage somebody to disqualify themselves for any purpose.

The language is purely superfluous. Is that the word you used, Senator Mauzy? It has no reason for being here and if a person or a Member of this Court decides that he wants to not vote there's no power on earth that I know of -- on earth, Senator Schwartz, that can make him vote. I think it's just -- I don't think there's any need for this to be in the rules, but I think it's -- if anything it might encourage somebody to not vote. And I would like to request that the members of the Court vote against this amendment.

THE PRESIDENT: Senator from Harris to close on his amendment.

SENATOR OGG: I think we have said enough about it. I don't think it would encourage people to do that, Senator. I think it merely specifies what can be done if a Member feels they are disqualified and chooses so to do.

THE PRESIDENT: Question on adoption of the amendment. Record vote is called for, Secretary call the roll.

Yeas: Ogg, Patman and Williams.

Nays: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Santiesteban, Schwartz, Sherman, Snelson and Traeger.

Absent: Moore.

THE PRESIDENT: Being 3 "Yeas" and 27 "Nays" the amendment is lost. The following amendment --

SECRETARY/CLERK: Senator Ogg offers the following amendment to the resolution:

Amend S.R. 4, Rules of Impeachment in the trial of O. P. Carrillo, Judge of the 229th Judicial District, Rule 12, page 7, line 2 by adding after the word "court." the following:

"Any member in violation of this Rule may be subject to the provisions of Rule 4."

THE PRESIDENT: The Senator from Harris.

SENATOR OGG: I think that we here are only putting in the same language that is applicable to witnesses that may be here and that is if -- we are speaking to the so-called "Gag" rule as Senator Adams put it in Section 12. I think that if we do speak to this matter on its merit in places where we're not supposed to or with people we are not supposed to, I think we should be subject to contempt of this Court. And I think we should be subject to contempt of the Presiding Officer just as you would in a Court of Law or just as a jury in a Court of Law would. And that's the purpose of this amendment.

THE PRESIDENT: The Senator from Jasper.

SENATOR ADAMS: Mr. President and Members of the Senate, I appreciate the Senator from Harris, Senator Ogg, explaining why Rule 4 was printed in the resolution if you can't be found in contempt of Court. It's in here, it's in here in Rule 4. We can punish ourselves in contempt of Court. It's just not a necessity in this amendment, it's superfluous.

THE PRESIDENT: Senator from Harris to close on his amendment.

SENATOR OGG: Senator, I would to some extent agree with you, but you have -- Rule 4 also specifies that would apply to witnesses. And in the section on witnesses you have specifically stated that a witness, under the rule, violates the rule, is subject to contempt of Court, just as he would be in a trial in this State, in a Court in this State. And I think that we should be subject also if we are in violation of the rule of talking about this case on its merits to people that we're not authorized to talk to. I think we're only applying the same test to ourselves as we do to the witnesses and it specifies it.

SENATOR ADAMS: Will the Senator yield?

SENATOR OGG: I will yield, Senator.

THE PRESIDENT: The Senator yields.

SENATOR ADAMS: If you will, read Rule 4 with me. "The Court has the power to compel the attendance of witnesses. One, to enforce obedience to its orders; two, mandates; three, writs; four, processes; five" etc. And it has the contempt power following that. It has all of these things in it, Senator Ogg.

SENATOR OGG: Well, Senator, then what was the purpose of reiterating it and putting it in as it applied to witnesses who were under the rule of the Court?

SENATOR ADAMS: Senator, you know that a witness can't be held in contempt of Court for violation of the rules if he hasn't been advised that he is under the rules. You know that, my goodness.

SENATOR OGG: All right, sir. But he is advised, and you know that also. He's advised --

SENATOR ADAMS: He's advised when you tell him he's advised and he's admonished and then he can be held in contempt of Court. And until that happens he can't be --

SENATOR OGG: And he is advised and so admonished from the very beginning when he's placed under the rule and he's given, in effect, a warning by the Presiding Officer, just as he would in a Court of Law, Senator. And it merely specifies it. It is in no way taking away from your rule. It merely restates it and sets it out, I think, in clear language.

THE PRESIDENT: Question on adoption of the amendment. Record vote is called for, Secretary call the roll.

Yeas: Ogg and Patman.

Nays: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

THE PRESIDENT: There being 2 "Yeas" and 29 "Nays" the amendment is lost.

The following amendment --

SECRETARY/CLERK: Senator Ogg offers the following amendment to the resolution:

Amend S.R. 4, Rules of Impeachment in the trial of O. P. Carrillo, Judge of the 229th Judicial District, Rule 14(a), page 7, line 25 by adding after the word "Senate." and before the word "while" the following:

“, unless such call is suspended by a majority vote of the court present. Suspension of the call of the court shall be for a time certain specified in the order of the court and may apply to an individual member or members of the court or to the court as a whole.”

THE PRESIDENT: Senator from Harris.

SENATOR OGG: Mr. President and Members, this is back on the question that Senator Meier and others have raised, relating to the suspension of the Call on the Senate. It's my understanding that in a regular session of the Senate when a Call is placed that a Call is placed for a particular vote, for a particular bill, for a particular time. And when that has expired then the Call automatically suspends.

Consequently, there is nothing in these particular rules, I think, that speaks -- or in the Senate Rules that speaks to the fact that you have a Call for the entire time of this trial. And what it would allow, is it would allow the Senate sitting as a Court to vote by a majority vote if they wanted to suspend the Call for a time certain to any one individual if they deemed they had a proper excuse, to any number of individuals or to the Court as a whole. And it allows it to be done by a simple majority vote.

And that's all the amendment does.

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: Mr. President and Members of the Senate, I just really don't understand why my friend and colleague from Harris County is so worried about having to attend these sessions. Now you all are making such a big deal out of this Call of the Senate. It's a matter of decorum, Senator Ogg. If you want to leave after you have been here and checked in and said you were present, all you have got to do is walk up there, you know, and tell the Presiding Officer, "You know, I have just got to leave, I have got to go to my office." And I'm sure he will sign an excuse for you and let you go down there unless you will break the quorum. And at that point I would think he wouldn't and I would hope he wouldn't. It's a matter of decorum. Now I don't think -- I just don't understand what the big deal is about this Call of the Senate. There's not going to be anybody go out and arrest you, Senator Ogg. We aren't going to send the Rangers down to Houston to get you and bring you back, unless somebody moves to do it here on the floor of this Court and it's adopted -- the motion is adopted. It's simply a matter of closing the door, maintaining decorum and maintaining a quorum.

SENATOR OGG: Will the Senator yield?

SENATOR ADAMS: Yes, sir.

SENATOR OGG: Senator, if that's all true and we're all so concerned about it, you seem very concerned about it too, why is there not a procedure to suspend the Call set out in the rules?

SENATOR ADAMS: There certainly is a method to suspend the Call.

SENATOR OGG: No, sir --

SENATOR ADAMS: Move to suspend the rules.

SENATOR OGG: Yes, sir, by a two-thirds vote. How would you suspend the rules, Senator?

SENATOR ADAMS: By moving to do it.

SENATOR OGG: All right. And what would the vote count be?

SENATOR ADAMS: Two-thirds.

SENATOR OGG: Two-thirds of those present. Is that correct?

SENATOR ADAMS: Yes.

SENATOR OGG: All right. This amendment says by a majority of those present.

SENATOR ADAMS: That's right. In other words, you're trying to make it easier for people not to be here.

SENATOR OGG: Senator, if that's the way you want to interpret it, that's fine. That is not what it is. We have used -- you have used and the Committee has used and we have or will vote to let a majority vote apply in most instances. And I think that this is the type of thing that a majority vote ought to apply and not two-thirds. And if you differ with that, fine, but I think that there should be a procedure set up and it should be by a majority vote only and not by the two-thirds.

SENATOR ADAMS: I differ with you. Whenever you try to make these rules or when you try to change these rules that will do something -- that will discourage attendance -- and that's what I think this does.

SENATOR OGG: Senator, I don't think --

SENATOR ADAMS: I urge the Court to vote against this amendment and the next one.

SENATOR OGG: Senator, I don't think it's going to discourage any attendance. I think that every member of this Senate is going to be here at every possible moment when they can.

SENATOR ADAMS: Mr. President, I yield the floor.

SENATOR OGG: I have not yielded.

SENATOR ADAMS: I yield the floor.

THE PRESIDENT: Senator from Harris to close on his amendment.

SENATOR OGG: Senator, I think that every member of this Senate is going to be here at every possible time, but there are going to be times in an extended period of weeks that we may be here that the members of this Senate -- that somebody is going to be ill, there's going to be a death in the family, there's going to be an emergency, there will be a matter in Federal Court to which they may have to attend, where we may not be given a leave not to be there as we are in the State Court. And I think that this would set out a procedure of a simple majority rather than two-thirds. And I would submit that the net effect of what you say -- if you want two-thirds to be it, then you ought to vote for Senator Adams. If you want a majority to be the way to suspend the Call then you ought to vote for the amendment.

THE PRESIDENT: Question on adoption of the amendment. Record vote is called for, Secretary call the roll.

Yeas: Meier and Ogg.

Nays: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Mengden, Moore, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

THE PRESIDENT: There being 2 "Yeas" and 29 "Nays" the amendment is lost.

The following amendment -

SECRETARY/CLERK: Senator Ogg offers the following amendment to the resolution:

Amend S.R. 4, Rules of Impeachment in the trial of O. P. Carrillo, Judge of the 229th Judicial District by adding a new Rule 19 to read as follows:

"Rule 19. Final Argument. Final argument shall be conducted in a manner prescribed by the presiding officer of the court unless a member of the court asks that the final argument be conducted in a manner prescribed by the court. The question shall then be decided by a majority vote of the court present."

THE PRESIDENT: Senator from Harris.

SENATOR OGG: Mr. President and Members, this would, I think, go a little further than the present rules do as to a procedure on final argument. The only thing that I could find in the rules that would apply to final arguments is that it says that the Managers are allowed to open and close, consequently the Respondent then would speak in the middle, much as in a criminal trial. What this would do and, I guess, in any other event then the Presiding Officer would just decide what the procedure would be. I think that there are procedures in final arguments, such as the time to be allowed, certain things of that nature that I would like the Senate or this Court -- the Senate sitting as a Court, to be able to at least have an opportunity to vote on. And if we do -- if we think that the procedures should in some way be changed as to the final

arguments then I think we would have the right to do so. And it merely goes a little further than Senator Adams' rules do.

SENATOR ADAMS: Mr. President and Members of the Court, it appears to me that this amendment by Senator Ogg does just what Senator Ogg intends for it to. The rules prescribe -- the Rules of Procedure prescribe that the Board of Managers has the right to open and close. Under the rules in the courts in which I practice, Senator Ogg, the Judge sits up there and he says, "Now I'm going to give you five minutes apiece to argue" and then you negotiate up from there. And I figure that the way this is going to happen and certainly any Member of this Court has a right to vote on it, to allow that each side have thirty minutes, three hours or three and a half days. And this Court would then decide. Under these rules you can't move to allow the Respondent the right to open and close, because these rules say you can't do it. But you can move to give each side three hours or whatever you want to. So it looks like to me you misunderstood your amendment when you were trying to -- you were amending something you didn't intend to. And it's taking the discretion away from Members of the Court and I hope the Members of the Court will go against this amendment.

THE PRESIDENT: Senator from Harris to close on his amendment.

SENATOR OGG: Senator, negative. It says exactly what you just said. It says that it will go to the -- the Presiding Officer will decide what the manner prescribed will be for final arguments that unless a member of the Court moves otherwise. And it does -- it spells it out and specifies and gives us a right to move otherwise if we do not agree with what the Presiding Officer does.

THE PRESIDENT: Question on adoption of the amendment. Secretary call the roll.

Yeas: Ogg and Williams.

Nays: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Patman, Santiesteban, Schwartz, Sherman, Snelson and Traeger.

THE PRESIDENT: There being 2 "Yeas" and 29 "Nays" the amendment is lost. Question now -- Senator from Brazos.

SENATOR MOORE: Mr. President, pardon me, might I inquire, would it be possible to cut these lights off when they're not using them in the interest of conserving electricity and besides that they glare in my eyes.

THE PRESIDENT: That's a good point, Senator. Is anybody doing any filming? If not --

SENATOR MOORE: They ought to be paying the electric bill too, if they--

THE PRESIDENT: They are, Senator, they're all taxpayers.

Question now on the adoption of Senate Resolution Number 4 as amended. All in favor say aye, all opposed, no. The ayes have it. Senate Resolution Number 4 as amended is adopted.

Senator from Jasper for a nomination.

SENATOR ADAMS: Mr. President and Members of the Court. At this time it's a privilege for me under these rules to make a nomination for a man to serve as General Legal Counsel of this Senate sitting as a Court of Impeachment. The Honorable Leon Jaworski of Houston, Texas really needs no introduction. He's a man who's well thought of in his community. He's a man who's held in great and highest esteem by his peers and by his profession. And he's a graduate of Baylor University, Southwest Conference Champions.

Mr. Jaworski has very kindly advised the Presiding Officer of this Court that he, if nominated and elected, would be glad to serve as General Legal Counsel to the Court. And at this point I would like to move that Mr. Jaworski be appointed General Counsel for the Court of Impeachment.

THE PRESIDENT: Are there other nominations?

SENATOR AIKIN: Mr. President.

THE PRESIDENT: Senator from Lamar.

SENATOR AIKIN: Unless you want a record vote, Leon Jaworski is the past president of the State Bar Association and past president of the American Bar Association and has one of the most distinguished records of any lawyer in this State. Unless you need a record vote I would like to move this nomination cease and that he be elected by acclamation.

THE PRESIDENT: You have heard the motion of the Senator from Lamar. Is there objection? All in favor of the motion signify by saying aye. All opposed no. The ayes have it. Nominations are closed and Mr. Jaworski is elected General Legal Counsel to the Court of Impeachment.

Colonel Jaworski, will you raise your right hand, say the words "I do" after the following oath:

Do you solemnly swear that you will faithfully perform the duties of General Legal Counsel in the impeachment trial of O. P. Carrillo?

MR. JAWORSKI: I do.

THE PRESIDENT: Thank you, sir.

MR. JAWORSKI: Thank you.

THE PRESIDENT: Will the parties and their counsel now come forward to the counsel table.

The following items indicate a compliance with the notice requirement of Article 5963 of the Texas Revised Civil Statutes will be entered into the record of the Court at this point.

The Proclamation of the Governor, letters to the Senators notifying them of this session (Exhibit A, Appendix) and the requisite advertisement in the newspapers (Exhibit B, Appendix) are contained in this envelope which the Chair now delivers to the Clerk of the Court for entry into the Court record.

In this envelope is a copy of a letter sent by the Speaker of the House to each member of the Senate notifying them of the action of the House and the return receipts from the registered letter. (Exhibit C, Appendix). The Chair now delivers these items to the Clerk of the Court for entry into the record of the Court.

Earlier in the day before the Senate resolved itself into a High Court of Impeachment Mr. Mitchell, Counsel for the Respondent, waived a reading of the

Articles of Impeachment at that time. The time has now come in the proceedings of this Court for the Chair to lay out H.S.R. 161, the Articles of Impeachment following the resolution.

(The Clerk read the Resolution in full, as it appears in the Senate Journal of September 3, 1975.)

THE PRESIDENT: At this time the Chair would like to afford the parties and counsels for both sides to introduce themselves to the Court. First, Counsel for the Respondent.

MR. MITCHELL: Mr. President, I am Arthur Mitchell from Austin, Texas of the firm of Mitchell, George & Belt. I, and Miss Jan Fox of that same firm, along with Mr. Richard Haynes of Haynes & Fullenweider of Houston will represent Judge Carrillo. This is our client, Judge Carrillo, this is Mr. Haynes, Miss Fox. Mr. Cutright, out of our office will also assist.

Thank you, Mr. President.

THE PRESIDENT: Counsel for the Board of Managers.

MR. DOYLE: Mr. President, I'm Terry Doyle, attorney for the Board of Managers. Seated to my right is Liz Levatino of the Attorney General's staff and behind me are the members of the Board of Managers of the House who I will not name individually, since they have been previously introduced and some other members of the Attorney General's staff who may from time to time be of assistance in this cause.

THE PRESIDENT: Thank you, Mr. Doyle.

The Chair now recognizes Counsel for the Respondent to present the answer for Judge Carrillo.

MR. MITCHELL: Thank you, Mr. President. We have prepared with leave of the Court an answer of Judge Carrillo, which we would desire to file and note in the record. We would like, also, with leave of the Court to have a copy of the Answer to be made available to each and every Member of the Court.

(Verbatim Copy of Original Document as received)

IN THE MATTER OF THE IMPEACHMENT OF O. P. CARRILLO, DISTRICT
JUDGE

BEFORE THE SENATE OF THE STATE OF TEXAS

ORIGINAL ANSWER OF O. P. CARRILLO

TO THE SENATE OF THE STATE OF TEXAS:

Now comes O. P. CARRILLO, by and through his attorneys of record, and makes this his Original Answer to the Articles of Impeachment as preferred against him by the House of Representatives of the State of Texas, and would respectfully show the Senate as follows:

I. PRELIMINARY STATEMENT REGARDING FORM OF ANSWER AND
INCORPORATION OF RECORD

The Answer of Respondent O. P. Carrillo is divided into two major sections, the first major division being composed of the Preliminary Statement of Facts under Section II and the second major division being composed of Points of Law under Section III. This form for the Answer, in which those facts which the Respondent believes are relevant to this proceeding are set out preliminarily, is employed because it is appreciated that many members of the Senate, the ultimate judge of the facts and the law in this matter, are not acquainted with the facts as they occurred in the present proceedings, and the knowledge of such facts are necessary for an understanding of the points of law to be raised in Section III of the Answer. Such additional facts as are necessary for a thorough explication of the particular points of law raised by Respondent Carrillo herein will be included with such points under Section III.

Respondent incorporates herein for all purposes the complete record of the proceedings before the House Select Committee on Impeachment and the House of Representatives of the State of Texas in the present matter, including but not limited to the entire transcript of the hearings before the House Select Committee on Impeachment, all documentary and tangible evidence presented as evidence before the House Select Committee on Impeachment, the entire transcript of the proceedings before the House of Representatives on the 4th and 5th of August, 1975, and the First, Second, and Third Responses of O. P. Carrillo to the House Select Committee on Impeachment as fully as if set out in toto herein.

II. PRELIMINARY STATEMENT OF FACTS

A. Background to Proceedings before the House Select Committee on Impeachment

1. Commencing several years prior to date, an extensive Government investigation was conducted by members of the United States Attorney's office and members of the investigatory force of the Internal Revenue Service as part of the so-called "South Texas Project," which investigation culminated in the return of Federal Grand Jury indictments against several individuals including Archer Parr, Octavio Saenz, and the late George B. Parr, all of Duval County, Texas.

2. Questioned by Government agents in the course of this investigation were Respondent O. P. Carrillo, his brother Ramiro D. Carrillo, and a cousin of the Carrillo brothers, Arturo R. Zertuche. All three men were later to be called to testify before the grand jury which subsequently returned indictments against George B. Parr, Archer Parr, and Octavio Saenz. While Respondent O. P. Carrillo claimed his Fifth Amendment right and refused to testify, Ramiro D. Carrillo and Arturo R. Zertuche did give testimony before the grand jury.

3. As a result of the investigation, and based on information partially resulting from the aforesaid testimony given by Arturo R. Zertuche and Ramiro D. Carrillo before the grand jury, a twelve-count indictment was returned against Respondent O. P. Carrillo, his brother Ramiro D. Carrillo, and Arturo R. Zertuche on or about the 28th day of March, 1975, by a Federal Grand Jury sitting in Corpus Christi, Texas. In said indictment, the three men were charged with tax fraud and conspiracy to commit tax fraud and to defraud the Government in the assessment and collection of income taxes (Exhibit A).

4. Arraignment of O. P. Carrillo, Ramiro D. Carrillo, and Arturo R. Zertuche was held before the Federal District Court for the Southern District of Texas, Corpus Christi Division, on April 10, 1975. O. P. Carrillo and the two other defendants therein each entered a plea of "not guilty" therat.

5. Over the course of the next several weeks following the arraignment, the three defendants filed numerous pretrial motions aimed at securing pretrial discovery of the exact nature of the charges against them and the information upon which such charges were based (Exhibits B-1 through B-5). As a result of such pretrial motions

and the Government's answers thereto, it became evident that the charges against O. P. Carrillo and the two other defendants were grounded largely on the theory that the Schedule C income tax form filed by Arturo R. Zertuche for the years 1967, 1968, 1969, and 1970 contained misrepresentations of material matters in that said Schedule C averred that the Zertuche General Store was a sole proprietorship owned by Arturo R. Zertuche and that the income received therefrom was the property of Arturo R. Zertuche. According to the Government's theory, the Zertuche General Store in fact had no independent existence apart from Farm and Ranch Supply (a store owned by O. P. Carrillo and Ramiro D. Carrillo) and was merely used as a front by the Carrillos which enabled them to sell goods and services to the various governmental agencies. Finally, the Government's theory was that, since the Zertuche General Store was a sham, the income from such store should have been reported on the income tax returns of O. P. Carrillo and Ramiro D. Carrillo, and the failure to report such income on their returns constituted fraudulent misrepresentation by O. P. Carrillo and Ramiro D. Carrillo.

6. On or about the 16th day of May, 1975, a hearing was held in the Federal District Court for the Southern District of Texas, Corpus Christi Division, which resulted in a determination by the Court that the joint representation of O. P. Carrillo, Ramiro D. Carrillo, and Arturo R. Zertuche by a single attorney did not create a present conflict of interest on the part of the attorney, that a severance of the trials of O. P. Carrillo and Ramiro D. Carrillo from that of Arturo R. Zertuche was advisable, that a continuance of the trial should tentatively be granted to the three defendants, and that the defendants should be granted the right to take depositions of Cleofas Gonzalez and five other individuals.

7. Widespread media coverage attended all of the above court proceedings (Exhibits C-1 through C-7).

B. Commencement of Removal and Impeachment Proceedings

1. During the course of preparation for the May 16th hearing in Federal Court, Respondent O. P. Carrillo received a letter dated the 2nd of May, 1975, from the Judicial Qualifications Board of the State of Texas, wherein he was given notice of the commencement of informal proceedings against O. P. Carrillo in his capacity as District Judge based on four charges of misconduct allegedly casting doubt on the desirability of his continuation in his capacity of District Judge (Exhibit D). Respondent was given further notice in said letter of his right to make reply to such charges within fifteen days from the date of receipt of the letter. Reply to the charges was made by Respondent Carrillo within the allotted time by a letter to the Executive Director of the Judicial Qualifications Board (Exhibits E-1 and E-2).

2. On or about the 15th day of May, 1975, House Simple Resolution 161 (Exhibit F) calling for the institution of impeachment proceedings against O. P. Carrillo on the basis of his recent indictment in Federal Court was presented to the House of Representatives of the State of Texas. H.S.R. 161 was sponsored by Rep. Terry A. Canales of Premont, Texas, a long-time supporter of the Parr political faction in South Texas (Exhibit G) and the former attorney for both George B. Parr and Archer Parr in removal suits brought in the 229th District Court of Texas against the two men in their official capacities, as indicated by the Motions for Legislative Continuance filed therein (Exhibits H-1 and H-2). The involvement of Rep. Canales with the Parr faction is further indicated by Canales' authorship and sponsorship of a bill in the House of Representatives seeking the abolition of the office of District Attorney for the 229th Judicial District of Texas following the institution of the removal suits against the Parrs by the present District Attorney of said District.

3. Also in May of 1975, the House of Representatives passed H.S.R. 167 (Exhibit I) sponsored by Rep. Robert Maloney creating the House Select Committee on Impeachment, whose stated function was to inquire into the matters contained in H.S.R. 161.

4. On or about the 19th day of May, 1975, Respondent Carrillo received a telegram from L. DeWitt Hale, Chairman of the House Select Committee on Impeachment (Exhibit J), which telegram gave "notice" of the commencement of impeachment hearings by the House Select Committee on the 20th day of May, 1975, and of Carrillo's right to be present at such hearings and to present evidence and testimony.

5. On or about the 20th day of May, 1975, at eight o'clock p.m., the House Select Committee on Impeachment convened to hold the first of its hearings inquiring into the activities of Respondent O. P. Carrillo and others. Over the course of the next several weeks, the Committee continued to hold daily hearings and to take evidence and testimony introduced by Rep. Terry A. Canales, while denying Respondent or his attorney the right to examine the documentary material before the Committee or to question the witnesses testifying before the Committee.

a. Much of the evidence and testimony presented to the Committee was identical in nature to that to be presented in the Federal prosecution of O. P. Carrillo, in that it went to the two questions of whether the Zertuche General Store was a sham enabling Plaintiff to sell goods and services directly to the County of Duval and whether Respondent O. P. Carrillo received income which was not reported on his income tax returns. As indicated by the indictment and the Government's answers to the pretrial Motions for Discovery and Bill of Particulars, these were to be the same questions at issue in the Federal trial. Whereas H.S.R. 161 indicated that the impeachment proceedings were to be brought on the basis of the fact of Respondent Carrillo's indictment, the Committee, upon the instigation of Rep. Canales, took it upon itself to conduct hearings on the very issues involved in the Federal charges. The Committee, however, did not limit itself to the scope of the indictment and the questions of fact presented thereby, but went outside the scope of the indictment and of H.S.R. 161 and received documentary evidence and testimony on matters wholly unrelated to the above and not included in the limited notice given either by the telegram from L. DeWitt Hale or by H.S.R. 161.

b. Included among the witnesses testifying upon subpoena by the Committee were Cleofas Gonzales and Rudolfo Couling, both of whom are key witnesses in the Federal prosecution, as indicated by the fact that the defendants in the Federal cause have sought the right to take the deposition of Cleofas Gonzales (which was granted by the Federal court) and have sought discovery of the records of the Benavides Implement and Hardware, a store operated by Rudolfo Couling.

c. Included among the records subpoenaed by the Committee were bank records showing checks written to various individuals and entities by the governmental entities in Duval County (Exhibit K), which records are also to play a vital part in the Federal prosecution of O. P. Carrillo, as indicated by the fact that the defendants in that prosecution have sought and were granted the right to take the deposition of Barney Goldthorne, the president of the bank from which the Committee subpoenaed the records (Exhibit L).

d. From the outset of the Committee hearings, Carrillo was denied the right to examine the documentary evidence before the Committee, to know the evidence to be presented against him, to have reasonable notice as to the dates and times of the Committee hearings, to have reasonable notice of the charges against him and the scope of the investigation, to present evidence in his favor, and to present witnesses or to have said witnesses subpoenaed by the Committee. Plaintiff was further denied the effective right to question witnesses subpoenaed by the Committee itself.

6. On or about the 23rd day of May, 1975, Respondent presented his First Response to the impeachment proceedings (Exhibit M) to the Select Committee wherein Plaintiff set out numerous objections to the hearings and the impeachment proceedings in general, citing among other things the denial of substantive and procedural due process and minimal constitutional safeguards inherent in the

proceedings, as well as the Committee's lack of authority to proceed, as grounds for discontinuation of the Committee hearings. The House Select Committee on Impeachment took no action upon said Response of O. P. Carrillo.

7. In the final days of the legislative session, the House of Representatives passed House Simple Resolution 221 (Exhibit N), sponsored by Rep. L. DeWitt Hale, by which the House of Representatives purported to give itself the authority to vote out Articles of Impeachment against the Respondent O. P. Carrillo should the Select Committee recommend such action either by a majority or by a minority vote of said Committee, evidencing a certain predetermination of the impeachment matter on the part of the House of Representatives.

8. At twelve midnight on the 2nd day of June, 1975, the Legislature adjourned sine die. Despite the constitutionally mandated termination of the legislative session and the adjournment of the Legislature, the House Select Committee on Impeachment continued to hold unlawful hearings and inquiries over Respondent's stringent objections.

9. On or about the 3rd day of June, 1975, Respondent submitted a request to the House Select Committee wherein a list of the witnesses subpoenaed by the Committee in executive session and otherwise, a transcript of all testimony taken to date, copies of all documentation introduced and considered part of the official record, and a calendar of the hearings were sought by Respondent. As a result of such request, the Committee furnished Respondent a transcript of the testimony and copies of documentation introduced.

10. At 12:05 p.m. on Friday, June 6, 1975, the House Select Committee on Impeachment adjourned public hearings, purportedly to reconvene at such later date as to be set by the Committee.

11. On the 8th and 9th day of June, 1975, subsequent to said adjournment and unbeknownst to Respondent Carrillo at the time, a subcommittee of the Select Committee held a closed meeting initiated in Alice, Texas, present at which were Rep. Terry A. Canales, Archer Parr, Ruben Chapa, Cleofas Gonzales, Texas Ranger Gene Powell, and various and other persons called as witnesses at present unknown to Respondent. Said meeting of the subcommittee was conducted pursuant to no statutory or legislative authority and was in direct violation of Texas Open Meetings Act, Art. 6252-17, V.A.C.S. (Exhibit O).

12. Thereafter, on various dates and at various times unknown to Respondent, though including the 23rd and 24th days of June, 1975, the Committee or a subcommittee thereof continued to hold closed meetings or "executive sessions" without any form of notice to O. P. Carrillo, whereat testimony of persons unknown to Respondent Carrillo and documentary evidence likewise unknown were received by the Committee or a subcommittee thereof. Following the final vote on the committee substitute for H.S.R. 161, the House Select Committee delivered to the attorney for O. P. Carrillo a partial list and summary of the "executive sessions" held, with the dates, times and places of those sessions listed included.

13. Respondent Carrillo has received information that during the course of the committee hearings, both public and executive, numerous discussions on the subject matter of the hearings took place between sundry committee members and various members of state executive, administrative, and law enforcement agencies, including members of the Judicial Qualifications Commission and members of the staff of the Attorney General's office.

14. On or about the 26th day of June, 1975, O. P. Carrillo filed in the Federal District Court for the Southern District of Texas, Corpus Christi Division, a Supplementary Motion for Indefinite Continuance of the Respondent's trial on tax fraud (Exhibit P) on the grounds that widespread publicity attendant to the committee proceedings made a fair trial impossible anywhere in the State of Texas at that time. Respondent Carrillo was granted a continuance by the Judge of the Federal District

Court in a hearing in that court on the 30th day of June, 1975, the date originally set for trial of the Federal case.

15. On or about the 12th day of July, 1975, the Judicial Qualifications Commission met in executive session to consider the various charges against O. P. Carrillo in his capacity as District Judge purportedly warranting action by the Commission (Exhibit Q).

16. On or about the 15th day of July, 1975, in the absence of effective notice to O. P. Carrillo, the House Select Committee on Impeachment reconvened in public session after an adjournment of public hearings for a period of several weeks. At said session, the Committee, without notice to Respondent Carrillo, instituted a new format for the proceedings, in that, as opposed to the format of the prior hearings, witnesses were questioned at the outset by a newly-hired attorney for the committee, Terry Doyle, who proceeded to act as both examiner and cross-examiner of the witnesses.

17. On or about the morning of the 16th day of July, 1975, the committee held its final hearing and adjourned for the purported purpose of the drafting and consideration of Articles of Impeachment against O. P. Carrillo. Several hours after adjournment of the committee on July 16, 1975, it was announced that the committee had voted to recommend eleven Articles of Impeachment against O. P. Carrillo (Exhibit R). None of the proposed articles contained any reference to Respondent's indictment in Federal court. It was announced by the Chairman of the House Select Committee on Impeachment that the House of Representatives would meet on the 4th day of August, 1975, to vote on the proposed articles (Exhibit S).

18. On or about the 4th day of August, 1975, the House of Representatives of the State of Texas reconvened upon call of the Speaker pursuant to the purported authority of H.S.R. 221 and commenced voting on the proposed Articles of Impeachment as set forth in the committee substitute for H.S.R. 161. By noon the following day the House had completed its vote on the committee substitute and, with minor changes, adopted as Articles of Impeachment all but one of the committee's proposed articles.

19. Pursuant to the provisions of Article XV, section 6 of the Constitution of the State of Texas, upon passage of the formal Articles of Impeachment by the House of Representatives on August 5, 1975 in the form of H.S.R. 161, O. P. Carrillo was suspended from his office as District Judge pending final determination of the charges against him by the Senate.

20. By proclamation of the Governor of the State of Texas, the Senate was ordered to reconvene for the purpose of trial on the Articles of Impeachment on the 3rd day of September, 1975.

21. On or about the 18th day of August, 1975, a meeting of the Senate Administrative Committee was held with Respondent and his attorneys in attendance thereat, at which proposed rules for the trial before the Senate were discussed and drafted. A further rules meeting of the committee and the attorneys for O. P. Carrillo and the House of Representatives was set for September 2, 1975.

22. On or about the 25th day of August, 1975, a pretrial hearing was held in the United States District Court for the Southern District of Texas, Corpus Christi Division, in connection with O. P. Carrillo's trial on charges of federal income tax fraud, wherein the defendants' motion for continuance based upon the pending impeachment proceedings herein was denied by the Court. In accordance with the setting made at the earlier hearing, the trial was set to begin on the 8th of September, 1975. In addition, the Court in the August 25th hearing postponed consideration of several of defendants' pretrial motions, including motions for dismissal and set a further pretrial hearing in Corpus Christi on September 2, 1975, at which time said motions are to be considered.

III. POINTS OF LAW

A. Pleas to the Jurisdiction

1. Lack of jurisdiction in the Senate to consider invalid Articles of Impeachment

a. No jurisdiction in House of Representatives to impeach

1) Under Article XV, section 1 (of the Constitution of the State of Texas) the power of impeachment is vested in the House of Representatives. Under Article XV, section 2, impeachment of a state officer shall be tried by the Senate.

2) On or about the 5th day of August, 1975, the Governor of the State of Texas issued a proclamation ordering the reconvening of the Senate on the 3rd day of September, 1975, to sit as a court of impeachment and hear the charges against O. P. Carrillo as preferred by the House of Representatives of the State of Texas in the ten Articles of Impeachment dated the 5th day of August, 1975.

3) Under the provisions of the Constitution of the State of Texas, the jurisdiction of the Senate to sit as a court of impeachment must necessarily depend upon the jurisdiction of the House of Representatives to impeach. In the present proceedings, the Senate lacks such jurisdiction for the reason that, under the plain provisions of the Constitution of the State of Texas, Article III, Sec. 24, and Article III, Sec. 5, and of Article 5422, V.A.C.S., the House of Representatives was without jurisdiction to prefer Articles of Impeachment against O. P. Carrillo.

4) At twelve o'clock midnight on the 2nd day of June, 1975, on the one hundred and fortieth day of the Regular Session, the 64th Legislature adjourned sine die, in conformance with the provisions of Article 5422, V.A.C.S., and Article III, Sec. 24 of the Constitution of the State of Texas, which provide:

"The Fortieth Legislature shall assemble to hold its biennial session on the second Tuesday in January, A.D. 1927, at 12 o'clock m., and shall meet biennially thereafter on the same day and hour until otherwise provided by law." (Article 5422, V.A.C.S.)

and

"No Regular Session shall be of longer duration than one hundred and forty (140) days." (Article III, Sec. 24, Tex. Const.)

5) Thereafter, on the 4th day of August, 1975, under the purported authority of House Simple Resolution 221, the House of Representatives reconvened upon call of the Speaker of the House to consider and cast its vote on the Articles of Impeachment as proposed by the House Select Committee on Impeachment in the form of the Committee Substitute for H.S.R. 161 in violation of the provisions of Article III, Sec. 5 of the Constitution of the State of Texas, which provides:

"The Legislature shall meet every two years at such times as may be provided by law and at other times when convened by the Governor." (Emphasis added.)

The attempt by the House of Representatives to call itself back into session and to reconstitute itself into a lawful legislative body for purposes of acting upon the proposed Articles of Impeachment must clearly be ineffective to do so under the above provision of the Constitution of the State of Texas.

6) The House of Representatives lacking constitutional authority to be in session, it was clearly without jurisdiction to prefer Articles of Impeachment against Respondent. The House of Representatives lacking jurisdiction to prefer the Articles of Impeachment against O. P. Carrillo, House Simple Resolution 161 as voted by the

individual members of the House of Representatives cannot constitute valid Articles of Impeachment and, therefore, cannot trigger the constitutional provision, Article XV, section 2, Constitution of the State of Texas, creating jurisdiction in the Senate to try Articles of Impeachment as preferred by the House of Representatives. The Senate therefore, although lawfully called into session by proclamation of the Governor of the State of Texas, lacks jurisdiction in the present proceeding.

b. No jurisdiction in the House Select Committee impeach

1) The Articles of Impeachment preferred by the members of the House of Representatives under H.S.R. 161 are an invalid attempt to impeach for the further reason that the House of Representatives is given no authority under the Constitution of the State of Texas to delegate its authority to a committee. Throughout the impeachment process, the House of Representatives has acted by and through the House Select Committee on Impeachment as created by House Simple Resolution 167, finally voting in the Articles of Impeachment proposed by the committee, with minor changes, after mere cursory examination of the evidence gathered by the committee. Under Article XV, section 2 of the Constitution of the State of Texas, the extraordinary power and serious responsibility to impeach a public official is vested in the House of Representatives. Nowhere under the Constitution is the House of Representatives given the right to delegate this power and responsibility vested in the whole House of Representatives to a committee. The attempt by the House of Representatives to do so in this matter must be ineffective, and the Articles of Impeachment arising out of the House Select Committee are therefore invalid.

2) Assuming, *arguendo*, the House of Representatives has the authority to delegate its power of impeachment or a portion thereof to a committee, the Articles of Impeachment are invalid for the reason that the power of the Committee to impeach must be coextensive with that of the House of Representatives. The House of Representatives lacking jurisdiction to take any official action after the termination of the legislative session at midnight, June 2nd, 1975, the House Select Committee likewise was without jurisdiction to continue impeachment proceedings after that time. The Articles of Impeachment based on the proceedings of the House Select Committee on Impeachment are therefore invalid, and do not constitute charges upon which an impeachment trial before this Senate may be commenced.

c. Articles of Impeachment invalid as based on proceedings outside the jurisdiction of the House Select Committee on Impeachment

1) Assuming, *arguendo*, the House of Representatives and the House Select Committee on Impeachment were fully empowered and authorized to continue to act subsequent to the termination of the legislative session midnight, June 2, 1975, the Articles of Impeachment contained in H.S.R. 161 as preferred by the members of the House of Representatives are invalid as charges of impeachable offenses for the reason that said Articles contain charges based on hearings on matters which were outside the scope of the enabling resolution of the House Select Committee on Impeachment.

2) The House Select Committee on Impeachment was created pursuant to H.S.R. 167, which limited the scope of the inquiry of the House Select Committee on Impeachment to matters and charges contained in the original H.S.R. 161. The only authority which the committee was granted by H.S.R. 167, therefore, was to commence impeachment proceedings on the charge that O. P. Carrillo had been indicted by a Federal grand jury on multiple counts of Federal income tax violations, the sole charge contained in the original H.S.R. 161.

3) The House Select Committee commenced impeachment proceedings and began taking testimony and other evidence on matters ranging far beyond the scope of H.S.R. 161 and of the Federal indictment, as evidenced by the transcript of proceedings before the House Select Committee on Impeachment. Such action on the part of the House Select Committee on Impeachment constituted an unlawful exercise of purported jurisdiction wholly outside the authority conferred upon the committee by the

enabling resolution. The Articles of Impeachment based on such action outside of the jurisdiction of the committee, are, therefore, invalid and may not form the basis for the impeachment trial before the Senate.

d. Articles of Impeachment invalid as based on proceedings of the House Select Committee on Impeachment in violation of the Texas Open Meetings Act

1) Assuming, arguendo, the House of Representatives and the House Select Committee on Impeachment were fully empowered to act subsequent to the termination of the legislative session at midnight on the 2nd day of June, 1975, the Articles of Impeachment as contained in H.S.R. 161 and preferred by members of the House of Representatives are invalid as based on proceedings of the House Select Committee on Impeachment in violation of the Texas Open Meetings Act, Article 6252-17, V.A.C.S. As indicated in the Preliminary Statement of Facts in Section II herein, throughout the course of its impeachment proceedings, the House Select Committee held numerous closed meetings and inquiries (labeled "executive sessions" by the committee) at which not only were discussions of the matters under investigation held by members of the committee, but also testimony and other evidence were received, in violation of the Texas Open Meetings Act. Further, the committee throughout a large part of its proceedings failed to give public notice of the date, time, and place at which these and other meetings were to be held, likewise in violation of the Texas Open Meetings Act. The willful failure of the committee to conform its proceedings to the provisions of the Texas Open Meetings Act, although repeatedly requested to do so by the attorney for the Respondent, results in the invalidity of Articles of Impeachment arising out of such proceedings.

e. Articles of Impeachment invalid as based on proceedings in violation of the due process and due course of the law clauses of the Constitution of the United States of America and the Constitution of the State of Texas

1) Assuming, arguendo, the House of Representatives and the House Select Committee on Impeachment were fully empowered to act subsequent to the termination of the legislative session at midnight on the 2nd day of June, 1975, the Articles of Impeachment contained in H.S.R. 161 and preferred by members of the House of Representatives are invalid as arising out of proceedings of the House Select Committee on Impeachment in violation of Article I, section 19 of the Constitution of the State of Texas and Amendments Five and Fourteen to the Constitution of the United States of America. Assuming the committee has the power to investigate matters and prefer charges which result in the summary suspension of O. P. Carrillo from his office as District Judge pending trial of those charges before the Senate, thus depriving O. P. Carrillo of both a property right and the privileges of his office as District Judge, the actions of the committee, to be valid, are required to conform to the due process provisions of both the Constitution of the State of Texas and the Constitution of the United States of America. The proceedings before the House Select Committee did not, however, conform to the due process provisions of the constitutions cited above, for the reason that throughout the course of the committee proceedings, Respondent Carrillo was denied the following due process rights:

- a) right to reasonable notice of the dates, times, and places at which the committee hearings were to be held;
- b) right to reasonable notice of the nature of the charges against him;
- c) right to have only the evidence relevant to the charges against him of which he had notice considered by the committee;
- d) right to be confronted by the witnesses against him;
- e) right to cross-examine the witnesses against him;
- f) right to make objections to the proceedings as conducted;
- g) right to examine the documentary material presented as evidence against

him;

h) right to introduce evidence favorable to him or tending to contradict the evidence against him;

i) the right to produce witnesses in his behalf or to have such witnesses subpoenaed by the committee;

j) right to effective assistance of counsel;

k) right to presumption of innocence;

l) right to a fair and impartial tribunal;

m) right to be present in person or by attorney at all hearings;

n) right to public hearings.

Given the unconstitutional nature of the proceedings before the House Select Committee, the Articles of Impeachment arising out of said proceedings are invalid as charges upon which trial before the Senate may constitutionally be instituted.

2) In addition to the specific denials of due process protections to the Respondent in the proceedings before the House Select Committee, the entire proceeding before the House Select Committee culminating in the vote by the House of Representatives resulted in an overall denial of O. P. Carrillo's due process rights. First, said proceedings were politically motivated, having been instituted by a member of the House of Representatives as a retaliatory measure against O. P. Carrillo for actions taken by Carrillo in his office as District Judge against a political ally of that member of the House of Representatives. Second, the House Select Committee allowed itself to become involved in the above political maneuver and, in fact, aligned with the interests of the political faction supported by the members of the House of Representatives sponsoring the impeachment resolution, resulting in such actions by the Committee as the refusal to subpoena witnesses requested by Respondent Carrillo for the purpose of establishing political vendetta as the basis for the institution of such proceedings. Third, the proceedings by the House Select Committee and the House of Representatives in this most serious matter of impeachment occurred throughout in the carnival-like atmosphere created by wide-spread media coverage and publicity, resulting in increasing pressure on the committee and the House of Representatives to impeach Respondent regardless of the nature or weight of the evidence against him. Fourth, in spite of the often constitutionally questionable proceedings of the House Select Committee on Impeachment and the numerous objections thereto brought to the attention of the House of Representatives by Respondent, the House of Representatives summarily preferred Articles of Impeachment against O. P. Carrillo as proposed by the House Select Committee with only minor alterations. Such proceedings and the Articles of Impeachment and suspension of Respondent Carrillo arising therefrom are clearly repugnant to the due process provisions of the State and Federal Constitutions and as such are invalid exercises of purported jurisdiction on the part of both the House of Representatives and the House Select Committee on Impeachment.

2. Senate lacks jurisdiction under constitutional impeachment provisions

a. Constitutional and statutory provisions for impeachment deny Respondent substantive due process and/or due course of the law

1) The constitutional and statutory provisions of the Texas Constitution and statutes(1) deny to Respondent substantive due process of law and due course of the law under the Fifth and Fourteenth Amendments to the Constitution of the United States of America and Article I, section 19 of the Constitution of the State of Texas in that said impeachment provisions of the Texas Constitution and statutes are vague and indefinite as to the nature of an impeachable offense and are characterized by a complete absence of proper standards as to actions which constitute impeachable offenses. The effect of said unconstitutional provisions is to deprive Respondent Carrillo of constitutionally protected rights and privileges while affording Respondent no reasonable notice of the actions on his part for which such forfeiture may be constitutionally effected.

(1) Article XV, sections 1 through 5, Constitution of the State of Texas, and Articles 5961, 5962, and 5963, V.A.C.S.

2) In their failure to set out proper standards for actions on the part of a public official which constitute impeachable offenses, the impeachment provisions of the Constitution and statutes of the State of Texas further deny Respondent substantive due process of law in that, taken together, they amount to a bill of attainder, in that their effect is to inflict punishment on Respondent in the form of automatic suspension from office without a hearing conforming to the standards of constitutional due process. Further, said provisions amount to an ex post facto law in that, failing to include a statement or definition of the offenses for which an official may be impeached, they result in defining the impeachable offense only in the course of the proceedings themselves, in the actual charging process, well after the occurrence of the conduct for which the Respondent is impeached.(2)

(2) The enactment of both bills of attainder and ex post facto laws are specifically prohibited by the Constitution of the State of Texas, Article I, section 16.

3) The impeachment provisions of the Constitution and statutes of the State of Texas further deny to Respondent substantive due process of law and/or due course of the laws in violation of the Constitution of the United States of America and the Constitution of the State of Texas in failing to make any provision whatsoever for minimal due process safeguards in the preliminary stages of the impeachment process while providing for automatic suspension of the public official upon the preferring of charges.

B. Pleas in Abatement

1. Case for Legislative Restraint

a. Prior jurisdiction of the Judicial Qualifications Commission

1) On or about the 2nd day of May, 1975, by written notice to O. P. Carrillo, Respondent herein, the Judicial Qualifications Commission of the State of Texas commenced proceedings against Respondent,(3) the purpose of which were to investigate charges of official misconduct of O. P. Carrillo in his capacity of District Judge and to determine appropriate action to be taken in regard to Respondent Carrillo should said charges and the evidence relative thereto warrant the same. The proceedings before the Judicial Qualifications Commission have progressed from the informal to the formal stage, hearing on formal charges against O. P. Carrillo being presently set for the month of October, 1975. Should it be determined in said formal hearing that the evidence against O. P. Carrillo based on the charges is substantial, trial on said charges will be to the Supreme Court of the State of Texas,(4) culminating in the exoneration, the disciplining, or the removal of O. P. Carrillo as District Judge.

(3) Pursuant to the Rules for the Removal or Retirement of Judges, as adopted and promulgated by the Supreme Court of Texas pursuant to Art. V, section 1-a (11) of the Constitution of the State of Texas.

(4) By procedures set out in Rules 20 and 21 of the Rules for Removal or Retirement of Judges.

2) The notice of formal proceedings against O. P. Carrillo before the Judicial Qualifications Commission present charges based on alleged acts of misconduct on the part of Respondent Carrillo similar and at many points identical to the misconduct with which Respondent is charged by the House of Representatives in the Articles of Impeachment.

3) Given the prior jurisdiction of the Judicial Qualifications Commission over the same and similar matters to be considered by the Senate upon trial of the charges contained in the Articles of Impeachment, as well as the power of the Judicial Qualifications Commission and the Supreme Court of the State of Texas to exonerate or to impose such sanctions as the evidence presented against O. P. Carrillo as District Judge warrants, the Senate should exercise legislative restraint and abstention in favor of the proceedings by the Judicial Qualifications Commission.

b. Prior jurisdiction of the Federal Court

1) As indicated in the Preliminary Statement of Facts contained in Section I of this Answer, Respondent Carrillo is currently under indictment on multiple counts of Federal income tax fraud and is scheduled to commence trial on the charges contained in said indictment in Federal District Court on the 8th of September, 1975. As likewise indicated by the Preliminary Statement of Facts, it was on the basis of the Federal indictment that impeachment proceedings were originally instituted against O. P. Carrillo in the form of proposed House Simple Resolution 161.

2) The Articles of Impeachment preferred by the House of Representatives contain issues of fact and law identical to those to be considered in the trial of O. P. Carrillo in Federal Court. The consideration and/or preadjudication of such issues by the Senate in an impeachment trial, with the widespread publicity certain to be attendant thereto, would severely prejudice the rights of O. P. Carrillo in his Federal trial and result in an overall denial to him of due process and the right to a fair trial therein, meriting the exercise of legislative restraint and abstention on the part of the Senate in the impeachment proceedings in order to insure the protection of the constitutional rights of Respondent.

c. Senate as party to political in-fighting

1) In recent years the removal of public officials by the process of impeachment has fallen into disrepute. In part, this is due to the fact that, by and large, impeachment is an unwieldy and expensive process, accomplishing the exoneration or removal of a public officer at a high cost to the citizens of the State and the particular governmental entities involved. Given the alternative statutory and constitutional means for considering charges of official misconduct of a public officer and appropriate action to be taken thereon, the ancient process of impeachment is not only anachronistic but superfluous. An even more serious objection to the impeachment process, however, is its tendency to embroil members of the legislature in what is often at heart a political battle between members of opposing political factions. Grave charges against a public official appropriately tried by independent and uninterested judges of law and fact in a forum free from bias are instead tried in an atmosphere of political in-fighting which subjects the members of the Senate court to enormous pressure both from within and without the legislature to become involved in the fracas in the political arena. Notwithstanding the commitment and impartiality of the individual judges, such an atmosphere insures only that an impartial trial on the legal evidence will be an extraordinarily difficult thing to achieve from any point of view. The matter presently before the Senate is clearly no exception to the above propositions. Having its genesis in fierce political battle in an area of the state notorious for its political struggles, the impeachment proceeding now before the Senate has been fraught with charges of bias and interest on all sides. Such a situation calls upon the members of this Senate to consider the dangers to individual rights necessarily resulting from such an atmosphere and to exercise legislative restraint and abstention before the Senate itself becomes an unwilling party to a proceeding in which the welfare of the citizens of the State is so likely to be confused with personal and political gain.

C. General Denial

1. Respondent denies generally allegations of Articles of Impeachment

a. Respondent O. P. Carrillo denies generally each and every, all and singular allegations of Article I of the Articles of Impeachment preferred against him by the

House of Representatives in House Resolution 161 and demands strict proof thereof.

b. Respondent O. P. Carrillo denies generally each and every, all and singular allegations of Article II of the Articles of Impeachment preferred against him by the House of Representatives in House Resolution 161 and demands strict proof thereof.

c. Respondent O. P. Carrillo denies generally each and every, all and singular allegations of Article III of the Articles of Impeachment preferred against him by the House of Representatives in House Resolution 161 and demands strict proof thereof.

d. Respondent O. P. Carrillo denies generally each and every, all and singular allegations of Article IV of the Articles of Impeachment preferred against him by the House of Representatives in House Resolution 161 and demands strict proof thereof.

e. Respondent O. P. Carrillo denies generally each and every, all and singular allegations of Article V of the Articles of Impeachment preferred against him by the House of Representatives in House Resolution 161 and demands strict proof thereof.

f. Respondent O. P. Carrillo denies generally each and every, all and singular allegations of Article VI of the Articles of Impeachment preferred against him by the House of Representatives in House Resolution 161 and demands strict proof thereof.

g. Respondent O. P. Carrillo denies generally each and every, all and singular allegations of Article VII of the Articles of Impeachment preferred against him by the House of Representatives in House Resolution 161 and demands strict proof thereof.

h. Respondent O. P. Carrillo denies generally each and every, all and singular allegations of Article VIII of the Articles of Impeachment preferred against him by the House of Representatives in House Resolution 161 and demands strict proof thereof.

i. Respondent O. P. Carrillo denies generally each and every, all and singular allegations of Article IX of the Articles of Impeachment preferred against him by the House of Representatives in House Resolution 161 and demands strict proof thereof.

j. Respondent O. P. Carrillo denies generally each and every, all and singular allegations of Article X of the Articles of Impeachment preferred against him by the House of Representatives in House Resolution 161 and demands strict proof thereof.

D. Special Exceptions

1. Special Exceptions to Article I

a. Respondent O. P. Carrillo specially excepts to Article I of the Articles of Impeachment preferred by the House of Representatives in H.S.R. 161 and would show the Senate that said Article is insufficient in the following particulars:

1) Article I is too vague, general and indefinite in its allegations, omitting to allege with any particularity the acts which Respondent is alleged to have committed, and thereby fails to afford Respondent reasonable notice of either the facts the State expects to prove thereunder or of the offense with which he is charged therein.

2) Article I fails to allege the purpose of the alleged conspiracy.

3) Article I fails to allege a date or time at which the alleged conspiracy was entered into by O. P. Carrillo and others.

4) Article I fails to allege the duration of the alleged conspiracy entered into by O. P. Carrillo and others.

5) Article I fails to allege a location in which the alleged conspiracy and overt acts committed pursuant thereto occurred.

6) Article I fails to allege any overt acts committed in furtherance of the object of the conspiracy.

7) Article I fails to allege with particularity any of the persons with whom O. P. Carrillo allegedly conspired to have Duval County pay for groceries.

8) Article I fails to allege that the alleged conspiracy was entered into by O. P. Carrillo or continued during Respondent's present term of office as District Judge.

9) Article I fails to allege that the alleged conduct on the part of O. P. Carrillo in any manner affected the performance of Respondent's official duties as District Judge.

10) Article I fails to state an offense for which Respondent may properly be impeached in that it fails to allege conduct which as a matter of law constitutes either official misconduct or maladministration.

2. Special Exceptions to Article II

a. Respondent O. P. Carrillo specially excepts to Article II of the Articles of Impeachment preferred by the House of Representatives in H.S.R. 161 and would show the Senate that said Article is insufficient in the following particulars:

1) Article II in its entirety is too vague, general, and indefinite and fails to afford Respondent reasonable notice of the facts the House of Representatives intends to prove thereunder or of the offense with which Respondent is charged therein. In particular, said Article is vague in its statement that the alleged conduct of Respondent "included but was not limited to one or more" of the four allegations specified in the Article.

2) Article II, section (1) is too vague and indefinite to afford Respondent reasonable notice of the facts the House of Representatives intends to prove thereunder or of the offense with which Respondent is charged therein. In particular, Article II, section (1) is vague in the following respects:

a) It fails to allege with particularity the party involved in Cause No. 3953 with whom Respondent is alleged to have had numerous financial ties.

b) It fails to allege with particularity the nature of the financial ties the Respondent is alleged to have had with the party involved in Cause No. 3953.

c) It fails to allege sufficient facts to show as a matter of law Respondent O. P. Carrillo should have recused and disqualified himself from Cause No. 3953.

3) Article II, section (1) fails to allege that the alleged refusal of Respondent to recuse and disqualify himself in Cause No. 3953 occurred during Respondent's present term of office as District Judge and thereby fails to allege an offense for which Respondent may be properly impeached.

4) The allegations contained in Article II, section (1) are irrelevant and immaterial to any issue properly involved in these proceedings in that the alleged conduct on the part of Respondent occurred, if at all, prior to the election of Respondent to his present term of office as District Judge.

5) Article II, section (1) fails to allege conduct for which Respondent may properly be impeached in that it fails to allege conduct which as a matter of law constitutes either official misconduct or maladministration.

6) Article II, section (2) is too vague and indefinite in its allegations to afford Respondent reasonable notice of the facts the House of Representatives intends to prove thereunder or of the offense with which Respondent is charged therein. In particular, Article II, section (2) is vague in the following respects:

a) It fails to allege with particularity the party in Cause No. 8890 with whom Respondent is alleged to have publicly split.

b) It fails to allege the time at which Respondent is alleged to have publicly split with the party involved in Cause No. 8890.

c) It fails to specify with particularity what allegedly was involved in the "heated competition for political control of the governmental entities in Duval County" and fails to specify what governmental entities in Duval County were involved therein.

7) Article II, section (2) fails to allege that the alleged refusal of Respondent to recuse and disqualify himself in Cause No. 8890 occurred during Respondent's present term of office as District Judge and thereby fails to allege an offense for which Respondent may properly be impeached.

8) Article II, section (2) fails to allege conduct for which Respondent may properly be impeached in that it fails to allege conduct which as a matter of law constitutes either official misconduct or maladministration.

9) Article II, section (3) is too vague and indefinite in its allegations to afford Respondent reasonable notice of the facts the House of Representatives intends to

prove thereunder or the offense with which Respondent is charged therein. In particular, Article II, section (3) is vague in the following respects:

- a) It fails to allege with particularity the persons with whom Respondent is alleged to have conspired to influence the membership and proceedings of the Grand Jury of Duval County.
- b) It fails to allege with particularity the date on which Respondent entered into the alleged conspiracy to influence the membership and proceedings of the Grand Jury of Duval County.
- c) It fails to allege the duration of the alleged conspiracy between O. P. Carrillo and others.
- d) It fails to allege with particularity the place at which the alleged conspiracy and overt acts pursuant thereto occurred.
- e) It fails to allege with particularity the object of the alleged conspiracy between O. P. Carrillo and others.
- f) It fails to allege any overt acts committed by either O. P. Carrillo or the other members of the alleged conspiracy done in furtherance of the object of the alleged conspiracy.
- g) It fails to allege with particularity the manner in which O. P. Carrillo and others allegedly conspired to influence the membership and proceedings of the Grand Jury of Duval County.

10) Article II, section (3) fails to allege conduct for which Respondent may properly be impeached in that it fails to allege conduct which as a matter of law constitutes either official misconduct or maladministration.

11) Article II, section (4) is too vague and indefinite in its allegations to afford Respondent reasonable notice of the facts the House of Representatives intends to prove thereunder or the offense with which Respondent is charged therein. In particular, Article II, section (4) is vague in the following respects:

- a) It fails to allege with particularity the persons with whom Respondent is alleged to have conspired to dominate and control the Benavides Independent School District.
- b) It fails to allege the purpose of the alleged conspiracy among O. P. Carrillo and others.
- c) It fails to allege the date on which Respondent entered into the alleged conspiracy to dominate and control the Benavides Independent School District.
- d) It fails to allege with particularity any overt acts by Respondent or others done in furtherance of the object of the alleged conspiracy.
- e) It fails to allege the place at which the conspiracy and any of the alleged overt acts done in furtherance of the conspiracy occurred.
- f) It fails to allege with particularity the persons allegedly arbitrarily suspended from their offices.
- g) It fails to allege with particularity the alleged political allies appointed as replacements for the political allies.

12) Article II, section (4) fails to allege that the alleged conspiracy occurred during Respondent's present term of office as District Judge and thereby fails to allege an offense for which Respondent may properly be impeached.

13) Article II, section (4) fails to allege conduct for which Respondent may properly be impeached in that it fails to allege conduct which as a matter of law constitutes either official misconduct or maladministration.

3. Special Exceptions to Article III

a. Respondent Carrillo specially excepts to Article III of the Articles of Impeachment preferred by the House of Representatives in H.S.R. 161 and would show the Senate that said Article is insufficient in the following particulars:

- 1) Article III is duplicitous in alleging that "O. P. Carrillo acted alone or conspired with others."

2) Article III in its entirety is too vague, general, and indefinite in its allegations and fails to afford Respondent reasonable notice of the facts the House of Representatives intends to prove thereunder or of the offenses with which Respondent is charged therein. In particular, said Article is vague in the following respects:

- a) It fails to allege the time at which Respondent allegedly acted to divert the services of governmental employees to his personal benefit.
- b) It is vague in its statement that the alleged conduct of Respondent "included but was not limited to one or more" of the following five allegations.
- c) It is vague and contradictory in its statement that the conduct of Respondent "included but was not limited to one or more of the following..." in that said statement is followed only by the acts of other individuals.
- d) It is vague and obscure in its failure to allege specific conduct on the part of Respondent whereby Respondent allegedly acted to divert the services of governmental employees to his personal benefit.
- e) It fails to allege with particularity the persons with whom Respondent is alleged to have conspired, if at all, to divert the services of governmental employees to his personal benefit.
- f) It fails to allege with particularity the purpose of said alleged conspiracy, if any.
- g) It fails to allege with particularity the date upon which Respondent entered into said conspiracy, if any.
- h) It fails to allege with particularity the duration of said conspiracy, if any.
- i) It fails to allege with particularity any overt acts committed by Respondent or others in furtherance of the object of the conspiracy, if any.
- j) It fails to allege with particularity which governmental employees Respondent alone or in conspiracy with others acted to divert.

3) Article III fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege that the alleged conduct or conspiracy on the part of Respondent occurred during Respondent's present term of office as District Judge.

4) Article III fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege sufficient facts to state any misconduct whatsoever as a matter of law.

5) Article III fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege that the alleged conduct on the part of Respondent in any manner affected the performance of Respondent's official duties as District Judge.

6) Article III fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege conduct which as a matter of law constitutes either official misconduct or maladministration.

4. Special Exceptions to Article IV

a. Respondent Carrillo excepts to Article IV of the Articles of Impeachment preferred by the House of Representatives in H.S.R. 161 and would show the Senate that said Article is insufficient in the following particulars:

1) Article IV in its entirety is too vague, general, and indefinite in its allegations and fails to afford Respondent reasonable notice of the facts the House of Representatives intends to prove thereunder or of the offense with which Respondent is charged thereunder.

In particular, said Article is vague in the following particulars:

- a) It is vague in its statement that the conduct of Respondent and others "included but was not limited to one or more" of the following specific allegations.
- b) It fails to allege with particularity the persons with whom Respondent is alleged to have conspired to misapply government equipment.

- c) It fails to allege with particularity the purpose of said alleged conspiracy.
 - d) It fails to allege with particularity the date upon which Respondent entered into said alleged conspiracy.
 - e) It fails to allege with particularity the duration of said alleged conspiracy.
 - f) It fails to allege with particularity overt acts committed by Respondent or others in furtherance of the object of said alleged conspiracy.
 - g) It fails to allege with particularity the place at which the alleged conspiracy and the overt acts in furtherance thereof occurred.
 - h) It fails to allege with particularity the governmental equipment which Respondent allegedly conspired to misapply.
 - i) It fails to allege with particularity whether the governmental equipment which Respondent allegedly conspired to misapply was owned or leased by Duval County or other governmental entities, and is vague and duplicitous in its statements in sections (1) through (5) that the equipment named therein was "owned or leased by Duval County."
- 2) Article IV fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege that the alleged conduct on the part of Respondent occurred during Respondent's present term of office as District Judge.
- 3) Article IV fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege sufficient facts to state any misconduct whatsoever on the part of the Respondent.
- 4) Article IV fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege that the alleged conduct on the part of Respondent in any manner affected the performance of Respondent's official duties as District Judge.
- 5) Article IV fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege conduct which as a matter of law constitutes either official misconduct or maladministration.
5. Special Exceptions to Article V
- a. Respondent Carrillo specially excepts to Article V of the Articles of Impeachment preferred by the House of Representatives in H.S.R. 161 and would show the Senate that said Article is insufficient in the following particulars:
- 1) Article V, insofar as it contains allegations relating to Respondent's conduct while serving as either county attorney for Duval County or as a member of the board of trustees for the Benavides Independent School District, contains allegations which are entirely irrelevant and immaterial to any issue properly involved in the impeachment of Respondent as District Judge.
 - 2) Article V is too vague, general and indefinite in its allegations and fails to afford Respondent reasonable notice of either the facts which the House of Representatives intends to prove thereunder or of the offense with which he is charged therein. In particular, said Article is vague in the following respects:
 - a) It is vague in its statement that the conduct of Respondent "included but was not limited to" the specific allegations following.
 - b) It fails to allege with particularity the public officials with whom Respondent is alleged to have conspired.
 - c) It fails to allege with particularity the purpose of the conspiracy alleged therein.
 - d) It fails to allege with particularity the date on which Respondent entered into said alleged conspiracy.
 - e) It fails to allege with particularity the duration of said alleged conspiracy.
 - f) It fails to allege with particularity any overt acts committed by Respondent or other alleged co-conspirators in furtherance of the object of said alleged conspiracy.
 - g) It fails to allege with particularity the place at which said alleged conspiracy and the overt acts committed pursuant thereto occurred.

h) It fails to allege with particularity the constitutional provisions, the oaths of office, the statutes, and the public policy which Respondent is alleged to have violated by his conduct.

i) It fails to allege with particularity the governmental entities with which Respondent allegedly did private business.

j) It fails to allege with particularity the dates of the alleged transactions between Respondent and the governmental entities.

k) It fails to allege with particularity the other business entities through which Respondent allegedly transacted business with the governmental entities.

l) It fails to allege with particularity the close relatives with whom Respondent had a joint economic interest and who served as officers of the governmental entities with which Respondent had business transactions.

m) It fails to allege with particularity the governmental entities for which the close relatives of Respondent served as officers and with which Respondent had business transactions.

n) It fails to allege with particularity the official positions which the close relatives of Respondent allegedly held during the time in which Respondent allegedly had business transactions with governmental entities.

o) It fails to allege with particularity the joint economic interest that Respondent Carrillillo allegedly had with his close relatives who served as officers of the governmental entities.

3) Article V fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege that the alleged conduct on the part of Respondent occurred during Respondent's present term of office as District Judge.

4) Article V fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege sufficient facts to state any misconduct whatsoever on the part of Respondent.

5) Article V fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege that the alleged conduct on the part of Respondent in any manner affected the performance of Respondent's official duties as District Judge.

6) Article V fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege conduct which as a matter of law constitutes either official misconduct or maladministration.

6. Special Exceptions to Article VI

a. Respondent Carrillo specifically objects to Article VI of the Articles of Impeachment preferred by the House of Representatives in H.S.R. 161 and would show the Senate that said Article is insufficient in the following particulars:

1) Article VI is too vague, general and indefinite in its allegations and fails to afford Respondent reasonable notice of either the facts which the House of Representatives intends to prove thereunder or of the offense with which Respondent is charged therein. In particular, said Article is vague in the following respects:

a) It fails to allege in particularity the dates on which the alleged financial statements were filed with the Secretary of the State of Texas.

b) It fails to allege in particularity the purpose for which the alleged financial statements were filed with the Secretary of the State of Texas.

c) It fails to allege with particularity the manner in which the alleged financial statements filed with the Secretary of the State of Texas were false and fraudulent.

d) It fails to allege with particularity either intent on the part of Respondent to file false and fraudulent financial statements with the Secretary of the State of Texas or the knowledge on the part of Respondent that the alleged financial statements so filed were false and fraudulent.

2) Article VI fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege that the alleged conduct on the part of

Respondent occurred during Respondent's present term of office as District Judge.

3) Article VI fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege sufficient facts to state any misconduct whatsoever on the part of Respondent.

4) Article VI fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege that the alleged conduct on the part of Respondent in any manner affected the performance of Respondent's official duties as District Judge.

5) Article VI fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege conduct which as a matter of law constitutes either official misconduct or maladministration.

7. Special Exceptions to Article VII

a. Respondent Carrillo specially excepts to Article VII of the Articles of Impeachment preferred by the House of Representatives in H.S.R. 161 and would show the Senate that said Article is insufficient in the following particulars:

1) Article VII is too vague, general and indefinite in its allegations and fails to afford Respondent reasonable notice of either the facts which the House of Representatives intends to prove thereunder or of the offense with which Respondent is charged therein. In particular, said Article is vague in the following respects:

a) It fails to allege with particularity the other persons with whom Respondent is alleged to have conspired to rent nonexistent equipment to the governmental entities.

b) It fails to allege with particularity the purpose of the alleged conspiracy to rent nonexistent equipment to the governmental entities.

c) It fails to allege with particularity the date upon which Respondent entered into the said alleged conspiracy.

d) It fails to allege with particularity the duration of the said alleged conspiracy.

e) It fails to allege with particularity any overt acts committed by Respondent or other alleged co-conspirators in furtherance of the object of said alleged conspiracy.

f) It fails to allege with particularity the place at which said alleged conspiracy and the overt acts committed pursuant thereto occurred.

g) It fails to allege with particularity the nature of the nonexistent equipment that Respondent and others are alleged to have rented to the governmental entities.

h) It fails to allege with particularity the governmental entities to which Respondent and others allegedly conspired to rent nonexistent equipment.

i) It fails to allege with particularity the manner in which Respondent and others allegedly conspired to effect the rental of nonexistent equipment to the governmental entities.

2) Article VII fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege that the alleged conduct on the part of Respondent occurred during the Respondent's present term of office as District Judge.

3) Article VII fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege sufficient facts to state any misconduct whatsoever on the part of Respondent.

4) Article VII fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege that the alleged conduct on the part of the Respondent in any manner affected the performance of Respondent's official duties as District Judge.

5) Article VII fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege conduct which as a matter of law constitutes either official misconduct or maladministration.

8. Special Exceptions to Article VIII

a. Respondent Carrillo specially excepts to Article VIII of the Articles of Impeachment preferred by the House of Representatives in H.S.R. 161 and would show the Senate that said Article is insufficient in the following particulars:

1) Article VIII is too vague, general, and indefinite in its allegations and fails to afford Respondent reasonable notice of either the facts which the House of Representatives intends to prove thereunder or of the offense with which Respondent is charged therein. In particular, said Article is too vague in the following respects:

a) It fails to allege with particularity the other persons with whom Respondent is alleged to have conspired to defraud Duval County.

b) It fails to allege with particularity the purpose of the conspiracy alleged therein.

c) It fails to allege with particularity the date on which Respondent entered into said alleged conspiracy.

d) It fails to allege with particularity the duration of said alleged conspiracy.

e) It fails to allege with particularity any overt acts committed by Respondent or other alleged co-conspirators in furtherance of the object of said alleged conspiracy.

f) It fails to allege with particularity the place at which said alleged conspiracy and the overt acts committed pursuant thereto occurred.

g) It fails to allege with particularity the manner in which Respondent and the other co-conspirators allegedly conspired to effect the object of said alleged conspiracy.

h) It fails to allege with particularity the reason for which Arturo Zertuche was not entitled to receive funds from Duval County.

2) Article VIII fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege that the alleged conduct on the part of Respondent occurred during the Respondent's present term of office as District Judge.

3) Article VIII fails to allege an offense for which Respondent may properly be impeached for the reason that said Article fails to allege sufficient facts to state any misconduct whatsoever on the part of Respondent.

4) Article VIII fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege that the alleged conduct on the part of Respondent in any manner affected the performance of Respondent's official duties as District Judge.

5) Article VIII fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege conduct which as a matter of law constitutes official misconduct or maladministration.

9. Special Exceptions to Article IX

a. Respondent Carrillo specially excepts to Article IX of the Articles of Impeachment preferred by the House of Representatives in H.S.R. 161 and would show the Senate that said Article is insufficient in the following particulars:

1) Article IX is too vague, general, and indefinite in its allegations and fails to afford Respondent reasonable notice of either the facts which the House of Representatives intends to prove thereunder or of the offense with which Respondent is charged therein. In particular, said Article is too vague in the following respects:

a) It fails to allege with particularity the other persons with whom Respondent is alleged to have conspired to defraud Duval County.

b) It fails to allege with particularity the purpose of the conspiracy alleged therein.

c) It fails to allege with particularity the date on which Respondent entered into said alleged conspiracy.

d) It fails to allege with particularity the duration of said alleged conspiracy.

e) It fails to allege with particularity the overt acts committed by Respondent or other alleged co-conspirators in furtherance of the object of said alleged conspiracy.

f) It fails to allege with particularity the place at which said alleged conspiracy and the overt acts committed pursuant thereto occurred.

g) It fails to allege with particularity the manner in which Respondent and the other co-conspirators allegedly conspired to effect the object of said alleged conspiracy.

h) It fails to allege with particularity the reason for which Robert Elizondo was not entitled to receive funds from Duval County.

2) Article IX fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege that the alleged conduct on the part of Respondent occurred during the Respondent's present term of office as District Judge.

3) Article IX fails to allege an offense for which Respondent may properly be impeached for the reason that said Article fails to allege sufficient facts to state any misconduct whatsoever on the part of Respondent.

4) Article IX fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege that the alleged conduct on the part of Respondent in any manner affected the performance of Respondent's official duties as District Judge.

5) Article IX fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege conduct which as a matter of law constitutes official misconduct or maladministration.

10. Special Exceptions to Article X

a. Respondent Carrillo specially excepts to Article X of the Articles of Impeachment preferred by the House of Representatives in H.S.R. 161 and would show the Senate that said Article is insufficient in the following particulars:

1) Article VIII is too vague, general and indefinite in its allegations and fails to afford Respondent reasonable notice of either the facts which the House of Representatives intends to prove thereunder or of the offense with which Respondent is charged therein. In particular, the said Article is too vague in the following respects:

a) It fails to allege with particularity the other persons with whom Respondent is alleged to have conspired to defraud Duval County.

b) It fails to allege with particularity the purpose of the conspiracy alleged therein.

c) It fails to allege with particularity the date on which Respondent entered into said alleged conspiracy.

d) It fails to allege with particularity the duration of said alleged conspiracy.

e) It fails to allege with particularity the overt acts committed by Respondent or other alleged co-conspirators in furtherance of the object of said alleged conspiracy.

f) It fails to allege with particularity the place at which said alleged conspiracy and the overt acts committed pursuant thereto occurred.

g) It fails to allege with particularity the manner in which Respondent and the other co-conspirators allegedly conspired to effect the object of said alleged conspiracy.

h) It fails to allege with particularity the reason for which Patricio Garza was not entitled to receive funds from Duval County.

2) Article X fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege that the alleged conduct on the part of Respondent occurred during the Respondent's present term of office as District Judge.

3) Article X fails to allege an offense for which Respondent may properly be impeached for the reason that said Article fails to allege sufficient facts to state any misconduct whatsoever on the part of Respondent.

4) Article X fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege that the alleged conduct on the part of Respondent in any manner affected the performance of Respondent's official duties as District Judge.

5) Article X fails to allege an offense for which Respondent may properly be impeached in that said Article fails to allege conduct which as a matter of law constitutes official misconduct or maladministration.

E. Affirmative Defenses

1. Admission by House Select Committee on Impeachment:

No Official Misconduct of Malfeasance

a. Respondent O. P. Carrillo respectfully submits that the allegations contained in the Articles of Impeachment as preferred by the House of Representatives do not present grounds for impeachment of Respondent, in that the House of Representatives through the House Select Committee on Impeachment has made admission that the misconduct with which Respondent is charged does not involve misconduct or malfeasance in the performance of the duties of Respondent's office as District Judge, which admission is contained in the transcript of the proceedings before the House Select Committee on Impeachment and made a part of the record in these proceedings. The effect of said admission by the House Select Committee on Impeachment in the transcript of its proceedings, which transcript forms the basis for all of the Articles of Impeachment preferred by the House of Representatives against Respondent, is to render all the allegations in said Articles of Impeachment irrelevant and immaterial to any issue properly before the Senate sitting as a Court of Impeachment.

2. Articles Presenting no Grounds for Impeachment

a. Respondent O. P. Carrillo respectfully submits that the allegations contained in Articles II(1), IV, V, VI, VII, VIII, IX, and X of the Articles of Impeachment preferred by the House of Representatives do not present grounds for impeachment of Respondent, in that the record of the proceedings before the House Select Committee on Impeachment clearly indicates that the alleged conduct contained in the above-specified Articles occurred prior to Respondent's election to his present term of office, and therefore, do not present grounds for removal under Article 5986, V.A.C.S.

3. No Official Misconduct or Malfeasance as a Matter of Law

a. Respondent O. P. Carrillo respectfully submits that the allegations contained in Articles I, V, VII, VIII, IX, and X of the Articles of Impeachment preferred by the House of Representatives do not present grounds for impeachment, in that, as a matter of law, a district judge has no power officially to order or cause any of the governmental entities of the county to make expenditures or payments of any nature and for any purpose, said power being vested in the County Judge, the full Commissioner's Court, and the other governmental bodies and/or agencies connected with the particular governmental entities. Lacking the power as District Judge to order or cause such expenditures or payments to be made, Respondent as a matter of law can be charged with no offense of official misconduct or malfeasance in his office as District Judge under the above-specified Articles; and said Articles insofar as they charge official misconduct on the part of Respondent on the grounds that Respondent caused improper expenditures to be made by governmental entities of the county, or conspired to do the same, are anomalous.

WHEREFORE, PREMISES CONSIDERED, Respondent O. P. Carrillo respectfully prays that the Senate dismiss impeachment proceedings against Respondent for want of jurisdiction. In the alternative, Respondent prays that the Senate exercise legislative restraint and abstain in the impeachment proceedings. In the alternative, Respondent prays that the Senate dismiss such of the Articles of Impeachment as present no grounds for impeachment of Respondent as a matter of law. Finally, and in the alternative, Respondent prays that the Senate order the House of Representatives to amend the Articles of Impeachment preferred against O. P. Carrillo in line with the Special Exceptions of Respondent contained in Section II, D. of this Answer, so as to afford Respondent reasonable notice of the facts which the House of Representatives intends to prove under the Articles and of the offenses with which Respondent is charged therein.

Respectfully submitted,

RICHARD HAYNES
Suite 610, 711 Fannin St.

Houston, Texas 77002

ARTHUR MITCHELL
JAN WOODWARD FOX
315 Westgate Bldg.
Austin, Texas 78701

By /s/ Arthur Mitchell
Arthur Mitchell
ATTORNEYS FOR RESPONDENT

INDEX TO EXHIBITS

- Exhibit A - Indictment of O. P. Carrillo
- Exhibit B-1 - Motion for Bill of Particulars
- Exhibit B-2 - First Motion for Discovery
- Exhibit B-3 - Second Motion for Discovery
- Exhibit B-4 - Third Motion for Discovery
- Exhibit B-5 - Fourth Motion for Discovery
- Exhibit C-1 - C-7 - News articles on court proceedings
- Exhibit D - Notice of Informal Proceedings of the Judicial Qualifications Commission
- P. Carrillo
 - Exhibit E-1 - Reply to the charges of Judicial Qualifications Commission by O. Carrillo
 - Exhibit E-2 - Rules for the Removal or Retirement of Judges
 - Exhibit F - House Simple Resolution 161
 - Exhibit G - News article on Canales
 - Exhibit H-1 - Motion for Legislative Continuance by Terry Canales
 - Exhibit H-2 - Motion for Legislative Continuance by Terry Canales
 - Exhibit I - House Resolution 167
 - Exhibit J - Telegram to O. P. Carrillo from DeWitt Hale
 - Exhibit K - News articles on bank records subpoenaed by Committee
 - Exhibit L - Motion to take Deposition of Barney Goldthorne
 - Exhibit M - First Response to the Impeachment Proceedings (Exhibits original attached thereto omitted)
 - Exhibit N - House Resolution 221
 - Exhibit O - Texas Open Meetings Act, Art. 6252-17, V.A.C.S.
 - Exhibit P - Supplementary Motion for Indefinite Continuance (Exhibits originally attached thereto omitted)
 - Exhibit Q - News article on meeting of Judicial Qualifications Committee
 - Exhibit R - Substitute for H.S.R. 161
 - Exhibit S - News article on Aug. 4 meeting

Exhibit "A"

(Verbatim Copy of Original Document as received)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA)

VS.)

RAMIRO D. CARRILLO,)
O. P. CARRILLO,)
ARTURO R. ZERTUCHE)

CRIMINAL NO. 75-C-45

INDICTMENT

THE GRAND JURY CHARGES:

COUNT ONE

That on or about January 1, 1967, the exact date being to the grand jurors unknown, and continuously thereafter up to and including May 31, 1974, within the Corpus Christi Division of the Southern District of Texas and elsewhere, O. P. CARRILLO, RAMIRO D. CARRILLO, ARTURO R. ZERTUCHE, all residents of Duval County, Texas, hereinafter referred to as Defendants, did unlawfully, knowingly and willfully, conspire, confederate, combine, and agree together, with each other, and with divers other persons to the grand jurors unknown, to commit offenses against the United States and to defraud the United States; that is to say, they conspired to make, subscribe, and file with the Internal Revenue Service, false and fraudulent individual and partnership income tax returns (Forms 1040 and 1065) in violation of Title 26, United States Code, Section 7206(1), and they conspired to defraud the United States by impeding, impairing, obstructing, and defeating the lawful function of the United States Treasury Department, Internal Revenue Service, in the ascertainment, computation, assessment, and collection of income taxes.

The grand jury further charges that said unlawful conspiracy, confederation, combination and agreement was to be accomplished by the means and methods in the manner following:

a. During the course of the conspiracy the aforesaid defendants would cause certain sales of the partnership O. P. and Ramiro D. Carrillo, doing business as Farm and Ranch Supply (hereinafter called Farm and Ranch), including sales to Duval County, Duval County Conservation and Reclamation District and Benavides Independent School District, to be made in the name of Zertuche General Store.

b. During the course of the conspiracy the aforesaid defendants would cause said sales, or a portion of them, to be reported on the income tax returns of defendant Zertuche as sales of the Zertuche General Store and not to be reported on the Farm and Ranch partnership returns.

c. During the course of the conspiracy the aforesaid defendants would falsely claim to employees of the United States that Zertuche General Store was an independent operation of defendant Zertuche, that it had its own location apart from the Farm and Ranch operation and it was a separate operation from Farm and Ranch.

The grand jury further charges that during the existence of this conspiracy, as a part thereof, in furtherance thereof, to effect the objects thereof, and in accordance with their plan, the said defendants did the following, among other, overt acts within the Corpus Christi Division of the Southern District of Texas:

OVERT ACTS

1. On or about April 13, 1968, RAMIRO D. CARRILLO filed a 1967 Form 1040 with the Internal Revenue Service.
 2. On or about April 8, 1969, RAMIRO D. CARRILLO filed a 1968 Form 1040 with the Internal Revenue Service.
 3. On or about April 6, 1970, RAMIRO D. CARRILLO filed a 1969 Form 1040 with the Internal Revenue Service.
 4. On or about April 7, 1971, RAMIRO D. CARRILLO filed a 1970 Form 1040 with the Internal Revenue Service.
 5. On or about April 15, 1968, O. P. CARRILLO filed a 1967 Form 1040 with the Internal Revenue Service.
 6. On or about April 12, 1969, O. P. CARRILLO filed a 1968 Form 1040 with the Internal Revenue Service.
 7. On or about May 11, 1970, O. P. CARRILLO filed a 1969 Form 1040 with the Internal Revenue Service.
 8. On or about April 12, 1971, O. P. CARRILLO filed a 1970 Form 1040 with the Internal Revenue Service.
 9. On or about April 12, 1968, ARTURO ZERTUCHE filed a 1967 Form 1040 with the Internal Revenue Service.
 10. On or about April 14, 1969, ARTURO ZERTUCHE filed a 1968 Form 1040 with the Internal Revenue Service.
 11. On or about April 13, 1970, ARTURO ZERTUCHE filed a 1969 Form 1040 with the Internal Revenue Service.
 12. On or about April 6, 1971, ARTURO ZERTUCHE filed a 1970 Form 1040 with the Internal Revenue Service.
 13. On or about April 15, 1968, O. P. CARRILLO filed a 1967 Form 1065 with the Internal Revenue Service.
 14. On or about April 9, 1969, RAMIRO D. CARRILLO filed a 1968 Form 1065 with the Internal Revenue Service.
 15. On or about April 12, 1970, RAMIRO D. CARRILLO filed a 1969 Form 1065 with the Internal Revenue Service.
 16. On or about April 15, 1971, O. P. CARRILLO filed a 1970 Form 1065 with the Internal Revenue Service.
- (Violation: Title 18, United States Code, Section 371)

COUNT TWO

That on or about April 8, 1969, in the Corpus Christi Division of the Southern District of Texas, and within the jurisdiction of this Court, RAMIRO D. CARRILLO, a resident of Duval County, Texas, did willfully and knowingly make and subscribe a 1968 individual income tax return (Form 1040), which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said return he did not believe to be true and correct as to every material matter in that the said return reported income from a partnership in the amount of \$3,989.28, whereas, as he then and there well knew and believed, he had received income from the said partnership in a substantially greater amount than the reported amount of \$3,989.28.

(Violation: Title 26, United States Code, Section 7206(1))

COUNT THREE

That on or about April 6, 1970, in the Corpus Christi Division of the Southern District of Texas, and within the jurisdiction of this Court, RAMIRO D. CARRILLO,

a resident of Duval County, Texas, did willfully and knowingly make and subscribe a 1969 individual income tax return (Form 1040), which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said return he did not believe to be true and correct as to every material matter in that the said return reported income from a partnership in the amount of \$8,528.83, whereas, as he then and there well knew and believed, he had received income from the said partnership in a substantially greater amount than the reported amount of \$8,528.83.

(Violation: Title 26, United States Code, Section 7206(1))

COUNT FOUR

That on or about April 7, 1971, in the Corpus Christi Division of the Southern District of Texas, and within the jurisdiction of this Court, RAMIRO D. CARRILLO, a resident of Duval County, Texas, did willfully and knowingly make and subscribe a 1970 individual income tax return (Form 1040), which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said return he did not believe to be true and correct as to every material matter in that the said return reported income from a partnership in the amount of \$2,100.92, whereas, as he then and there well knew and believed, he had received income from the said partnership in a substantially greater amount than the reported amount of \$2,100.92.

(Violation: Title 26, United States Code, Section 7206(1))

COUNT FIVE

That on or about April 9, 1969, in the Corpus Christi Division of the Southern District of Texas, and within the jurisdiction of this Court, RAMIRO D. CARRILLO, a resident of Duval County, Texas, did willfully and knowingly make and subscribe a 1968 United States Partnership Return of Income (Form 1065), which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said return he did not believe to be true and correct as to every material matter in that the said return reported gross receipts in the amount of \$70,975.41, whereas, as he then and there well knew and believed, gross receipts of the partnership were in a substantially greater amount than the reported amount of \$70,975.41.

(Violation: Title 26, United States Code, Section 7206(1))

COUNT SIX

That on or about April 12, 1970, in the Corpus Christi Division of the Southern District of Texas, and within the jurisdiction of this Court, RAMIRO D. CARRILLO, a resident of Duval County, Texas, did willfully and knowingly make and subscribe a 1969 United States Partnership Return of Income (Form 1065), which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said return he did not believe to be true and correct as to every material matter in that the said return reported gross receipts in the amount of \$66,477.70, whereas, as he then and there well knew and believed, gross receipts of the partnership were in a substantially greater amount than the reported amount of \$66,477.70.

(Violation: Title 26, United States Code, Section 7206(1))

COUNT SEVEN

That on or about April 12, 1969, in the Corpus Christi Division of the Southern District of Texas, and within the jurisdiction of this Court, O. P. CARRILLO, a resident of Duval County, Texas, did willfully and knowingly make and subscribe a 1968 individual income tax return (Form 1040), which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said return he did not believe to be true and correct as to every material matter in that the said return reported income from the partnership in the amount of \$3,989.28, whereas, as he then and there well knew and believed, he had received income from the partnership in a substantially greater amount than the reported amount of \$3,989.28.

(Violation: Title 26, United States Code, Section 7206(1))

COUNT EIGHT

That on or about April 12, 1971, in the Corpus Christi Division of the Southern District of Texas, and within the jurisdiction of this Court, O. P. CARRILLO, a resident of Duval County, Texas, did willfully and knowingly make and subscribe a 1970 individual income tax return (Form 1040), which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said return he did not believe to be true and correct as to every material matter in that the said return reported income from a partnership in the amount of \$2,100.92, whereas, as he then and there well knew and believed, he had received income from the said partnership in a substantially greater amount than the reported amount of \$2,100.92.

(Violation: Title 26, United States Code, Section 7206(1))

COUNT NINE

That on or about April 15, 1971, in the Corpus Christi Division of the Southern District of Texas, and within the jurisdiction of this Court, O. P. CARRILLO, a resident of Duval County, Texas, did willfully and knowingly make and subscribe a 1970 United States Partnership Return of Income (Form 1065), which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said return he did not believe to be true and correct as to every material matter in that the said return reported gross receipts of the partnership in the amount of \$58,678.65, whereas, as he then and there well knew and believed, gross receipts of the partnership were in substantially greater amount than the reported amount of \$58,678.65.

(Violation: Title 26, United States Code, Section 7206(1))

COUNT TEN

That on or about April 14, 1969, in the Corpus Christi Division of the Southern District of Texas, and within the jurisdiction of this Court, ARTURO ZERTUCHE, a resident of Duval County, Texas, did willfully and knowingly make and subscribe a 1968 individual income tax return (Form 1040), which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said return he did not believe to be true and correct as to every material matter in that the said return included an attached Schedule C, Profit (or Loss) From Business or Profession, which was made a part of the said return and which said Schedule C reported income and expenses of an alleged sole proprietorship, whereas, as he then and there well knew and believed, the income and expenses reported

on the said Schedule C did not belong to the said ARTURO ZERTUCHE, and were not properly reportable on the said 1968 individual income tax return (Form 1040) of the said ARTURO ZERTUCHE.

(Violation: Title 26, United States Code, Section 7206(1))

COUNT ELEVEN

That on or about April 13, 1970, in the Corpus Christi Division of the Southern District of Texas, and within the jurisdiction of this Court, ARTURO ZERTUCHE, a resident of Duval County, Texas, did willfully and knowingly make and subscribe a 1969 individual income tax return (Form 1040), which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said return he did not believe to be true and correct as to every material matter in that the said return included an attached Schedule C, Profit (or Loss) From Business or Profession, which was made a part of the said return and which said Schedule C reported income and expenses of an alleged sole proprietorship, whereas, as he then and there well knew and believed, the income and expenses reported on the said Schedule C did not belong to the said ARTURO ZERTUCHE, and were not properly reportable as the said 1969 individual income tax return (Form 1040) of the said AUTURO ZERTUCHE.

(Violation: Title 26, United States Code, Section 7206(1))

COUNT TWELVE

That on or about April 6, 1971, in the Corpus Christi Division of the Southern District of Texas, and within the jurisdiction of this Court, ARTURO ZERTUCHE, a resident of Duval County, Texas, did willfully and knowingly make and subscribe a 1970 individual income tax return (Form 1040), which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said return he did not believe to be true and correct as to every material matter in that the said return included an attached Schedule C, Profit (or Loss) From Business or Profession, which was made a part of the said return and which said Schedule C reported income and expenses of an alleged sole proprietorship, whereas, as he then and there well knew and believed, the income and expenses reported on the said Schedule C did not belong to the said ARTURO ZERTUCHE, and were not properly reportable on the said 1970 individual income tax return (Form 1040) of the said ARTURO ZERTUCHE.

(Violation: Title 26, United States Code, Section 7206(1))

A TRUE BILL:

FOREMAN OF THE GRAND JURY

EDWARD B. McDONOUGH, JR.
United States Attorney

By _____
GEORGE A. KELT, JR.
Assistant United States Attorney

Exhibit "B-1"

(Verbatim Copy of Original Document as received)

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA)

V.)

RAMIRO D. CARRILLO,)

O. P. CARRILLO AND)

ARTURO R. ZERTUCHE)

Criminal No. CR 75-C-45

FIRST MOTION OF DEFENDANTS RAMIRO D. CARRILLO,
O. P. CARRILLO, AND ARTURO R. ZERTUCHE
FOR BILL OF PARTICULARS

TO THE HONORABLE COURT:

Come now Defendants, RAMIRO D. CARRILLO, O. P. CARRILLO, AND ARTURO R. ZERTUCHE, acting by and through their attorneys, and pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, and move this Court to order the Attorney for the United States of America to serve and file with this Court and to deliver to said Defendants a Bill of Particulars relating to the above captioned matter and containing the following particulars with respect thereto:

(1) A statement as to whether the Government alleges that an agreement was entered into by Ramiro D. Carrillo, O. P. Carrillo, and Arturo R. Zertuche whereby said persons agreed to commit the offenses against the Government alleged in the Indictment.

(2) A statement as to the exact date on which the alleged agreement, if any, was entered into by Ramiro D. Carrillo, O. P. Carrillo, and Arturo R. Zertuche.

(3) A statement as to the exact nature and terms of the alleged agreement and conspiracy, if any, entered into by Ramiro D. Carrillo, O. P. Carrillo, and Arturo R. Zertuche.

(4) A statement as to the effect of the alleged agreement and conspiracy among Defendants, and in particular, a statement as to the alleged specific resultant injury to the Government.

(5) A statement as to whether the Government alleges the participation of additional persons and co-conspirators in the agreement and conspiracy, if any, who are not named as codefendants in the Indictment; and, if so, the names of such additional co-conspirators.

(6) A statement as to the exact date any alleged additional co-conspirators, if any, entered into the alleged agreement and conspiracy, if any.

(7) A statement as to any and all additional overt acts by Ramiro D. Carrillo, O. P. Carrillo, and Arturo R. Zertuche, or other alleged co-conspirators, if any, pursuant to the alleged agreement and conspiracy, if any, and the exact dates on which such acts, if any, were performed.

(8) A statement as to all sales of the partnership O. P. Carrillo and Ramiro D. Carrillo, doing business as Farm and Ranch Supply, alleged to have been made in the

name of Zertuche General Store, and the exact date on which each of such alleged sales was made.

(9) A statement as to whether it is alleged by the Government that Zertuche General Store was not an independent operation of Arturo R. Zertuche; and if so alleged, an exact statement setting forth the following:

(a) the alleged owner or owners and proprietors of Zertuche General Store for each of the years 1967 to the present date.

(b) the alleged employees of the Zertuche General Store or the owners thereof and the capacity in which each of such employees were employed in regard to the Zertuche General Store for each of the years 1967 to date.

(c) the alleged role of Ramiro D. Carrillo, and O. P. Carrillo in regard to the Zertuche General Store for the years 1967 to date.

(d) the alleged role of Arturo R. Zertuche in regard to the Zertuche General Store for the years 1967 to date.

(e) the individuals on whose returns the income and expenses for Zertuche General Store were allegedly properly reportable for each of the years 1967 through 1974.

(10) A statement as to whether it is alleged by the Government that Zertuche General Store was not an entity separate and apart from the partnership of O. P. Carrillo and Ramiro D. Carrillo doing business as Farm and Ranch Supply; and, if so alleged, an exact statement as to the alleged relationship between Zertuche General Store and Farm and Ranch Supply for each of the years 1967 through 1974.

(11) A statement as to the amount of alleged income which was improperly unreported on the 1968 individual income tax return of Ramiro D. Carrillo and the source or sources thereof, including the source or sources from which the partnership allegedly received such income.

(12) A statement as to the amount of alleged income which was improperly unreported on the 1969 individual income tax return of Ramiro D. Carrillo and the source or sources thereof, including the source or sources from which the partnership allegedly received such income.

(13) A statement as to the amount of alleged income which was improperly unreported on the 1970 individual income tax return of Ramiro D. Carrillo and the source or sources thereof, including the source or sources from which the partnership allegedly received such income.

(14) A statement as to the amount of alleged gross receipts which were improperly unreported on the 1968 United States Partnership Return of Income of Ramiro D. Carrillo and the source or sources thereof.

(15) A statement as to the amount of alleged gross receipts which were improperly unreported on the 1969 United States Partnership Return of Income of Ramiro D. Carrillo and the source or sources thereof.

(16) A statement as to the amount of alleged income which was improperly unreported on the 1968 individual income tax return of O. P. Carrillo and the source or sources thereof, including the source or sources from which the partnership received such income.

(17) A statement as to the amount of alleged income which was improperly unreported on the 1970 individual income tax return of O. P. Carrillo and the source or sources thereof, including the source or sources from which the partnership received such income.

(18) A statement as to the amount of alleged gross receipts which were improperly unreported on the 1970 United States Partnership Return of Income of O. P. Carrillo and the source or sources thereof.

(19) A statement as to the amount of income and expenses of a sole proprietorship which were allegedly improperly reported on the Schedule C forms of the individual income tax returns of Arturo R. Zertuche for each of the years 1968,

1969, and 1970 and the individuals on whose returns such income and expenses allegedly were properly reportable for each of the years 1968, 1969, and 1970.

(20) A statement as to whether the Government alleges any improperly unreported income on the individual income tax returns of Ramiro D. Carrillo for any of the years 1968, 1969, and 1970.

(21) A statement as to whether the Government alleges that the improperly unreported income on the following individual income tax returns was derived from any source other than sales or transactions in the name of Zertuche General Store, and, if so, the nature of such other sources:

- (a) 1968 individual income tax return of Ramiro D. Carrillo.
- (b) 1969 individual income tax return of Ramiro D. Carrillo.
- (c) 1970 individual income tax return of Ramiro D. Carrillo.
- (d) 1968 individual income tax return of O. P. Carrillo.
- (e) 1970 individual income tax return of O. P. Carrillo.

(22) A statement as to whether the Government alleges that the improperly unreported gross receipts on the following United States Partnership Returns of Income were derived from any source other than sales or transactions in the name of Zertuche General Store, and, if so, the nature of such other sources:

- (a) 1968 United States Partnership Return of Income of Ramiro D. Carrillo.
- (b) 1969 United States Partnership Return of Income of Ramiro D. Carrillo.
- (c) 1970 United States Partnership Return of Income of O. P. Carrillo.

(23) A statement as to whether the Government alleges that all of the income which was allegedly improperly unreported on the following individual income tax returns was reported on the Schedule C forms of the individual income tax returns of Arturo R. Zertuche for each of the respective years:

- (a) 1968 individual income tax return of Ramiro D. Carrillo.
- (b) 1969 individual income tax return of Ramior D. Carrillo.
- (c) 1970 individual income tax return of Ramiro D. Carrillo.
- (d) 1968 individual income tax return of O. P. Carrillo.
- (e) 1970 individual income tax return of O. P. Carrillo.

(24) A statement as to whether the Government alleges that all of the gross receipts which were allegedly improperly unreported on the following United States Partnership Returns of Income were reported on the Schedule C forms on the individual income tax returns of Arturo R. Zertuche for each of the respective years:

- (a) 1968 United States Partnership Return of Income of Ramiro D. Carrillo.
- (b) 1969 United States Partnership Return of Income of Ramiro D. Carrillo.
- (c) 1970 United States Partnership Return of Income of O. P. Carrillo.

(25) If the Government alleges that a part of the income which was allegedly improperly unreported on the individual income tax returns of Ramiro D. Carrillo challenged in the Indictment either was not derived from sales or transactions in the name of Zertuche General Store or was not reported on the Schedule C forms of the individual income tax returns of Arturo R. Zertuche for the respective years, a statement as to whether the Government intends to rely to any extent on omission of specific items of income for reconstruction of income as to Ramiro D. Carrillo and, if so, an exact statement setting forth the following:

- (a) The date, amount, payor, and character of each such item in the year 1968.
- (b) The date, amount, payor, and character each such item in the year 1969.
- (c) The date, amount, payor, and character of each such item in the year 1970.

(26) If the Government alleges that a part of the income which was allegedly improperly unreported on the individual income tax returns of O. P. Carrillo challenged in the Indictment either was not derived from sales or transactions in the name of Zertuche General Store or was not reported on the Schedule C forms of the individual income tax returns of Arturo R. Zertuche for the respective years, a statement as to whether the Government intends to rely to any extent on omission of specific items of

income for reconstruction of income as to O. P. Carrillo and, if so, an exact statement setting forth the following:

- (a) The date, amount, payor, and character of each such item in the year 1968.
- (b) The date, amount, payor, and character of each such item in the year 1970.

(27) If the Government alleges that a part of the gross receipts which were allegedly improperly unreported on the United States Partnership Returns of Income of Ramiro D. Carrillo and O. P. Carrillo challenged in the indictment either were not derived from sales or transactions in the name of Zertuche General Store or were not reported on the Schedule C forms of the individual income tax returns of Arturo R. Zertuche for the respective years, a statement as to whether the Government intends to rely to any extent on omission of specific items in the gross receipts for reconstruction of the gross receipts as to the partnership and, if so, an exact statement setting forth the following:

- (a) The date, amount, payor, and character of each such item in the year 1968.
- (b) The date, amount, payor, and character of each item in the year 1969.
- (c) The date, amount, payor, and character of each such item in the year 1970.

(28) If the Government alleges that a part of the income which was allegedly improperly unreported on the individual income tax returns of Ramiro D. Carrillo challenged in the Indictment either was not derived from sales or transactions in the name of Zertuche General Store or was not reported on the Schedule C forms of the individual income tax returns of Arturo R. Zertuche for the respective years, a statement as to whether the Government intends to rely to any extent on over statement of specific items of deduction or expense for reconstruction of income as to Ramiro D. Carrillo and, if so, an exact statement setting forth the following:

- (a) The date, amount, payee, and character of each such item in the year 1968.
- (b) The date, amount, payee, and character of each such item in the year 1969.
- (c) The date, amount, payee, and character of each such item in the year 1970.

(29) If the Government alleges that a part of the income which was allegedly improperly unreported on the individual income tax returns of O. P. Carrillo challenged in the Indictment either was not derived from sales or transactions in the name of Zertuche General Store or was not reported on the Schedule C forms of the individual income tax returns of Arturo R. Zertuche for the respective years, a statement as to whether the Government intends to rely to any extent on overstatement of specific items of deduction or expense for reconstruction of income as to O. P. Carrillo and, if so, an exact statement setting forth the following:

- (a) The date, amount, payee, and character of each such item in the year 1968.
- (b) The date, amount, payee, and character of each such item in the year 1970.

(30) If the Government alleges that a part of the income which was allegedly improperly unreported on the individual income tax returns of Ramiro D. Carrillo challenged in the Indictment either was not derived from sale or transactions in the name of Zertuche General Store or was not reported on the Schedule C forms of the individual income tax returns of Arturo R. Zertuche for the respective years, a statement as to whether the Government intends to rely to any extent on the so-called "net worth" method for reconstruction of income as to Ramiro D. Carrillo or to corroborate some other method to be used and, if so, an exact statement setting forth the following:

(a) The opening net worth of Ramiro D. Carrillo and date of same to be used by the Government.

(b) A detailed analysis of the changes in net worth as computed by the Government from the date of opening net worth to December 31, 1970.

(31) If the Government alleges that a part of the income which was allegedly improperly unreported on the individual income tax returns of O. P. Carrillo challenged in the Indictment either was not derived from sale or transactions in the name of Zertuche General Store or was not reported on the Schedule C forms of the individual

income tax returns of Arturo R. Zertuche for the respective years, a statement as to whether the Government intends to rely to any extent on the so-called "net worth" method for reconstruction of income as to O. P. Carrillo or to corroborate some other method to be used and, if so, an exact statement setting forth the following:

(a) The opening net worth of O. P. Carrillo and date of same to be used by the Government.

(b) A detailed analysis of the changes in net worth as computed by the Government from the date of opening net worth to December 31, 1970.

(32) If the Government alleges that a part of the income which was allegedly improperly unreported on the individual income tax returns of Ramiro D. Carrillo and O. P. Carrillo challenged in the indictment either was not derived from sales or transactions in the name of Zertuche General Store or was not reported on the Schedule C forms of the individual income tax returns of Arturo R. Zertuche for the respective years, a statement as to whether the Government intends to rely to any extent on the so called "bank deposits and expenditures" method for reconstruction of income as to corroborate some other method to be used and, if so, an exact statement setting forth the following:

(a) A list of the partnership bank deposits in the year 1968 reflecting thereon the amount, date, and alleged character of each item.

(b) A list of the partnership bank withdrawals for the year 1969 reflecting thereon the amount, date, payee, and use of each withdrawal.

(c) A list of the partnership bank deposits in the year 1969 reflecting thereon the amount, date, and alleged character of each item.

(d) A list of the partnership bank withdrawals in the year 1969 reflecting thereon the amount, date, payee, and use of each withdrawal.

(e) A list of the partnership bank deposits in the year 1970 reflecting thereon the amount, date, and alleged character of each item.

(f) A list of the partnership bank withdrawals in the year 1970 reflecting thereon the amount, date, payee, and use of each withdrawal.

(33) If the Government alleges that a part of the income which was allegedly improperly unreported on the individual income tax returns of Ramiro D. Carrillo and O. P. Carrillo challenged in the indictment either was not derived from sales or transactions in the name of Zertuche General Store or was not reported on the Schedule C forms of the individual income tax returns of Arturo R. Zertuche for the respective years, a statement as to whether the Government intends to rely to any extent on the so called "bank deposits and expenditures" method for reconstruction of income as to corroborate some other method to be used and, if so, an exact statement setting forth the following:

(a) A list of the Zertuche General Store bank deposits in the year 1968 reflecting thereon the amount, date, and alleged character of each item.

(b) A list of the Zertuche General Store bank withdrawals for the year 1969 reflecting thereon the amount, date, payee, and use of each withdrawal.

(c) A list of the Zertuche General Store bank deposits in the year 1969 reflecting thereon the amount, date, and alleged character of each item.

(d) A list of the Zertuche General Store bank withdrawals in the year 1969 reflecting thereon the amount, date, payee, and use of each withdrawal.

(e) A list of the Zertuche General Store bank deposits in the year 1970 reflecting thereon the amount, date, and alleged character of each item.

(f) A list of the Zertuche General Store withdrawals in the year 1970 reflecting thereon the amount, date, payee, and use of each withdrawal.

(34) If the Government alleges that a part of the income which was allegedly improperly unreported on the individual income tax returns of Ramiro D. Carrillo challenged in the Indictment either was not derived from sales or transactions in the name of Zertuche General Store or was not reported on the Schedule C forms of the

individual income tax returns of Arturo R. Zertuche for the respective years, a statement as to whether the Government intends to rely to any extent on over statement of specific items of deduction or expense for reconstruction of income as to Zertuche General Store and, if so, an exact statement setting forth the following:

(a) The date, amount, payee, and character of each such item in the year 1968.
(b) The date, amount, payee, and character of each such item in the year 1969.
(c) The date, amount, payee, and character of each such item in the year 1970.
(35) If the Government alleges that a part of the income which was allegedly improperly unreported on the individual income tax returns of Ramiro D. Carrillo and O. P. Carrillo challenged in the indictment either was not derived from sales or transactions in the name of Zertuche General Store or was not reported on the Schedule C forms of the individual income tax returns of Arturo R. Zertuche for the respective years, a statement as to whether the Government intends to use any method for reconstructing the income of Ramiro D. Carrillo and O. P. Carrillo other than a method included within Paragraphs 24 through 34 above, and, if so, the nature of such method.

(36) A statement specifying the portion or portions of the individual and partnership income tax returns of Ramiro D. Carrillo, O. P. Carrillo, and Arturo R. Zertuche for each of the years 1968, 1969, and 1970 which the Government claims is false.

As grounds for this motion Defendants Ramiro D. Carrillo, O. P. Carrillo, and Arturo R. Zertuche would show the Court that the indictment presented does not give Defendants notice of the charges against which they will be required to defend. The Indictment read as a whole, particularly in view of the apparent nature of the conspiracy charged in Count I, appears to charge Defendants with setting up a fiction known as Zertuche General Store through which sales of the Ramiro D. Carrillo and O. P. Carrillo partnership, d/b/a Farm and Ranch Supply, could be made without the necessity of reporting the income from such sales on the individual and partnership returns of Ramiro D. Carrillo and O. P. Carrillo. The offense charged, then, seems to be the filing of false returns in that the income from the Zertuche General Store should have been, but was not, reported on the individual and partnership returns of Ramiro D. Carrillo and O. P. Carrillo; Zertuche General Store being but a part of the larger whole of the Ramiro D. Carrillo and O. P. Carrillo partnership. However, because of the very broad language of the Indictment and the wording of the individual Counts against Ramiro D. Carrillo and O. P. Carrillo, it is unclear whether the Government is also alleging that Defendants received unreported income from sources other than Zertuche General Store and other than that reported on the return of Arturo R. Zertuche. It is vital to know which of the above allegations is being made, or whether both are being made; for in the first instance, a charge based solely on the allegation that Zertuche General Store has no legitimate business purpose and no existence independent of Farm and Ranch Supply, the controlling issue in the case will be essentially a legal one based on the facts of the Zertuche General Store operation. In the second instance, however, the controlling issue will be the existence of unreported income from whatever source, and will involve considerable research into the financial records of all of the Defendants over a span of many years and will involve complicated accounting questions and methods of proof. In this event, the Defendants are certainly entitled to know in addition the method on which the Government intends to rely in order to show that income which should have been reported was willfully unreported, for in this sort of a case, the method which is to be used in calculating willfully unreported income of necessity will determine the defense which must be prepared.

Further, Defendants would show that the broad language of the Indictment and its lack of specificity as to the nature of the false statements allegedly made in the returns and as to the income which was unreported by Ramiro D. Carrillo and O. P. Carrillo give it every appearance of a fishing expedition on the question of income tax

evasion with a view to prosecution under 26 U.S.C.A. 7201. Were the indictment to directly charge evasion under 26 U.S.C.A. 7201, it would be fatally defective, in that the only offense formally charged is a violation of 26 U.S.C.A. 7206(1) and conspiracy. The Indictment should be considered no less defective for attempting to do indirectly what it could not validly do directly. Unless the Indictment is made specific as to the nature of the charges against Defendants, questions of double jeopardy are certain to arise.

For the foregoing reasons, the information herein requested is necessary to inform the Defendants of the nature of the charges against them with sufficient precision to enable them to prepare for trial, to prevent surprise and to plead double jeopardy in bar of another prosecution for the same offense.

WHEREFORE, Defendants respectfully pray that this motion be granted.

Respectfully submitted,

ARTHUR MITCHELL
Mitchell, George & Belt
315 Westgate Building
Austin, Texas 78701

WILLIAM DAVID BONILLA
Bonilla, Read, Rodriguez, Bechmon &
Bonilla
P. O. Box 5427
Corpus Christi, Texas 78405

By /s/ Arthur Mitchell
Arthur Mitchell

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing First Motion of Defendants for Bill of Particulars has been forwarded to the United States District Attorney for the Southern District of Texas at Houston on this the 25th day of April, 1975.

/s/ Arthur Mitchell
Arthur Mitchell

Exhibit "B-2"

(Verbatim Copy of Original Document as received)

IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA)

v.)

) Criminal No. CR 75-C-45

RAMIRO D. CARRILLO,)
O. P. CARRILLO, AND)
ARTURO R. ZERTUCHE)

FIRST MOTION OF DEFENDANTS RAMIRO D. CARRILLO,
O. P. CARRILLO, AND ARTURO R. ZERTUCHE
FOR DISCOVERY PURSUANT TO RULE 16
FEDERAL RULES OF CRIMINAL PROCEDURE

TO THE HONORABLE COURT:

Now come Defendants, RAMIRO D. CARRILLO, O. P. CARRILLO and ARTURO R. ZERTUCHE, acting by and through their attorneys, and pursuant to Rule 16 of the Federal Rules of Criminal Procedure and would respectfully show the Court the following:

I.

The Defendants Ramiro D. Carrillo, O. P. Carrillo, and Arturo R. Zertuche preliminarily would show the Court that, beginning at a date several years prior to the commencement of proceedings against Defendants in the above captioned case, the exact date being unknown to Defendants, investigations were instituted by the Government in connection with the prosecution of United States of America v. George B. Parr, United States of America v. Archer Parr, United States of America v. Saenz and other related cases, all well known to the Government. In connection with such investigations, some or all of the Defendants in the present prosecution, Ramiro D. Carrillo in particular, were interviewed and interrogated by agents and representatives of the Government; and information was given by such Defendants to the Government (which materially relates to the offenses with which all Defendants are charged in the present proceedings), all of which resulted in the violation of constitutionally protectual rights of the Defendants herein.

Further, Defendants Ramiro D. Carrillo, O. P. Carrillo, and Arturo R. Zertuche would show the Court that testimony was given in behalf of the Government by Ramiro D. Carrillo in the prosecutions of the above cases of United States of America v. George B. Parr, United States of America v. Archer Parr, United States of America v. Saenz, and other related cases, which testimony is material to the offenses with which Defendants are charged in the present proceedings.

Defendants further submit that no warnings of any nature, as required by the Constitution of the United States and the administrative regulations of the Internal Revenue Service, were at anytime given to any of the Defendants by the agents and representatives of the Government in connection with the interviews and interrogations conducted in the above cases.

Defendants further would show that the offenses with which Defendants are charged are based in a large part on the information obtained by the Government from Ramiro D. Carrillo and the other Defendants in the course of investigation and interrogation in the prior cases above.

Further, Defendants submit that in the course of the investigation in connection with both the present prosecution and the prior related prosecutions the Government obtained further information by means of electronic surveillance and wiretapping of the telephones of Ramiro D. Carrillo, O. P. Carrillo, Arturo R. Zertuche and their attorney, which information is material to the offenses with which Defendants are charged herein.

II.

Pursuant to the showings in Paragraph I and in the interest of full disclosure, and Defendants respectfully move this Court pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure to produce and permit Defendants to inspect and copy or photograph:

(1) a list bearing the exact date, time and location of each interview or interrogation with Ramiro D. Carrillo, O. P. Carrillo, and Arturo R. Zertuche conducted by agents or representatives of the Government and bearing the name and title of each of the agents or representatives conducting such interview or interrogation in connection with the United States of America v. George B. Parr, United States of America v. Archer Parr, United States of America v. Saenz, and related cases.

(2) written, recorded or transcribed statements by Ramiro D. Carrillo, O. P. Carrillo, Arturo R. Zertuche, and any agent or representative of the Government in any interview or interrogation conducted by agents or representatives of the Government in connection with United States of America v. George B. Parr, United States of America v. Archer Parr, United States of America v. Saenz and related cases, to date of this motion.

(3) a transcript of the written or recorded testimony of Ramiro D. Carrillo before the grand jury in connection with United States of America v. George B. Parr, United States of America v. Archer Parr, United States of America v. Saenz and related cases.

(4) a transcript of the written or recorded testimony of Ramiro D. Carrillo in the trial of United States of America v. George B. Parr, United States of America v. Archer Parr, United States of America v. Saenz and related cases.

(5) tapes and transcripts obtained by electronic surveillance and wiretapping of telephone conversations between Ramiro D. Carrillo, O. P. Carrillo, Arturo R. Zertuche and others, including agents or representatives of the Government, from the following telephones with the following numbers and/or names:

O. P. Carrillo	(512) 256-3671
O. P. Carrillo	(512) 279-3957
O. P. Carrillo	(512) 256-3491
Ramiro D. Carrillo	(512) 256-3445
Arturo R. Zertuche	(512) 394-7459
Arturo R. Zertuche	(512) 425-3507
Arthur Mitchell	(512) 477-9651
	9652, 9653, 9654
Arthur Mitchell	(512) 228-1900
	(512) 394-7121
	(512) 394-7386
	(512) 256-3592
	(512) 394-7129

(6) written or recorded testimony of Ramiro D. Carrillo, O. P. Carrillo and Arturo R. Zertuche before the grand jury in connection with the present prosecution.

(7) written or recorded statements between Ramiro D. Carrillo, O. P. Carrillo, or Arturo R. Zertuche and others including Government agents or representatives, or confessions made by Ramiro D. Carrillo, O. P. Carrillo, or Arturo R. Zertuche, or copies thereof, and, without limitation of the foregoing, any reports, notes, memoranda, affidavits, or other writings of, or containing any oral statements of Ramiro D. Carrillo, O. P. Carrillo, or Arturo R. Zertuche with others, including agents or representatives of the Government, which are within the possession, custody, or control of the Government the existence of which is known, or by the exercise of due diligence

may become known, to the attorney for the Government;

(8) any exculpatory or mitigating written or recorded statements by Ramiro D. Carrillo, O. P. Carrillo, or Arturo R. Zertuche relevant to the offenses charged which are within the possession, custody, or control of the Government, the existence of which is known, or by the exercise of due diligence may become known, to the Attorney for the Government;

(9) individual and partnership tax returns filed by Ramiro D. Carrillo, O. P. Carrillo, and Arturo R. Zertuche, whether under the names of the individual Defendants or under the name of Farm and Ranch Supply, Ramiro Carrillo & Bros., or Zertuche General Store, from 1965 to date.

III.

Defendants Ramiro D. Carrillo, O. P. Carrillo, and Arturo R. Zertuche, pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure, respectfully move the Court to order the Attorney for the Government to produce and permit Defendants to inspect and copy or photograph books, papers, documents, reports, memoranda, notes or written papers of any kind, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the Government which relate to the above captioned proceedings and which were obtained by the Government from any person.

(1) who was in the employ of Ramiro D. Carrillo, O. P. Carrillo, Arturo R. Zertuche or who was acting as an agent of any of the above named Defendants during the years 1967 through 1974 inclusive, including, but not limited to, employees of Farm and Ranch Supply, Ramiro Carrillo and Bros., and Zertuche General Store; or

(2) who purchased supplies from or paid revenue of any character to Ramiro D. Carrillo, O. P. Carrillo, Arturo R. Zertuche, Hector Zertuche, Farm and Ranch Supply, Ramiro Carrillo and Bros., or Zertuche General Store, or any employee or agent thereof, in any of the years 1967 through 1974 inclusive; or

(3) who made any payments of any character to Ramiro D. Carrillo, O. P. Carrillo, Arturo R. Zertuche, Hector Zertuche, Farm and Ranch Supply, Ramiro Carrillo and Bros., or Zertuche General Store, or any employee or agent thereof, in any of the years 1967 through 1974 inclusive; or

(4) to whom payments of any character were made by Ramiro D. Carrillo, O. P. Carrillo, Arturo R. Zertuche, Hector Zertuche, Farm and Ranch Supply, Ramiro Carrillo and Bros., or Zertuche General Store, or any employee or agent thereof, in any of the years 1967 through 1974 inclusive; or

(5) who has any knowledge of any of the personal or business income or expenses of Ramiro D. Carrillo, O. P. Carrillo, or Arturo R. Zertuche during the years 1967 through 1974 inclusive; or

(6) who has any knowledge of any of the personal and/or business assets and liabilities of Ramiro D. Carrillo, O. P. Carrillo, or Arturo R. Zertuche from January 1, 1967 through May 31, 1974; or

(7) who served with either Ramiro D. Carrillo or O. P. Carrillo in any official capacity or had any contact with either of the Defendants in their official capacities during the years 1967 through 1974 inclusive.

IV.

Defendants Ramiro D. Carrillo, O. P. Carrillo, and Arturo Zertuche respectfully move the Court, pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure, to order the Attorney for the Government to produce and permit Defendants to inspect and copy or photograph

(1) a list bearing the names of all Federal officers and agents who participated in the prearrest investigation of any of the Defendants for the offenses now before the Court and all officers who participated in the arrest and subsequent investigation;

(2) a list bearing the names of all witnesses interviewed by the Government in connection with this prosecution;

(3) a list bearing the names of all the witnesses the Government intends to call to testify in the trial of this case;

(4) a list bearing the names of all the witnesses who appeared before the grand jury in connection with the above captioned case;

(5) a list bearing the names of all the witnesses who appeared before the grand jury in connection with United States of America v. George B. Parr, United States of America v. Archer Parr, United States of America v. Saenz, and related cases;

(6) tapes and transcripts of the following telephones with the following numbers and/or names:

O. P. Carrillo	(512) 256-3671
O. P. Carrillo	(512) 279-3957
O. P. Carrillo	(512) 256-3491
Ramiro D. Carrillo	(512) 256-3445
Arturo R. Zertuche	(512) 394-7459
Arturo R. Zertuche	(512) 425-3507
Arthur Mitchell	(512) 477-9651
	9652, 9653, 9654
Arthur Mitchell	(512) 228-1900
	(512) 394-7121
	(512) 394-7386
	(512) 256-3592
	(512) 394-7129

(7) individual and partnership tax returns for Ramiro D. Carrillo, O. P. Carrillo, Arturo R. Zertuche, Farm and Ranch Supply, Ramiro Carrillo and Bros., Zertuche General Store, Hector Zertuche, and Cleophis Gonzales including the Schedule C forms filed with the returns, for the years 1965 through 1974 inclusive;

(8) all documents, papers, bank statements, cancelled checks or other writings relating to the income and expenses of any of the Defendants of Farm and Ranch Supply, Ramiro Carrillo and Bros., or Zertuche General Store in the years 1967 through 1974 inclusive;

(9) all papers, records, memoranda, or copies thereof, relating to all past examination reports by the Internal Revenue Service of the individual and/or partnership income tax returns of Ramiro D. Carrillo, O. P. Carrillo, Arturo R. Zertuche and Hector Zertuche, to include all such reports of Farm and Ranch Supply, Ramiro Carrillo and Bros., Zertuche General Store, and The General Store;

(10) all photographs, moving films of any kind, or still pictures in any way connected with the Defendants, Farm and Ranch Supply, Ramiro Carrillo and Bros., or Zertuche General Store;

(11) any and all evidentiary materials, including written or recorded statements by persons interviewed by agents or representatives of the Government, relevant to the defense of the case that would aid Ramiro D. Carrillo, O. P. Carrillo, and Arturo R. Zertuche in demonstrating their innocence or in mitigating the punishment to be assessed against them.

There is excluded from the subject matter of the motion contained in Paragraphs III and IV only reports, memoranda, or other purely internal government documents made by the government in connection with the investigation or prosecution of the case, or statements made by government witnesses or prospective government witnesses other

O. P. CARRILLO, AND)
ARTURO R. ZERTUCHE)

STATEMENT IN SUPPORT OF DEFENDANTS'
FIRST MOTION FOR DISCOVERY PURSUANT TO RULE 16, F.R.C.P.

TO THE HONORABLE COURT:

Comes now Defendants' attorney, Arthur Mitchell, and states to the Court that he has attempted to comply with Rule 20, Local Rules of the United States District Court for the Southern District of Texas; that a conference was held on April 19, 1975 with United States Attorney George Kelt and that no agreement has been reached concerning the discovery or inspection that is the subject of Defendants' motion.

Respectfully submitted,

ARTHUR MITCHELL
315 Westgate Bldg.
Austin, Tx. 78701

WILLIAM DAVID BONILLA
P. O. Box 5427
Corpus Christi, Tx. 78405

By /s/ Arthur Mitchell
Arthur Mitchell

ATTORNEYS FOR DEFENDANTS

Exhibit "B-3"

(Verbatim Copy of Original Document as received)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA)
)
V.)
)
RAMIRO D. CARRILLO,)
O. P. CARRILLO AND)
ARTURO R. ZERTUCHE)

Criminal No. CR 75-C-45

SECOND MOTION OF DEFENDANTS RAMIRO D. CARRILLO,
O. P. CARRILLO, AND ARTURO R. ZERTUCHE FOR DISCOVERY

TO THE HONORABLE COURT:

Defendants RAMIRO D. CARRILLO, O. P. CARRILLO and ARTURO R. ZERTUCHE respectfully move the Court that upon the Indictment, the Plea of Not Guilty, the Motion for Bill of Particulars, and such other proceedings had herein on their behalf, but due to the fact that these Defendants are not sufficiently apprised by

the general allegations in the Indictment, and have not been furnished with sufficient particular allegations and information of the charges and allegations in the Indictment, to enable them to prepare an adequate defense, and to prepare and present a Motion to Suppress Evidence, that the Court should order the prosecution to apprise these Defendants whether any evidence was obtained, directly or indirectly, on the following grounds:

(1) To require the Government to advise if it has noted Preferential Agreement with a Co-Defendant, co-conspirator, or alleged "unindicted co-conspirator", not indicted, to produce testimony against the Defendants.

This Motion is made under the following Authority:

Giglio v. United States, 92 S.Ct. 763 405 U.S. 150 (1972).

WHEREFORE, these Defendants Ramiro D. Carrillo, O. P. Carrillo and Arturo R. Zertuche respectfully request this Honorable Court to enter any and all appropriate Orders to carry out the foregoing matters, and for such order Orders as the Court may deem proper and appropriate.

Dated and Signed this 25th day of April, 1975.

Respectfully submitted,

ARTHUR MITCHELL
Mitchell, George & Belt
315 Westgate Building
Austin, Texas 78701

WILLIAM DAVID BONILLA
Bonilla, Read, Rodriguez, Bechmon &
Bonilla
P. O. Box 5427
Corpus Christi, Texas 78405

By: /s/ Arthur Mitchell
Arthur Mitchell

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

S hereby certify that a true and correct copy of the above and foregoing Second Motion of Defendants has been forwarded to the United States Attorney for the Southern District of Texas at Houston on this the 25th day of April, 1975.

/s/ Arthur Mitchell
Arthur Mitchell

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA)
)
V.)
)
RAMIRO D. CARRILLO,)
O. P. CARRILLO, AND)

CRIMINAL NO. CR-75-C-45

ARTURO R. ZERTUCHE

STATEMENT IN SUPPORT OF DEFENDANTS'
SECOND MOTION FOR DISCOVERY

TO THE HONORABLE COURT:

Comes now Defendants' attorney, Arthur Mitchell, and states to the Court that he has attempted to comply with Rule 20, Local Rules of the United States District Court for the Southern District of Texas; that a conference was held on April 19, 1975 with United States Attorney George Kelt and that no agreement has been reached concerning the discovery or inspection that is the subject of Defendants' motion.

Respectfully submitted,

ARTHUR MITCHELL
315 Westgate Bldg.
Austin, Tx. 78701

WILLIAM DAVID BONILLA
P. O. Box 5427
Corpus Christi, Tx. 78405

By /s/ Arthur Mitchell
Arthur Mitchell

ATTORNEYS FOR DEFENDANTS

Exhibit "B-4"

(Verbatim Copy of Original Document as received)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA)
)
V.)
)
RAMIRO D. CARRILLO,)
O. P. CARRILLO and)
ARTURO R. ZERTUCHE)

Criminal No. CR 75-C-45

THIRD MOTION OF DEFENDANTS RAMIRO D. CARRILLO, O. P.
CARRILLO AND ARTURO R. ZERTUCHE FOR DISCOVERY

TO THE HONORABLE COURT:

Comes now RAMIRO D. CARRILLO, O. P. CARRILLO and ARTURO R. ZERTUCHE, defendants in the above cause and make this their Motion for Discovery of all exculpatory evidence and as grounds therefore would show the Court as follows:

I.

The government should be ordered to produce and make available to the Defendants all statements, documentary evidence, and reports containing any exculpatory evidence whatsoever. This request is not limited to evidence which directly exculpates the Defendants, but rather extends to any evidence which is not directly incriminatory, since it is only the Defendants and their counsel who can properly determine if evidence may be of benefit to the Defendants in developing a defensive theory. Defendants herein further delineate more specifically certain categories of types of evidence which they specifically request, but in no way waive their general request that the Government produce all exculpatory evidence as contained in this paragraph.

II.

The Government should be required to produce for inspection and copying statements of all witnesses that the Government does not intend to call as a witness on its behalf. Additionally, the Government should furnish the names and addresses of all witnesses which to its knowledge have evidence exculpatory of any of the Defendants but who have not given statements to the Government.

III.

The Government should be required to furnish prior to trial all statements of witnesses which it does intend to call on its behalf who have given statements that are in any way exculpatory of any of the Defendants either by way of tending to exonerate them from any criminal action or by way of conflicting with other statements given by the same witnesses.

IV.

The criminal records of all witnesses which the Government intends to use in its trial of this cause including F.B.I. records of each such witness.

V.

All exculpatory statements made by witnesses who appeared before the Grand Jury whether or not said witnesses will be called at the trial of this case.

WHEREFORE, PREMISES CONSIDERED, Defendants Ramiro D. Carrillo, O. P. Carrillo and Arturo R. Zertuche respectfully pray that the Attorney for the Government be ordered to produce the above stated information in order that the Defendants may have a fair trial of the case against them and that they be granted such other and further relief to which they may be entitled.

Respectfully submitted,

ARTHUR MITCHELL
Mitchell, George and Belt
315 Westgate Building
Austin, Texas 78701

WILLIAM DAVID BONILLA
Bonilla, Read, Rodriguez, Bechmon &
Bonilla
P. O. Box 5427

Corpus Christi, Texas 78405

By: /s/ Arthur Mitchell
Arthur Mitchell

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Third Motion of Defendants For Discovery has been forwarded to the United States Attorney for the Southern District of Texas at Houston on this the 25th day of April, 1975.

/s/ Arthur Mitchell
Arthur Mitchell

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA)

v.)

CRIMINAL NO. CR-75-C-45

)
RAMIRO D. CARRILLO,)
O. P. CARRILLO, AND)
ARTURO R. ZERTUCHE)

STATEMENT IN SUPPORT OF DEFENDANTS'
THIRD MOTION FOR DISCOVERY

TO THE HONORABLE COURT:

Comes now Defendants' attorney, Arthur Mitchell, and states to the Court that he has attempted to comply with Rule 20, Local Rules of the United States District Court for the Southern District of Texas; that a conference was held on April 19, 1975 with United States Attorney George Kelt and that no agreement has been reached concerning the discovery or inspection that is the subject of Defendants' motion.

Respectfully submitted,

ARTHUR MITCHELL
315 Westgate Bldg.
Austin, Tx. 78701

WILLIAM DAVID BONILLA
P. O. Box 5427
Corpus Christi, Tx. 78405

By /s/ Arthur Mitchell
Arthur Mitchell

ATTORNEYS FOR DEFENDANTS

Exhibit "B-5"

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA)	
)	
V.)	
	)	Criminal No. CR. 75-C-45
RAMIRO D. CARRILLO,)	
O. P. CARRILLO AND)	
ARTURO R. ZERTUCHE)	

FOURTH MOTION OF DEFENDANTS
RAMIRO D. CARRILLO, O. P. CARRILLO, AND
ARTURO R. ZERTUCHE FOR DISCOVERY

TO THE HONORABLE COURT:

Now come Defendants Ramiro D. Carrillo, O. P. Carrillo, and Arturo R. Zertuche, acting by and through their attorneys and pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure, and would show the Court the following:

I.

Defendants Ramiro D. Carrillo, O. P. Carrillo, and Arturo R. Zertuche respectfully move the Court, pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure, to order the Attorney for the Government to produce and permit defendants to inspect or copy and photograph the following documents which are within the possession, custody, or control of the Government, the existence of which is known, or by the exercise of due diligence may become known to the Attorney for the Government:

- (1) all income tax returns of the Benavides Implement and Hardware Company for the years 1970 to date.
- (2) all records of the Benavides Implement and Hardware Company arising out of doing business with Farm and Ranch Supply from January 1, 1970 to date.
- (3) all records of any civil audit of the Benavides Implement and Hardware Company which may have been conducted by the Internal Revenue Service.
- (4) all records of civil proceedings for income tax liability by the Internal Revenue Service of the Benavides Implement and Hardware Company, including any records relating to agreements and/or settlements of civil liability.
- (5) all records relating to criminal proceedings for violations of income tax laws against the Benavides Implement and Hardware Company, including any records relating to agreements and/or settlements relating to same.
- (6) all records relating to civil investigations, if any, of Ramiro D. Carrillo, O. P. Carrillo, Arturo R. Zertuche, Farm and Ranch Supply, and Zertuche General Store by the Audit Division of the Internal Revenue Service; and, if any were conducted, the dates of their referrals to the Intelligence Division and a copy of the referral report.
- (7) all records of financial or commercial transactions between Duval County and Ramiro D. Carrillo, O. P. Carrillo, Arturo R. Zertuche, Farm and Ranch Supply, and/or Zertuche General Store, for the years 1965 to date, including all records of purchases or rentals of equipment or other items.

(8) all records of financial or commercial transactions between the Benavides Independent School District and Ramiro D. Carrillo, O. P. Carrillo, Arturo R. Zertuche, Farm and Ranch Supply, and/or Zertuche General Store for the years 1965 to date, including all records of purchases or rentals of equipment or other items.

(9) all records of financial and commercial transactions between Duval County Water and Reclamation District and Ramiro D. Carrillo, O. P. Carrillo, Arturo R. Zertuche, Farm and Ranch Supply, and/or Zertuche General Store for the years 1965 to date, including all records of purchases or rentals of equipment and other items.

II.

During the several years following the closing of Zertuche General Store, Benavides Implement and Hardware Company has had substantial financial and commercial transactions with Farm and Ranch Supply, yet no claim is made by the Government that the reported income of the Benavides Implement and Hardware Company is not properly its own. Such a charge is made against the proprietor of Zertuche General Store. The items requested in Paragraph I, subdivision 1 through 5 are material to the charges against Arturo R. Zertuche and the other Defendants.

III.

The items contained in Paragraph I (6) are material to the issue of suppression of evidence for the failure to give proper warnings.

IV.

It is alleged in the Indictment that Duval County, Benavides Implement and Hardware Company, and Duval County Water and Reclamation District made purchases directly from Farm and Ranch Supply through the conduit of Zertuche General Store. The items requested in Paragraph I, subdivisions 7, 8, and 9 are material to the defense of this charge.

V.

All of the documents requested herein are material to the preparation of the defense, as indicated by the facts set out in Paragraphs I through IV.

WHEREFORE, PREMISES CONSIDERED, the Defendants, Ramiro D. Carrillo, O. P. Carrillo, and Arturo R. Zertuche, respectfully pray that discovery as requested in the motion be ordered by this Court.

Respectfully submitted,

ARTHUR MITCHELL
315 Westgate Building
Austin, Texas 78701

WILLIAM DAVID BONILLA
P. O. Drawer 5427
Corpus Christi, Texas 78405

By: /s/ Arthur Mitchell
Arthur Mitchell

Attorneys for Defendants

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing Fourth Motion of Defendants For Discovery has been sent to the United States Attorney for the Southern District of Texas at Houston, on this the 2nd day of May, 1975.

/s/ Arthur Mitchell Arthur Mitchell

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA)
)
V.)
)
RAMIRO D. CARRILLO)
O. P. CARRILLO, AND)
ARTURO R. ZERTUCHE)

Criminal No. CR-75-C-45

ORDER RELATING TO DEFENDANTS'
FOURTH MOTION FOR DISCOVERY

On this date came to be heard the Fourth Motion For Discovery by Defendants Ramiro D. Carrillo, O. P. Carrillo, and Arturo R. Zertuche, and the Court having considered the same is of the opinion that said Motion be _____.

It is therefore ordered that Defendants' Fourth Motion For Discovery is hereby in all things _____.

DATED: _____

JUDGE
United States District Court
Southern District of Texas.

Exhibit "C-1"

Corpus Christi Caller

CORPUS CHRISTI, TEXAS, SATURDAY, APRIL 19, 1953

Small text in top right corner, likely publication details.

32 Pages—Price 15 cents

Carrillos, Zertuche plead not guilty

By NICK JIMENEZ—Staff Writer

Judge O. P. Carrillo of Duval County, his brother, Ramon Carrillo, a Duval County commissioner, and Arturo Zertuche of Harrison, pleaded innocent yesterday before federal judge Owen D. Cox to charges of income tax evasion.

Arthur Mitchell of Austin, attorney for the Carrillos, indicated he was prepared for lengthy legal battle by announcing that he planned to make "exhaustive pre-trial motions."

Austrian U.S. Atty. George Hale told Cox that the government would need only 15 days to get ready for trial. Cox set the trial for a June 20 docket call.

The two Carrillos entered their own pleas of innocent but Cox entered a plea of not guilty for Zertuche when attorney Nijo Alamo of San Diego asked for permission to remove himself from the case.

The three are named in a 12-count indictment accusing them of hiding the income from sales from Farm and Stock Supply, a business owned by the Carrillos, by attributing them to Zertuche General Store, owned by Zertuche. The store is in Duval County.

The sales which were allegedly shined were made to Duval County, Duval County Conservation and Reclamation District and Bessieville Independent School District.

The indictment includes one count of conspiracy and 11 separate counts of income tax evasion.

If convicted, the three face a maximum sentence of five years in prison and a \$10,000 fine on the conspiracy count and three years and a fine of \$5,000 on each of the 11 tax evasion counts.

O. P. Carrillo, judge of State District Court in San Diego, and his brother, Ramon, are considered as a legal step-over the Duval County Commissioner.



MITCHELL, O. P. CARRILLO, BROTHER (L-R) ENTER COURT (Photo by George O'Connell)

Carrillo hits deer, wrecks car

SAN DIEGO—That Judge O. P. Carrillo had another accident of approximately 8:30 p.m. Friday on Highway 25, the Pecos-Mission highway.

was named in the indictment as a co-conspirator.

Carrillo told the Caller-Mirror he hit a deer after he swerved westwards to avoid it. The judge said he was "taken up short" but suffered no serious injuries.

The judge's car was damaged and he was taken to the hospital. The judge's car was damaged and he was taken to the hospital.

Carrillo

From Page 1

Small, mostly illegible text at the bottom left of the page, likely a continuation of the article or a sidebar.

Exhibit "C-2"

Duval figures due in court

Two federal court hearings at 9 a.m. today will likely draw some of the principal figures in the recent turmoil in Duval County.

Expected to show up are 29th District Court Judge O.P. Carrillo, his brother County Commissioner Ramiro Carrillo, Arturo Zertuche, a cousin of the Carrillo brothers, and Clinton Manges, the rancher-banker.

The four are involved in two separate cases: The Carrillos and Zertuche are defendants in an income tax evasion case, while Manges is trying to recover \$75,000 he posted for the late George B. Parr.

U.S. District Judge Owen D. Cox has scheduled hearings in both cases for the same time, apparently because Austin attorney Arthur Mitchell represents all four.

Cox, at the time of Parr's death, indicated he was willing to set aside the forfeiture of the \$75,000 bond for Parr but the federal government said it felt the forfeiture was proper.

Manges, the rancher and banker who has emerged as a force in Duval County politics, put up the \$75,000 bond while Parr was on appeal.

In the income tax evasion case, the federal government has suggested that Mitchell may not be able to adequately defend all three clients and face a conflict of interest.

Colina Christi
15116175

Exhibit "C-3"

San Antonio EXPRESS-NEWS—Saturday May 17 1975

Carrillos granted separate tax trial

ASSOCIATED PRESS
CORPUS CHRISTI — U.S. Dist. Court Judge Owen Cox on Friday severed the income tax evasion cases of State-District Court Judge O. P. Carrillo and Duval County Commissioner Ramiro Carrillo from that of their cousin, Arturo Zertuche.

In the same hearing, Judge Cox refused to rule in a bond forfeiture case involving the late Duke of Duval George B. Parr.

The Carrillos and Zertuche were indicted recently by a Corpus Christi grand jury.

Government lawyers complained that Austin lawyer Arthur Mitchell could not adequately defend all three men without a conflict of interest. Cox allowed Mitchell to continue representing Zertuche after consulting with Zertuche in his chambers.

'Sham'

The government alleged Zertuche admitted his part in a "sham" business arrangement by which the Carrillo brothers are alleged to have hidden income from a partnership they owned.

Zertuche was to the point of plea bargaining, government attorneys said, until he talked with his two cousins and decided to fight the indictment.

The bond forfeiture hearing involved South Texas banker rancher Clinton Manges' effort to retrieve a \$75,000 cash bond he posted for George Parr, convicted of income tax evasion.

Parr fatally shot himself April 1, the day after he was to have appeared at a hearing.

'Contractual'

However, Judge Cox asked both sides if Manges' claim is not really against the Parr estate. He said it seemed to him the bond arrangement was "purely contractual" between Parr and Manges.

Cox said he was concerned whether the question should be in his court at all, and in effect suggested the matter should be in state court.

Exhibit "C-4"

CORPUS CHRISTI CALLER, Mon., June 30, 1975

Carrillo tax case**set for docket call**

The income tax evasion case against Judge O. P. Carrillo, his brother Duval County Commissioner Ramiro Carrillo and their cousin Arturo Zertuche is scheduled for docket call in federal court here today.

Motions for continuance were filed Friday by the Attorney for the Carrillos and Zertuche but no ruling has been made.

The three are accused of not reporting income and making false statements in regard to income derived from the Zertuche General Store. The federal government has alleged that the two brothers made sales to county governmental agencies from their own Farm and Ranch Supply through the general store without declaring it as income.

Although the docket call will be held today and the jury will probably be selected in the next few days, the actual trial is not expected to take place until late July or August even without a continuance.

Exhibit "C-5"

corpus christi

TIMES

CORPUS CHRISTI, TEXAS, MONDAY, SEPTEMBER 26, 1955 41 Pages—Price 15 Cents



(Photo by George Gongora) Ramiro Carrillo, (face hidden), Arthur Mitchell, O. P. Carrillo, attorney Jan Fox

Carrillos' Trial Delay Guilted

By NICK JEMINEZ Staff Writer
Federal Judge Owen D. Cox today...
question of whether Arturo...
the case was raised again...
tomorrow...
ask where he was. Defense attorney...
Mitchell of Austin said Zarruche...
said he had been covered from...
1st, but Mitchell said he wanted to...
is the whole matter of Zarruche's

severance again.
Judge Carrillo stepped down from his...
bench in Hebbronville, where he is...
hearing the ouster trial of Duval County...
Judge Archer Parr, to come to Corpus...
Christi's federal courthouse for...
dockets call which means that the trial...
itself may come anytime during...
September or even October. Cox told...
attorneys at arraignment that the trial...
may come as late as four to five weeks...
after docket call.
The Carrillos are accused of...
sales from their Farm and Ranch Supply...
to county governmental agencies through...
the Zarruche General Store without...
declaring it as part of their income.
The federal government has charged that...
Zarruche General Store was...
operation to conceal...
the Farm and Ranch Supply store...
Zarruche is charged with...
false returns claiming that the...
store belonged to him and that the

from it was his.
Cox had orally allowed Zarruche to be...
severed from the case as requested by the...
government, but legal papers executing...
the severance have not been signed by...
Zarruche.
Mitchell today said a recent decision by...
a federal appeals court had thrown the law...
into confusion on the Zarruche severance.
The government, represented by...
Assistant U.S. Atty. George Kote, had...
called for a determination of conflict...
of interest on the part of Mitchell.
Mitchell, the government has said, can...
not discontinue all three because Zarruche...
before he took on Mitchell as his attorney...
lawman in the midst of plea bargaining.

See CARRILLOS, Page 12A.

Carrillos

From Page 1

There is possible abuse of confidence...
conflict of loyalties, and the possibility...
one defendant choosing to testify who...
another does not, the government said...
Cox, at a May 15 hearing, allowed...
Zarruche to be severed after mulling...
Zarruche alone in his chambers.
But today Mitchell said the conflict...
interest argument which had been based...
on a federal court decision had...
been reversed and said he wanted...
entire matter discussed again.
Cox allowed Judge Carrillo to return to...
Parr ouster trial tomorrow but said it...
was subject to being called into federal...
court.

Exhibit "C-5"

Exhibit "C-6"

Tuesday, July 1, 1975 THE SAN ANTONIO LIGHT

Hearing
Delays
Carrillo

HEBRONVILLE (AP) — County Auditor Walter W. Meek, who testified earlier "things are done very informally in Duval County," is to return to the witness stand here today for the ouster trial of suspended Duval County Judge Archer Meek. Meek was on the witness stand Friday when District Court Judge O.P. Carrillo recessed the trial for the weekend. No court session was held Monday because Judge Carrillo was in Corpus Christi for a federal court hearing concerning income tax evasion charges pending against him.

Carrillo's trial in Corpus Christi was, in effect, postponed indefinitely by U.S. District Court Judge Owen Cox. A new trial date is expected to be set Sept. 8, when lawyers for both sides will appear to declare whether they are ready for trial.

Judge Carrillo temporarily suspended Parr from office March 24 after Dist. Atty. Arnulfo Guerra filed a civil suit seeking to remove Parr from office on grounds of a federal perjury conviction, official misconduct and conflict of interest. Parr, who has held the office for the past 16 years, is a nephew of the late South Texas political boss George B. Parr and is heir apparent to the title of "Duke of Duval."

Parr, who has not attended any of the lengthy hearings concerning the trial and was not present for the opening testimony Friday, contends the attempt to remove him from office is a conspiracy to take political control of Duval County from his political faction.

Through his defense lawyer, Marvin Foster of San Diego, Parr has sought to have Judge Carrillo disqualify himself from presiding on grounds that Carrillo is involved in the conspiracy. Others Parr claims are involved in the conspiracy include secretive rancher-banker Clinton Manges of Freer and the presiding judge's two brothers, former state Rep. Oscar Carrillo and Duval County Commissioner Ramiro Carrillo.

Parr has been subpoenaed as a prosecution witness, but process servers reported last week they have been unable to find him.

The suit seeking Parr's removal was filed by Dist. Atty. Guerra in behalf of Duval County grand jury foreman Jose R. Nichols of Freer. Nichols works as foreman at the Duval County Hatch Co., large Freer area ranch owned by Manges.

Testifying Friday as the third witness called by Guerra, Duval County auditor Meek said Duval County officials pay little or no attention to a budget in financing operations of the county.

"Things are done very informally, not wrong, but informally," Meek testified. One of the allegations against Parr claims he did not draw up a budget for the county, did not hold a public hearing on the budget and authorized expenditures for items not on the budget.

Meek testified Friday that he did not participate in the preparation of the budget because "I'm not invited." He added, "We don't pay much attention to the budget. We are not inhibited by the budget."

Exhibit "C-6"

Exhibit "C-7"

Sunday Edition

The Austin American-Statesman

Austin, Texas, Sunday, July 20, 1935

Carrillo's career threatened...

By ARNOLD GARCIA JR. Staff writer. Somewhere in the middle of the conversation, O.P. Carrillo remembers something George B. Parr said to the Duke...

attempting to run the labyrinth of South Texas politics. But it was South Texas politics that brought O.P. Carrillo to the capital city of the state almost every day for ten months to assist legislative committee of its work.

Johnson to the United States Senate in 1934. But O.P. Carrillo says people here overlook and overplay politics in Texas. It is not, he maintains, the "Land Without Evil" with special surcharges and penalties.

"It's just the way people think," Carrillo says, "and hard to play on the political stage." Carrillo says he is not particularly biased in the county. If that, then, he is asked, why all the interest, why all the sympathy for even before he leaves, Secretary - and why all the...

... but he's used to political strife. Carrillo remembers sitting. "You're not so political, O.P., you live in Doral County and it's all around you," Carrillo smiles at him.



Page 42-Austin, Texas

The Austin American-Statesman

Sunday, July 20, 1935

Carrillo

(Continued from page one) way around. He got up by tripping from under a bench, he says, drawing on a mental cigarette.

Gold panner strikes it rich

RENO, Nev. (AP) - An 80-year-old retired gold panner has won a \$125,000 jackpot at Harjeds Club Casino here. Carrillo said he believed it was the largest slot machine jackpot ever paid anywhere.

That came trouble with Carrillo who was twice removed from the Doral County judgeship by Carrillo. Carrillo tried to have Carrillo's first removal overturned by the state's Supreme Court. The San Antonio Court of Civil Appeals also denied a motion by Carrillo to have the removal order vacated but did order a jury trial to be held.

Train-car wreck kills young man

MOUNT VERNON (AP) - An 18-year-old man was killed early Saturday when a train slammed into his car in the Northeast Texas city, officials said.

The circumstances that brought Carrillo to the school board members with official misconduct. Carrillo points out a meeting Friday at Rep. Perry's office that generated the inquiry.

Quit Smoking while 35 Days

Quit Smoking while 35 Days call 447-4549. A Department of Public Safety investigator said Robert G. Kohn Jr. was on his way to work when his car was struck by a Louisiana and Arkansas Railway train.

Michelle wondered aloud, "Why is it always the politician?" that politician. Carrillo said he had no more to say about Carrillo's removal. Carrillo said he was not a politician.

Quit Smoking while 35 Days

Michelle said she was not a politician. Carrillo said he was not a politician. Carrillo said he was not a politician.

The conviction was cited as one reason for his removal later. Carrillo said he was not a politician. Carrillo said he was not a politician.

Quit Smoking while 35 Days

Michelle said she was not a politician. Carrillo said he was not a politician. Carrillo said he was not a politician.

Exhibit "C-7"

Exhibit "D"

(Verbatim Copy of Original Document as received)

STATE JUDICIAL QUALIFICATIONS COMMISSION
P. O. BOX 12265, CAPITOL STATION
AUSTIN, TEXAS 78711

HOMER E. STEPHENSON, CHAIRMAN
HOWARD C. DAVISON, VICE-CHAIRMAN
ROBERT C. McGINNIS, SECRETARY
VERNON BUTLER
E. CARL DILLARD
DONALD EASTLAND
F. RAY McCORMICK
PHIL PEDEN
R. C. VAUGHAN

MAURICE S. PIPKIN
EXECUTIVE DIRECTOR
May 2, 1975

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Honorable O. P. Carrillo, Judge
229th Judicial District Court
County Courthouse
San Diego, Texas 78384

Dear Judge Carrillo:

This is to advise you that at a meeting of the State Judicial Qualifications Commission, held in Austin, Texas, March 15, 1975, the Commission, by resolution, instructed this office to enter into a preliminary investigation of the following alleged misconduct on your part:

1. That you accepted an expensive gift from a person who was a litigant in a law suit pending in your court.
2. That you accepted bank stock to the extent of ten shares which would qualify you to be a Director of the Rio Grande City State Bank, which bank was, and is, controlled by the same litigant referred to in the foregoing paragraph.
3. That you entered into an open-end lease of grazing land with the same litigant, and which land was the subject of the litigation referred to in paragraph one.
4. Following disclosure of the acceptance by you of the benefits recited in the foregoing third paragraph, you attempted to conceal and justify your misconduct in accepting these benefits by entering into a fraudulent conveyance which purported to convey an interest in real estate in exchange for the benefits received in the foregoing three paragraphs at a time when you did not then own any interest in such real estate.

Such acts of misconduct on your part clearly constitute willful and persistent conduct, which is clearly inconsistent with the proper performance of your duties and casts public discredit upon the judiciary and the administration of justice.

For your information we are enclosing a copy of the RULES FOR THE REMOVAL OR RETIREMENT OF JUDGES, Adopted and Promulgated by the Supreme Court of Texas.

If you should care to comment on these matters in writing, you should file such answer within fifteen days of receipt of this letter.

Sincerely,

Maurice S. Pipkin
Executive Director

Exhibit "E-1"

(Verbatim Copy of Original Document as received)

Hon. Maurice S. Pipkin
Executive Director
State Judicial Qualifications Commission
P. O. Box 12265, Capitol Station
Austin, Texas 78711

Dear Mr. Pipkin:

Thank you for your letter of May 2, 1975 giving me an opportunity to answer on the charge of alleged misconduct you described.

As you will recall, you and I, at your request, met during 1973 at the Americana Restaurant in Alice and discussed these same charges. I then gave you full information about them and was informed by you that you would pass it on to the members of your commission for action if they desired to take any action. Since then I have had no further word from you or any of the other members of the Commission. I assured you that I was going to continue to recuse myself in cases involving Clinton Manges (he being the litigant referred to in your letter) and I have done so and will continue to do so.

As to the first charge: I deny this charge. I have not accepted a gift, expensive or otherwise, from any litigant in any law suit pending, or that has ever been pending, in any court in which I have sat as Judge. I assume that the charge has reference to a Cadillac delivered to me in March of 1971 after I became Judge. This car was ordered by me in the summer of 1970 from Riata Cadillac Company in San Antonio long before I became Judge and delivery was delayed due to a strike at General Motors. After allowance was made for my trade in the balance owed on the car was \$6700 and this was paid by Mr. Manges. He made this payment pursuant to a trade entered into between him and me shortly before October 12, 1970. Under such trade he received a lot and house in Benavides owned by me and having a value of about \$15,000; and under such trade I received his agreement to pay the balance on the Cadillac upon its delivery and to deliver to me 10 shares of stock of the bank in Rio Grande City, such stock having a value of about \$750 a share.

As to the second charge: I assume that the bank stock referred to in this charge consists of the 10 shares delivered to me on December 10, 1970 pursuant to the aforementioned trade I made with Clinton Manges. At the time I received this stock I was not Judge of any court and there was not then pending in any court of the district I later became Judge of any suit involving Clinton Manges. As a matter of fact, the litigation that is the basis of the charges made against me was, at the time of the aforementioned trade, pending solely and only in the federal court in Brownsville.

As to the third charge: It is true that sometime in the summer of 1971, after I became Judge, I did enter into an open-end grazing lease with Clinton Manges. The land covered by this lease included part of the realty involved in a receivership suit in which Mr. Manges was a party. Before this lease was executed all the parties to this

suit had entered into a written settlement agreement fixing absolutely the amount of interest each of the parties owned in such realty. In my opinion these facts did not disqualify me; however, when my qualification was challenged I immediately and voluntarily recused myself and caused the Administrative Judge to assign the disqualification motion for hearing before another court. I respectfully submit that in proceeding in this manner I acted in accordance with the best traditions of the judiciary. I might add that I was surprised when my qualification was challenged because throughout the receivership suit prior to such challenge all parties had indicated approval of my actions, to such extent that each and every order entered by me in such suit was an agreed order approved by all counsel and all litigants.

As to the fourth charge: I deny this charge. The property I conveyed to Mr. Manges was owned by me and the conveyance was part of the aforementioned trade. The second conveyance mentioned in this charge was not fraudulent or in any manner improper, being solely and only a correction deed and so showing on its face. This property has been in my possession since 1947 when it was given to me by my father. Since acquiring this property I have caused it to be kept in repair and during most of the time since 1947 it has been occupied by a tenant who has paid rent to me, the last of such tenants being Juan Rivera, well known football coach for the Benavides High School. The rent payments on this property were made to me by check and were reported by me as income to the Internal Revenue Service. This can all be verified if you are interested and it conclusively gives the lie to any suggestion I was not the owner or to any suggestion that Mr. Manges did not get title.

As you know, the aforementioned charges were involved in the hearing conducted by Judge Magus Smith and I assume you have available the transcript of the testimony and evidence presented to him. Since that hearing there has come to light one new item of evidence which I believe you will be interested in considering. In this connection, attention is called to the attached copy of letter dated May 25, 1973 from the clerk of the federal court in Brownsville. As you will see from such letter, the receivership suit, which is the basis of the charges against me, was not dismissed by the federal court until January 6, 1971. Now the reason this is important is that those attacking me have claimed, and continue to claim, that the order of dismissal entered by the federal court was entered on December 6, 1971, four days before the delivery to me of the aforementioned bank stock, it being their contention that when you compare the date of dismissal (claimed by them to be December 6, 1971) with the date of delivery of the stock you can infer that Mr. Manges was by the delivery of the stock attempting to influence my future decision upon my thereafter becoming Judge. The fallacy in this type of reasoning becomes apparent when it is realized that nobody,--either at the time of delivery of such stock or at the time the aforementioned trade was made,--had any way of knowing when, if ever, the federal court would dismiss the receivership suit; and, as the aforementioned letter shows, it was not until January 6, 1971, and after application of all parties, that the federal court did dismiss such suit.

I stand ready and willing to cooperate with you and the other members of the Commission in every way possible. Please let me know if there is any further answer or information I can furnish; and if the Commission desires my appearance to give testimony I will be glad to come upon being given notice.

With best personal regards, I am

Sincerely,

O. P. Carrillo

Exhibit "E-2"

(Verbatim Copy of Original Document as received)

RULES FOR THE REMOVAL OR RETIREMENT OF JUDGES
 Adopted and Promulgated by the
 SUPREME COURT OF TEXAS

Approved and adopted September 19, 1966
 Amended by Order of the Court, July 20, 1971

RULES FOR THE REMOVAL OR RETIREMENT OF JUDGES

(Adopted and Promulgated Pursuant to Section 1-a (11)
 Art. V., Constitution of Texas)

RULE 1. DEFINITIONS

In these rules, unless the context or subject matter otherwise requires:

- (a) "Commission" means the State Judicial Qualifications Commission.
- (b) "Judge" means any Justice or Judge of the Appellate Courts and District and Criminal District Courts, any County Judge, and any Judge of a County Court-at-Law, a Court of Domestic Relations, a Juvenile Court, a Probate Court, or a Corporation or Municipal Court, and any Justice of the Peace, and any Judge or presiding officer of any special court created by the Legislature.
- (c) "Chairman" includes the acting chairman.
- (d) "Master" means a special master appointed by the Supreme Court upon request of the Commission pursuant to Section 1-a(8), Art. V of the Constitution.
- (e) "Examiner" means the person appointed by the Commission to gather and present evidence before a master or the Commission.
- (f) "Shall" is mandatory and "May" is permissive.
- (g) "Mail" means First Class United States mail.
- (h) The masculine gender includes the feminine gender.

RULE 2. MAILING OF NOTICES AND OF OTHER MATTER

Whenever these rules provide for giving notice or sending any matter to a judge, the same shall, unless otherwise expressly provided by the rules or requested in writing by the judge, be sent to him by mail at his last known place of residence; provided, that when the judge has a guardian or guardian ad litem, the notice or matter shall be sent to the guardian or guardian ad litem by mail at his last known place of residence.

RULE 3. PRELIMINARY INVESTIGATION

(a) The Commission, upon receiving a verified statement, found upon examination and inquiry to be neither unfounded nor frivolous, alleging facts indicating that a judge is guilty of willful or persistent conduct which is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or the administration of justice, or that he has a disability seriously interfering with the performance of his duties, which is, or is likely to become, permanent in nature, shall make a preliminary investigation to determine whether formal proceedings should be instituted and a hearing held. The Commission may, on its own motion and without receiving a verified statement, make inquiry and a preliminary investigation with respect to the conduct or physical or mental condition of a judge.

(b) Before finally determining that formal proceedings should be instituted, the judge shall be notified of the nature of the charges contained in a verified statement, if any, or that the investigation is on the Commission's own motion, and shall be afforded reasonable opportunity to present such matters as he may choose. Such notice shall be given by registered or certified mail marked "Personal" and addressed to the judge at

his chambers and at his last known residence.

(c) If the preliminary investigation does not disclose sufficient cause to warrant further proceedings, the Commission may in its discretion issue a private reprimand and an order terminating the investigation shall be entered. If notice pursuant to Rule 3 (b) has been given to the judge, he shall be so notified of such termination.

RULE 4. NOTICE OF FORMAL PROCEEDINGS

(a) If after the preliminary investigation has been completed the Commission concludes that formal proceedings should be instituted, the matter shall be entered in a docket to be kept for that purpose and written notice of the institution of formal proceedings shall be issued to the judge without delay. Such proceedings shall be entitled:

“Before the State Judicial Qualifications Commission
Inquiry Concerning a Judge, No. _____.”

(b) The notice shall specify in ordinary and concise language the charges against the judge and the alleged facts upon which such charges are based, and shall advise the judge of his right to file a written answer to the charges against him within 15 days after service of the notice upon him.

(c) The notice shall be served by personal service of a copy thereof upon the judge by a member of the Commission or by some person designated by the chairman, and the person serving the notice shall promptly notify the Commission in writing of the date on which the same was served. If it appears to the chairman upon affidavit that, after reasonable effort during a period of 10 days, personal service could not be had, service may be made by mailing, by registered or certified mail, copies of the notice addressed to the judge at his chambers and at his last known residence, and the date of mailing shall be entered in the docket.

RULE 5. ANSWER

Within 15 days after service of the notice of formal proceedings, the judge may file with the Commission an original answer, which shall be verified, and eight legible copies thereof.

RULE 6. SETTING FOR HEARING AND APPOINTMENT OF MASTER

(a) Upon the filing of an answer or upon expiration of the time for its filing, the Commission shall set a time and place for hearing before itself or before a master and shall give notice of such hearing by mail to the judge at least 20 days prior to the date set.

(b) If the Commission directs that the hearing be before a master, the Commission shall, when it sets a time and place for the hearing, transmit a written request to the Supreme Court to appoint a master for such purpose; and the Supreme Court shall, within 10 days from receipt of such request, appoint a district judge or judge of a Court of Civil Appeals, either active or retired, to conduct such hearing.

RULE 7. HEARING

(a) At the time and place set for hearing, the Commission, or the master when the hearing is before a master, shall proceed with the hearing as nearly as may be according to the rules of procedure governing the trial of civil causes in this State, subject to the provisions of Rule 8, whether or not the judge has filed an answer or appears at the hearing. The examiner or other authorized officer shall present the case in support of the charges in the notice of formal proceedings.

(b) The failure of the judge to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for removal or retirement. The failure of the judge to testify in his own behalf or his failure to submit to a medical examination requested by the Commission or the master may be considered, unless it appears that such failure was due to circumstances unrelated to the facts in issue at the hearing.

(c) The proceedings at the hearing shall be reported by a phonographic reporter or by some qualified person appointed by the Commission and taking the oath of an

official court reporter.

(d) When the hearing is before the Commission, not less than five members shall be present while the hearing is in active progress. The chairman, when present, the vice-chairman in the absence of the chairman, and the member designated by the chairman in the absence of both, shall preside. Procedural and other interlocutory rulings shall be made by the person presiding and shall be taken as consented to by the other members unless one or more calls for a vote, in which latter event such rulings shall be made by a majority vote of those present.

RULE 8. ISSUANCE, SERVICE AND RETURN OF SUBPOENAS

(a) The chairman or any member of the Commission, or a master where hearing is before a master, shall, at the written request of the judge or of the examiner or other authorized person presenting the case in support of the charges, issue a subpoena for any witness or witnesses who may be represented to reside within 100 miles of the place at which the hearing is being held.

(b) The style of the subpoena shall be "The State of Texas". It shall state the style of the proceeding, that the proceeding is pending before the Commission, the time and place at which the witness is required to appear, and the person or official body at whose instance the witness is summoned. It shall be signed by the chairman or some other member of the Commission, or by the master where hearing is before a master, and the date of its issuance shall be noted thereon. It shall be addressed to a person designated by the chairman to make service thereof.

(c) A subpoena may also command the person to whom it is directed to produce the books, papers, documents or tangible things designated therein.

(d) Subpoenas may be executed and returned at any time, and shall be served by delivering a copy of such subpoena to the witness; and service thereof may be accepted by any witness by a written memorandum, signed by such witness, attached to the subpoena.

RULE 9. EVIDENCE

At a hearing before the Commission or a master, legal evidence only shall be received as in the trial of civil cases, except upon consent evidenced by absence of objection, and oral evidence shall be taken only on oath or affirmation.

RULE 10. PROCEDURAL RIGHTS OF JUDGES

(a) In the proceedings for his removal or retirement a judge shall have the right to be confronted by his accusers, the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. He shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers and other evidentiary matter.

(b) When a transcript of the testimony has been prepared at the expense of the Commission, a copy thereof shall, upon request, be available for use by the judge and his counsel in connection with the proceedings, or the judge may arrange to procure a copy at his expense. The judge shall have the right, without any order or approval, to have all or any portion of the testimony in the proceedings transcribed at his expense.

(c) If the judge is adjudged insane or incompetent, or if it appears to the Commission at any time during the proceedings that he is not competent to act for himself, the Commission shall appoint a guardian ad litem unless the judge has a guardian who will represent him. In the appointment of a guardian ad litem, preference shall be given, so far as practicable, to members of the judge's immediate family. The guardian or guardian ad litem may claim and exercise any right and privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent.

RULE 11. AMENDMENTS TO NOTICE OR ANSWER

The master, at any time prior to the conclusion of the hearing, or the Commission, at any time prior to its determination, may allow or require amendments

to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judge shall be given reasonable time both to answer the amendment and to prepare and present his defense against the matters charged thereby.

RULE 12. REPORT OF MASTER

(a) After the conclusion of the hearing before a master, he shall promptly prepare and transmit to the Commission a report which shall contain a brief statement of the proceedings had and his findings of fact with respect to the issues presented by the notice of formal proceedings and the answer thereto, or if there be no answer, his findings of fact with respect to the allegations in the notice of formal proceedings. When the findings support the grounds alleged for removal or retirement, the report shall be accompanied by an original and two copies of a transcript of the proceeding before the master.

(b) Upon receiving the report of the master, the Commission shall promptly send a copy to the judge, and one copy of the transcript shall be retained for his use.

RULE 13. OBJECTIONS TO REPORT OF MASTER

Within 15 days after mailing of the copy of the master's report to the judge, the examiner or the judge may file with the Commission an original and eight legible copies of a statement of objections to the report of the master, setting forth all objections to the report and all reasons in opposition to the findings as sufficient grounds for removal or retirement. A copy of any such statement filed by the examiner shall be sent to the judge.

RULE 14. APPEARANCE BEFORE COMMISSION

If no statement of objections to the report of the master is filed within the time provided, the findings of the master may be deemed as agreed to, and the Commission may adopt them without a hearing. If a statement of objections is filed, or if the Commission in the absence of such statement proposed to modify or reject the findings of the master, the Commission shall give the judge and the examiner an opportunity to be heard orally before the Commission, and written notice of the time and place of such hearing shall be sent to the judge at least ten days prior thereto.

RULE 15. EXTENSION OF TIME

The chairman of the Commission may extend for periods not to exceed 30 days in the aggregate the time for filing an answer, for the commencement of a hearing before the Commission, and for filing a statement of objections to the report of a master, and a master may similarly extend the time for the commencement of a hearing before him.

RULE 16. HEARING ADDITIONAL EVIDENCE

(a) The Commission may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and place of hearing and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent to the judge at least ten days prior to the date of hearing.

(b) The hearing of additional evidence may be before the Commission itself or before the master, as the Commission shall direct; and if before the master, the proceedings shall be in conformance with the provisions of Rule 7 to 11, inclusive.

RULE 17. COMMISSION VOTE

(a) If, after hearing, or after considering the record and report of the master, the Commission finds good cause therefor, it shall recommend to the Supreme Court the removal or retirement, as the case may be; or in the alternative, the Commission may, by the affirmative vote of five of its members, order a private reprimand or order of public censure of the judge in question.

(b) The affirmative vote of five members of the Commission who have considered the record and report of the master and who were present at any oral hearing as provided in Rule 14, or when the hearing was before the Commission

without a master, of five members of the Commission who were present when the evidence was produced, is required for a recommendation of removal or retirement of a judge. If five votes, as described, are not cast for a recommendation of removal or retirement, an order of dismissal shall be entered.

RULE 18. RECORD OF COMMISSION PROCEEDINGS

The Commission shall keep a record of all proceedings concerning a judge. The Commission's determination shall be entered in the record and notice thereof shall be given to the judge. In all proceedings resulting in a recommendation to the Supreme Court for removal or retirement, the Commission shall prepare a transcript of the evidence and of all proceedings therein and shall make written findings of fact and conclusions of law with respect to the issues of fact and law in the proceedings.

RULE 19. CONFIDENTIALITY AND PRIVILEGE OF PROCEEDINGS

All papers filed with and proceedings before the Commission or a master shall be confidential, and the filing of papers with, and the giving of testimony before, the Commission, master, or the Supreme Court shall be privileged; provided that upon being filed in the Supreme Court the record loses its confidential character.

RULE 20. CERTIFICATION OF COMMISSION RECOMMENDATION TO SUPREME COURT

Upon making a determination recommending the removal or retirement of a judge, the Commission shall promptly file a copy of the recommendation certified by the chairman or secretary of the Commission, together with the transcript and the findings and conclusions, with the clerk of the Supreme Court, and shall immediately send the judge notice of such filing, together with a copy of such recommendation, findings and conclusions.

RULE 21. REVIEW OF COMMISSION PROCEEDINGS

(a) A petition to the Supreme Court to reject the recommendation of the Commission for removal or retirement of a judge may be filed within thirty days after the filing with the clerk of the Supreme Court of a certified copy of the recommendation complained of. The petition shall be verified, shall be based on the record, shall specify the grounds relied on and shall be accompanied by nine copies of petitioner's brief and proof of service of one copy of the petition and of the brief of the Chairman of the Commission. Within twenty days after the filing of the petition and supporting brief, the Commission shall file nine copies of a respondent's brief, and shall serve a copy thereon on the judge.

(b) Failure to file a petition within the time provided may be deemed a consent to a determination on the merits based upon the record filed by the Commission.

(c) Rules 418 to 422, Texas Rules of Civil Procedure, shall govern the form and contents of briefs except where express provision is made to the contrary or where the application of a particular rule would be clearly impracticable, inappropriate, or inconsistent.

(d) The Supreme Court may, in its discretion and for good cause shown, permit the introduction of additional evidence, and may direct that the same be introduced before the master or the Commission and be filed as a part of the record in the Court.

RULE 22. SETTING OF CASE AND ORAL ARGUMENT IN THE SUPREME COURT

(a) Oral argument on a petition of a judge to reject a recommendation of the Commission shall, upon receipt of the petition, be set on a date not less than thirty days nor more than forty days from the date of receipt thereof.

(b) The order and length of time of argument shall, if not otherwise ordered or permitted by the Court, be governed by Rule 498, Texas Rules of Civil Procedure.

RULE 23. DECISION BY THE SUPREME COURT

The Supreme Court shall review the record of the proceedings on the law and facts, and, in its discretion, may for good cause shown, order public censure retirement, or removal, as it finds just and proper, or wholly reject the recommendation of the

Commission.

RULE 24. MOTION FOR REHEARING

A motion for rehearing may not be filed in the Supreme Court as a matter of right. In entering its judgment the Court may direct that no motion for rehearing will be entertained, in which event the judgment of the Court will be final on the day and date of its entry. If the Court does not so direct and the judge wishes to file a motion for rehearing, he shall present the motion together with a motion for leave to file the same to the clerk of the Court within fifteen days of the date of the judgment, and the clerk shall transmit it to the Court for such action as the Court deems proper.

APPROVED AND ADOPTED September 19, 1966
AMENDED BY ORDER OF THE COURT July 20, 1971

Exhibit "F"

(Verbatim Copy of Original Document as received)

FIRST PRINTING May 15, 1975 Official House Printing 64th Leg.

By: Canales

H.S.R. 161

(In the House--Filed May 15, 1975; May 15, 1975, read first time and referred to A Select Committee.)

HOUSE SIMPLE RESOLUTION

BE IT RESOLVED by the House of Representatives, That impeachment charges be preferred against O. P. Carrillo, Judge of the 229th Judicial District of the State of Texas, in the Senate of the State of Texas for the following cause: He has been indicted by a Grand Jury of the United States of America on multiple counts for violations of federal income tax laws; and, be it further

RESOLVED, That the Speaker appoint five members of the House as a board of managers to prepare Articles of Impeachment against Judge O. P. Carrillo, submit them to the House for approval, and, if adopted, present them to the Senate.

Exhibit "G"

HOUSTON CHRONICLE
Section 1, Page 15

Monday, May 26, 1975

Impeachment Issue May Extend Session

Austin (UPI) — The Texas Legislature, due to adjourn June 2, may have to extend its 1975 session to consider the impeachment of Duval County Dist. Judge O. P. Carrillo.

"I don't see any way we can finish before the end of the session," Rep. Dewitt Hale, D-Corpus Christi, said today.

Hale is the chairman of the special House committee considering an impeachment resolution against Carrillo, a member of a South Texas family engaged in a political feud with the surviving members of the late George P. "Duke of Duval" Parr's family.

The legislator who filed the impeachment resolution, Rep. Terry Canales, D-Premont, is aligned with the Parr faction and was a pallbearer at the funeral earlier this year of George Parr.

Arthur Mitchell, Carrillo's attorney, said he may call as many as 50 witnesses in his client's defense.

"We might conceivably be able to finish taking testimony next week, but in view of the large number of subpoenas Mr. Mitchell has requested we might not be able to finish it," Hale said.

Once all the witnesses have finished testifying, the 11-member committee will prepare articles of impeachment on all the charges brought against Carrillo. The committee will then vote on each individual article. If one or more of the articles are approved, they will be sent to the House which must come back into session to decide if Carrillo will be impeached. And, if the House votes to impeach, the Senate will have to come back into session to conduct Carrillo's trial.

The committee has voted to subpoena elusive rancher-banker Clinton Manges to testify, but Hale said he has not learned if Manges has been served with the order. Manges has aligned himself with the Carrillo faction in the family's feud with the Parrs.

The committee is to resume its hearings Tuesday night with Manges scheduled to testify. But Hale said he did not know if Manges could receive his subpoena in time.

Canales claims Carrillo and Manges conspired to remove elected county and school board officials from their offices in Duval County and replace them with allies of the Carrillo family.

Carrillo, who split with Parr's Old Party in March to form his own political machine, has been indicted by a federal grand jury for income tax evasion.

Exhibit "H-1"

(Verbatim Copy of Original Document as received)

NO. 8806

THE STATE OF TEXAS)	IN THE 229th JUDICIAL
VS.)	DISTRICT COURT OF
GEORGE B. PARR)	DUVAL COUNTY, TEXAS

DEFENDANT'S MOTION FOR CONTINUANCE

TO THE HONORABLE O. P. CARRILLO, JUDGE OF SAID COURT:

COMES NOW GEORGE B. PARR, Defendant in the above entitled and numbered cause now pending in the above named Court and respectfully requests and demands this Honorable Court to continue said cause, which is presently set for trial for December 16th, 1974.

I.

This Defendant is represented by the Honorable TERRY CANALES who is one of his Attorneys, and that the said TERRY CANALES, is an Attorney at Law licensed by the Supreme Court of Texas and qualified in every way to represent the Defendant before this Honorable Court.

II.

That the said TERRY CANALES, is a duly elected and qualified member of the 64th Legislature of the State of Texas, and is a member of the House of Representatives of this State.

III.

That the regular session of the 64th Legislature of the State of Texas will convene on the 14th day of JANUARY, A.D. 1975, that the presence of the said Attorney, TERRY CANALES, is necessary to a fair and proper trial of the above entitled and numbered cause in that it is his intention to participate actively in the preparation and/or presentation of said case.

IV.

That the said TERRY CANALES, respectfully requests and demands that the trial of this cause be continued and postponed to a time and day which is at least thirty (30) days from the time of the adjournment of the regular session of the Legislature of the State of Texas.

V.

That this request and demand for postponement is made in conformity with and pursuant to Article 2168a of the Vernon's Annotated Civil Statutes of the State of Texas and that neither the defendant or defendant's said attorney, TERRY CANALES, desire to, or waive, any right to a continuance under the cited statute.

WHEREFORE, PREMISES CONSIDERED, Defendant or defendant's Attorney, TERRY CANALES, respectfully move and apply for a continuance of the above entitled and numbered cause in all things particularly, but not limited to, the trial of the said cause upon the merits until a time at least thirty (30) days after the adjournment of the 64th Legislature of the State of Texas.

Respectfully submitted,

/s/ Terry Canales
TERRY CANALES

Attorney at Law
Canales & Barrera
Post Office Box 1308
69 South Wright
ALICE, TEXAS 78332

Attorney for Defendant
GEORGE B. PARR

NO. 8806

THE STATE OF TEXAS) IN THE 229th JUDICIAL
VS.) DISTRICT COURT OF
GEORGE B. PARR) DUVAL COUNTY, TEXAS

Now Comes, TERRY CANALES, Attorney for the Defendant in the above entitled and numbered cause and in support of the application and motion for continuance filed herein and herewith by the said Defendant, and, being duly sworn says:

My name is TERRY CANALES, I am over twenty one (21) years of age and of sound mind and qualified in every respect to make the following affidavit. I am a member of the State Bar of Texas and licensed by the Supreme Court of this State to act as an Attorney at Law.

I am an Attorney for the Defendant in the cause styled The State of Texas vs. George B. Parr, having been employed on the 11th day of November, A. D. 1974, and notice thereof filed with the Clerk of this Court, now pending in the 229th Judicial District Court of Duval County, Texas. That said cause has been set for trial on the 16th day of DECEMBER, A. D. 1974.

The regular session of the Legislature of the State of Texas will begin in Austin, Texas, on the 14th day of JANUARY, A. D. 1975. That all dates relative to this cause for settings mentioned in the paragraph immediately next preceding are either within thirty (30) days prior to or during the regular session of the Texas Legislature.

That I will be in actual and personal attendance at said session and I am a duly elected and qualified representative and as such a member of such Legislature.

That my presence is necessary to a fair and proper trial of the above entitled and numbered cause in that it is my intention to participate actively in the preparation and/or presentation of said case.

Under the provisions of Article 2168a of Vernon's Annotated Civil Statutes of the State of Texas I hereby demand that said cause be postponed until a time at least thirty (30) days after said regular session of the 64th Legislature has adjourned.

Witness my hand this the 12th day of DECEMBER, A. D. 1974.

/s/ Terry Canales
Terry Canales

THE STATE OF TEXAS)
COUNTY OF JIM WELLS)

Subscribed and sworn to before me, by the said TERRY CANALES on this the 12th day of DECEMBER, A. D. 1974, to certify which witness my hand and seal of office.

/s/ Rachel Trejo
Notary Public in and for Jim Wells
County, TEXAS

No. 8806 The State Of Texas Vs George B. Parr In The 229th. Judicial District Court Of Duval County, Texas Defendant's Motion For Continuance Filed at 1:30 o'clock P. M. Dec. 13th-74 A. Salinas Clerk District Court Duval County, Texas By H. G. Gonzalez, Deputy.

THE STATE OF TEXAS
COUNTY OF DUVAL

I, A. Salinas, Clerk of the District Court of Duval County, Texas, do hereby certify that the foregoing is a true and correct copy of the original Defendant's Motion For Continuance IN RE The State of Texas Vs George B. Parr Cause No. 8806 as the same appears on file _____ in my office in Book _____ Page _____ GIVEN UNDER MY HAND, and the seal of said Court, at office in San Diego, Texas, this 19th day of May, 1975.

A. SALINAS, District Clerk
229th Judicial District
Duval County, Texas

By /s/ H. G. Gonzalez Deputy
H. G. Gonzalez

Exhibit "H-2"

(Verbatim Copy of Original Document as filed)

NO. 8807

THE STATE OF TEXAS)
VS.)
ARCHER PARR)
IN THE 229th JUDICIAL
DISTRICT COURT OF
DUVAL COUNTY, TEXAS

DEFENDANT'S MOTION FOR CONTINUANCE

TO THE HONORABLE O. P. CARRILLO, JUDGE OF SAID COURT:

COMES NOW ARCHER PARR, Defendant in the above entitled and numbered cause now pending in the above named Court and respectfully requests and demands this Honorable Court to continue said cause, which is presently set for trial for December 16th, 1974.

I.

This Defendant is represented by the Honorable TERRY CANALES who is one of his Attorneys, and that the said TERRY CANALES, is an Attorney at Law licensed by the Supreme Court of Texas and qualified in every way to represent the Defendant before this Honorable Court.

II.

That the said TERRY CANALES, is a duly elected and qualified member of the 64th Legislature of the State of Texas, and is a member of the House of Representatives of this State.

III.

That the regular session of the 64th Legislature of the State of Texas will convene on the 14th day of JANUARY, A. D. 1975, that the presence of the said Attorney, TERRY CANALES, is necessary to a fair and proper trial of the above entitled and numbered cause in that it is his intention to participate actively in the preparation and/or presentation of said case.

IV.

That the said TERRY CANALES, respectfully requests and demands that the trial of this cause be continued and postponed to a time and day which is at least thirty (30) days from the time of the adjournment of the regular session of the Legislature of the State of Texas.

V.

That this request and demand for postponement is made in conformity with and pursuant to Article 2168a of the Vernon's Annotated Civil Statutes of the State of Texas and that neither the defendant or defendant's said attorney, TERRY CANALES, desire to, or waive, any right to a continuance under the cited statute.

WHEREFORE, PREMISES CONSIDERED, Defendant or defendant's Attorney, TERRY CANALES, respectfully move and apply for a continuance of the above entitled and numbered cause in all things particularly, but not limited to, the trial of the said cause upon the merits until a time at least thirty (30) days after the adjournment of the 64th Legislature of the State of Texas.

Respectfully submitted,

/s/ Terry Canales
TERRY CANALES
 Attorney at Law
 Canales & Barrera
 Post Office Box 1308
 69 South Wright
 ALICE, TEXAS 78332

Attorney for Defendant
ARCHER PARR

NO. 8807

THE STATE OF TEXAS	)	IN THE 229th JUDICIAL
VS.	)	DISTRICT COURT OF
ARCHER PARR	)	DUVAL COUNTY, TEXAS

Now Comes, TERRY CANALES, Attorney for the Defendant in the above entitled and numbered cause and in support of the application and motion for continuance filed herein and herewith by the said Defendant, and, being duly sworn says:

My name is TERRY CANALES, I am over twenty one (21) years of age and of sound mind and qualified in every respect to make the following affidavit. I am a member of the State Bar of Texas and licensed by the Supreme Court of this State to act as an Attorney at Law.

I am an Attorney for the Defendant in the cause styled The State of Texas vs. Archer Parr, having been employed on the 11th day of NOVEMBER, A. D. 1974, and notice thereof filed with the Clerk of this Court, now pending in the 229th Judicial

District Court of Duval County, Texas. That said cause has been set for trial on the 16th day of DECEMBER, A. D. 1974.

The regular session of the Legislature of the State of Texas will begin in Austin, Texas, on the 14th day of JANUARY, A. D. 1975. That all dates relative to this cause for settings mentioned in the paragraph immediately next preceding are either within thirty (30) days prior to or during the regular session of the Texas Legislature.

That I will be in actual and personal attendance at said session and I am a duly elected and qualified representative and as such a member of such Legislature.

That my presence is necessary to a fair and proper trial of the above entitled and numbered cause in that it is my intention to participate actively in the preparation and/or presentation of said case.

Under the provisions of Article 2168a of Vernon's Annotated Civil Statutes of the State of Texas I hereby demand that said cause be postponed until a time at least thirty (30) days after said regular session of the 64th Legislature has adjourned.

Witness my hand this the 12th day of DECEMBER, A. D. 1974.

/s/ Terry Canales
Terry Canales

THE STATE OF TEXAS)
COUNTY OF JIM WELLS)

Subscribed and sworn to before me, by the said TERRY CANALES on this the 12th day of DECEMBER, A. D. 1974, to certify which witness my hand and seal of office.

/s/ Rachel Trejo
Notary Public in and for Jim Wells
County, TEXAS

Exhibit "I"

(Original Document as received)

HOUSE RESOLUTION 167

BE IT RESOLVED by the House of Representatives of the 64th Legislature, That there is hereby created a select committee of the House of Representatives composed of 11 members appointed by the Speaker, the chairman and vice-chairman thereof to be appointed by the Speaker, to consider House Simple Resolution No. 161 and investigate charges brought against O. P. Carrillo, and report back to the House its recommendations on whether presenting to the Senate of Texas a bill of impeachment against O. P. Carrillo is in order; and, be it further

RESOLVED, That the committee is authorized to meet at the call of the chairman, meet in executive session when ordered by the committee, and expend funds for necessary expenses and employment of personnel as approved by the Committee on House Administration; and, be it further

RESOLVED, That the committee shall have all powers granted to committees of the House by Article 5962, Revised Civil Statutes of Texas, 1925, the Legislative Reorganization Act of 1961, and the Rules of the House of Representatives.

Maloney


Speaker of the House

I hereby certify that H.S.R. No. 167 was adopted by the House on May 17, 1975, by a non-record vote.

Chief Clerk of the House

Exhibit "J"

259 cr 38



Telegram

DC 08 DCC 08 (2 2 1) (2-018 192E 139) PO: 01 19 75 12 00 1975 MAY 19 5/21
 ICS IPRBNQZ QSP MAILING UNSUCCESSFUL *Still in Austin* 19 PH12: 54

5 124755824 TDM AUSTIN TX 165 05-19 12 15P EST
 PMS HONORABLE O T CARRILLO, DISTRICT JUDGE, FONE
 COUNTY COURT HOUSE (Mail)
 SAN DIEGO TX 78384 *not office #
 Listed below #
 049944*

THE HOUSE SELECT COMMITTEE ON IMPEACHMENT WILL MEET IN THE STATE
 CAPITOL AT 8PM TUESDAY MAY 20 TO CONSIDER HSR161 BY CANALES, SEEKING
 YOUR IMPEACHMENT FROM THE OFFICE OF DISTRICT JUDGE. DAILY MEETINGS
 HEREAFTER ARE CONTEMPLATED UNTIL THE INQUIRY IS COMPLETED. YOU ARE
 INVITED TO BE PRESENT IN PERSON OR BY ATTORNEY; HOWEVER, CROSS
 EXAMINATION OF WITNESSES WILL NOT BE PERMITTED, SINCE THIS IS ONLY
 AN INVESTIGATING PROCEEDING. ANY EVIDENCE YOU CARE TO PRESENT
 BEARING ON THE MATTER WILL BE WELCOME THE PRINCIPLE FUNCTION OF
 THIS COMMITTEE IS TO DEVELOP FACTS AND OBTAIN ASSISTANCE IN THIS
 ENDEAVOR WILL BE APPRECIATED

5R


2793957

*San Antonio
 La Grange city
 stair case*

5/19/75

5/19/75

14-1201 (75-07)



Telegram

pc 458/2

ROBERT HALE CHAIRMAN

5/19/75
5/19/75

Exhibit "K"

EXHIBIT "K"

Friday, May 23, 1975

The Austin American-Statesman

House panel to subpoena bank records of Carrillo

By LEE HAVINS
Staff Writer

Members of the House Select Committee on Impeachment voted Thursday to subpoena bank records of 22nd Dist. Court Judge O. P. Carrillo during the third day of hearings into the possibility of removing the Duval County figure from office.

Before the 71 vote to subpoena the records from the First State Bank of San Diego, fireworks erupted between the committee and Carrillo's attorney, Arthur Mitchell of Austin.

Mitchell told the inquiry he had the bank records but he refused to turn them over to the committee in bulk before he being allowed to introduce testimony on behalf of Carrillo.

The lawyer said he planned to call an accountant through whom he would introduce the bank records and other information regarding operation of Zertuche General Store, the Farm and Ranch store "and all other entities" pertinent to the inquiry.

However, on a motion by Rep. Bob Hendricks of McKinney, the committee voted to seek the entire set of books from the bank.

Committee chairman DeWitt Hale of Corpus Christi alluded to previous testimony that Carrillo and his brother used Zertuche's General Store as a front for business dealings with Duval County. Those records would prove whether that testimony was true or not, Hale said.

Rep. Terry Canales of Premont, author of the resolution that led to the inquiry, presented Duval County payroll records and cancelled county checks he said corroborated testimony given during the first two days of hearings.

He called Octavio Hinojosa of San Diego, assistant Duval County auditor, who went through the books with the committee indicating where Thomas Elizondo, Cleofas Gonzalez, Oscar Sanchez and Francisco Ruis had been paid mostly as county workers.

Wednesday, Sanchez and Ruis testified they were asked to work on Carrillo's Duval County Ranch. They were not paid beyond their county salaries for that work, they

said. The payroll records indicated Elizondo worked for Duval County Precinct 3 for \$173 a month until March. In April, Hinojosa testified, Elizondo was paid \$500 as a court bailiff for Carrillo.

Also on Wednesday, a former friend of Carrillo testified he saw Elizondo operating county machinery on Carrillo's ranch. Before Thursday's testimony began, Mitchell said he would call former Duval County Judge Arthur Parr — nephew of the late "Duke of Duval," George Parr — and as many as 50 witnesses to try to clear Carrillo.

"Before 50 subpoenas are issued by the committee," Hale said, Mitchell would have to show the relevance of that

testimony. "We're not interested in making a career out of this hearing."

Hale speculated that the committee was to determine if evidence warranted recommending articles of impeachment to the full House.

"It's the chair's thinking that we would reach that decision on the basis of (Mitchell's) refusal" to turn over the records, Hale said.

Mitchell filed the refusal to a federal income misrepresentation case facing Carrillo. Carrillo, his brother and Arturo Zertuche — a cousin — have been indicted by a federal grand jury on that charge.

In his resolution, Canales charged the federal indictment made Carrillo unfit to hold the judgeship.

III.

Barney Goldthorne is in the possession of information pertinent and material to the defense of the offenses charged in the Indictment in the above captioned cause; specifically, information concerning the financial transactions between the Defendants or the entities controlled by them and others, including Duval County, Benavides Independent School District, and Duval County Water and Reclamation District.

IV.

The prospective witness may be prevented from testifying in the trial of the present cause, and it is imperative to take his deposition to prevent a failure of justice.

V.

Further, circumstances including the present state of political strife in Duval County, the involvement of the Federal Bureau of Investigation, the State Attorney General's office, and the Internal Revenue Service therein, and the recent death of George B. Parr render it impossible to conduct orderly pretrial discovery without the protection of this Court. Due to such extraordinary and emergency conditions, Defendant assert the right to take the deposition of Barney Goldthorne in the Federal District Court at Corpus Christi and under its protection.

WHEREFORE, Defendants pray that this Court order that the Defendants be permitted to take the deposition of Barney Goldthorne in the Federal District Court at Corpus Christi under the protection of this Court and that Barney Goldthorne be ordered to produce as such time, all books, documents, records, recordings, and other material in his possession, including copies of cancelled checks, bank statements, and financial statements as may relate to the financial transactions of any of the Defendants, or any of the entities listed in the Indictment, including employees thereof, with others, including Duval County, Benavides Independent School District, and Duval County Water and Reclamation District, for the years 1965 to date.

Respectfully submitted,

ARTHUR MITCHELL
315 Westgate Building
Austin, Texas 78701

WILLIAM DAVID BONILLA
P.O. Drawer 5427
Corpus Christi, Texas 78405

By: /s/ Arthur Mitchell
Arthur Mitchell

Attorneys for Defendants

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing Third Motion of Defendants To Take Deposition has been sent to the United States Attorney for the Southern District of Texas at Houston on this the 30th day of April, 1975.

/s/ Arthur Mitchell
Arthur Mitchell

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA)
)
V.)
)
RAMIRO D. CARRILLO,)
O. P. CARRILLO, AND)
ARTURO R. ZERTUCHE)

Criminal No. CR 75-C-45

ORDER RELATING TO DEFENDANTS'
THIRD MOTION TO TAKE DEPOSITION

On this date came to be considered the Third Motion To Take Deposition by Defendants Ramiro D. Carrillo, O. P. Carrillo, and Arturo R. Zertuche, and the Court having considered the same is of the opinion that said Motion should be _____:

It is therefore ORDERED that Defendants' Third Motion To Take Deposition is hereby in all things _____.

DATED: _____

JUDGE
United States District Court
Southern District of Texas
Exhibit "M"

IN THE MATTER OF THE IMPEACHMENT OF O. P. CARRILLO, DISTRICT JUDGE

TO: HOUSE SELECT COMMITTEE ON IMPEACHMENT

FIRST RESPONSE OF O. P. CARRILLO

I. CONSTITUTIONAL AND CIVIL RIGHTS ACT CONSIDERATIONS

Now comes Hon. O. P. Carrillo, Judge of the District Court, 229th Judicial District of Texas, and makes this his Answer to H.S.R. 161 and Challenge to the proceedings of the House Select Committee on Impeachment and the enabling provisions of the Constitution and Statutes of the State of Texas, under whose authority the House Select Committee on Impeachment is proceeding, and would respectfully show the following:

A. Substantial Due Process Considerations

The present proceeding before the House Select Committee on Impeachment is so lacking in substantive due process as to be constitutionally defective under Amendment Five and Amendment Fourteen of the Constitution of the United States and in violation of Title 42, Sec. 1983, U.S.C.A., in that the provision of the Texas Constitution and its companion statute, to-wit, Art. 15, Secs. 1 through 5 of the Constitution of the State of Texas and Article 5961, V.A.C.S. under whose authority the Select Committee is proceeding, are unconstitutionally vague and indefinite and wholly fail to give notice of those things which constitute impeachable or

nonimpeachable acts, so as to deprive one charged thereunder of due process of law as protected by the Fifth and Fourteenth Amendments to the Constitution of the United States.

B. Procedural Due Process Considerations

Further, the present proceeding as conducted before the House Select Committee on Impeachment is constitutionally defective and in violation of Title 42, Sec. 1983, U.S.C.A., in its present and imminent threat to deprive the Hon. O. P. Carrillo of property without procedural due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States in that (1) the sole notice of the charges proffered against the Hon. O. P. Carrillo, in the form of a telegram dated May 19, 1975, twenty-four hours before the commencement of the proceedings before the Select Committee, wholly failed to give timely notice of the proceedings against him; (2) the notice as provided by the telegram of May 19, 1975 and H.S.R. 161 was wholly inadequate as notice of the charges proffered against the Hon. O. P. Carrillo before the House of Representatives and gives no notice of any specific charge on which the impeachment inquiry is based; (3) the scope of the inquiry as conducted by the House Select Committee reaches far beyond the limitations of H.S.R. 161, which sets out as the sole basis of the inquiry the indictment of O. P. Carrillo by a Grand Jury of the United States of America for violations of Federal income tax laws and is thus outside the scope of the powers of the committee as set out in Art. 5429(f), V.A.C.S.; (4) the right to cross examination of the witnesses against him is denied to the Hon. O. P. Carrillo, as evidenced by conduct of the proceedings and the telegram of notice of said proceedings dated May 19, 1975; (5) the right to make objections to any part of the proceedings is denied to the Hon. O. P. Carrillo; (6) the subpoenas as issued by the House Select Committee act to procure witnesses whose testimony goes far beyond the scope of the proceedings as limited by H.S.R. 161 and beyond the restricted power of subpoena by the House Select Committee, presenting matters wholly beyond the inquiry of the Committee; (7) the proceedings as conducted threaten to deny to the Hon. O. P. Carrillo the presumption of innocence as guaranteed by the due process clauses of the Constitution of the United States of America in that the automatic suspension from office as provided by Art. 15, Sec. 5 of the Texas Constitution upon commencement of impeachment proceedings and the denial of the above enumerated due process rights at the inquiry stage cause the person accused to enter the impeachment proceedings without the presumption of innocence in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States of America; and (8) the proceedings threaten to deny to the accused the right to protection from double jeopardy in that, as a result of such proceedings, the Hon. O. P. Carrillo is subjected to the threat of double jeopardy should he choose to assert his constitutional rights and the denial thereof in a judicial forum.

C. Bill of Attainder and Ex Post Facto Considerations

Further, the impeachment inquiry as conducted by the House Select Committee amounts to a Bill of Attainder and/or the enactment of an ex post facto law in violation of Art. I, Sec. 9, clause 3 of the Constitution of the United States of America and Title 42, Sec. 1983, U.S.C.A., in that all acts contained in the notice of the proceedings as provided by H.S.R. 161 and the telegram of May 19, 1975 as well as those acts evinced by the testimony presented before the House Select Committee on Impeachment occurred prior to November, 1975, the date on which the Hon. O. P. Carrillo was elected to the office of District Judge of the 229th Judicial District of Texas, thereby making the basis of impeachment and attaching civil liability to alleged acts committed prior to the date on which the Hon. O. P. Carrillo was elected to office and prior to the commencement of the term of that office. The plain effect of such proceedings as conducted is to inflict punishment in the form of automatic suspension from office on one charged without a judicial trial, and to inflict a greater punishment for the acts than

that which could have been inflicted at the time the alleged acts were committed.

D. Equal Rights Considerations

Further, the present proceedings is violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States of America and the equal rights clause of Article I, Sec. 3 of the Constitution of the State of Texas in that it represents selective enforcement of the law as to the Hon. O. P. Carrillo. The Hon. O. P. Carrillo would show that there have been in the past, and are at the present time, members of the House of Representatives of the State of Texas under indictment during their terms of offices and yet no impeachment proceedings directed at their removal from office have been at any time begun by the House of Representatives. However, impeachment proceedings have been set in action against Hon. O. P. Carrillo on the basis of an indictment alleging acts occurring before his election to office. There can be no rational basis for distinction in the case of the Hon. O. P. Carrillo; and the selective use of the impeachment laws evidenced by these proceedings is violative of the Hon. O. P. Carrillo's right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States of America and Article I, Sec. 3 of the Constitution of the State of Texas.

II. SPECIFIC CONSIDERATIONS

A. Procedural - H.S.R. 161

1. Judge O. P. Carrillo states that the charge "(O. P. Carrillo) Judge of the 229th Judicial District of the State of Texas, has been indicted by a Grand Jury of the United States of America on multiple counts for violations of Federal income tax laws; . . ." are admitted; such statement as contained in H.S.R. 161, does not constitute ground or reason upon which impeachment can be used.

2. The ground stated in H.S.R. No. 161 is insufficient ground or reason upon which impeachment can be based, the same relating to private acts unrelated to performance of official functions, acts predating the certificate of election (which certificate is dated November 22, 1974), and acts protected by the constitutional considerations advanced in I. See: Garcia v. Tobi 307 S.W.2d 836 (conviction for mail fraud, on appeal, not grounds for removal of county judge); Gordon v. State, 43 Tex. 330; Brackenridge v. State, 11 S.W. 630; State ex rel v. Loomis 29 S.W. 415; Reeves v. State, 267 S.W. 666 (acts predating certificate of election not grounds for removal--also annotated 42 A.L.R. 2d 691); Art. 15, Sec. 1, Tex. Const.; Ferguson v. Maddox, 263 S.W. 888.

B. Procedural--Non-H.S.R. 161 Considerations

H.S.R. No. 161, being the source of the power of this Committee, speaks only in terms of "indictment by Grand Jury." Nevertheless, after approximately a week of testimony, the questions and witnesses presented before the Committee reach matters totally and completely unrelated to whether or not Judge O. P. Carrillo has been indicted (a matter which would have been admitted at the outset of the hearings), but to a broad spectrum of acts of misconduct (established by witnesses through hearsay and otherwise competent testimony) outside the scope of H.S.R. 161 and therefore outside the power of this Committee as delimited by the Legislative Reorganization Act of 1961 (Art. 5429f, V.A.C.S.). O. P. Carrillo's constitutional rights are not only violated by this procedure (See, I, Constitutional Considerations above), but the proceedings thus far violate the specific statutes enacted by the legislature for the guidance of itself as well as the public.

C. Case for Legislative Restraint

It is submitted, respectfully, that for the reasons set out in I and II above, and those set out in this paragraph, this is a classic instance of calling for the exercise of legislative restraints. Some of the salient factors which should guide this body in its exercise of legislative restraint and self-discipline are,

1) Pending trial of indictment No. CR75-C-45, United States District Court for the Southern District of Texas, Corpus Christi Division, for 18 U.S.C.A. 7206(1), violation, with its attendant due process and other constitutional protections. If the Respondent Carrillo is found guilty, then under appropriate Texas statutes, Respondent Carrillo would be automatically disbarred and thus, pending appeal from any adverse finding, be precluded from exercising the prerogatives of office.

2) Pending proceeding before State Judicial Qualifications Commission -- by letter dated May 2, 1975, from the State Judicial Qualifications Commission, Respondent was notified that it was through the office of Maurice Pipkin, Executive Director of the Commission, to enter into preliminary investigation of certain alleged acts of misconduct.

This preliminary investigation has triggered the statutory jurisdiction of the Commission and matters testified to before this Committee (largely outside H.S.R. #161) will be resolved on that forum, devoid of the protections, considerations, and policies explicated in I, II and this section of Respondent's Reply.

3) Existence of viable investigative task force -- in March, 1975, the Attorney General of Texas provided a team of investigators to assist District Attorney Arnulfo Guerra and the Grand Jury; this task force included members of the general's staff, Texas Rangers, members of the Department of Public Safety's Intelligence Division and a private auditing firm. The first indictments springing from the labors of this task force were returned May 23, 1975, based upon transactions without the scope of H.S.R. 161 but within the range of questions to some of the witnesses called by the Committee. See Exhibit A. As stated in Exhibit A, this Grand Jury was empanelled by Judge O. P. Carrillo, 229th District Court and continues to sift factual input from the Investigative Task Force.(1)

(1) Judge Carrillo, Respondent, could not receive the indictments because, as stated in Exhibit A, he was in Austin, Texas, the week of May 23, 1975, in attendance at legislative committee hearings on his proposed impeachment. Certainly the hearings conducted here are counterproductive of the harvest of the fruits of the task force.

Also in March, 1975, actions were instituted by the duly elected district attorney to remove Archer Parr, County Judge, Duval County; M. K. Bercaw, Trustee of the Benavides Independent School District (as well as other named Trustees, the causes being docketed No. 8884 as to Trustee M. K. Bercaw; No. 8885 as to Trustee Enrique Garcia, etc.). After a series of complex legal maneuvers in the Supreme Court of Texas by Bercaw, Garcia, etc. to avoid trial (to no avail)(2) the Parr cases were set for trial Monday, May 19, 1975(3) but continued by Hon. Judge O. P. Carrillo to be in attendance May 20, 1975, in the State Capitol at 8:00 p.m.(4) Notwithstanding the continuance forced in part by the present hearings, Judge O. P. Carrillo, on Saturday, May 24, 1975, during a recess in the present impeachment hearings, convened court in San Diego, Duval County, Texas, and after full hearing, named a "duly constituted" school board of the Benavides Independent School District.(5) It is also noted that Judge Carrillo's actions in ousting the Parr school were sustained by Hon. Judge Wesley Dice, retired Judge of the State Court of Criminal Appeals, by his denying injunctive relief at the request of Parr against Tobin, Jr., Carrillo's appointee to the County Judge's post after removal of Parr by Carrillo.(6)

(2) See article, Bill Kidd, "State Supreme Court Backs Carrillo in Duval Decisions," Ex. B, April 1, 1975, CORPUS CHRISTI CALLER, Spencer Pearson, "Carrillo Hearing . . . One Week Later," May 25, 1975, CORPUS CHRISTI CALLER, Ex. C.

(3) See "Duval Busy with Court Actions," Joe Coudert, CORPUS CHRISTI CALLER, May 16, 1975, Ex. D.

(4) See Ex. E, telegram, L. DeWitt Hale, Chairman, House Select Committee on Impeachment.

(5) See Ex. C, Joe Coudert, "Benavides Board Confirmed"; Ex. F, "Parr Removal Recessed," and "Carrillo Planning to Attend Hearing, CORPUS CHRISTI CALLER, May 20, 1975.

(6) Joe Coudert, "Parr Fails to Get Restraining Orders," CORPUS CHRISTI CALLER, April 17, 1975.

Respondent Carrillo, through his attorney, has subpoenaed the District Attorney, 229th District; Attorney General's office, and related law enforcement agencies to establish factually the matters contained in #3 to establish without cavil, Judge Carrillo's active part in that post-Parr clean up--all designed to establish that there is no official delinquency or maladministration or wrongful conduct on the part of Respondent Carrillo of such a character as to indicate unfitness for the office of Judge, 229th Judicial District.(7)

(7) See subpoenas filed by attorney for Respondent Carrillo, May 23, 1975.

4) Existence of viable investigative Federal Task Force--several years ago, William Sessions, U. S. Attorney, Western District of Texas(8) was spurred into Duval County action by information gathered by the IRS; the resulting flurry saw the late George Parr found guilty of income tax evasion and former Duval County Judge Archer Parr found guilty of perjury--plus ancillary indictments and convictions. This Federal Task Force continues its investigative work, in coordination with the Texas Task Force outlined in paragraph #3 above.

(8) William Sessions has since been appointed U. S. District Judge, Western District, and his then first assistant, John Clark, a lifelong Republican, has been appointed new U. S. Attorney for the Western District of Texas.

5) Removal of District Judges by Address of 2/3rds of each House of Legislature--Sec. 8, Art. 15, Texas Constitution permits removal of district judges by the Governor on the address of two-thirds of each House of Legislature.(9)

(9) Article 5964, V.A.C.S.

6) Removal of district judges by the Supreme Court--still another relevant, viable alternative to the drastic once-in-a-lifetime impeachment procedures pending, is that provided by Article 15, Sec. 6, Texas Constitution. Under this provision of the Texas Constitution, any judge of the district court who is incompetent, etc., may be tried before a detailed procedure outlined in the relevant section of the Constitution by the Supreme Court.(10)

(10) The Supreme Court shall have original jurisdiction to hear and determine the causes aforesaid when presented in writing upon the oaths taken before some judge of a court of record of not less than ten lawyers, practicing in the courts held by such judge, and licensed to practice in the Supreme Court; said presentment to be founded either upon the knowledge of the persons making it or upon the written oaths as to the fact of creditable witnesses. The Supreme

Court may issue all needful process and prescribe all needful rules to give effect to this section. Causes of this kind shall have precedence and be tried as soon as practicable.

Removal under Art. 15, Sec. 6 has many advantages over removal by impeachment:

“The Supreme Court is able to dispose of disciplinary matters expeditiously. It is fitted by training and experience to conduct judicial proceedings. It is closely associated with the problems of administering justice, and is confronted daily by problems of judicial ethics which gives it the proper appreciation of the conduct of any judge accused of malfeasance in office, as well as a sound estimate of those qualities which would be involved in a compulsory retirement on account of age or health. Cases of retirement and removal necessarily involve discretion. They cannot be settled by stiff and arbitrary rules. No one is so well qualified by training and experience to exercise discretion fairly as a court consisting of supreme court judges. By impeachment, an incumbent is tried almost entirely of men untrained in judicial matters, and the decision is often based on partisan or emotional determinations. Thus, a judicial removal proceeding is the only form which is entirely consistent with security of judicial tenure. [Emphasis added.]

7) Impeachment decision based on partisan or emotional determinations--as noted in the commentary quoted at length in connection with paragraph 7, 3 Vernon's Annotated Constitution, p. 52, impeachment decisions quite frequently are based on partisan or emotional determinations, to the end that the public good is not served, but to the contrary, there is set into motion emotional distrust of the decisions to impeach, creating more evil which in turn begets more evil.

So too, this Committee must note during the present hearing certain hard facts, which generate political ramifications. A split developed between the Parr and the Carrillo factions in Duval County; there were many causes for this rift, not the least of which was the fact that one of the Carrillo brothers and the Carrillo father were Government witnesses in the main Parr trials and related trials. Suffice to state, alignment with the Parr faction and the Carrillo faction (and splinter factions, such as the Guerra faction of Starr County) commenced, to the end that polarization of the factions occurred for the ensuing fight.(11) Many attorneys were plunged into affray, Marvin Foster, M. K. Bercaw, Charles Orr, and yes, attorney and Representative Terry Canales, author of H.S.R. No. 161.

(11) See Bill Graham, “Archer Parr Fights for Dukedom,” SAN ANTONIO EXPRESS, April 20, 1975.

It is the same Hon. Terry Canales who appeared for George B. Parr in Cause No. 8806 (being an action by the State of Texas to disbar George Parr because of his Federal felony conviction) and sought and secured (before Judge O. P. Carrillo's 229th District Court) a legislative continuance to delay the disbarment.(12)

(12) See Ex. G.

It is the same Hon. Terry Canales who appeared for Archer Parr in Cause no. 8807 (being an action by the State of Texas to disbar Archer Parr, because of his Federal felony conviction) and sought and secured (before Judge O. P. Carrillo's 229th District Court) a legislative continuance to delay the disbarment proceedings.(13)

(13) See Ex. H.

It is the same Hon. Terry Canales who, after the District Attorney, Duval County, Texas, filed information for leave to file petition in removal of Archer Parr and various members of the Benavides School Board, drafted for filing in the House and Senate, a bill to abolish the office of District Attorney, 229th District, upon whose relation the informations for leave to file petitions for removal were filed.(14)

(14) Exh. I, for copy of bill; also, Respondent intends to interrogate the District Attorney, Duval County, Texas, and Hon. Terry Canales concerning this entire proceeding here--more emotionalism, that would be lead to erosion of the people in the offices held by the participants.

While Hon. Terry Canales denies any significance can be attached to his active participation in the past and post-impeachment period, the attorney for Respondent would in discharge of his sworn duty to his client, have to question him in detail on these and related, relevant matters--all of which must be stated to this Committee, searching, as it is, for the truth, but all of which is designed to generate emotions and charges and countercharges.(15)

(15) Just as the well-known fact that the House did nothing when its prior Speaker, Hon. Gus Mutscher, was indicted during session; and just as the House does nothing to one of its present members who stands indicted. Respondent's attorney states that this is as it should be, that is, that an indictment should not be the basis for an impeachment, as set out in H.S.R. 161, for the valuable presumption of innocence given to each citizen would be emasculated to think to the contrary. Unfortunately, the general public, beset by ungodly telephone rates, low school teacher's salaries, unregulated utilities, terrible gasoline prices (in face of plenty), will not draw this fine lawyer-like conclusion, thus more discord, more erosion of confidence in a fine legislature which has accomplished much, more destruction of the image of our governing body, etc.

III. DEFENSIVE POSTURE OF RESPONDENT (IF ALLOWED TO CALL WITNESSES AND/OR IF ALLOWED THE RIGHT TO CROSS EXAMINATION AND/OR IF ALLOWED TO INTRODUCE DOCUMENTARY EVIDENCE)

A. Documentary Evidence desired to be introduced and to be considered by the Committee;

1. Copies of the Tax Returns of Hector Zertuche, 1965, 1966, with emphasis on Schedule C, Profit (or Loss) from Business or Profession, establishing sole proprietorship as to Zertuche General Store; negates sham;

2. Copies of the Tax Returns of Arturo R. Zertuche, 1968, 1969, 1970, with emphasis on Schedule C, Profit (or Loss) from Business or Profession, establishing sole proprietorship as to Zertuche General Store; negates sham;

3. Photographs of Zertuche General Store, 1966, showing partial destruction by hurricane;

4. Carrillo personal check #616, September 3, 1973, payable to Ronnie E. Guerra, Custom Broker, in payment for cement which went into Carrillo's ranch building;

5. Checks Nos. 609, 623, 421, 1393, 1400, 166, 112, payable to Patricio Garza on O. P. Carrillo's personal bank account, payment work done;

6. Copy of customer order for Replacement of Cadillac, by O. P. Carrillo, dated 11/10/70;

7. Certified copy of docket sheet in Duval County Ranch Co., Inc. v. The Speedman Oil Company, et al, showing that on 9/24/73, Judge Carrillo secluded and excused himself from the case, with docket entry, to effect that "Judge to reclude itself, and request Judge Alamia to name another judge to hear this case." (Cause #8591, 229th District Court).

8. Certified copy of docket sheet in Duval County Ranch Co. (represented by M. K. Bercaw, Jr.) v. J. W. Bumgardner, showing that as of 9/13/73 (approximately 37 days after suit filed) Judge Carrillo made following docket entry: "Judge O. P. Carrillo will reclude himself and not sit and will notify Administrative Judge J. R. Alamia . . ."

9. Statement of Executive Vice President of Duval County Ranch Company to the effect that upon examination of books of the corporation for the years 1972-1975, Manuel Amaya, Jr. was not an employee of Duval County Ranch Company, and received no payments for work done for the corporation or Clinton Manges and no request for payments were made by Mr. Amaya, Jr. to the corporation or Clinton Manges.

10. Statement of Manuel Amaya, Jr. that he has never received any money or anything else of value from Duval County Ranch Company or Clinton Manges.

11. Copies of checks from November 15, 1972, through February 29, 1974 to M. K. Bercaw, Jr., representing retainer of \$600.00 a month by Duval County Ranch Company and accompanying statement to effect that of his duties as attorney for Duval County Ranch Co. was to negotiate settlement of tax liability of Company and Benavides Independent School District. Statement to effect that because of his efforts, taxes on both Duval County and Benavides Independent School District were reduced and paid.

12. Minutes of Commissioners Court for February 14, 1975 and tax receipts dated February 12, 1975, issued by Benavides Independent School District, as evidence of tax payment for 1973 and 1974 by Duval County Ranch Company--no outstanding tax liability exists except current year.

13. Check in amount of \$62,539.43 to Duval County Tax Collector by Duval County Ranch Company, for balance of taxes due for years 1972, 1973, 1974.

14. Check No. 2428, dated February 11, 1975, in amount of \$34,724.26, from Duval County Ranch Company to Tax Collector, and Tax Receipts Nos. 2889, 2890, and 516 for payment 1973 Taxes and Tax Receipts Nos. 800, 801, and 3767, evidencing payment for year 1974.

15. Check No. 10012, Benavides Independent School District, dated August 23, 1974, to Marvin Foster, \$35,000.

16. Check No. 10013, Benavides Independent School District, dated August 23, 1974, to Charles E. Orr, \$25,000.

17. Undated letter Statement from Marvin Foster to Board of Trustees for \$60,000, bill "submitted as statement for services rendered and to be rendered relative to investigation by the IRS and Grand Jury of the District and the School Board . . ."

18. Copy of Texas Standard Policy covering period of March 18, 1964 to March 18, 1969, covering one-story building, housing Zertuche General Store.

19. Letter of Judge J. R. Alamia (and Court's order) acknowledging fact that O. P. Carrillo disqualified himself to serve in Cause No. 3953, Clinton Manges v. M. A. Guerra, et al, and appointing new judge to try cause.

20. Personal tax returns of O. P. Carrillo, with emphasis on depreciation schedule showing equipment inventory of Carrillo and gross income (with showing that no income came from operation of Zertuche General, this income being captured and reported on Schedule C, Zertuches' returns mentioned above).

21. Checks of O. P. Carrillo personally to Pilon, for payment hauling water.

22. Copy of attorney fee contract between Archer Parr and Terry Canales (if one exists), reflecting terms and conditions of employment preceding motion for legislative continuance to date, services to be performed, payment made and promised

to be made.

23. Copy of applicable local and Federal rules establishing correct administration of food program in Duval County, and evidence to effect that same is thus being administered.

WHEREFORE, PREMISES CONSIDERED, Respondent respectfully prays that this Committee refuse to recommend, for the reasons set out herein, bill of impeachment; in addition Respondent prays that he be allowed the right to further supplement and/or amend his answer, as the testimony unfolds, he not having any notice of what testimony is to be solicited from whom--this answer being based upon the uncross-examined testimony as it ceased to flow 23 May, 1975, and upon no documentary evidence introduced, for he has not been honored with copies of the documents made part of the record.

Respectfully submitted,

/s/ Arthur Mitchell
 ARTHUR MITCHELL
 315 Westgate Building
 Austin, Texas 78701
 ATTORNEY FOR RESPONDENT
 HONORABLE O. P. CARRILLO

Exhibit "N"

(Original Document as received)

By: Hale

H.S.R. No. 221

RESOLUTION

WHEREAS, The select committee on impeachment created by House Simple Resolution No. 167 to consider House Simple Resolution No. 161 and to investigate charges brought against O. P. Carrillo is continuing its investigation; and

WHEREAS, It is apparent that extensive testimony still to be heard by the committee will preclude completion of its work prior to June 2, 1975, on which date the 64th Regular Session shall expire by limitation; now, therefore, be it

RESOLVED by the House of Representatives of the 64th Legislature, That the select committee on impeachment, as created by House Simple Resolution No. 167 and as constituted by appointment by the speaker of the house, continue its investigation of all charges against O. P. Carrillo after the adjournment sine die of the 64th Regular Session; and, be it further

RESOLVED, That during its continuing investigation the select committee have all the powers granted to it by House Simple Resolution No. 167; and, be it further

RESOLVED, That after completing its deliberations the committee file with the chief clerk of the house a report containing its recommendations on whether O. P. Carrillo should be impeached; and, be it further

RESOLVED, That if impeachment is recommended by majority report of six or more members, or by minority report of five members:

1. The report shall include a resolution of impeachment and articles of impeachment against O. P. Carrillo for consideration by the house and action thereon.

2. The house of representatives shall be reconvened to sit and consider matters of impeachment at 10 a.m. on the third Monday following the date the committee report is filed with the chief clerk of the house.

3. The speaker of the house, when notified by the chief clerk of the house that the report recommending impeachment has been filed, shall immediately notify each member of the house of the date and time of reconvening the house and shall forward to each member a copy of the resolution of impeachment and articles of impeachment; and, be it further

RESOLVED, That on reconvening the house shall proceed at its pleasure and may continue to meet until such time as the matter of impeachment of O. P. Carrillo may be resolved.

Exhibit "O"

Art. 6252-16 PUBLIC OFFICES, ETC. Title 110A

Cross References

Fire and police employee relations act, see art. 5154c-1.

Law Review Commentaries

Philadelphia Plan; equal employment opportunity in construction trades. 8 Houston L.Rev. 342 (1970).

Texas equal rights amendment. Joan Harvill, 15 South Texas L.J. 111 (1974).

Index to Notes

In general 1

Validity 1/2

1/2 Validity

This article, prohibiting discrimination by public employers against persons because of their race, religion, color, sex, or national origin, provided sufficient remedy to employee of county hospital district who alleged that district had discriminated against her with regard to promotions and salary and in placing her upon probation because of her race or color, national origin, or sex, and this article met requirements for deferral set out in Civil Rights Act [42 U.S.C.A. § 2000e-6(c)] providing for deferral for six days if state or local law prohibits the unlawful practice alleged, and the EPOC was without jurisdiction. *Nueces County Hospital Dist. v. Equal Employment Opportunity Commission* (D.C. 1971) 371 F.Supp. 1126.

1. In general

Fact that this article prohibiting discrimination by public employers against persons because of race, religion, color, sex or national origin did not prohibit employer from retaliating for an employee's levying discrimination charge was not ground for enforcing EPOC subpoena for records of county hospital district where the subpoena requested material relevant to charge of discrimination as to which deferral by EPOC was required rather than to a charge of retaliation. *Nueces County Hospital Dist. v. Equal Employment Opportunity Commission* (D.C.1974) 371 F.Supp. 1126.

Purpose of § 4 of this article, designating the district attorneys and/or county attorneys as the appropriate officers to receive notice from Equal Employment Opportunity Commission of a discriminatory practice occurring within the state, was to enable those officials to institute criminal proceedings for violations of the statutes. *Id.*

Under sec. 4 of art. 1015c, taxpayers could maintain action against country club and others to have deed from city to country club and lease declared void, to enjoin alleged discriminatory practices and for damages. *Turullols v. San Felipe Country Club* (Civ.App.1970) 458 S.W.2d 204, ref. n. r. c.

A person may not be barred from public employment arbitrarily or in disregard of his constitutional rights, but those persons seeking public employment may be required to conform to such reasonable requirements as may be established as condition of such employment. *Jackson v. Firemen's and Policemen's Civil Service Commission of Galveston* (Civ.App.1971) 466 S.W.2d 412.

Action of county attorney, in prosecuting male defendant under Vernon's Ann.P.C. art. 1147(9), making an assault or battery committed by adult male on adult female an aggravated assault, but making an assault by adult female on another adult female an aggravated assault only if committed under circumstances otherwise constituting an aggravated assault, was not within purview of § 1(a) (7) of this article, which provides that no officer or employee of subdivision of state may refuse to grant benefit to, or impose unreasonable burden on person because of his sex. *Buchanan v. State* (Cr.App.1972) 450 S.W.2d 207, appeal dismissed 93 S.Ct. 175, 403 U.S. 814, 34 L.Ed.2d 71, rehearing denied 93 S.Ct. 476, 409 U.S. 1029, 34 L.Ed.2d 323, and in which rehearing is denied 93 S.Ct. 1507, 410 U.S. 892, 36 L.Ed.2d 191.

The State Comptroller does not have an affirmative duty to withhold issuance of any state warrants to any state department, agency, or employee, simply because a complaint is made to him that such department or agency, or employee, may be discriminating against some person in violation of this article. The statutory remedies for violation are exclusive. *Op.Atty.Gen.1971, No. M-750.*

A commissioners court may limit the number of persons it will hear on a particular subject and the frequency with which they may appear, so long as its regulation does not abridge constitutionally guaranteed rights of freedom of speech and to petition, nor unfairly discriminate among views seeking expression. *Op.Atty.Gen. 1973, No. H-155.*

Art. 6252-17. Prohibition on governmental bodies from holding meetings which are closed to the public

Definitions

Section 1. As used in this Act:

(a) "Meeting" means any deliberation between a quorum of members of a governmental body at which any public business or public policy over which the governmental body has supervision or control is discussed or considered, or at which any formal action is taken. It shall not be construed that the intent of this definition is to prohibit the gathering of

Title 110A PUBLIC OFFICES, ETC. Art. 6252-17

members of the governmental body in numbers of a quorum or more for social functions unrelated to the public business which is conducted by the body or for attendance of regional, state, or national conventions or workshops as long as no formal action is taken and there is no deliberation of public business which will appear on the agenda of the respective body.

(b) "Deliberation" means a verbal exchange between a quorum of members of a governmental body attempting to arrive at a decision on any public business.

(c) "Governmental body" means any board, commission, department, committee, or agency within the executive or legislative department of the state, which is under the direction of one or more elected or appointed members; and every Commissioners Court and city council in the state, and every deliberative body having rule-making or quasi-judicial power and classified as a department, agency, or political subdivision of a county or city; and the board of trustees of every school district, and every county board of school trustees and county board of education; and the governing board of every special district heretofore or hereafter created by law.

(d) "Quorum" unless otherwise defined by constitution, charter, rule or law applicable to such governing body, means a majority of the governing body.

Sec. 1 amended by Acts 1973, 63rd Leg., p. 45, ch. 31, § 1, eff. Jan. 1, 1974.

Application of act

Sec. 2. (a) Except as otherwise provided in this Act or specifically permitted in the Constitution, every regular, special, or called meeting or session of every governmental body shall be open to the public; and no closed or executive meeting or session of any governmental body for any of the purposes for which closed or executive meetings or sessions are hereinafter authorized shall be held unless the governmental body has first been convened in open meeting or session for which notice has been given as hereinafter provided and during which open meeting or session the presiding officer has publicly announced that a closed or executive meeting or session will be held and identified the section or sections under this Act authorizing the holding of such closed or executive session.

(b) In this Act, the Legislature is exercising its rule-making powers to prohibit secret meetings of the Legislature, its committees, or any other bodies associated with the Legislature, except as otherwise specifically permitted by the Constitution.

(c) A governmental body may exclude any witness or witnesses from a hearing during examination of another witness in the matter being investigated.

(d) Nothing in this Act shall be construed to affect the deliberation of grand juries.

(e) Private consultations between a governmental body and its attorney are not permitted except in those instances in which the body seeks the attorney's advice with respect to pending or contemplated litigation, settlement offers, and matters where the duty of a public body's counsel to his client, pursuant to the Code of Professional Responsibility of the State Bar of Texas, clearly conflicts with this Act.

(f) The public may be excluded from that portion of a meeting during which a discussion is had with respect to the purchase, exchange, lease, or value of real property, negotiated contracts for prospective gifts or donations to the state or the governmental body, when such discussion would have a detrimental effect on the negotiating position of the governmental body as between such body and a third person, firm or corporation.

Art. 6252-17 PUBLIC OFFICES, ETC. Title 110A

(g) Nothing in this Act shall be construed to require governmental bodies to hold meetings open to the public in cases involving the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee or to hear complaints or charges against such officer or employee, unless such officer or employee requests a public hearing.

(h) Nothing in this Act shall be construed to require school boards to hold meetings open to the public in cases involving discipline of public school children unless an open hearing is requested in writing by a parent or guardian of the child.

(i) All or any part of the proceedings in any public meeting of any governmental body as defined hereinabove may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction.

(j) Nothing in this Act shall be construed to require governing bodies to deliberate in open meetings regarding the deployment, or specific occasions for implementation, of security personnel or devices.

(k) Nothing in this Act shall be construed to allow a closed meeting of a governing body where such closed meeting is prohibited, or where open meetings are required, by charter.

(l) Whenever any deliberations or any portion of a meeting are closed to the public as permitted by this Act, no final action, decision, or vote with regard to any matter considered in the closed meeting shall be made except in a meeting which is open to the public and in compliance with the requirements of Section 3A of this Act.

(m) Nothing in this Act shall be construed to require school boards operating under consultation agreements provided for by Section 13.901 the standards, guidelines, terms, or conditions it will follow or instruct its representatives to follow, in consultation with representatives of employees of the Texas Education Code to deliberate in open meetings regarding employee groups.

(n) Nothing in this Act shall be construed to require an agency wholly financed by Federal funds to deliberate in open meetings.

(o) Nothing in this Act shall be construed to require medical boards or medical committees to hold meetings open to the public in cases where the individual medical and psychiatric records of an applicant for a disability benefit from a public retirement system are being considered.

(p) Nothing in this Act shall be construed to require that interviews or counseling sessions between the members of the Board of Pardons and Paroles and inmates of any facility of the Texas Department of Corrections be open to the public.

Sec. 2 amended by Acts 1971, 62nd Leg., p. 1401, ch. 381, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 45, ch. 31, § 2, eff. Jan. 1, 1974.

* * * * *

Notice of meetings

Sec. 3A. (a) Written notice of the date, hour, place, and subject of each meeting held by a governmental body shall be given before the meeting as prescribed by this section.

(b) A State governmental body shall furnish notice to the Secretary of State, who shall then post the notice on a bulletin board to be located in the main office of the Secretary of State at a place convenient to the public.

(c) A city governmental body shall have a notice posted on a bulletin board to be located at a place convenient to the public in the city hall.

Title 110A

PUBLIC OFFICES, ETC.

Art. 6252-17

(d) A county governmental body shall have a notice posted on a bulletin board located at a place convenient to the public in the county courthouse.

(e) A school district shall have a notice posted on a bulletin board located at a place convenient to the public in its central administrative office and, in addition, shall either furnish a notice to the county clerk in the county in which most, if not all, of the school district's pupils reside or shall give notice by telephone or telegraph to any news media requesting such notice and consenting to pay any and all expenses incurred by the school district in providing special notice.

(f) A governmental body of a water district or other district or political subdivision covering all or part of four or more counties shall have a notice posted at a place convenient to the public in its administrative office, and shall also furnish the notice to the Secretary of State, who shall then post the notice on a bulletin board located in the main office of the Secretary of State at a place convenient to the public; and it shall also furnish the notice to the county clerk of the county in which the administrative office of the district or political subdivision is located, who shall then post the notice on a bulletin board located at a place convenient to the public in the county courthouse.

(g) The governing body of a water district, other district, or other political subdivision, except a district or political subdivision described in Subsection (f) of this section, shall have a notice posted at a place convenient to the public in its administrative office, and shall also furnish the notice to the county clerk or clerks of the county or counties in which the district or political subdivision is located. The county clerk shall then post the notice on a bulletin board located at a place convenient to the public in the county courthouse.

(h) Notice of a meeting must be posted for at least 72 hours preceding the day of the meeting, except that in case of emergency or urgent public necessity, which shall be expressed in the notice, it shall be sufficient if notice is posted two hours before the meeting is convened. In the event of an emergency meeting, the presiding officer or the member calling such meeting shall, if request therefor containing all pertinent information has previously been filed at the headquarters of the governmental body, give notice by telephone or telegraph to any news media requesting such notice and consenting to pay any and all expenses incurred by the governmental body in providing such special notice. The notice provisions for legislative committee meetings shall be as provided by the rules of the house and senate.

Sec. 3A amended by Acts 1971, 62nd Leg., p. 1789, ch. 527, § 1, eff. June 1, 1971; Acts 1973, 63rd Leg., p. 47, ch. 31, § 3, eff. Jan. 1, 1974.

Violations and penalties

Sec. 4. (a) Any member of a governing body who wilfully calls or aids in calling or organizing a special or called meeting or session which is closed to the public, or who wilfully closes or aids in closing a regular meeting or session to the public, or who wilfully participates in a regular, special, or called meeting or session which is closed to the public where a closed meeting is not permitted by the provisions of this Act, shall be guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$500 or imprisonment in the county jail for not less than one month nor more than six months, or both.

(b) Any member or group of members of a governing body who conspire to circumvent the provisions of this Act by meeting in numbers less than a quorum for the purpose of secret deliberations in contravention of this Act shall be guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$500 or imprisonment

Art. 6252-17 PUBLIC OFFICES, ETC. Title 110A-

in the county jail for not less than one month nor more than six months or both.
 Sec. 4 amended by Acts 1973, 63rd Leg., p. 48, ch. 31, § 4, eff. Jan. 1, 1974.

Senate Concurrent Resolution No. 83 (1969)

WHEREAS, Senate Bill No. 260 [Acts 1969, 61st Leg., p. 674, ch. 227] has passed the House and the Senate; and

WHEREAS, Senate Bill No. 260 was amended to delete provisions in the present open meetings law stating that "Nothing in this Act shall be construed to prevent a governing body from consulting with its attorney"; and

WHEREAS, The privileged nature of communications between attorney and client are recognized by the common law, by Article 38.10, Code of Criminal Procedure of Texas, 1965, and by the rules of the State Bar of Texas; and

WHEREAS, It was the intent of the legislature, in repealing the quoted portion of Section 2, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), the open meetings law, to eliminate from that law surplus matter already covered elsewhere in the law; now, therefore, be it

RESOLVED by the Senate of the State of Texas, the House of Representatives concurring, That the legislature declare that it did not intend, in passing Senate Bill No. 260, to abridge or in any way affect the privileged nature of communications between attorney and client.

Cross References

Municipal utility districts, board of directors meetings, applicability of this article, see V.T.C.A. Water Code, § 54.109.

Offshore terminal commission, meetings subject to provisions of this article, see V.T.C.A. Water Code, § 12.016(d).

State officers and employees, standards of conduct, compliance with this article, see art. 6252-9b, § 6(a).

Law Review Commentaries

Local government; annual survey of Texas law. H. Louis Nichols, 26 Southwestern L.J. 213 (1972).

Married and pregnant students. 50 Texas L.Rev. 1196 (1972).

Open meetings act; coverage and enforcement. 49 Texas L.Rev. 764 (1971).

Supplementary Index to Notes

Injunction 3

Notice 4

1. Validity

Evidence supported finding that meeting of board of equalization of school district was an open meeting and sufficiently complied with requirements of this article. *Levisay v. Comanche Independent School Dist.* (Civ.App.1972) 487 S.W.2d 110, ref. n. r. e.

Official committees composed of members of governmental bodies regulated by this article, meeting to formulate recommenda-

tions for the disposition of matters pending before the parent body, must comply with the "notice" and "open meeting" provisions of this article. *Op.Atty.Gen.1973, No. H-3.*

A commissioners court may limit the number of persons it will hear on a particular subject and the frequency with which they may appear, so long as its regulation does not abridge constitutionally guaranteed rights of freedom of speech and to petition, nor unfairly discriminate among views seeking expression. *Op.Atty.Gen. 1973, No. H-185.*

2. Construction and application

County attorney did not have right to institute civil litigation in name of county to enjoin county judge and county commissioners from spending any funds of county on retirement program for county employees where attorney brought suit without authority of county commissioner's court or Attorney General or anyone else. *Ward County v. King.* (Civ.App.1970) 454 S.W.2d 239.

Failure of county board of school trustees to comply with provisions of this article rendered action of the board at such illegal meeting in annexing one school district to another voidable in subsequent court proceedings initiated by annexed school district. *Foyah Independent School Dist. v. Pecos-Barstow Independent School Dist.* (Civ.App.1971) 466 S.W.2d 377.

This article providing that every regular, special, or called meeting or session

Exhibit "P"

(Verbatim Copy of Original Document as received)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA)		
V.)	)	Criminal No. 75-C-45
)	
RAMIRO D. CARRILLO,)	
O. P. CARRILLO,)	
ARTURO R. ZERTUCHE)	

SUPPLEMENTARY MOTION OF THE DEFENDANTS
RAMIRO D. CARRILLO, O. P. CARRILLO, AND
ARTURO R. ZERTUCHE TO DISMISS AND MOTION IN THE
ALTERNATIVE FOR INDEFINITE CONTINUANCE

TO THE HONORABLE JUDGE OF SAID COURT:

Come now Ramiro D. Carrillo, O. P. Carrillo, and Arturo R. Zertuche, Defendants in the above entitled and numbered cause, and make this their Supplementary Motion To Dismiss and Motion In The Alternative For Indefinite Continuance, and in support thereof would respectfully show the Court as follows:

I.

On or about the 28th day of March, 1975, a twelve count indictment was returned by a Federal Grand Jury setting in Corpus Christi, Texas, charging the Defendants Ramiro D. Carrillo, O. P. Carrillo, and Arturo R. Zertuche with violations of 18 U.S.C. 371 and 26 U.S.C. 7206(1).

II.

On or about the 10th day of April, 1975, arraignment of the Defendants was held before the Federal District Court for the Southern District of Texas, Corpus Christi Division, each of the Defendants entering a plea of "not guilty" therein.

III.

Subsequent to the arraignment of the Defendants. Defendants filed numerous pretrial motions, including a request for a bill of particulars, a motion for continuance, motions for pretrial discovery, motions to suppress evidence, and a request for a pretrial conference and hearing on Defendants' pretrial motions.

IV.

On or about the 16th day of May, 1975, a hearing was held in Federal District Court for the Southern District of Texas, Corpus Christi Division, on Defendants' First Motion For Continuance and the Government's Motion For Determination Of Conflict Of Interest. At the conclusion of the hearing, a determination was made by the Court that the joint representation of all three Defendants by a single attorney did not result in a conflict of interest on the part of defense counsel, although a severance of the trial of Arturo R. Zertuche from the trial of the other two Defendants was deemed advisable by the Court. It was indicated by the Court that it would tentatively grant Defendants' Motion For Continuance, by way of maintaining the June 30th setting for selection of the jury, but by postponing the date of actual commencement of the trial to a date some

six weeks subsequent thereto. Further, Defendants' First through Sixth Motions To Take Deposition were orally granted by the Court.

To date, no determination has been made on the Defendants' other pretrial motions filed herein.

V.

On or about the 19th day of May, 1975, the Defendant O. P. Carrillo received notice by way of telegram of the commencement of impeachment proceedings against him in his capacity as District Judge of the 229th Judicial District of Texas (Exhibit A). Such proceedings were commenced pursuant to the passage of H.S.R. 161 (Exhibit B), which calls for the institution of impeachment proceedings on the grounds of O. P. Carrillo's indictment herein for income tax fraud. House Simple Resolution 167 (Exhibit C) established the House Select Committee On Impeachment to investigate the charges brought against O. P. Carrillo in H.S.R. 161. Hearings before the House Select Committee on Impeachment began May 20, 1975, and have continued to date with only brief adjournments. The investigation by the Committee has reached not only the indictment of O. P. Carrillo by the Federal Grand Jury and the very matters to be tried in the prosecution of the instant cause, but also has reached outside the scope of the indictment and concerned itself with unrelated and allegedly improper acts and occurrences involving O. P. Carrillo as well. Among the witnesses who have been summoned and who have appeared before the Committee are many who testified before the Grand Jury that returned the indictment against the Defendants herein and who are to testify in the trial of the present cause. The documentary material presented to the Committee has included documentary material which is essential to both the proof of the prosecution's case and the defense of all three Defendants in the above cause. Not only have the witnesses and the documentary materials essential to the presentation of an adequate defense in the present cause been commandeered by the members of the Committee in the absence of even minimal due process protections, but also the testimony and documentary material on matters unrelated to the subject matter of the indictment has been publicly considered by the Committee. The statutory and constitutional authority for many of the Committee's actions, including the holding of closed investigatory sessions, and, in fact, the lawful existence of the Committee, has been seriously challenged by counsel for O. P. Carrillo, as indicated by the First Response of O. P. Carrillo presented to the Committee (Exhibit D). As likewise indicated by the First Response of O. P. Carrillo presented to the Committee, objection to the Committee hearings and investigations was made by counsel for O. P. Carrillo on the grounds that such hearings and investigations constitute an interference with the prosecution and defense of the instant cause in Federal Court. Despite such challenges and objections to the proceedings, the House Select Committee on Impeachment continues in its hearings and investigations on the subject matter of the indictment and matters ranging far beyond the scope of the indictment.

VI.

Insofar as the Committee has investigated matters contained in the indictment, hearing testimony, receiving documentary evidence, and essentially putting the Defendant O. P. Carrillo to trial on the charges in the indictment in the absence of even minimal due process protections, the State has acted to deprive all of the Defendants herein of their due process rights. Evident is a pervasive pollution of the expected testimony by the witnesses and the other evidence essential to the trial in this cause which, together with the widespread publicity attendant to the impeachment proceedings, renders a fair trial of the Defendants in Federal Court impossible.

VII.

Further, the active participation in the impeachment proceedings of the United States Government through the participation of agents of the Internal Revenue Service therein and the resulting combination of State and Federal action in the deprivation of Defendants' rights renders a fair trial of the Defendants in the present cause impossible.

VIII.

Further, the effect of the institution and conduct of the impeachment hearings is to subject all of the Defendants herein to a trial on the same offense for which they are charged in Federal Court. As the text of H.S.R. 161 makes apparent, in order to determine whether articles of impeachment should be returned against O. P. Carrillo and whether O. P. Carrillo is guilty of an impeachable offense, the Legislature has cast upon itself the burden of determining whether O. P. Carrillo and the other two Defendants herein in fact committed the offenses with which they are charged in the federal indictment. Thus, not only are the Defendants in effect being subjected to two trials on identical acts and transactions, they are being tried in two forums for the same offense, to wit, violations of 18 U.S.C. 371 and 26 U.S.C. 7206(1). The participation of the federal government in the State impeachment proceedings makes the subjection of the Defendants to double jeopardy for the same offense doubly evident, and negates any possible argument that the Defendants, or any of them, are being tried in separate proceedings before forums of different governmental systems for different offenses.

IX.

Further, attendant to the impeachment proceedings has been widespread newspaper, magazine, radio, and television publicity, (Exhibits E-1 through E-27) whereby the evidence presented to the Committee on Impeachment and the Committee's interrogations and comments thereon have been exposed to state-wide view. Created by such publicity has been an atmosphere of public prejudice towards the Defendant O. P. Carrillo and the other two Defendants making a fair trial on the indictment impossible anywhere in the State of Texas at this time. As a result of the impeachment proceedings and the state-wide publicity accompanying such proceedings, the Defendants are receiving a "trial by the press"; and a trial not only on the matters contained in the federal indictment, but also on matters ranging far beyond the scope of the indictment. If put to trial before the prejudicial effect of the pretrial publicity and the hostile atmosphere engendered by such publicity has subsided, the Defendant O. P. Carrillo and the other two Defendants, who as a result of the impeachment proceedings have also been placed in the public spotlight, will be laboring under a heavy handicap in establishing their innocence at the impending trial. Delaney v. United States, 199 F. 2d 107, 39 ALR 2d 1300 (1st Cir. 1952).

X.

Further, subsequent to the commencement of the impeachment hearings before the House Select Committee, Defendants filed herein their Supplementary Motion For Continuance, setting out as grounds therefor the commencement and continuation of such hearings, making it physically impossible for counsel for the defense to prepare for trial of the present cause by the date set therefore and resulting in a denial of Defendants' Sixth Amendment right to effective assistance of counsel and their Fifth and Fourteenth Amendment rights to due process of law if Defendants are required to go to trial at that time. No determination of this Motion has been made as of the present date. Defendants incorporate herein for all purposes the allegations and prayer contained in the aforesaid Supplementary Motion For Continuance.

WHEREFORE, PREMISES CONSIDERED, Defendants pray that the Court order that the prosecution against Defendants Ramiro D. Carrillo, O. P. Carrillo, and Arturo R. Zertuche in the above entitled and numbered cause be dismissed on the grounds that the manner in which the hearings before the House Select Committee On Impeachment have been conducted and the totality of circumstances involved in the conduct of the impeachment proceedings, working a denial of Defendants' most elementary due process rights, together with the involvement of agents of the federal government therein, have rendered a fair trial of the Defendants in the federal prosecution an impossibility and on the further grounds that the combined action of the State and Federal Governments in the impeachment hearings on the alleged offenses contained in the federal indictment have subjected the Defendants to former jeopardy

for those offenses, in violation of the Sixth Amendment to the Constitution of the United States of America. In the alternative, Defendants pray that the trial of the above entitled and numbered cause be continued indefinitely until the prejudicial effect of the state-wide publicity pursuant to the impeachment inquiry has subsided and Defendants may go to trial without laboring under the heavy burden of proving their innocence in the hostile atmosphere engendered by such publicity.

Respectfully submitted,

/s/ Arthur Mitchell
Arthur Mitchell
Mitchell, George & Belt
315 Westgate Building
Austin, Texas 78701

Attorney for Defendants

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above Supplementary Motion of the Defendants To Dismiss and Motion in The Alternative For Indefinite Continuance was sent to Mr. George A. Kelt, Jr., Assistant United States Attorney, P. O. Box 61129, Houston, Texas 77208 on this 25th day of June, 1975.

/s/ Arthur Mitchell
Arthur Mitchell

Exhibit "Q"

Exhibit "Q"

Suit to oust Carrillo possible

By ARNOLD GARCIA JR.
Staff Writer

The state's official judicial review commission Saturday will consider removal action against Duval County State Dist. Court Judge O.P. Carrillo, who is already being investigated on charges of official misconduct by a special legislative impeachment committee.

The nine-member Judicial Qualifications Commission will decide whether to sue for the removal of the con-

troversial South Texas political leader and judge during a closed-door session, according to the agency's executive director, Maurice Pipkin.

The commission may also discuss the case of two Odessa judges who had prior knowledge of a fake drug arrest that was represented to reporters as genuine.

Pipkin said, however, that the commission normally does not discuss a judge's behavior until it receives a complaint, and he said no

complaint has been received in the case of Dist. Judge R.L. McKim and Justice of the Peace Jan Brooks.

Should the commission decide to press for Carrillo's removal, its case would be filed with the State Supreme Court.

The commission, Pipkin said, is scheduled to hear material on Carrillo gathered by its staff and the state attorney general's office.

The commission has been conducting its own in-

vestigation into allegations of misconduct lodged against Carrillo at the same time the House Select Committee on Impeachment has been considering bringing removal articles in the legislature.

Impeachment committee chairman DeWitt Hale of Corpus Christi said Friday that any action by the commission would have no bearing on the committee's work.

Both Pipkin and Hale agreed, however, that this

"end result" of the current investigations could be the same.

The impeachment committee is scheduled to resume open impeachment hearings Tuesday.

Hale said he did not anticipate the legislature sidetracking possible impeachment action should the commission take a removal petition to the Supreme Court.

"At least," Hale added, "not at this stage of the procedure."

Exhibit "R"

(Verbatim Copy of Original Document as received)

COMMITTEE SUBSTITUTE FOR HOUSE SIMPLE RESOLUTION 161

A RESOLUTION IMPEACHING O. P. CARRILLO, DISTRICT JUDGE
FOR THE 229TH JUDICIAL DISTRICT OF TEXAS, AND
PREFERRING ARTICLES OF IMPEACHMENT AGAINST HIM

BE IT RESOLVED by the House of Representatives of the State of Texas, That O. P. Carrillo, judge of the district court for the 229th Judicial District of the State of Texas, is impeached and that the following articles of impeachment be exhibited to the senate:

Articles of impeachment exhibited by the House of Representatives of the State of Texas in the name of itself and of all the people of the State of Texas against O. P. Carrillo, judge of the district court for the 229th Judicial District of the State of Texas, in maintenance and support of its impeachment against him.

ARTICLE I

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to have Duval County pay for groceries, to which he was not entitled, for his personal use and benefit.

ARTICLE II

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo used his official powers in a manner calculated to subvert the principles of democratic government and obstruct the fair and impartial administration of justice, thereby bringing the district court for the 229th Judicial District of Texas into scandal and disrepute to the prejudice of public confidence in the judiciary of the state.

This conduct included but was not limited to one or more of the following:

(1) in the case of Clinton Manges versus M. A. Guerra, et al., Cause No. 3953 in the district court for the 229th Judicial District of Texas, which involved a party with whom O. P. Carrillo had numerous financial ties, he refused to recuse and disqualify himself;

(2) in the case of State of Texas on relation of Jose R. Nichols versus Archer Parr, Cause No. 8890 in the district court for the 229th Judicial District of Texas, which involved the suspension and removal from office of a former political ally with whom O. P. Carrillo had publicly split and who was involved in heated competition for political control of the governmental entities in Duval County, he refused to recuse and disqualify himself;

(3) he conspired with others to improperly influence the membership and proceedings of the grand jury of Duval County impaneled in February, 1975;

(4) he conspired with others to dominate and control the Benavides Independent School District by arbitrarily suspending from their offices his political opponents on the school district board of trustees and appointing his political allies as replacements.

ARTICLE III

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo acted alone or conspired with others to divert the services of governmental employees to his personal benefit when he was not entitled to receive those services.

This conduct included but was not limited to one or more of the following:

(1) Cleofas Gonzalez, while employed and being paid by Duval County, worked in the Farm and Ranch Store, which was a partnership between O. P. Carrillo and another;

(2) Pat Gonzalez, while employed and being paid by Duval County, worked in the Farm and Ranch Store, which was a partnership owned by O. P. Carrillo and another;

(3) Francisco Ruiz, while employed and being paid by Duval County, worked as a welder on O. P. Carrillo's property;

(4) Oscar Sanchez, while employed and being paid by Duval County, worked in the construction of a reservoir on O. P. Carrillo's ranch;

(5) Patricio Garza, while employed and being paid by Duval County, worked on O. P. Carrillo's ranch.

ARTICLE IV

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to misapply government equipment, which he was not entitled to use, to his personal benefit.

This conduct included but was not limited to one or more of the following:

(1) the use of a backhoe owned or leased by the Duval County Water Control and Improvement District in the construction of a private building on his property;

(2) the use of equipment owned or leased by Duval County in the construction of a water reservoir on his property;

(3) the use of a truck, mounted with post-hole digging equipment, owned or leased by Duval County in the construction of fences on his property;

(4) the use of welding equipment and supplies owned or leased by Duval County to make repairs on his property;

(5) the use of trucks owned or leased by Duval County to haul equipment and materials to his property for his private use.

ARTICLE V

While holding office as district judge for the 229th Judicial District of Texas and, prior to that, while simultaneously holding office as county attorney for Duval County and a member of the board of trustees for the Benavides Independent School District, O. P. Carrillo conspired with public officials and others to violate the constitution, oaths of office, statutes, and public policy against public officials doing private business with governmental entities they serve.

This conduct included but was not limited to the sale of goods and services and the rental of equipment, either directly from the Farm and Ranch Store, an entity owned by O. P. Carrillo and another public official, or by sham transactions through Zertuche General Store and other business entities, to various governmental entities in Duval County when O. P. Carrillo and close relatives with whom he had a joint economic interest served as officers of those governmental entities.

ARTICLE VI

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo filed false and fraudulent financial statements with the Secretary of State for Texas.

ARTICLE VII

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to use for his personal benefit materials and supplies owned by Duval County and other governmental entities, which he was not entitled to receive.

This conduct included but was not limited to the following: O. P. Carrillo used fuel owned by Duval County in his personal vehicles.

ARTICLE VIII

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to charge and collect money from governmental entities for rentals of equipment that did not exist and for rental of equipment that the governmental entities did not use.

ARTICLE IX

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to defraud Duval County by causing county funds to be paid to Arturo Zertuche, who was not entitled to receive the funds.

ARTICLE X

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to defraud Duval County by causing county funds to be paid to Roberto Elizondo, who was not entitled to receive the funds.

ARTICLE XI

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to defraud Duval County by causing county funds to be paid to Patricio Garza, who was not entitled to receive the funds.

* * *

In all of this, O. P. Carrillo has acted in a manner contrary to the trust reposed in him as district judge and is guilty of gross violations of the constitution and statutes of this state, of the duties of his office, and of the Code of Judicial Conduct. By such conduct he has rendered himself unfit to hold the office of judge of the district court for the 229th Judicial District of Texas and he warrants trial and conviction, removal from office, and disqualification from holding any future office in this state, and the house of representatives, saving to itself the liberty to exhibit additional articles of impeachment against O. P. Carrillo at any future date, if it decides any are necessary, requests that O. P. Carrillo be required to answer the articles of impeachment against him.

Exhibit "S"

Friday, July 18, 1975

The Austin American-Statesman

Austin, Texas—Page 15

House to meet Aug. 4 to mull Carrillo charges

By JON FORD
Political Editor

Texas House members received formal notice Thursday they must convene here Aug. 4 to consider the first impeachment proceedings in four decades.

Speaker Bill Clayton also mailed representatives copies of the 11-count articles of impeachment filed by a secret investigating committee against 229th District Judge O. P. Carrillo of stormy Duval County.

Rep. L. DeWitt Hale of Corpus Christi, chairman of the committee, delivered the impeachment resolution (HR 361) to House Chief Clerk Dorothy Hallman late Thursday morning.

Meanwhile, removal action against the 52-year-old South Texas judge was launched on another front.

Carrillo's attorney, Arthur Mitchell of Austin, said he has been given notice that the Judicial Qualifications Commission is seeking to serve a notice of formal proceedings.

"I agreed to accept service as

his (Carrillo's) attorney," said Mitchell.

Clayton and Hale said the commission's move will have no effect on the impeachment case already triggered into action.

Indications were outcome of the impeachment effort will be known before the commission reaches a final recommendation and obtains a Supreme Court ruling.

"We were automatically called into session on this matter by the filing of this (committee) report," said Clayton. "Regardless of what the commission does now, we still have to meet and decide if we are going to pass or not pass the committee resolution."

If the House votes articles of impeachment by a simple majority or larger, the Senate will sit in trial of complaints against Carrillo. A two-thirds vote of the Senate would be necessary to remove him from the bench and bar him from holding future political office.

Committee complaints against Carrillo include judicial misconduct, improper use for

personal benefit of county equipment and personnel, conspiracy to control the Benavides Independent School District and conspiracy to defraud Duval County.

The judge and his family are feuding politically with remnants of the old, dominant George Parr faction in Duval County. Parr, 74, committed suicide April 1 after threatening to kill Carrillo and rancher-banker Clinton Mangos.

Carrillo suspended Parr's nephew, Archer Parr, who faces a federal perjury conviction, as Duval County judge and later presided over the trial which resulted in an instructed verdict that Parr be permanently removed. Carrillo is under a federal income tax evasion indictment.

Clayton told House members in a letter mailed Thursday afternoon the impeachment resolution will be the only issue before them next month.

"We should be able to give the matter thorough and complete consideration in a relatively short period of time," wrote Clayton.

The speaker said he remains hopeful a majority decision can be reached in the case within two or three days. Hale acknowledged the session could "drag on for weeks" if lawmakers want to question witnesses as a committee of the whole.

A House resolution adopted during the regular legislative session last May provided for impeachment three weeks after filing of the investigative report.

Even if Carrillo resigns, the House would still meet and vote on the impeachment resolution, said Clayton.

The speaker issued directives for an economy session.

He said House members will draw the \$30-a-day living expenses allowed them by a recent constitutional amendment plus their \$600 monthly salaries, but no funds will be allocated for hiring additional staff.

Clayton said regular House employees will assist with a secretarial pool where needed.

Hale said he received word

from Mitchell before the committee vote on the impeachment resolution Wednesday that the Judicial Qualifications Commission was also taking after Carrillo.

"He thought that may be grounds for delay of our committee's action," said Hale. "But I saw no reason to delay. The Judicial Qualifications Commission is at about the same point we were last May (when impeachment action was first proposed by Rep. Terry Canales of Premont)."

The commission must allow Carrillo 15 days to respond to written charges. A hearing, similar to a trial, would follow.

After receiving a report from the trial judge or master, the commission would report its recommendations, if removal action is decided on, to the State Supreme Court. The high court has power to order censure, retirement or removal, or to reject commission recommendations entirely.

Under the proposed new constitution the legislature would not be given authority to impeach district judges.

THE PRESIDENT: Copies of the Answer are now available to each of the Members of the Court in your offices.

MR. MITCHELL: In addition, Mr. President, I would like to have filed with the Answer the brief in support of the original answer and request in addition that it be permitted to be filed and also that a copy be made available to each member of the Court.

(Verbatim Copy of Original Document as received)

IN THE MATTER OF THE IMPEACHMENT
OF O. P. CARRILLO, DISTRICT JUDGE
BEFORE THE SENATE OF THE STATE OF TEXAS

BRIEF IN SUPPORT OF ORIGINAL ANSWER
OF O. P. CARRILLO

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Introductory Statement

On or about the 5th day of August, 1975, Articles of Impeachment were preferred against O. P. Carrillo, District Judge, by vote of the House of Representatives of the State of Texas. O. P. Carrillo, as Respondent, has filed his Original Answer to the charges contained in said Articles of Impeachment. The following is a brief in support of said Answer.

POINT I RESTATED AND ARGUED

POINT I

SENATE WITHOUT JURISDICTION TO CONSIDER ARTICLES OF IMPEACHMENT ARISING OUT OF HOUSE AND COMMITTEE ACTION TAKEN IN ABSENCE OF JURISDICTION

FACTS, ARGUMENT, AND AUTHORITY UNDER POINT I

The Senate may convene only to consider Articles of Impeachment that comport with the Constitution and laws of the State of Texas; to do otherwise would be a non sequitur. In the instant case, however, the Articles of Impeachment, *inter alia*, do not comport with the Constitution of the State of Texas in that the House which voted the Articles had no authority to be in session at the time that vote was taken. Article III, section 5, of the Texas Constitution provides that "The Legislature shall meet every two years at such time as may be provided by law and at other times when convened by the Governor." (Emphasis added.) The Legislature adjourned *sine die* at midnight, June 2, 1975, in accordance with the dictates of Article 5422, V.A.C.S., and Article III, section 4 of the Texas Constitution. The Governor did not call the House back into special session. Hence, the House acted in violation of the Constitution of the State. Reliance on Article 5962, V.A.C.S. as authority for the House's actions is misplaced as that statute is repugnant to the above-cited Article III, section 5 of the Texas Constitution. The Texas Supreme Court has never confronted directly the constitutionality of Article 5962. However, an indication of the action it would take if so confronted was given in Walker v. Baker, 196 S.W. 2d 324 (Tex. 1946), wherein it was held that the Senate had

no authority to call itself back into session to consider the Governor's recess appointments. The rule of construction it adopted in that case is significant: "Where a power is expressly given and the means by which, or the manner in which, it is to be exercised is prescribed, such means or manner is exclusive of all others." *Id.*, at 327. Following such a rule, Article 5962 is unconstitutional.

Likewise, the members of the House Select Committee that reported out the Articles of Impeachment had no authority to act. First, since their work extended beyond the end of the legislative session, they, too, violated Article III, section 5 of the Texas Constitution, as their powers are necessarily limited by those of the House. Secondly, Article XV, section 1, of the Texas Constitution grants impeachment powers only to the House and not to its committees. Following the rule of construction laid down in *Walker*, the only means by which such power may be exercised is through the whole House. Hence, to the extent that Article 5962 authorizes the formation of committees, it is repugnant to the Constitution of Texas. To assert, furthermore, that the House Select Committee did not impeach O. P. Carrillo within the meaning of Article III, section 5 is to ignore reality, as it was taking the testimony of witnesses and framing the articles. The House merely ratified the committee's report and recommendations after a day and a half of deliberation.

POINT II RESTATED AND ARGUED

POINT II

ARTICLES OF IMPEACHMENT INVALID AS BASED ON PROCEEDINGS OUTSIDE THE JURISDICTION OF THE HOUSE SELECT COMMITTEE ON IMPEACHMENT

FACTS, ARGUMENT, AND AUTHORITY UNDER POINT II

H.S.R. 167, creating the House Select Committee on Impeachment, limited the scope of the committee's inquiry to matters contained in H.S.R. 161. H.S.R. 161 authorized investigation solely on the charge that Carrillo had been indicted by a Federal Grand Jury on multiple counts of Federal tax violations. As per an opinion by Mr. Robert Johnson dated the 30th day of July, 1973, all interim acts of the House committees are governed by the Legislative Reorganization Act of 1961, Art. 5429f. When the legislature is not in session, the committee can meet, but committee action can only take place to the extent the committee is so authorized by the resolution creating such committee. "If there is no duly passed resolution and no authorization or direction by the Speaker, the committee, or any subcommittee thereof, has no authority to act in any fashion whatsoever." (Letter of July 30, 1973.) Therefore, the Articles of Impeachment are void because they are the product of and are themselves beyond the scope of the resolutions authorizing such investigation, H.S.R. 161 and H.S.R. 167.

An excerpt from Respondent's First Response to the committee hearings sets out the objections Respondent makes herein:

H.S.R. 161, being the source of the power of this Committee, speaks only in terms of "indictment by Grand Jury." Nevertheless, after approximately a week of testimony, the questions and witnesses presented before the Committee reach matters totally and completely unrelated to whether or not Judge O. P. Carrillo has been indicted (a matter which would have been admitted at the outset of the hearings), but to a broad spectrum of acts of misconduct (established by witnesses through hearsay and otherwise incompetent testimony) outside the scope of H.S.R. 161 and therefore outside the power of this Committee as delimited by the Legislative Reorganization Act of 1961 (Art. 5429f, V.A.C.S.).'

It is impossible for the House of Representatives through the Select Committee to ignore and violate the procedures the House previously enacted into statute. Once the legislature enacts statutory procedures under which they must proceed, it cannot ignore them. Anderson v. Grossenbacher, 381 S.W. 2d 72, 74 (Tex. Civ. App.-San Antonio 1964, ref'd. n.r.e.). Considering the extensive investigation beyond the scope of its authority, and its inability under the law of Texas to undertake such extensive investigation without authorization, the acts of the House Committee and the subsequent Articles of Impeachment are void under the Legislative Reorganization Act of 1961 (Art. 5429f, V.A.C.S.).

POINT III RESTATED AND ARGUED

POINT III

ARTICLES OF IMPEACHMENT INVALID AS BASED ON PROCEEDINGS OF THE HOUSE SELECT COMMITTEE ON IMPEACHMENT IN VIOLATION OF TEXAS OPEN MEETINGS ACT

FACTS, ARGUMENT, AND AUTHORITIES UNDER POINT III

Article III, section 11 of the Texas Constitution provides that "Each house may determine the rules of its own proceedings." The obvious purpose of this provision is to prevent any other legislative body or the Governor from altering the legislature's rules. Once each chamber of the legislature enacts procedures into general statutory law, the legislature is required to enforce and abide by such procedures. "We are . . . dealing with statutory procedures under which the legislative body must proceed and which it is not free to ignore." Anderson v. Grossenbacher, supra. The legislature has enacted procedure applicable to its own meetings under the Open Meetings Law, Article 6252-17, V.A.C.S. (1974). The Attorney General found Section 2(b) prohibiting any secret or executive sessions of the legislature clearly applicable to legislative committees. Attorney General Letter Advisory No. 84 (1974). Section 2(b) of the Act provides:

"The Legislature is exercising its rule-making powers to prohibit secret meetings of the Legislature, its committees, or any other bodies associated with the Legislature."

Thus, Section 2(b) of the Texas Open Meetings Act clearly indicates that the legislative body of the State of Texas has made a statutory enactment under which the Legislature itself must proceed and which it is not free to ignore.

A. As provided by Section 3A of the Act, the State must publish written notice of the date, hour, place, and subject of each meeting, which notice must be presented at least seventy-two hours in advance.

The notice sent to Plaintiff on May 19, 1975, was wholly inadequate. It did not state the charges preferred against Respondent herein, nor did it give any notice of the specific charge on which the impeachment inquiry was based.

The notice was also inadequate under the Texas Open Meetings Act, Art. 6252 - 17, Sec. 3A (1967), as amended (1974). Under this Act, notice of all meetings of any governmental body must be posted seventy-two hours preceding the day of the meeting. The sole notice of the proceedings was received by Respondent only twenty-four hours before the commencement of the committee meeting.

Actions taken in violation of the notice provisions of the Open Meetings Act are void and of no effect. City of San Marcos v. Lower Colorado River Authority, 508 S.W. 2d 403 (Tex. Civ. App. Austin 1974, writ granted). Considering the lack of notice given Respondent, all the actions of the House Select Committee on Impeachment were

void as in violation of the Texas Open Meetings Act.

B. All actions in closed sessions are void.

Of the twenty-one meetings of the House Select Committee on Impeachment, at least a portion of each of eleven meetings were resolved into executive sessions. The exact contents of these executive sessions are unknown to the Respondent. Neither Respondent nor his attorney were permitted to be present at the sessions. These sessions are not exempted from the operation of the Texas Open Meetings Act by Sec. 2(1) of that Act because several decisions and votes regarding matters discussed in the closed sessions were made by the Committee in closed session. It is very difficult to provide an accurate account of the actions taken by the committee in executive session since no detailed minutes of the proceedings have been given to the Respondent. Rather terse committee reports indicate that the executive sessions were often strategy meetings. The committee sometimes met with Bob Johnson or Terry Doyle to discuss the presentation of the committee's case. These executive sessions occurred often during the middle of the open meeting and sometimes during the testimony of a witness. In these executive sessions, the committee made such decisions as the decision as to the person to be subpoenaed by the committee, the decision to send representatives of the committee to South Texas, and the decision as to the time and place of the next committee meeting.

All closed sessions of the Select Committee on Impeachment were in violation of the Texas Open Meetings Act, Art. 6252-17. Section 2(g) allowing closed sessions under special circumstances to governing bodies is not applicable to executive sessions of the House Select Committee on Impeachment because the function of the committee does not fall within the provisions of Sec. 2(g). As stated in the Report of the Select Committee on Impeachment to the Speaker and the House of Representatives the committee's "sole function is to conduct an investigation to determine whether or not there are sufficient grounds to justify presentment of charges." Page 27. Thus, the committee's numerous executive sessions, whether they included decision making or local gossip, were in violation of the state law because they were not under the exception to the Act, but were rather under general rule of Sec. 2(b) prohibiting any secret sessions of the legislature.

POINT IV RESTATED AND ARGUED

POINT IV

ARTICLES OF IMPEACHMENT INVALID AS BASED ON PROCEEDINGS IN VIOLATION OF DUE PROCESS AND DUE COURSE OF THE LAW

FACTS, ARGUMENT, AND AUTHORITIES UNDER POINT IV

A. Statutory creation of the office of District Judge in Duval County by Article 199, subd. Sec. 229, Sec. 3(a) V.A.C.S. (1969) is sufficient State action to require the impeachment process to follow standards of due process.

Once the State through case law, statutes, or rules and understandings creates a right or expectation of re-employment in a public official, the State has created a property right which cannot be denied without due process of law. *Klein v. New Castle County*, 370 F. Supp. 85 (D. Del. 1974). The right to due process has been given to individuals in their private capacity as well as public employees. *Gonzales v. Gonzales*, 385 F. Supp. 1226 (D. Puerto Rico 1974). A police chief is a public official in a capacity analogous to that of district judge. Both may be elected by the people of their district. A recent federal case held that pretermination hearings involving police chiefs must comply with due process requirements, including an opportunity to be represented by counsel at the pretermination hearing, to cross-examine witnesses presenting adverse

testimony, to present his own defense, to call witnesses in his own behalf, to have a method of review of the proceedings, and to be tried by "an independent, neutral, and detached decision maker." *Jenner v. Board of Trustees of Village of East Troy*, 389 F. Supp. 43 (E.D. Wis. 1974). During the committee hearings, the Respondent was not allowed to freely cross-examine all witnesses, to present a sufficient defense, to call witnesses in his own behalf, or to be tried by an independent, detached decision maker.

The House Select Committee claims impeachment is not a criminal proceeding. Assuming, *arguendo*, this to be true, it is completely illogical to analogize the proceedings by the House Select Committee to that of a grand jury. Instead, it is much more logical to analogize the procedures to those of a pretermination hearing or to a hearing prior to disbarment, both of which require due process.

B. The standards applicable to the removal, disqualification, or impeachment of a judge are analogous to the attorney's deprivation of a property interest when he is disbarred.

Since *Schwartz v. Board of Bar Examiners*, 77 S. Ct. 752, 353 U.S. 232, 238-239 (1954) becoming a member of the bar is a matter of right, and states cannot exclude any person from the practice of law or any other occupation in a manner or for reasons contravening the Due Process Clause. Disbarment proceedings are analogous to removal or impeachment of a district judge. In both situations, the proceedings are not like those of a grand jury, and it is more than a termination of employment; it is barring an individual from his vocation. "Procedural due process requires confrontation and cross-examination of those whose word deprives him of his livelihood." *Willner v. Committee on Character and Fitness*, 83 S. Ct. 1175, 373 U.S. 96, 103 (1963).

Not only was Respondent denied due process in the committee hearings; but the failure to allow the Respondent to contest the basis of the committee reports before the vote in the House on the impeachment articles is a denial of due process. The requirements of due process must apply at the concluding as well as the investigatory committee procedures. *Willner v. Committee on Character and Fitness*, *supra* at 103.

Respondent's right to due process has been violated likewise because he did not receive proper notice of the charges to be investigated before the commencement of the committee's proceedings. The telegram was inadequate notice to Respondent of the charges against him. "The charge must be known before the proceedings commence." *In re Ruffalo*, 88 S. Ct. 1222, 390 U.S. 544, 550 (1968).

Like the attorney in a disbarment proceeding, the district judge is entitled to a presumption of innocence. This is one of the basic requirements in due process of law. *Board of Commissioners of the State Bar v. Jones*, 291 Ala. 371, 281 So. 2d 267 (1973). The proceedings, as conducted, threaten to deny Respondent the presumption of innocence in that the automatic suspension from office as provided by Article 15, Sec. 5 of the Texas Constitution causes the accused to enter the Senate trial without the presumption of innocence.

C. Under state law Art. I, Sec. 19 of the Texas Constitution, the Respondent is guaranteed "due course of the law of the land."

Article I, Sec. 19 of the Constitution of the State of Texas, which provides that "No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land," is the "due process" clause of the State Constitution. The words "due process of law" or "due course of the law of the land" are the equivalents of the phrase "law of land" in Magna Carta. Interpretive Commentary, Art. I, Sec. 19 Texas Constitution. Due course of law in Texas encompasses an opportunity to prepare a defense, reasonable notice of the charges against one and opportunity to cross-examine witnesses. *Merriman v. Ball*, 116 Tex. 527, 296 S.W. 1085 (1927).

Art. I, Sec. 19 of the Constitution of the State of Texas, unlike Amendments Five and Fourteen to the Constitution of the United States, includes within the scope of

its protection privileges or immunities. At the time of drafting it must have been intended to be broader in scope than the provisions of the Constitution of the United States. Throughout its history it has been considered at least equivalent in the protection it affords with the scope of the Federal Constitution. *Mellinger v. City of Houston*, 63 Tex. 37, 3 S.W. 249 (1887).

Article I, Sec. 19 of the Constitution of the State of Texas establishes the due process standard which must be followed in the termination of all public officers. "A public officer, holding office for a fixed term subject to removal for cause, is entitled to notice and a hearing." *Ridgway v. City of Fort Worth*, 243 S.W. 740 (Tex. Civ. App. - Fort Worth 1922, dismissed). The right of a public office to due course of law thus has been established in Texas for over fifty years. Respondent holds this same right to notice and a fair and impartial hearing. Examination of the facts preceding and during the hearings of the Select Committee on Impeachment indicate Respondent's rights have been ignored; therefore, the committee proceedings should be held for naught and the Articles of Impeachment arising therefrom should be held invalid for any purpose.

D. Respondent's due process rights were violated as a result of inadequate notice and hearing.

As noted above, in connection with the committee's numerous violations of the Texas Open Meetings Act, the notice of impeachment proceedings sent to Respondent on May 19, 1975 was wholly inadequate, failing to state the charges preferred against Respondent herein and failing to give any notice of the specific charge upon which the impeachment inquiry was based.

As likewise noted above, under Article 6252-17, Sec. 3A, V.A.C.S. (1967), as amended (1974), notice of any meeting of a governmental body must be posted seventy-two hours preceding the day of the meeting. The sole notice from the committee was received by Respondent only twenty-four hours before the first committee meeting, thus failing to give Respondent adequate, timely notice as required by due process standards.

The committee hearings were conducted in such a way as to deny Respondent his Constitutional Rights to due process. He has been denied the right to freely cross-examine all the witnesses against him; and he has been denied the right to make objections to any part of the proceedings. Under these conditions, all the proceedings by the Select Committee on Impeachment were unconstitutional. The restraints on Respondent at the Committee hearings denied him the right to present his own defense which is the prerequisite of an adequate hearing.

POINT V RESTATED AND ARGUED

POINT V

SENATE WITHOUT JURISDICTION BECAUSE COLLECTIVE EFFECT OF CIRCUMSTANCES SURROUNDING IMPEACHMENT PROCESS RESULTS IN DENIAL OF DUE PROCESS

FACTS, ARGUMENT, AND AUTHORITY UNDER POINT V

It is an old principle of constitutional law that even though deprivations of a person's right to due process considered singly by themselves would not be sufficient to mandate judicial redress, their collective effect would be to do so. *Moore v. Dempsey*, 261 U.S. 86 (1923) (no one act deprived the defendants of their due process rights; indeed the defendants had all the technical rudiments of fair procedure); simply the sum total of certain events surrounding the trial fatally poisoned the atmosphere; *Allee v. Medrano*, 94 S. Ct. 2191, 2200 (1974) (single acts of misconduct by state officers would not have been grounds for federal equitable relief; a "pattern" of them was). This principle was no where better put than by Chief Justice Anderson of the Alabama Supreme Court in his dissent to the famous "Scottsboro" case. After discussing

various reasons why the defendants' rights to a fair trial were violated, he stated:

It may be that neither of the foregoing reasons, if standing alone should reverse these cases, but when considered in connection with each other, they must collectively impress the judicial mind with the conclusion that these defendants did not get the fair and impartial trial that is required by the Constitution. *Powell v. State*, 224 Ala., 540, 141 So. 201, 215 (1932), rev'd 287 U.S. 45 (1932).

The totality of the circumstances surrounding the impeachment proceedings compel the conclusion that the Respondent's due process rights have been violated. First, *inter alia*, the impeachment proceedings were instigated by Representative Terry Canales, attorney for Archer Parr and member of the Parr faction of South Texas, to advance the fortunes of that faction. Secondly, the committee refused to subpoena Archer Parr, calling his testimony not relevant, yet it met with him at a closed, unannounced meeting in Alice, Texas. Thirdly, the sessions of the House Select Committee and the House were given extensive publicity by the media across the State of Texas, destroying the presumption of innocence to which the Respondent is entitled. Finally, the full House did not hear witnesses or examine other witnesses in its impeachment deliberations, nor did it redress the deprivations of due process discussed above; instead, it ratified the committee's report, save for one article, after a day and a half of debate.

POINT VI RESTATED AND ARGUED

POINT VI

SENATE WITHOUT JURISDICTION TO ACT UNDER UNCONSTITUTIONALLY VAGUE AND INDEFINITE IMPEACHMENT PROVISIONS

FACTS, ARGUMENT, AND AUTHORITY UNDER POINT VI

It is now a well established precept of constitutional law that vagueness in legal standards violates due process. E.g., *Lanzetta v. New Jersey*, 306 U.S. 451 (1939); *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952); *United States v. Cardiff*, 344 U.S. 174 (1953). It is not necessary that the vague standard be a criminal one with criminal penalties. *Baggett v. Bullitt*, 377 U.S. 360 (1964). "It is not the penalty itself that is invalid, but the exaction of obedience to a rule or standard that is so vague and indefinite as to be really no rule or standard at all." 377 U.S. at 374. Indeed in *Baggett* the Court held a Washington statute merely delineating standards that had to be met before one could get employment from the state to due process specificity standards. In fact, it is not even necessary that the vague standard be a statute, for in *Baggett* the Court also held an oath required of prospective state employees to be void for vagueness.

The principle behind *Baggett* and the other void-for-vagueness cases is one central to American Jurisprudence: a person must know what is wrongful conduct. A standard violates due process if it is couched "in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." *Baggett*, 377 U.S. at 366. Since even a standard required before someone may receive something from the state (e.g., the oath in *Baggett*) must be specific, surely a constitutional provision concerning the removal from office (that is, the taking of the office of judge) must be held to the same constitutional standard. The Texas Constitution, however, does not specify a course of conduct, even in the vaguest of terms, that would constitute an impeachable offense. The word impeachment describes a punishment, not a standard of conduct.

Construction of the provisions by state courts have not corrected the provision's deficiencies, for the Texas Supreme Court in *Ferguson v. Maddox*, 263 S.W. 888 (Tex.

1924) declined to set any standards to which the Texas Senate must be bound in determining what is an impeachable offense. It is insufficient to allege that the word impeachment has an ancient history in common law, for the thrust of the void-for-vagueness doctrine is to relieve the prospective defendant from the burden of plowing through old case books and tomes and discerning a rule of conduct from jumbled and conflicting precedents.

POINT VII RESTATED AND ARGUED

POINT VII

SENATE WITHOUT JURISDICTION UNDER IMPEACHMENT PROVISIONS DENYING SUBSTANTIVE DUE PROCESS OF LAW AND AMOUNTING TO BILL OF ATTAINDER AND EX POST FACTO LAW

FACTS, ARGUMENT, AND AUTHORITY UNDER POINT VII

A. Article I, Sec. 16 of the Constitution of the State of Texas forbids the passing of Bills of Attainder, that is, legislative actions pronouncing punishment on someone without a proper hearing. Article XV, Secs. 1 through 6 of the Texas Constitution and Article 5961, V.A.C.S. are repugnant to the bill of attainder prohibitions of the Texas Constitution in that they provide for the punishment of a public official subject to impeachment in the form of suspension from office pending trial without any specification of the requisite offenses and without any guarantee of notice and a hearing. It is an insufficient argument that the bill of attainder prohibitions apply only to criminal statutes, for as has been shown above, impeachment, with its analogous grand jury, trial, and conviction stages, is criminal in nature.

B. Ex post facto laws, forbidden by Article I, Sec. 16 of the Texas Constitution, are laws passed specifically to punish conduct that has already occurred. The failure of the Texas Constitution to specify what constitutes an impeachable offense results in the legislature's defining in the impeachment process itself impeachable offenses with which the public official is charged. In effect, the impeachable offense is proposed and defined by the House of Representatives in the charging process and ratified by the Senate in its vote to remove the public official, resulting in the punishment of the official for conduct occurring prior to the creation of the offense. Such a procedure and result are clearly prohibited by the ex post facto provision of Article I, Sec. 16 of the Constitution of the State of Texas.

The impeachment provisions of the Constitution of the State of Texas, by their complete failure to provide proper standards for conduct constituting impeachable offenses and to provide minimal due process safeguards, are clearly violative of the bill of attainder and ex post facto provisions of the Constitution of the State of Texas (which, as general provisions of the Constitution are controlling over the more specific impeachment provisions of the Constitution under the elementary rules of legislative construction) and, moreover, deny to Respondent substantive due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

POINT VIII RESTATED AND ARGUED

POINT VIII

PRIOR JURISDICTION ESTABLISHED IN OTHER FORUMS AND NATURE OF IMPEACHMENT PROCEEDINGS CALL FOR EXERCISE OF LEGISLATIVE RESTRAINT BY THE SENATE

FACTS, ARGUMENT, AND AUTHORITY UNDER POINT VIII

A. Prior jurisdiction rests with the Judicial Qualifications Commission.

By a letter dated May 2, 1975, from the State Judicial Qualifications Commission, Respondent was notified through the office of Maurice Pipkin, Executive Director of the Commission, that the Commission was entering into a preliminary investigation of the alleged acts of misconduct. This preliminary investigation triggered the statutory jurisdiction of the Commission under Article X, Sec. 1-a of the Texas Constitution. Under this statute the Judicial Qualifications Commission has the power to remove a judge from office for "willful or persistent conduct, which is clearly inconsistent with the proper performance of his said duties or casts discredit upon the judiciary or administration of justice." Art. V, Sec 1-a(6)a. In this situation the Senate should exercise legislative restraint and allow the processes of the Judicial Qualifications Commission to continue.

Impeachment is an extraordinary procedure which has fallen into disrepute in recent years because of the extreme cost to the state, among other reasons. Such an extreme action resulting in far-reaching effects not only on Respondent but also on the political atmosphere of the State of Texas is not demanded. That impeachment, with its necessarily political nature, is not a proper action for the removal of a district judge, is manifested by the newly-drafted Texas Constitution. Under the new Constitution there is no provision for impeachment of district court judges, the Judicial Qualifications Commission procedures having been adopted for such a purpose.

B. The Federal District Court holds prior jurisdiction.

The pending trial of Respondent on the indictment in Cause No. CR-75-C-45 in United States District Court for the Southern District of Texas, Corpus Christi Division, for multiple violations of the criminal tax fraud statute provides a method of adjudication of the improper actions of which the Respondent is accused. If the Respondent is found guilty on the basis of the Federal indictment, then under appropriate Texas statutes, Respondent Carrillo would be automatically disbarred and, thus, pending appeal from any adverse finding, be precluded from exercising the prerogatives of office. Under such a circumstance, the Senate should prevent unnecessary expense and labor by exercising legislative restraint and discontinuing trial on the Articles of Impeachment at least until such trial in Federal Court is completed and the verdict rendered.

C. The pretrial publicity has made it impossible for Respondent to receive a fair and impartial trial.

Previous to and following the convening of the House of Representatives on August 4, 1975, overwhelming statewide newspaper, radio, and television publicity has attended the impeachment proceedings against Respondent. In order for Respondent to receive a hearing with "a panel of impartial, 'indifferent' jurors," it will be necessary for the Senate to exercise legislative restraint and allow the Judicial Qualifications Commission with its proceedings closed to the public and the press to continue its procedures. *Irwin v. Dowd*, 81 S. Ct. 1639, 366 U.S. 717 at 722 (1961). In exercising this power, the Senate would not only save the state great expense for what is largely a duplication of the effort of the Judicial Qualifications Commission, but would also allow the Commission to proceed with a fair and impartial hearing in the absence of prejudicial publicity. In the impeachment trial before the Senate, with the proceedings being of such statewide interest largely because of the impeachment procedure itself, it will be impossible to prevent the atmosphere from being clouded by "inflammatory publicity to accommodate the public atmosphere for carnival." *Murphy v. Florida*, 95 S. Ct. 2031, 2036 (1975). Allowing such persuasive media coverage will turn what by rights should be solemn proceedings into a circus. *Murphy v. Florida, supra*. Although such an atmosphere in all likelihood will not arise directly from the distinguished judges and jurors or the witness stand, it will be impossible to prevent material interference with the impartiality and fairness required in the courtroom. The statement by the

Supreme Court in the case of *Sheppard v. Maxwell*, 86 S. Ct. 1507, 384 U.S. 333 (1966) indicates the extremely detrimental effect publicity can have on a trial:

"Much of the material printed or broadcast during the trial was never heard from the witness stand, such as the charges that Sheppard had purposely impeded the murder investigation and must be guilty since he had hired a prominent criminal lawyer; that Sheppard was a perjurer; that he had sexual relations with numerous women; that his slain wife had characterized him as a 'Jekyll-Hyde'; that he was 'a bare-faced liar' because of his testimony as to police treatment; and finally, that a woman convict claimed Sheppard to be the father of her illegitimate child. As the trial progressed, the newspapers summarized and interpreted the evidence, devoting particular attention to the material that incriminated Sheppard, and often drew unwarranted inferences from testimony." *Sheppard v. Maxwell*, 86 S. Ct. 1507, 384 U.S. 333, 356-57 (1966).

Realizing the possibilities of rendering an improper verdict, and realizing, in addition, the effect which such publicity will have on Respondent's rights in his Federal trial, the Senate should exercise its power of legislative restraint, refrain from trying Respondent on the Articles of Impeachment, and allow the Judicial Qualifications Commission to continue its proceedings.

POINT IX RESTATED AND ARGUED

POINT IX

ARTICLES OF IMPEACHMENT INSUFFICIENT FOR LACK OF SPECIFICITY AS TO CONSPIRACY ALLEGATIONS

FACTS, ARGUMENT, AND AUTHORITY UNDER POINT IX

An indictment for conspiracy must contain certain things for it to be legally sufficient. In particular, it must contain:

- 1) the time of the offense. Texas Rules of Criminal Procedure, Art. 21.02;
- 2) the place where the offense occurred. Texas Rules of Crim. Proc., Art. 21.02;
- 3) the other parties to the conspiratorial agreement. Dever v. State, 30 S.W. 1071 (Tex. Crim. App. 1899).
- 4) the object of the conspiracy. Carter v. State, 237 S.W. 285 (Tex. Crim. App. 1922).

The indictment should aver the facts necessary to constitute the conspiracy in ordinary and concise language so that a reasonable person would know what is alleged to have occurred. Carter v. State, *supra*.

Even if the conspiratorial charges in the Articles of Impeachment are termed civil in nature, the allegations would still have to set forth the facts on which the charges are based. State v. Ford Motor Co., 169 S.W.2d 504 (Tex. Civ. App., 1943), *aff'd* 175 S.W.2d 20 (Tex. 1943).

The Articles of Impeachment as preferred by the House Select Committee on Impeachment, and particularly the conspiracy allegations therein, wholly failing to conform to the standards of specificity required for civil or criminal pleadings, fail to give Respondent adequate notice of either the charges against him or the facts the House of Representatives intends to prove upon trial and are insufficient as a charging document upon which trial before the Senate may be based.

POINT X RESTATED AND ARGUED

POINT X

ONLY ACTS INVOLVING OFFICIAL MISCONDUCT CONSTITUTE IMPEACHABLE OFFENSES

FACTS, ARGUMENT, AND AUTHORITY UNDER POINT X

The Texas Supreme Court, in Ferguson v. Maddox, 263 S.W. 888 (Tex. 1924), held that public officials could be impeached only for "official delinquencies, wrongs, or malfeasances," i.e., official misconduct. This has been the prevailing view of authorities. R. Berger, IMPEACHMENT, 193 (1973). See also J. Feerick, Impeaching Federal Judges: A Study of the Constitutional Provisions, 39 FORDHAM L. REV. 455 (1970) for a list of the authorities supporting this view. The House Select Committee has admitted that the acts of Respondent involved no official misconduct; hence, he cannot, as a matter of law, be guilty of an impeachable offense.

POINT XI RESTATED AND ARGUED

POINT XI

CONDUCT OCCURRING PRIOR TO ELECTION TO OFFICE NOT GROUNDS FOR REMOVAL

DFACTS, ARGUMENT, AND AUTHORITY UNDER POINT XI

Article 5986, V.A.C.S. provides that: "No officer shall be removed from office for any act he may have committed prior to his election to office." All acts which the Federal indictment alleges Respondent committed occurred, if at all, prior to the Respondent's election to the office of judge on November 1, 1974. The acts relating to the Federal indictment were the only acts on which the House Select Committee could make a report, as they were the only acts set out by H.S.R. 161 as grounds for the impeachment of the Respondent. Likewise, all of the other alleged acts that were investigated by the House Select Committee beyond the scope of its enabling resolution and that form the basis of the other Articles of Impeachment occurred prior to the Respondent's election to office.

The rationale for the statute is that the public is the ultimate arbiter of what constitutes improper conduct by state officials. Reeves v. State, 114 Tex. 296, 267 S.W. 666 (1924). The statute has been applied in proceedings involving the Judicial Qualifications Commission, though with the proviso that the acts committed prior to election must have been known to the electors. In Re Laughlin, 265 S.W. 2d 805 (Tex. 1954); In Re Brown, 512 S.W. 2d 317 (Tex. 1974). Even accepting arguendo the requirement that the alleged acts be known to the public, the burden was on the House to make a determination that the acts were unknown to the public (whatever that phrase might mean), yet it failed to do so.

POINT XII RESTATED AND ARGUED

POINT XII

DISTRICT JUDGE MAY NOT BE IMPEACHED FOR UNLAWFUL DISBURSEMENTS OF COUNTY FUNDS AS A MATTER OF LAW

FACTS, ARGUMENT, AND AUTHORITY UNDER POINT XII

The power to disburse county funds rests only with the commissioner's court. Art. 2351, V.A.C.S. It does not rest with a state district judge. Lacking the power to order or cause disbursement of county funds, Respondent as a matter of law cannot be charged with an offense involving official misconduct under Articles I, V, VII, VIII,

IX, and X of the Articles of Impeachment, which Articles contain charges involving misdirection of county funds. Because impeachable offenses are only those involving official misconduct, under the authority cited in Point X, Respondent may not be impeached for the conduct alleged in the above Articles, and said Articles are therefore insufficient as a matter of law to charge offenses upon which trial before the Senate may be based.

CONCLUSION AND PRAYER

For the reasons and authorities cited in the foregoing Brief in Support of Original Answer, Respondent respectfully prays that the Senate grant the relief requested in the prayer to Respondent's Original Answer, incorporated herein for all purposes.

Respectfully submitted,

RICHARD HAYNES
Suite 610, 711 Fannin St.
Houston, Tx. 77002

ARTHUR MITCHELL
JAN WOODWARD FOX
315 Westgate Bldg.
Austin, Tx. 78701

By /s/ Arthur Mitchell
Arthur Mitchell

ATTORNEYS FOR RESPONDENT

THE PRESIDENT: Mr. Mitchell, do you waive the reading of the Answer?

MR. MITCHELL: Yes.

THE PRESIDENT: Let the record show that Counsel for the Respondent waived a full reading of the Answer before the Court. The other items that Counsel has presented are in the custody of the Clerk of the Court and will become a part of the record of the trial.

Mr. Mitchell, the Clerk of the Court has raised a point here that some of these attachments are very difficult to read and every effort, of course, will be made to see that these are faithfully reproduced, but there are portions of the attachments here that do present some difficulty.

MR. MITCHELL: With leave of Court, Mr. President, may I have a member of my staff get with Mr. Schnabel and see if we can't reproduce those so that they can be read by each and every member of the Court regardless of age.

THE PRESIDENT: Is there objection to the procedure outlined by the attorney for the Respondent? The Chair hears none, it stands approved.

MR. DOYLE: Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: I just have a question, Mr. President. You indicated earlier that a record of each day's activities would be available to us. Is that going to pose any

problems in attempting to put these in tomorrow's record?

THE PRESIDENT: The Chair is advised by the Clerk of the Court that with the current state of the exhibits, yes, that will indeed present a problem. The Chair hopes that Counsel for the Respondent will be able to furnish more legible copies so that the record can be promptly produced.

MR. DOYLE: In that same regard, Mr. President, we just received Mr. Mitchell's pleadings today and have obviously not had time to prepare an Answer to his brief and assume that the Court will grant us leave to file that at such a time as we have had an opportunity to review and prepare such brief.

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: Yes, as long as we have the same right to amend, Mr. President, in the event that Counsel's Answer raises matters that we deem should be properly answered for and on behalf of the Court.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Well, what leave the Court grants them I'm not concerned about, Mr. President, I only want to be sure that we have the right to file such a brief at such time as perhaps even the Court may not be in session. We will certainly furnish to Mr. Mitchell upon filing any pleadings or briefs -- we will furnish him copies of the same at the time we file them.

What I'm concerned about, Mr. President, if you're going to put any time limitations on us with respect to that sort of thing, we need to know it as soon as possible.

THE PRESIDENT: Is there objection from any Member of the Court to following the procedure outlined by Mr. Doyle, that is, he be granted leave to file his response to the brief at any time, that response, of course, will be made available to each Member of the Court at that time or at any subsequent session of the Court it seems to the Chair that the matters raised by Mr. Mitchell should be determined. Is there objection from any member of the Court to following that procedure?

The Chair hears none, it is so ordered.

Mr. Mitchell for a motion.

MR. MITCHELL: Mr. President, Members of the Court, I have and would like to file an addition to the Answer which contains pleas to the jurisdiction, pleas in abatement and special exceptions, a motion to disqualify the Attorney General and a motion to postpone the procedure following action of the Court on the motion to disqualify the Attorney General from the proceedings.

THE PRESIDENT: Which motion would you desire to take up first, Mr. Mitchell?

MR. MITCHELL: I would prefer, Mr. President, the motion to disqualify the Attorney General.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President, it makes no difference to me. The only thing I'm thinking of is it's now after 4:00 o'clock and the first motion is likely to take less time

than the second motion. That is the motion to postpone is likely to take less time than the motion to disqualify. And I would prefer not to be interrupted by an overnight delay during the consideration of any motion.

THE PRESIDENT: Mr. Mitchell and Mr. Doyle, could you give the Court an estimate of the amount of time you would anticipate argument on each of these motions?

MR. MITCHELL: Yes, Mr. President, the Respondent won't want more than four or five minutes of this Court's time to argue the motion to disqualify and about five minutes to argue the motion to postpone. It won't take me any longer than that.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President, on the motion for a delay I will take very little time. The motion to disqualify, I will have a little bit more to say about and I would anticipate some discussion, perhaps, by members of the Court on the second motion and probably not on the first motion.

THE PRESIDENT: Could you furnish us a time estimate of the amount of your presentation?

MR. DOYLE: Ten or fifteen minutes perhaps on the second motion.

THE PRESIDENT: What the Chair has in mind obviously -- while it is after 4:00, it's not for example, after 5:00 or after 6:00 and these are the only two motions on the President's desk here to be disposed of. It looks as if this Court could dispose of all matters before it by keeping on it today, rather than coming back overnight. And if it is the sense of the Court that we wish to stay on this afternoon and dispose of these matters rather than stay over until tomorrow the Chair will proceed in that manner.

The Secretary will read the motion.

The Secretary/Clerk read the following:

IN THE MATTER OF THE IMPEACHMENT OF O. P. CARRILLO, DISTRICT JUDGE

BEFORE THE SENATE OF THE STATE OF TEXAS

MOTION TO DISQUALIFY ATTORNEY GENERAL

Comes now O. P. CARRILLO, by and through his attorney of record, and moves to disqualify the Attorney General and members of his staff from participation either as general counsel and/or assistant for the board of managers and/or general counsel or assistant for Judge O. P. Carrillo, and in support thereof would make the following statement:

I.

The Attorney General and members of his staff should be precluded from participating directly or indirectly in the present impeachment proceedings, in that there is no provision for the participation in the rules of procedure governing the impeachment.

II.

The Attorney General should be precluded from participating herein, for to allow him to participate is to violate the basic separation of power doctrine as contained in the Constitution, he being a member of the Executive Department and the impeachment procedure being strictly and fully a legislative function.

III.

The Attorney General is further precluded from participation herein, in that he has a conflict of interest, having constituted a member of the task force set up in the Duval County area in early 1975, charged (with other law enforcement agencies) with the responsibility of intense investigation of alleged wrongdoings in the county by Parr forces or Carrillo forces. He and his staff have undertaken an active investigation and one that has been sustained and continuous, to the end that he and his staff have personally presented dozens of cases to the various grand juries in the Duval County area, and at least in one instance primarily responsible for the indictment of O. P. Carrillo as well as Carrillo-aligned individuals in that the present controversy arises out of a tremendously volatile conflict between Carrillo and Parr people and that the evidence previously introduced by the subcommittee under H.S.R. 161 shows many violations by the Parr people and that it is a fact that there have been very few indictments returned where the Parr people are concerned but some returned where the Carrillo people are concerned. The Attorney General appears caught in a political conflict, making it inappropriate for him to continue alignment with the Parr faction and anti-Carrillo faction.

WHEREFORE, PREMISES CONSIDERED, for the reasons set out herein, that is, that there is no provision in the Constitution, law, or rules for the participation of the Attorney General herein, Judge Carrillo moves he and his staff be stricken and not permitted to appear for and in behalf of the board of managers or for anyone, and for all other relief.

Dated: 9/2/75

Respectfully submitted,

/s/ Arthur Mitchell
ARTHUR MITCHELL
315 Westgate Bldg.
Austin, Tx. 78701

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: Mr. President, it is the desire of the Court to hear further explication of the motion.

THE PRESIDENT: Yes, sir.

MR. MITCHELL: It is our position that the Attorney General as stated in the motion is not an appropriate party in the proceedings.

Mr. President and Members of the Court, first, as stated in the motion, that there is no provision specifically in the rule; secondly, none that I could find anywhere, either in the Constitution or the statutes. As a matter of fact there are statutes which provide that he has a duty to represent Judge Carrillo in a case of this type. We find, however, that he's aligned forces on the opposite party with the House Managers and earnestly presenting a case in behalf of the House Managers. Thereby converting the proceedings herein inappropriately, we submit, into a criminal procedure.

We find further, that as a matter of fact, the Attorney General has been engaged in an intense criminal investigation in the area for the better part of this last year. He has, as the record will reflect, kept a Task Force in the area. He has gathered evidence, he has gone, through his staff, before grand juries. And we simply do not want this procedure to be converted into a criminal procedure, we don't want it converted into a grand jury, Mr. President.

And we move that he be stricken. The gentlemen from the House, the Managers, have ample assistance. They have Mr. Terry Doyle, Special Counsel, they have the Managers themselves, most of whom are attorneys. They have Special Counsel and we think that certainly the case pro and con can be submitted and presented to this body amply, truthfully and completely without the undercurrent of -- for better terminology -- an aggressive prosecution in the case. And we move that he be stricken, Mr. President, and his staff.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President and Members of the Court, I would point first and foremost to Article 4399 of the Texas Civil Statutes and the Legislative Reorganization Act of 1961, which is Article 5429F of the Civil Statutes.

First, with respect to Article 4399 there is an express provision therein that committees of either branch of the Legislature on any questions touching the public interest, it provides that the Attorney General shall have the primary duty of representing --

SENATOR: Mr. President, we can't hear back here.

MR. DOYLE: Mr. President, I'm either going to have to sit down so they can hear me or I'm going to have to pick the mike up or stand up there or something. Can you hear me any better now?

Mr. President, may I have the Court's permission to sit down while I address the Court?

THE PRESIDENT: Mr. Doyle, we're getting a lavalier microphone for you there that can be plugged in.

MR. DOYLE: Mr. President, do you want me to proceed now?

THE PRESIDENT: Yes, Mr. Doyle, please.

MR. DOYLE: Mr. President and Members of the Court, I would first refer you to Article 4399 of the Texas Civil Statutes and Article 5429F of the Texas Civil Statutes, the latter being the Legislative Reorganization Act.

Both indicate clearly that not only is the Attorney General a proper person to represent the Board of Managers in this instance, but that he is obligated under the law to represent the Board of Managers in this instance.

Under the terms of these two articles, on August the 7th, 1975, Mr. DeWitt Hale, who was Chairman at that time of the Board of Managers of the House of Representatives, wrote a letter to General Hill soliciting his aid in the prosecution of this case. Now, I would point out to the members of the Court that at the time of the writing of this letter and at all times before this, the Attorney General, by statute, is obligated to represent the Judicial Qualifications Commission. His lawyers have historically always prosecuted cases before that body and in the Courts after that body has acted.

I would also point out to you that there's a great deal of logic in providing for this. And first and foremost in that logic and I can assure you in the consideration of the Board of Managers, at the time the letter was written asking for his assistance, is the question of cost, that is expense. As you can see, a few moments ago Mr. Mitchell presented an Answer. He presented attached to that Answer an extensive brief. Now I have hired out in this instance, holding myself out to be an attorney and one who felt like he could take on the task that was assigned to me by the House in representing the Board of Managers. But no one can take on the task of responding to a 200-page brief in a short period of time, which means that I either have to have some time with which to answer such a brief and such pleadings as have been filed today or I have to have at my disposal a number of attorneys to do this work in a short period of time. And it seemed logical to the Board of Managers, especially when you consider the Articles that I have cited to you earlier which indicate that the A.G. is responsible for this sort of work, to ask the Attorney General to make his lawyers available to us in the handling of this case, particularly with reference to that portion of the case which requires a tremendous amount of briefing in a short period of time. That's the main reason the Attorney General is in this lawsuit at this time.

It seems clear to me without question that the Attorney General is not only a proper party as an attorney in this case, it seems to me that he has a duty to be a member of the prosecution staff or to assist the prosecution in a case of this nature. It's clear from earlier cases that not only has the Attorney General been considered to be the proper person to be here, but that he's been here. In the last impeachment case that was tried the Senate Journal reflects that a member of the Attorney General's staff participated in the prosecution of the case and actively asked questions of the witnesses, took an active part in the trial of the lawsuit. And I think it -- it makes complete sense to me and I cannot conceive of this Court entertaining Mr. Mitchell's motion, since it's so clear that an A.G. not only has a right to be here, but in fact he has a duty to be here.

Now I'm sorry to see that Mr. Mitchell has chosen to interject Duval County politics into his pleadings. I would point out to the Court that throughout the proceedings in the House of Representatives a sincere effort was made to consider the allegations that have been made on the basis of the conduct of the Judge of the 229th District Court. Who his friends are and who his enemies are really shouldn't be before this Court. And he cites in his brief the fact that there have been indictments sought by the Attorney General and in fact returned by grand juries in that area of Texas. That's completely accurate. There have been a number of indictments, somewhere like twenty-five or so. I haven't counted them up and don't intend to do so to see how many of these indictments are against friends of the accused in this instance and how many are against the enemies of the accused in this instance. That's not the function of this Court, nor is it my function as an attorney representing the Board of Managers here.

I would suppose and I would sincerely hope that the members of the grand juries in those areas are doing what they're constitutionally supposed to do under the laws of the State of Texas. That is accuse people of committing crimes wherein there's enough evidence to indicate there ought to be a trial. That's all we're here for. The House of Representatives has dictated by its Articles of Impeachment that there is probable cause to try the accused here on the Articles as drawn by the House of Representatives. There seems to be no doubt in my mind and I'm confident not in yours that the Attorney General shouldn't be a party to this lawsuit. I have made copies of statutes involved, have them here, will be glad to pass them out to you so that you can read them to see for your own -- or to read for your own purposes and to let you make up your own mind about what duties the law of Texas imposes on the Attorney General in cases such as this. There have been numerous decisions by the Courts in Texas, not on this point, because there haven't been that many impeachments, but which clearly indicate that the Attorney General has a duty to represent the State of Texas in civil

proceedings. This is a civil proceeding. A party to this action is the Board of Managers of the House of Representatives. Both the Legislative Reorganization Act (Exhibit D, Appendix) and Article 4399 (Exhibit E, Appendix) clearly dictate that when so chosen or so requested by an agency of either House of the Legislature the Attorney General has not only a right to act but he has a duty to act. I think with that I will close.

Mr. President, I have these Exhibits which I will be happy to furnish to you for the purposes of handing out. I have a copy of the letter from Mr. Hale to the Attorney General (Exhibit F). I have copies of the statutes involved which clearly -- or which set out in black and white what the duties of the Attorney General are and I will furnish them to you to pass out or just keep them at my desk, whichever you direct.

THE PRESIDENT: Because the rules of the Court of Impeachment that we are all operating under are somewhat unfamiliar to members of the Court, as well as to Counsel, at least in the early stages of the trial in order to clarify difficulties arising from operating under the rules to which we're all accustomed and all understand I will let the Chair at this point invite the attention of the Members of the Court to Rule 15 on Page 8 in the printed rules, which Rule is headed "Action on Pleadings". The relative portion of the rule directing how matters now before the Court shall be disposed of are as follows: "All dilatory pleas and motions properly heard before evidence is introduced on the merits are first to be heard and disposed of, and are to be decided by the vote of a majority of the members of the Court present, the yeas and nays being entered on the record. The party presenting such pleas or motions is entitled to open and conclude the argument thereon. The Court shall vote separately on each such plea or motion."

Mr. Mitchell to close on his motion. Mr. Mitchell, let me at this point propound to you under the provisions of another rule which provides for this procedure.

Again, let me invite the attention of the Members of the Court to Rule 17 Paragraph D on Page 10 of the printed rules. The portion relevant to the proceeding we're in now reads "If a Member of the Court wishes a question to be put to a witness, House Manager, or Counsel for either party, the question must be reduced to writing and shall be put by the Presiding Officer, or by the General Legal Counsel or Clerk of the Court at the direction of the Presiding Officer." Now in the case of questions propounded to a witness, "Such questions must be put only after completion of both direct and cross examination." So in compliance with that rule, Mr. Mitchell, let me propound to you first a question from the Senator from Potter, Senator Sherman. The question is: "Could Mr. Mitchell give us statutory reference to the statute requiring the A.G. to represent Judge Carrillo? If so, could a copy of the statute be made available to the Court?"

MR. MITCHELL: Mr. President, I will furnish that shortly, we are securing it. I do have Article 4399 in front of me that was quoted by Counsel for the Board, which with leave of the Court, Mr. President, I would like to comment on. It appears to be a very strict statute and it appears -- if I might be permitted to reply in part to the argument given by Mr. Terry Doyle. Could I give that answer, please, Mr. President?

THE PRESIDENT: Please, sir.

MR. MITCHELL: All right.

THE PRESIDENT: If the Members of the Court who have questions to propound would please write their names on the questions before they send them up it would be helpful to the Chair.

MR. MITCHELL: Mr. President, Members of the Court, Article 4399 cited by counsel, of course, limits the Attorney General in representation in the following instances; one, at the instance of the head of any department of the State, that would include any board, boards of penal and eleemosynary institutions, State boards, regents, trustees of the State Educational Institution, committees of either branch of the Legislature, county auditors or county -- or who shall give them written advice upon questions touching of public interest. He shall advise civil district and county attorneys on the prosecution and defense of all actions in which the State is interested. He shall advise the proper legal authorities in regard to the issuance of bonds. And this statute provides specifically, "he is hereby prohibited from giving legal advice or written opinions to any other than the officers or persons named herein."

Now it is our position and I direct my answers first to -- my remarks to some of the questions to the matters raised by Counsel. First of all, it is our position that Article 4399 specifically prohibits the Attorney General from representing anyone that's a party to this procedure. This is a matter that's strictly a legislative function and the fact that he was called upon -- the Attorney General was called upon by the select committee to assist does not, of course, mean that this Court -- it gives him standing before this Court. You can go down Article 4399, the Attorney General -- it's a request of the Governor, we have seen no request. The request of the head of any department, any board, regents, trustees, etc. We simply take the position that he has no standing to represent any party, neither Judge Carrillo, the Respondent herein, or the Board of Managers.

Mr. Doyle mentioned the question of the Attorney General participating in the forming of procedure when the Articles were formulated. This, it appears to us, is one more reason why he shouldn't be involved in the trial of these Articles on the merit. He mentions time element, well, I don't want to comment on time element and, we, of course -- you see our staff, you see the burden that we have that we're discharging or attempting to discharge in behalf of our client and the burden that is not only on us here, but also in the Federal District Court in Corpus Christi in a matter which we will address ourselves to in our motion to postpone.

We find further that there is no need to involve the Attorney General in a procedure which is neither criminal nor civil, but actually Sui Juris, one standing on its own. To do so is to carry over, it appears to us, the accusatorial process into what should be the adjudicatory process. And we respectfully submit, Mr. President and Members of the Court, that it be precluded in the absence of some condition occurring in the statute, either Article 4399 or some other, which gives him standing here.

THE PRESIDENT: Mr. Mitchell, if you will remain at the podium there, let me put to you other questions submitted by members of the Senate.

MR. MITCHELL: Yes, sir.

THE PRESIDENT: Two questions, one submitted by Senator Ogg from Harris, the other by Senator Clower from Dallas. These are essentially the same questions. That is: "How would it prejudice Judge Carrillo if the Attorney General of Texas takes part in this case?"

MR. MITCHELL: Mr. President and Members of the Court, there is no prejudice at the outset that I can cite. The basic complaint of the impeachment procedure is that at all times it resolves itself into a political factional fight, with the stresses attending one political party pulling and tugging at another.

Honestly, I am just as interested here, not as an advocate, but to remove all suspicion from the possibility that this man's scalp is going to be put on somebody's belt. I honestly want us to go down in history as did Governor Moody and the

Members who sat in Judge Price's impeachment in the '30's, go down as a fair and square hearing, and not one where the procedure was twisted and turned into a political struggle, a political fight. Now the Attorney General has a function, and don't let me stand here and tell this Court that he doesn't, and he's down here performing that function. And he has gone before a grand jury and gotten my client indicted. That's fine. If my client has committed a violation he's going to be entitled to a trial under the rules of our State and I feel confident that those rules will prevail. That's not what I'm talking about. I'm saying we should not convert this procedure into an extension of the Jim Hogg grand jury or the Duval County grand jury. To do so would simply cast a cloud on our procedures here, that honestly, I don't think any one of us wants.

We have talked about whether it's criminal or civil, we don't know. Quite honestly and quite frankly I don't know. I say they are Sui Generis. I say they're a breed of cats -- that an impeachment proceeding is a breed of cat not civil and not criminal. I say that the Attorney General has a function, certainly, but that function is not here before this body. This body is a Court trying Articles of Impeachment brought by the House before it. It is not, it appears to me, a pull and tug as attendant in an adversary trial, criminal or civil. Now, again, we do not object to the Attorney General participating in generating the evidence going into the input into these Articles. He was there, he's done a good job and I say that's fine. Now let's move those charges into a Court unpolluted, with a motion leaning one way or the other that might have been generated by all of that activity. And we certainly don't want our labors to be lost after the month or month and a half of trial here. There is no reason why he can't go on about his business of enforcing the law down there and you have got plenty of representation. Mr. Doyle has got plenty of assistance, he's been on the case since back in the middle of June.

Consequently -- and I respectfully submit to this Court -- that the motion to disqualify the Attorney General and members of his staff be granted so that we can divorce the criminal investigation on the Task Force down there from the impeachment procedure that's occurring off up here in Austin, Texas. Thank you, Mr. President.

THE PRESIDENT: Thank you, Mr. Mitchell.

Again, similar questions, one from Senator Clower and one from Senator Ogg. The question from Senator Clower directed to the Chair, the one from Senator Clower directed to Mr. Doyle. And the question is: "What is the precedent for the Attorney General being a party to a trial of impeachment in Texas?"

The first page of the supplement to the Senate Journal recording the impeachment trial of Judge J. B. Price in 1931 shows on the first page the appearances are recorded of the attorneys on behalf of various parties. And the appearance of the Honorable Grady Sturgeon, Assistant Attorney General, on behalf of the Board of Managers is recorded (Exhibit G, Appendix).

The question for Mr. Doyle, again, from Senator Ogg: "Do you anticipate the Presiding Officer of this Court requesting an Attorney General's opinion during this trial or proposed recess?" Number Two: "If so, would this not place the Attorney General in a position of a conflict of interest?"

Mr. Doyle.

MR. DOYLE: First, with respect to the question concerning the propriety of the Attorney General appearing and the obvious appearance of the Attorney General at the Price trial. There's no question but that the Attorney General did take part in that prosecution.

Mr. Mitchell pointed out to you his view and version of Article 4399. He failed to discuss the Legislative Reorganization Act of 1961, Article 5429F. I would refer you to that Article. I have copies of it available, will be glad to give them to you. The Article expressly says that the standing committees of the Legislature have the

privilege, if you want to call it that -- I call it an obligation -- to seek the assistance of the Attorney General whenever they see fit. It further provides that whenever they do seek such assistance that he is under an obligation, a duty to furnish them legal assistance.

I read to you from a letter from Mr. Hale to Attorney General Hill of August the 7th, requesting that assistance. It didn't spell out the section of the law that was involved which required the Attorney General to give assistance. The Attorney General is a lawyer and obviously knows, obviously is aware. He represents the State of Texas, he represents the Judicial Qualifications Commission in a lawsuit that is pending at this time against the accused herein in an effort to remove him from office. I can envision no possibility of the Presiding Officer of this trial seeking an Attorney General's opinion at any time during this trial in answer to the question propounded to me. Should that occur and, again, as I say, I can't see how it could, I would point out to you that it's not binding anyway. It would not be binding on this Court, you're sitting as a Court.

While on that subject and in response to that same question, I would point out to you a quote from Ferguson against Maddox, which is a classic lawsuit decided by the Supreme Court of Texas in this matter. Wherein that Court said -- and that's the Supreme Court of Texas we're talking about -- "The Senate sitting in an impeachment trial is just as truly a Court as this Court". I would point out to you that under the Articles that I mentioned earlier, that the A. G. has a duty to represent committees of the Legislature in civil proceedings and in many, many instances a duty to represent the State of Texas in criminal proceedings. This is clearly a civil proceeding. This is clearly, for the purposes that we gather here today, a Court and the Attorney General is not only privileged to participate he is under a duty to participate.

I would further suggest to you a point that I failed to make earlier, that should a conviction come out of this Court there is no appeal. Any attack on what this Senate does must be brought in some proceeding, probably in a federal jurisdiction, alleging violation of some constitutional right. By the very nature of that sort of lawsuit that Court will have to -- that petition will have to attack the Senate or the State of Texas or the Governor or whichever organ of State Government is alleged to be the one about to carry out the punishment or judgment, I should say -- the judgment of this Court. In that proceeding, clearly, the Attorney General must represent this body, must represent the interest of whatever organ of government whose function it is to carry out the judgment of this Court. If the Attorney General by some stretch of the imagination had nobody available to work on this trial at this time to the degree that his people are available now, he would almost necessarily have to have a lawyer here to sit in on it. If he had to sit in the balcony, he's going to have somebody here, because at any future attack in some other jurisdiction he's going to have to have somebody that knows what the heck went on down here to represent his client, when his client in that instance is going to be the Senate of the State of Texas or some other organ of government which he is constitutionally bound to represent. That's another very practical reason for him being present. I'm confident that that's the reason he was present in the Price trial and I'm confident that that's the reason that the Legislative Reorganization Act so clearly makes available to standing committees of the House the functions of the Attorney General. It in another section makes available to select committees or special committees of the House and Senate the same provisions that are made available to standing committees. So there's no question that the Attorney General not only has a right to be a participant in this trial as Counsel, not as a party, he is not a party, he is not here by any stretch of the imagination as a party to the lawsuit, only as Counsel. He not only has a right to be here, it appears clear to me -- completely clear to me -- that he has a duty to be here. And besides that it's very practical for him to be here, because it saves a lot of taxpayers' dollars and a lot of the Senate's time, which is dollars.

I have attempted to answer the question concerning the Presiding Officer requesting an opinion. I cannot envision how that could occur.

"If so, would this not place the A.G. in a position of conflict of interest?" No more so than the A.G. is placed in a position of conflict of interest by his representation of the Judicial Qualifications Commission, which the Legislature in its wisdom imposed upon him by statute and his representation of any other organ of State Government, individual within State Government. We can't afford, as taxpayers, to hire Counsel for each separate agency, obviously. The function of the A.G. is to do that. If an opinion, by some stretch of the imagination, was requested during this proceeding I suppose he would give us an opinion. I cannot conceive of how that would create a conflict of interest.

THE PRESIDENT: Thank you, Mr. Doyle.

Are there further questions that any member of the Court wishes to direct to Counsel for either party?

Has Mr. Mitchell responded to your question, Senator? The question from Senator Sherman regarding the statutory authority for the A.G. to represent Judge Carrillo.

MR. MITCHELL: I don't have it, I'm sorry. I'll try to get it to --

THE PRESIDENT: Provide it at a later date?

MR. MITCHELL: Yes, for the Court. I might have one observation that might assist. Our position is that the Legislative Reorganization Act, Article 5429F applies to standing committees and has no application at all to the procedure presently pending before this Court. The Counsel therefore can gain no strength by the wording of Article 5429F. The Legislative Reorganization Act provides -- dealing with standing committees and certainly those standing committees having the right to call upon the Attorney General under the general terms of 4399. I think -- it is true, if I might be permitted a further observation, that the Attorney General did represent in the last impeachment proceeding before this body --

THE PRESIDENT: The Chair read that appearance into the record.

MR. MITCHELL: But I might point out that there were no Counsel employed and no objection raised to his participation. Here we have Counsel employed for that specific purpose and, of course, objection raised.

And I will try to get that.

MR. DOYLE: Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Might I be permitted permission to read Section 7 of the Legislative Reorganization Act to clear the air?

THE PRESIDENT: Yes, Mr. Doyle.

MR. DOYLE: I apologize to the President and members of the Court for reading from a statute book, which is very poor etiquette for a lawyer.

"Sec. 7. Each House of the Legislature acting individually, or the two Houses acting jointly, shall have full power and authority to provide for the creation of special committees to perform such functions and to exercise such powers and responsibilities

as shall be determined in the Resolution creating such committee. During the life of a special committee, it shall have and exercise the same powers and authority as are herein granted to standing committees, subject to such limitations as may be imposed in the Resolution creating such special committee, and shall have such other and additional powers and authority as may be delegated to it by the Resolution creating the committee, subject to the limitations of law."

I wanted to be certain that the Court understood that, because the law is not as Mr. Mitchell indicated, the law is drawn for standing committees. And Section 7 gives that same authority to select committees or special committees. And obviously the Board of Managers and prior to that the House Select Committee on Impeachment has that standing.

THE PRESIDENT: Mr. Mitchell to close.

MR. MITCHELL: Well, I think we have, as we said back in Williamson County, "flogged that old horse to death," but one thing I do want to observe, if any member of this Court or if the President wants an opinion from the Attorney General of the State of Texas he is going to be precluded from getting one if that Attorney General represents the House, the folks bringing these Articles, because that's an automatic conflict. Consequently, to permit him to represent is to abrogate the effect of the opinion statute and then we might as well go out of the business of wanting to know what the law is as to certain portions of the procedure.

THE PRESIDENT: The argument now being concluded on Mr. Mitchell's motion, the Chair will ask the Clerk of the Court to read to the Court only the prayer in Mr. Mitchell's motion before putting the matter to a vote.

SECRETARY/CLERK: "WHEREFORE, PREMISES CONSIDERED, for the reasons set out herein, that is, that there is no provision in the Constitution, law, or rules for the participation of the Attorney General herein, Judge Carrillo moves he and his staff be stricken and not permitted to appear for and in behalf of the Board of Managers or for anyone, and for all other relief."

THE PRESIDENT: Question on the motion of the Attorney for the Respondent, Mr. Mitchell.

The Secretary will call the roll.

Yeas: Brooks, Creighton, Harris, Meier, Mengden, Ogg and Traeger.

Nays: Adams, Aikin, Andujar, Braecklein, Clower, Doggett, Farabee, Gammage, Hance, Harrington, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Patman, Santiesteban, Schwartz, Sherman, Snelson and Williams.

Absent: Moore.

THE PRESIDENT: There being 7 "Yeas" and 23 "Nays" the motion is lost. Mr. Mitchell for a motion.

MR. MITCHELL: May it please the President, we have a motion to postpone the procedure we would like to file.

IN THE MATTER OF THE IMPEACHMENT
OF O. P. CARRILLO, DISTRICT JUDGE
BEFORE THE SENATE OF THE STATE OF TEXAS

MOTION TO POSTPONE

Comes now O. P. Carrillo, Judge, 229th Judicial District of Texas, and makes this his Motion To Postpone the proceedings before the Senate of the State of Texas, and in support of said Motion would respectfully show the Senate as follows:

I.

Respondent Carrillo incorporates herein in haec verba his Original Answer and Brief in Support thereof.

II.

The facts are, and the Original Answer of O. P. Carrillo reflects, that the case of United States v. O. P. Carrillo, et al, Criminal No. 75-C-45, United States District Court, Southern District of Texas, Corpus Christi Division, was tried on the 25th day of August, 1975, there being approximately thirty-five pretrial motions and briefs in support thereof to be considered by the Court. The trial court, Hon. Owen Cox, Judge, Southern District of Texas, Corpus Christi Division, presiding, denied O. P. Carrillo's Supplementary Motion to Continue the trial of the above cause from the 8th of September, 1975, to a date subsequent to the termination of the present proceedings before the Senate and to a day when the ends of justice and due process could be served, as set out in Respondent's Original Answer herein.

III.

The announced intentions in this proceeding are that the Senate shall resolve itself into a court to try Respondent Carrillo on the 3rd day of September, 1975, on charges contained in ten Articles of Impeachment adopted by the House of Representatives on the 5th day of August, 1975. Cause No. 75-C-45 having been set for trial in Federal Court on the 8th day of August, 1975, justice requires that the present proceedings be postponed to a time in the future when

A. Respondent Carrillo will be able to be present in person at said proceedings;

B. The attorneys of record for Respondent Carrillo will be able to be present and to represent Respondent Carrillo at said proceedings;

C. Respondent Carrillo and his attorneys of record will have had an opportunity to adequately prepare Respondent Carrillo's defense to the charges contained in the Articles of Impeachment and to participate to whatever extent they are permitted in the formulation of the Rules of Procedure and Evidence governing the impeachment proceedings.

WHEREFORE, PREMISES CONSIDERED, Respondent Carrillo respectfully prays that the Senate postpone any and all proceedings in the matter of the impeachment of O. P. Carrillo until a future date subsequent to the completion of the trial in Federal District Court in accordance with the considerations outlined above.

Dated: 9/2/75

Respectfully submitted,

RICHARD HAYNES
Suite 610, 711 Fannin Street
Houston, Texas 77002

ARTHUR MITCHELL
JAN WOODWARD FOX
315 Westgate Bldg.
Austin, Texas 78701

By: /s/ Arthur Mitchell

Arthur Mitchell

ATTORNEYS FOR RESPONDENT

THE PRESIDENT: If there's no objection, Mr. Mitchell, the Chair will dispense with the reading of the motion and recognize you for the purpose of explaining it.

MR. MITCHELL: Thank you. Mr. President and Members of the Court, the facts are in the present case that Judge Carrillo, the Respondent, herein as Defendant, or one of the Defendants in Cause Number 75-C-45 in the United States District Court for the Southern District of Texas in the Corpus Christi Division -- that case has passed through extensive pretrial and has been set for trial Monday, this coming Monday on September the 8th. Counsel for the Respondent moved as recently as yesterday before that Court for a continuance and the motion for continuance was overruled. We have been ordered to trial in the Federal District Court and the trial will be of a 1706 indictment, which is a misrepresentation as regards income tax reporting indictment. And the estimate, gentlemen, is that it will take about two weeks or three to try that case correctly.

In addition Counsel is committed to try back-to-back, at least for the time being, the case of a Defendant, Arturo Zertuche, who was a co-indictee with Judge Carrillo and his brother, Ramiro Carrillo, but was severed out. Judge Cox, the Federal Judge, announcing that he would require us to pick a jury next week in the O. P. Carrillo, Ramiro Carrillo case -- they are to be tried together -- and the Arturo Zertuche case, which is to be tried following the trial of the O.P. Carrillo and the Ramiro Carrillo case. It's impossible, of course, for us to be in attendance before this Court and at the same time be in attendance before the Federal District Court in Corpus Christi. We therefore respectfully pray that this proceeding be postponed for a period of time which will permit us to try that case in Corpus Christi and which will permit us, consistent with the constitutional mandate and dictates on adequacy and competency of counsel to prepare for the defense of our client before this Court on Articles of Impeachment which differ now entirely from the indictment pending before the Federal District Court in Corpus Christi.

Thank you, Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President and Members, earlier in a letter to Mr. Mitchell and Mr. Haynes I indicated that I would have no objection to complying with or working with the defense in an effort to see that they have ample time to try their case in the Federal jurisdiction and I certainly take no different position today. However, I would urge that you listen very carefully, because I'm fixing to ask you to do something different sounding than what I'm saying. It appears to me that the Senate will move to adjourn or recess in the next few moments. I would suggest that that motion to recess be to a time -- or motion to adjourn, be to a time that will obviously give enough time to Mr. Mitchell to try his lawsuit in the Federal jurisdiction. I'm asking that you not grant the motion to postpone because of the wording that's in the motion. In the wording on the second page of the motion, "Justice requires that the present proceedings be postponed to a time in the future, when, a Respondent Carrillo will be able to be present in person at said proceedings." Well, by just granting the motion you perhaps are saying that you're going to reconvene at whatever time is convenient to the accused herein. And it seems to me that that's not proper. I frankly want to ask -- I want to join with Mr. Mitchell in his request to start the testimony in this cause at a time in the future sufficient to give him time to try his lawsuit, but I don't want any

legal significance attached to the granting of his motion to postpone. Frankly, I don't know for sure what some Court may later attach to what you do in the granting of such a motion with the language that's in it and language which I honestly haven't had time to research the significance of. According to information furnished to us by Mr. Mitchell and what he just got through saying he's going to trial next week in a tax case. If you recess until the 22nd you're giving him two full weeks to get that disposed of. If you recess or adjourn until the 29th -- Mondays are the numbers I'm using -- if you recess or adjourn until the 29th you give him three full weeks to get that disposed of. Either day, either time seems quite appropriate to me, but I really don't want to have an indeterminate time to be the result of the granting of his motion to postpone. I would respectfully request that you vote no on his motion, but then recess and give him plenty of time to try his lawsuit.

THE PRESIDENT: Mr. Mitchell, I believe it was covered in your argument, but I have a question from Senator Hance here that asks if you would estimate how long both cases you referred to would take to try.

MR. MITCHELL: In a similar question put to Counsel yesterday by Judge Cox, the Government estimated two weeks for their side of the case, we estimated approximately the same time for the trial of one case, Mr. President. That, of course, is a month. That does not include the trial of the severed case, Arturo Zertuche, nor does that involve any time to get ready to go to trial. It's a matter of not only finishing, but, of course, preparing. Coming back to the fact that we would be released in a period of, say, a month and a half, Mr. President, coming back on the very same day, certainly, would be of no avail if we hadn't had an opportunity to be prepared.

THE PRESIDENT: Let me be sure the Chair understands, Mr. Mitchell. You're saying -you're estimating the time to try the two cases, plus the time for you to further prepare for this case and so forth would be a month and a half?

MR. MITCHELL: At least, yes, sir. The Government estimated two weeks for their side of the case. We estimated 10 days to two weeks for our side of the case. That's on the first case, Mr. President. Plus, we have the Arturo Zertuche case, which because we probably would have gone through essentially the same evidence we would say would take two weeks to try. That's six weeks.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President, I want to make it clear, in case I didn't earlier, that I want to work with and agree with Mr. Mitchell in granting -- and agree with him to have time to try his case involving the accused in this case, which is the same Defendant in the tax case in Corpus Christi. I feel no such compelling fairness with respect to any other Defendants that Mr. Mitchell may represent. I do wish to ask the Senate to give him time to try his case involving the same Defendant as we have here, but I don't want to be put on record as favoring continuance of this cause which would enable him to try some other Defendant in some other cause of action.

THE PRESIDENT: Mr. Mitchell, a question propounded by Senator Mauzy from Dallas: "Does the Respondent intend to file any other dilatory plea or motions prior to beginning the introduction of evidence, if the motion for continuance is granted?"

MR. MITCHELL: We contemplate none, but as stated at the outset, Mr. President, there will be an Answer filed. Mr. Doyle proposed to file an Answer and we

did reserve the right.

MR. DOYLE: It will probably be a brief. We don't really have an Answer to file. In brief form we may answer some of the points you have brought out.

MR. MITCHELL: We have no dilatory pleas, only to reserve the right to answer whatever brief, Mr. President.

THE PRESIDENT: Question for Mr. Doyle from Senator Gammage: "Under Federal statutes or rules would the Federal District Court be compelled to postpone its case if this Court of Impeachment were in the midst of its proceedings? Are there any decisions or precedents?"

MR. DOYLE: Mr. President, I know of no rule that would require the Judge to postpone in order to allow us to try this case. Likewise, I know of no rule which requires the Senate to afford Mr. Mitchell the courtesy which I have suggested that the Senate afford. I have been trying lawsuits for a long time and I never have seen a judge that would just pull a lawyer out of another court to go to trial. Perhaps it's occurred, I'm not familiar with it.

MR. MITCHELL: Mr. President, we would certainly -- we would certainly welcome the President contacting Judge Cox and setting aside that hearing and we would go to trial here Monday if Judge Cox will be persuaded. We have tried everything we know to persuade him.

MR. DOYLE: Mr. President, I'm not -- Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President, I am not suggesting that we deny Mr. Mitchell or Mr. Carrillo the ability to go to the federal jurisdiction in Corpus Christi and try the lawsuit, quite the contrary, their indictment predates our impeachment. What I am suggesting, that we not adjourn for two or three months in anticipation of whatever docket Mr. Mitchell may have an obligation to try for his various clients. It seems to me that this is a fairly important proceeding that we're involved in and we have the entire Senate of the State of Texas here, you know, waiting. And it appears quite proper to let them try their lawsuit, but it doesn't appear proper to just postpone this thing indefinitely.

THE PRESIDENT: Mr. Mitchell, a question from Senator Sherman: "Is Judge Carrillo a party to the suit against Zertuche?"

MR. MITCHELL: The original indictment was against Judge Carrillo, Ramiro Carrillo and Arturo Zertuche. The Court on its own motion severed out Arturo Zertuche, but required us to pick a jury at the same time we picked the jury for the O. P. Carrillo, Ramiro Carrillo case for Arturo Zertuche and has instructed us to try the Arturo Zertuche case back-to-back with the O. P. and Ramiro case.

THE PRESIDENT: All right. Here is a question sent up by Senator Ogg. A question to the Chair, to give the Chair the opportunity to lay before the Senate a perhaps legal and parliamentary difficulty in which we find ourselves. The question is: "Must the recess by this Court be to a date certain or to a time that may be ascertained?" Article 5963, which is the portion of the law under the authority of which the Senate is now meeting as a Court of Impeachment, the relevant portion reads, "The

Senate so convened..." that is as it is now convened "...shall continue in session until such matters are finally disposed of, or it may from time to time adjourn to a day certain, when the consideration of such matters shall be resumed and disposed of." Now it seems to the Chair that this language creates a problem when read in conjunction with Senate Rules, which provide that if the Senate adjourns to a day certain as opposed to a recess -- the Parliamentarian has pointed out the same problem exists when the Senate meets and a quorum is not present, it may only then adjourn or recess from day-to-day. Now the problem that this raises here and I'm sure that the solution that we all envisaged somehow would be that the Senate would adjourn or recess for a period of two weeks, three weeks, whatever period of time the Court might select and look at the situation at that time. And if the trials in Corpus Christi that Mr. Mitchell has described to us -- if they were still in progress then the Senate would have at that time a better reading to pick another date further in the future.

SENATOR CREIGHTON: Mr. President.

THE PRESIDENT: The Senator from Palo Pinto.

SENATOR CREIGHTON: Will the Chair accept a motion to adjourn or recess, whichever is proper?

THE PRESIDENT: There is a motion on the floor from Mr. Mitchell for a continuance at this time, Senator, and I think we'd better -- the Chair will not entertain your motion at this time.

Senator from Harris, Senator Ogg.

SENATOR OGG: Mr. President, I did not understand. I understood what he said about adjournment, but I did not understand the question about whether we could recess.

THE PRESIDENT: Yes, sir. Article 3, Section 10 of the Constitution, from which Senate Rule Number 1 is directly taken, says that "two-thirds of all the Senators elected shall constitute a quorum, but a smaller number may adjourn or recess from day-to-day and compel the attendance of absent members."

SENATOR CREIGHTON: Parliamentary inquiry.

THE PRESIDENT: State your inquiry.

SENATOR CREIGHTON: Would not a motion to recess or adjourn take precedence over any pending business?

THE PRESIDENT: Yes, Senator, it would. For what period of time do you propose to move?

SENATOR CREIGHTON: I'm flexible.

THE PRESIDENT: Senator, I think we are within a few minutes of getting this matter resolved. The Chair would request you withdraw your motion.

The question from Senator Traeger is, of course, the question before the Court at this time, is that if Mr. Mitchell's motion is adopted what time certain would we be adjourning to? And that's the question that we have to wrestle with, because of the constitutional provision that you can only adjourn from day-to-day.

Mr. Mitchell.

MR. MITCHELL: Mr. President, may I make a motion to withdraw the motion to postpone?

THE PRESIDENT: Mr. Mitchell moves to withdraw his pending motion for postponement. Is there objection? The Chair hears none. The motion is withdrawn. Senator from Lamar.

SENATOR AIKIN: Mr. President, in view of that, I move the Senate stand recessed --

THE PRESIDENT: Under the statute, Senator, we can only adjourn.

SENATOR AIKIN: What I want to do, Mr. President -- I haven't talked to Senator Doggett, but I think this will give them plenty of time. I had in mind to make it the 22nd, but we will make it the 29th with the understanding that if the Corpus Christi case is not through that we will ask Senator Doggett to come up here from day-to-day and adjourn us and that way all of us won't have to come back in here and that the Lieutenant Governor will notify us. And I move the Senate stand adjourned until September 29th at 10:30 o'clock a.m.

THE PRESIDENT: Senator Aikin moves the Senate stand adjourned until 10:30 o'clock a.m., Monday, September the 29th.

All in favor signify by saying aye. Opposed, no. The ayes have it.

Accordingly, the Senate, sitting as a Court of Impeachment, at 5:20 o'clock p.m. stood adjourned until 10:30 o'clock a.m. Monday, September 29.

SECOND DAY (Monday, September 29, 1975)

The Senate, sitting as a Court of Impeachment, met at 10:30 o'clock a.m., pursuant to adjournment, and was called to order by the Senator from Jackson, Senator Patman.

COMMUNICATIONS FROM PRESIDENT

The Presiding Officer laid before the Court the following Communication from the President:

The State of Texas
Office of the Lieutenant Governor
Austin

September 29, 1975

Dear Senator Patman:

You are hereby designated to serve as presiding officer over the session of the Court of Impeachment on September 29, 1975.

Thank you for your assistance in this matter.

Sincerely,

/s/
William P. Hobby

Hon. William N. Patman
The State Senate
Austin, Texas

The Secretary/Clerk read the Communication.

The Presiding Officer then laid before the Court the following telegram from the President:

September 24, 1975

To all Senators and Counsel for all parties and the Senate's General Legal Counsel:

It now appears certain that the Corpus Christi trial of Judge Carrillo can, at best, end by Friday or Saturday of this week.

After consultation with attorneys for all parties and the Senate's Legal Counsel, I believe that the wisest course of action will be for the full Senate to return to Austin at 10:30 a.m. on Monday, October 6, 1975.

The Senate will adjourn from day to day beginning September 29, in accordance with the motion made by Senator Aikin on September 3.

/s/
William P. Hobby

The Secretary/Clerk read the telegram.

SENATORS PRESENT

The Presiding Officer announced the following Senators were present: Senators Clower, Doggett, Gammage and Mauzy.

The Presiding Officer noted the absence of a quorum and recognized the Senator from Travis for a motion.

ADJOURNMENT

Senator Doggett moved that pursuant to the September 24, 1975 telegram from the President of the Senate and in accordance with Article III, Section 10 of the Constitution, the Members of the Senate absent today be excused until October 6th and that the Senate, sitting as a Court of Impeachment, stand adjourned until 9:00 o'clock a.m. tomorrow.

Accordingly, the Senate, sitting as a Court of Impeachment, at 10:32 o'clock a.m. adjourned until 9:00 o'clock a.m. tomorrow.

THIRD DAY
(Tuesday, September 30, 1975)

The Senate, sitting as a Court of Impeachment, met at 9:00 o'clock a.m., pursuant to adjournment, and was called to order by the Senator from Dallas, Senator Clower.

COMMUNICATION FROM PRESIDENT

The Presiding Officer laid before the Court the following Communication from the President:

The State of Texas
Office of the Lieutenant Governor
Austin

September 30, 1975

Dear Senator Clower:

You are hereby designated to serve as presiding officer over the session of the Court of Impeachment on September 30, 1975.

Thank you for your assistance in this matter.

Sincerely,

/s/
William P. Hobby

Hon. Ron Clower
The State Senate
Austin, Texas

The Secretary/Clerk read the Communication.

SENATORS PRESENT

The Presiding Officer announced the following Senators were present: Senators Doggett, Mauzy, Patman and Snelson.

The Presiding Officer noted the absence of a quorum and recognized the Senator from Travis for a motion.

ADJOURNMENT

Senator Doggett moved that pursuant to the September 24, 1975 telegram from the President of the Senate and in accordance with Article III, Section 10 of the Constitution, the Senate, sitting as a Court of Impeachment, stand adjourned until 9:00 o'clock a.m. tomorrow.

The motion prevailed.

Accordingly, the Senate, sitting as a Court of Impeachment, at 9:02 o'clock a.m. adjourned until 9:00 o'clock a.m. tomorrow.

FOURTH DAY
(Wednesday, October 1, 1975)

The Senate, sitting as a Court of Impeachment, met at 9:00 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present: Doggett, Patman and Snelson.

Absent-excused: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Santiesteban, Schwartz, Sherman, Traeger and Williams.

There was no quorum present.

ADJOURNMENT

Senator Doggett moved that pursuant to the September 24, 1975 telegram from the President of the Senate and in accordance with Article III, Section 10 of the Constitution, the Senate, sitting as a Court of Impeachment, stand adjourned until 9:00 o'clock a.m. tomorrow.

The motion prevailed.

Accordingly, the Senate, sitting as a Court of Impeachment, at 9:01 o'clock a.m. adjourned until 9:00 o'clock a.m. tomorrow.

FIFTH DAY
(Thursday, October 2, 1975)

The Senate, sitting as a Court of Impeachment, met at 9:00 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present: Doggett and Patman.

Absent-excused: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

There was no quorum present.

ADJOURNMENT

Senator Doggett moved that pursuant to the September 24, 1975 telegram from the President of the Senate and in accordance with Article III, Section 10 of the Constitution, the Senate, sitting as a Court of Impeachment, stand adjourned until 9:00 o'clock a.m. tomorrow.

The motion prevailed.

Accordingly, the Senate, sitting as a Court of Impeachment, at 9:01 o'clock a.m. adjourned until 10:00 o'clock a.m. tomorrow.

SIXTH DAY
(Friday, October 3, 1975)

The Senate, sitting as a Court of Impeachment, met at 10:00 o'clock a.m., pursuant to adjournment, and was called to order by the Senator from Jackson, Senator Patman.

The roll was called and the following Senators were present: Brooks, Doggett and Patman.

Absent-excused: Adams, Aikin, Andujar, Braecklein, Clower, Creighton, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

There was no quorum present.

COMMUNICATION FROM PRESIDENT

The Presiding Officer laid before the Court the following Communication from the President:

The State of Texas
Office of the Lieutenant Governor
Austin

October 3, 1975

Dear Senator Patman:

You are hereby designated to serve as presiding officer over the session of the Court of Impeachment on October 3, 1975.

Thank you for your assistance in this matter.

Sincerely,

/s/
William P. Hobby

Honorable William N. Patman
The State Senate
Austin, Texas 78711

The Secretary/Clerk read the Communication.

The Secretary/Clerk submitted the following Brief, which had been filed with the Secretary/Clerk:

(Verbatim Copy of Original Document as received)
IN THE MATTER OF THE IMPEACHMENT OF O. P. CARRILLO, DISTRICT
JUDGE
BEFORE THE SENATE OF THE STATE OF TEXAS
SITTING AS A COURT OF IMPEACHMENT
BRIEF IN REPLY TO ORIGINAL ANSWER OF O. P. CARRILLO
AND BRIEF IN SUPPORT THEREOF

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IN THE MATTER OF THE IMPEACHMENT OF O. P. CARRILLO, DISTRICT
JUDGE

BEFORE THE SENATE OF THE STATE OF TEXAS
SITTING AS A COURT OF IMPEACHMENT

BRIEF IN REPLY TO ORIGINAL ANSWER OF O. P. CARRILLO
AND BRIEF IN SUPPORT THEREOF

TO THE SENATE OF THE STATE OF TEXAS:

COMES NOW, the Board of Managers and by and through their attorneys of record presents this their Reply to the Original Answer of O. P. Carrillo and Brief in Support Thereof and would respectfully show the Senate as follows:

Introduction

The purpose of this brief is to respond to the legal arguments set out in Respondent's Brief in Support of Original Answer.(1)

(1) It is inappropriate to comment on the factual allegations set out in Respondent's Original Answer, however, the Board of Managers would point out that allegations concerning the indictment and trial of Respondent by the federal court for alleged tax evasion, and the actions of the Judicial Qualifications Commission are irrelevant here, as are allegations of political alliances or motivations in the investigation and certification of Articles of Impeachment against Respondent by the House of Representatives. The factual allegations in Point I of Respondent's Original Answer are either irrelevant or erroneous.

Respondent in his Answer and Brief in Support thereof initially contends that the Senate, sitting as a court of impeachment, has no jurisdiction to consider the Articles of Impeachment presented by the House of Representatives and asks that the Senate therefore dismiss these proceedings. The absence of senatorial jurisdiction is predicated on two theories:

(1) The proceedings of the House of Representatives and its Select Committee on Impeachment are void because they were not conducted during a regular or special session of the Legislature in violation of Article III, Sections 5, 24 of the Texas Constitution and Article 5422, V.A.C.S., and because the proceedings of the Select Committee were a non-delegable duty of the House of Representatives, went beyond the scope of the enabling resolution, were conducted in violation of the Open Meetings Act, and contravened due process requirements of the United States Constitution and due course of law of the Texas Constitution;

(2) The constitutional and statutory provisions regarding impeachment (Article XV, Sections 1 through 6 and Article 5961) are vague and indefinite in contravention of federal constitutional due process standards and amount to a bill of attainder and ex post facto law in contravention of Article I, Section 16, of the Texas Constitution.

The Board of Managers respectfully submits that the jurisdiction of the Senate to consider the Articles of Impeachment presented to it by the House of Representatives is clear. Article XV, Section 2 requires the Senate to try the impeachment of a judge of a district court. Additionally the Board of Managers will show that, regardless of the extent to which the Senate can go behind the Articles of Impeachment to the actual proceedings of the House of Representatives, the actions of the House and the Select Committee contravened neither the provisions of the Texas Constitution and statutes nor any right of the Respondent protected by the federal or state constitutions. Nor do the impeachment provisions of the Texas Constitution and statutes violate the federal or Texas Constitution.

Respondent then asks the Senate to exercise "legislative restraint" and refrain from fulfilling its constitutional responsibilities to avoid conflict with proceedings of the Judicial Qualifications Commission, and the federal district court for the Southern District of Texas, Corpus Christi Division, and to avoid embroiling itself in political infighting. The Board of Managers submits that the proceedings of the Judicial Qualifications Commission and the federal district court, constitute neither a bar nor a conflict to these proceedings. The Senate, as mentioned above, is required to consider or try the impeachment and this constitutional responsibility cannot be shirked in the interest of avoiding speculated political infighting.

Finally, Respondent raises special exceptions to the Articles of Impeachment themselves. As will be shown herein, the Articles of Impeachment are not inadequate, vague, imprecise, or duplicitous, and allege sufficient facts relating to misconduct of O. P. Carrillo during his tenure as District Judge of the 229th Judicial District.

I. THE HOUSE OF REPRESENTATIVES HAD JURISDICTION TO MEET FOR THE PURPOSE OF CONSIDERATION OF ARTICLES OF IMPEACHMENT AT TIMES OTHER THAN DURING A REGULAR OR CALLED SESSION OF THE LEGISLATURE AND COULD, AT ANY TIME, DELEGATE TO A COMMITTEE OF THE HOUSE THE TASK OF CONSIDERING THE RECOMMENDATION OF ARTICLES OF IMPEACHMENT FOR ADOPTION OR REJECTION BY THE WHOLE HOUSE. (Reply to Point I, Brief in Support of Original Answer)

A. The House of Representatives had authority to meet at any time for the purpose of considering Articles of Impeachment.

Respondent asserts at page 13 of his Original Answer that "the House of Representatives lacking constitutional authority to be in session, it was clearly without jurisdiction to prefer Articles of Impeachment against Respondent." The constitutional provisions relied on by Respondent are contained in Article III of the Texas Constitution and deal with the convening of the *legislature* to exercise legislative power; they have no bearing on the extraordinary power of impeachment. While provisions of Article III prevent the Legislature from reconvening or extending on its own for the purpose of passing legislation, Article XV pertaining to impeachment, imposes no limitations as to the time at which the Legislature may exercise its impeachment powers. The leading case on the question is a Texas Supreme Court case, *Ferguson v. Maddox*, 114 Tex. 85, 263 S.W. 888 (1924). That case states in part

"The powers of the House and Senate in relation to impeachment exists at all times. They may exercise these powers during a regular session. No one would question this. Without doubt, they may exercise them during a special session, unless the Constitution itself forbids. It is insisted that such inhibition is contained in Article 3, Section 40, which provides that legislation at a special session shall be confined to subjects mentioned in the proclamation of the governor convening it. This language is significant and plain. It purposefully and wisely imposes no limitation, save as to legislation. *As neither House acts in a legislative capacity in matters of impeachment, this section imposes no limitation with relation thereto, and the broad power conferred by Article 15 stands without limit or qualification as to the time of its exercise.*

* * *

"From the inception to the conclusion of impeachment proceedings the House and Senate, as to that matter, are not limited or restricted by legislative sessions. As has been shown, their constitutional powers with regard to impeachment are not legislative and are not effected by Article 3, Section 40. Each house is empowered by the constitution to exercise certain functions with reference to the subject-matter; and as they have not been limited as to time or restricted to one or more legislative sessions, they must necessarily proceed in the exercise of their powers without regard thereto. At the end of a legislative session, the House does not cease to exist, and its power, so far as its proper participation in a pending impeachment proceeding is concerned, is not affected, or the effect of what it has already properly done impaired. . .

* * *

". . . The fact that the impeachment trial may extend from one legislative session into another and cover parts of both is not material. The Constitution creates the court; it does not prescribe for it any particular tenure, or limit the time of its existence. By indubitable reason and logic it must have power and authority to sit until the full and complete accomplishment of the purpose for which it was created, limited, perhaps, by the tenure of office of the persons composing it." *Id.* at 891.(2)

(2) Emphasis added throughout unless otherwise indicated.

The clear statement of the Texas Supreme Court that Article III, Section 40, is inapplicable to impeachment proceedings is based on the recognition that neither the House nor the Senate act in a *legislative* capacity in matters of impeachment. Respondent argues that Article 5962, V.A.C.S., which, in accordance with *Ferguson*, explicitly recognizes that impeachment proceedings can be instituted at any time, contravenes provisions of Articles III and IV of the Texas Constitution. But the provisions of the Texas Constitution cited by Respondent all relate to the convening of the *legislature*. See Article III, Section 5, Article III, Section 40 and Article IV, Section 8. *Ferguson v. Maddox* teaches that neither the House nor the Senate act in a legislative capacity in meeting on matters of impeachment and that the constitutional provisions relating to the convening of the legislature impose no limit or qualification on the power of impeachment created by Article XV.

Respondent erroneously relies on *Walker v. Baker*, 196 S.W.2d 324 (Tex. 1946), in support of his contention that the House was without jurisdiction to consider the Articles of Impeachment. *Walker* was concerned with the action of the Senate in attempting to call itself back into session to consider appointments of the Governor made during the interim. The Supreme Court in *Walker* stated that although the consideration of a gubernatorial appointment by the Senate is an executive function delegated by the constitution to the legislative branch, it can only be exercised at the times specified by the Constitution for convening of the Legislature because Article III, Section 5, and Article IV, Section 12, expressly require that confirmation of recess appointees of the Governor be done during the first 30 days of a regular session.

“The means thus being expressly provided for the Senate to be in session and thereby to have an opportunity to consider the governor’s appointments, it follows that any authority in the Senate to convene itself at other times for that purpose is excluded.” 146 S.W.2d at 328.

Additionally, the Court in *Walker* specifically disavowed any application of its opinion in this cause to the powers of either house with regard to impeachment. *Id.* at 329.

Finally there is no merit to Respondent’s assertions that insofar as Article 5962, V.A.C.S., allows the convening of the House by a method other than that prescribed by Article III, Section 5, it is unconstitutional. As recognized by the Texas Supreme Court in both *Walker* and *Ferguson*, the constitutional provisions relating to the calling of the *Legislature* into session are not applicable when the House or Senate is acting pursuant to Article XV of the Constitution in matters of impeachment. Article 5962, V.A.C.S., is a statute enacted within the framework of Article XV by setting forth the method by which the impeachment provisions can be utilized in an orderly fashion. Since the Supreme Court of Texas has said that the provisions relating to the convening of the legislature and the Constitution are not applicable to the House or Senate when dealing in matters of impeachment, and since Article XV is silent as to the precise procedures by which the impeachment powers are to be implemented and utilized, the Texas House of Representatives and Senate are free to establish and follow any procedures within the framework of Article XV of the Texas Constitution.(3)

(3) *Ferguson v. Maddox* makes it clear that Article XV’s grant of impeachment powers is “self-executing” and “needs no aid from” implementing legislation. Therefore, the proper and ultimate inquiry, when assessing the propriety of impeachment proceedings provided for by the Constitution, is not whether they are consonant with any statute but rather whether they are consistent with Article XV itself. Therefore, the Board of Managers need not defend the constitutionality of Article 5962, V.A.C.S., but only the constitutionality of the

procedures followed by the House in the instant case. To the extent that such procedures are authorized by Article XV but inconsistent with Article 5962 (an inconsistency which is strenuously denied), there would be substantial doubt as to the latter's constitutionality.

B. The House of Representatives had statutory and constitutional authority to delegate to a committee the task of considering the recommendation of Articles of Impeachment.

Respondent asserts that the House of Representatives is given no power to delegate any of its impeachment power to a committee and that the House has attempted to do so. First, and most importantly, it is clear that no attempt was made to delegate to a committee the impeachment power of the House. The House Select Committee on Impeachment was charged by H.S.R. 167 to "consider House Simple Resolution No. 161 and investigate charges . . . and report back to the House its recommendations on whether presenting . . . a bill of impeachment is in order." This is precisely what the Select Committee did. It did not present a bill of impeachment to the Senate. It simply made its recommendations to the full House when the House was reconvened on August 4, 1975, for the specific purpose of considering either adopting or rejecting the recommended Articles of Impeachment. The return of Articles of Impeachment against Respondent O. P. Carrillo took place, and only took place, in the full House of Representatives. That the House of Representatives has broad power when involved in impeachment proceedings pursuant to Article XV has been established above. These proceedings obviously could include the establishing of a House committee to do the preliminary investigation and recommendation regarding the charges of impeachment. The House of Representatives in adopting H.S.R. 167 chose to define the power of the Select Committee by reference to the powers "granted the committees of the House by Article 5962, Revised Civil Statutes of Texas, 1925, the Legislative Reorganization Act of 1961, and the Rules of the House of Representatives." H.S.R. 167.(4) Therefore under the impeachment power granted the House in Article XV, the House of Representatives properly instructed a Select Committee which it created to perform the preliminary investigatory functions and make recommendations to the full House. Respondent's contention that the House Select Committee had no authority to take any action after the termination of the Sixty-Fourth Legislative Session at midnight, June 2, 1975, is likewise specious under both the grant of authority to the House by Article XV of the Constitution and by definition of the power given to the committee in H.S.R. 167. By defining the power of the Select Committee as that granted under Article 5962, V.A.C.S. and the Legislative Reorganization Act of 1961 the House of Representatives merely added additional statutory authority to the constitutional authority already possessed by the Select Committee to meet during interim periods.

(4) The ability of either house of the Legislature to establish committees for the purpose of establishing its own rules of procedure including the creation of committees to perform investigatory functions pursuant to Article III, Section 11, of the Texas Constitution has been upheld in *Terrell v. King*, 118 Tex. 237, 14 S.W.2d 786, 789 (1929). It is significant to note that this section of the Constitution refers to each house and not to the legislature or the function of legislation, a significant distinction as pointed out in *Ferguson v. Maddox*, *supra*, when considering whether Article III, Section 40, was applicable to impeachment proceedings.

II. THE HOUSE SELECT COMMITTEE ON IMPEACHMENT DID NOT EXCEED THE AUTHORITY CONFERRED BY ITS ENABLING RESOLUTION AND EVEN IF IT DID, THE FULL HOUSE RATIFIED ITS

ACTIONS OVER OBJECTIONS OF RESPONDENT. (Reply to Point II, Brief in Support of Original Answer).

Respondent argues that the Articles of Impeachment are void because they are products of action on the part of the House Select Committee beyond the scope of the enabling resolution and therefore violative of the Legislative Reorganization Act of 1961. Article 5429f, V.T.C.S. To determine the scope of authority delegated by the House to the Select Committee, it is necessary to look to the wording of House Simple Resolution No. 167, which created the committee, and House Simple Resolution No. 221, which extended its existence past the adjournment of the 64th Regular Session of the legislature.

H.S.R. No. 167 created the Select Committee for three purposes: (1) to consider H.S.R. No. 161 which involves the indictment of Carrillo for tax fraud; (2) to investigate charges brought against Carrillo; and (3) to recommend whether a bill of impeachment against Carrillo should be presented by the House to the Senate of Texas. (Respondent's Exhibit "I") H.S.R. No. 221 states that the Select Committee is to consider H.S.R. No. 161 (tax fraud indictment) *and* to investigate charges brought against Respondent. Later, it states that the Select Committee is "to *continue* its investigation of *all* charges against O. P. Carrillo . . ." (Respondent's Exhibit "N")

It is a basic rule of statutory interpretation that every word and every clause is presumed to have been used intentionally by the legislature for a purpose, and not merely as superfluous verbiage. *Missouri-Kansas-Texas Ry. Co. of Texas v. Thomason*, 280 S.W. 325 (Tex. Civ. App.--Austin 1926, writ ref'd). It is also a general tenet of interpretation that a statute will be construed with reference to the goals and purposes sought to be obtained by its enactment. *Trimmier v. Carlton*, 116 Tex. 572, 580 (1927). It is, therefore, inappropriate for Respondent to argue that the phrase "to investigate charges" adds nothing to the powers of the committee already granted them by the duty to look into tax fraud allegations mentioned in H.S.R. No. 161.

It is obvious from the language of H.S.R. 221, adopted after the Select Committee had considered many more charges against Respondent than that of tax fraud, that the House intended for the Select Committee to fully consider all allegations against Respondent and not merely the formal charges of tax fraud indictment. The intent of the House was to have the Select Committee make a full review of Respondent's fitness to remain in his position as district judge. Indeed, there is no other explanation for the House's use of the plural "charges" and "articles of impeachment" in the wording of H.S.R. 221.

The role of the House in impeachment proceedings ". . . is investigating facts in order that it may determine whether one of the people's servants has done an official wrong worthy of impeachment . . ." *Ferguson v. Maddox, supra* at 890. The House had the obvious intention of fulfilling that duty. Since it was not necessary that the House as a whole remain in session at this point, it was intended that the full investigative function of the House be carried on by the Select Committee. The expansive grant of power to the Select Committee in the final paragraph of H.S.R. No. 167, including all powers given to committees under the impeachment provisions (Article 5962, V.A.C.S.), affirm this intention on the part of the House. To limit the powers delegated to the Select Committee solely to the review of the fraud charges would flout the clear intent of the House to perform its duty of vigilant investigation of corrupt public officials.

Pursuant to Section 7 of the Legislative Reorganization Act of 1961 (Article 5429f, V.T.C.S.), a special committee of the Legislature is entitled to

"exercise the same powers and authority as are herein granted to standing committees, subject to such limitations as may be imposed in the Resolution creating such special committee. . . ."

Under Section 5,

“each standing committee shall make a continuing study of the matters under its jurisdiction . . . and shall conduct such investigations as the committee deems necessary to supply it with adequate information and material to discharge its responsibilities.” Furthermore,

“no standing committee . . . shall be confined . . . to . . . Resolutions or proposals submitted to it by individual Members . . . but each standing committee shall have full authority and responsibility to seek out problems within its area of jurisdiction and to develop, formulate, initiate and secure passage of legislative programs which the committee deems desirable in its approach to such problems.”

While the House was not compelled to require the Select Committee to act within the confines of Article 5429f--there being no indication that the Reorganization Act is designed to govern the Legislature's performance of judicial as opposed to legislative functions--H.S.R. 167 and 221 both state that the Select Committee is to have “all powers granted” by said article. These include the power of a standing committee “to seek out problems” since there is nothing in either H.S.R. 167 or 221 which can be reasonably construed to be a “limitation” on such powers of the Select Committee. Finally, the House of Representatives as a whole was the only body entitled to object that the Select Committee had strayed beyond its delegated powers, so long as those powers exercised could legitimately have been exercised by the House itself. “. . . [E]ach house . . . is the sole judge of its own rules of procedure . . .” *Terrell v. King*, 118 Tex. 237, 14 S.W.2d 786, 789 (1929). When the full House considered the report and recommendation of the Select Committee, over Respondent's objections that the latter had exceeded the scope of its authority, the House in effect ratified the scope of the Committee's probe and Respondent lost further standing to complain thereof.

III. THE PROCEEDINGS OF THE HOUSE SELECT COMMITTEE ON IMPEACHMENT WERE NOT IN VIOLATION OF THE TEXAS OPEN MEETINGS ACT. (Reply to Point III, Brief in Support of Original Answer).

A. *The Open Meetings Act is inapplicable to impeachment proceedings of the Legislature.*

As explained above, there is considerable doubt whether the Legislature has any constitutional power to regulate by means of any statute (be it the Legislative Reorganization Act, Articles 5962-63, or the Open Meetings Act) the mode of impeachment of district judges since

“the Constitution, in the matter of impeachment of the officers mentioned in section 2 of article 15, is clearly self-executing . . . [and] needs no aid from the Legislature.” *Ferguson v. Maddox*, 263 S.W. at 893.

But even assuming that the Open Meetings Act could have been constitutionally written so as to govern the modes of impeaching a district judge, it is clear that the Legislature had no such intention. First, the Act's definition of “governmental body” does not extend to the judicial department of the state, and, as *Walker v. Baker, supra*, makes clear, impeachment, while constitutionally delegated to the Legislature, “is a judicial function of government.”

Second, Section 2(d) of the Open Meetings Law provides:

“(d) Nothing in this Act shall be construed to affect the deliberation of grand juries.”

While the impeachment proceedings of the House of Representatives are not technically those of a grand jury, the function is virtually identical. Respondent, in his discussion of another point, says “it is completely illogical to analogize the proceedings by the House Select Committee to that of a grand jury.” However, Respondent's logic is not consistent with the view of the Supreme Court of Texas which said:

“In the matter of impeachment the House acts somewhat in the capacity of a grand jury. It investigates, hears witnesses, and determines whether or not there is sufficient ground to justify the presentment of charges, and, if so, it adopts appropriate

articles and prefers them before the Senate. In doing these things, the House is not 'legislating,' nor is it conducting an investigation in order that it may be in better position to legislate. It's investigating facts in order that it may determine whether one of the people's servants has done an official wrong worthy of impeachment under the principles and practices obtaining in such cases, and, if so, to present the matter for trial before the constituted tribunal. All of this is judicial in character." *Ferguson v. Maddox*, 263 S.W. 890.

It is reasonable to construe the Section 2(d) exception to apply to an impeachment proceeding since the statutory rule on construction in Texas is to "look diligently for the intention of the Legislature, keeping in view at all times the old law, the evil and the remedy." Article 10(6), V.T.C.S. Surely the Legislature was attempting to prevent application of the Act to bodies which are functionally indistinguishable from a grand jury.

Finally, Section 2(g) excepts from the Act, meeting "in cases involving the . . . evaluation . . . discipline, or dismissal of a public officer . . . or to hear complaints or charges against such officer . . ." Respondent totally fails to explain why the Select Committee was not performing the function of "investigating charges brought against O. P. Carrillo" as charged by H.S.R. 167.

B. Even if the Open Meetings Law were or constitutionally could be, applicable to the impeachment proceedings of the House, its effect would be that of a rule rather than a statute and, as a rule, it would be subject to modification or waiver by the House, and that is precisely what the House did in adopting H.S.R. 167.

Article 3, Section 11, of the Texas Constitution provides:

"Each House may determine the rules of its own proceedings, punish members for disorderly conduct, and, with the consent of two-thirds, expel a member, but not a second time for the same offense." (Emphasis added.)

This provision, like similar provision in constitutions of other states, is based on Article 1, Section 5 of the United States Constitution. As Respondent indicated the obvious purpose of these provisions is to prevent one house of the Legislature or the Governor from being able to hamstring any attempt of the other house to alter its own rules.

Even though Respondent admits this fundamental premise, he somehow reaches the conclusion that the Open Meetings Act applies to the Legislature with the force and dignity of a statute. He cites no authority for this conclusion, but having made the point, relies on *Anderson v. Grossenbacher*, 391 S.W.2d 72 (San Antonio 1964, writ ref'd n.r.e.), for the proposition that "we are dealing with statutory procedures under which the legislative body must proceed and which it is not free to ignore." *Anderson*, however, involved a city charter drafting commission which had failed to comply with a statute enacted by the Texas Legislature to govern the proceedings of such commissions. The court in *Anderson* specifically indicated that it was not dealing with legislative rules which were made by the legislative body itself and which it could "waive, modify or disregard."

However, that is precisely what is involved here. Because of the power granted each house by Article 3, Section 11, there is a substantial possibility that any statute regulating meetings of legislative committees would be unconstitutional. Attorney General Letters Advisory Nos. 18 (1973) and 84 (1974). Accordingly, insofar as the Open Meetings Law applies to the Legislature it is as a legislative rule. Specifically Section 2(b) of the Open Meetings Law provides:

"(b) In this Act, the Legislature is exercising its rule-making powers to prohibit secret meetings of the Legislature, its committees, or any other bodies associated with the Legislature, except as otherwise specifically permitted by the Constitution."

As the court indicated in *Anderson v. Grossenbacher, supra*, there is no question that a legislative body can amend or waive or disregard its own rules. In construing Article 1, Section 5 of the United States Constitution, the United States Supreme Court said:

"The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the house, and within the limitations suggested, absolute and beyond the challenge of any other body or tribunal." *United States v. Ballin*, 144 U.S. 1, 5 (1892).

Furthermore, the power to alter its rules is not limited to purely legislative matters. It has been said:

"The provision that 'each house shall have power to determine the rules of its proceedings' is not restricted to proceedings of the body in ordinary legislative matters; but such authority extends to the determination of the propriety and effect of any action taken by the body as it proceeds in the exercise of any power, in the transaction of any business, or in the performance of any duty conferred upon it by the Constitution." *Opinion of the Justices*, 40 So.2d 623, 625-626 (Ala. 1949).

By enacting H.S.R. No. 167 the House of Representatives amended its "rule" prohibiting closed committee meetings insofar as the Select Committee on Impeachment is concerned. The resolution specifically provides:

"That the committee is authorized to meet at the call of the chairman, meet in executive session when ordered by the committee. . . ."

A House Simple Resolution is the customary way of adopting and amending House rules. See, e.g., House Journal, 64th Legislature, pp. 60-92 (January 16, 1975).

In short, to the extent that the Open Meetings Law is or can be applicable to meetings of legislative committees performing impeachment functions, its effect is solely that of a legislative rule which can be modified or waived. By adopting H.S.R. 167, the House of Representatives specifically abrogated any rule prohibiting the Select Committee on Impeachment from conducting executive sessions.

C. A failure, if any, to comply with the Open Meetings Law would not affect the validity of the committee's action.

While courts have held certain actions taken in violation of the Open Meetings Law to be voidable; *Lower Colorado River Authority v. San Marcos*, 523 S.W.2d 641 (Tex. Sup. 1975); *Toyah Independent School District v. Pecos Barstow Independent School District*, 366 S.W.2d 377 (Tex. Civ. App.--San Antonio, no writ); that doctrine has no relevance here. The allegedly invalid actions were those of the Select Committee on Impeachment, but it was the House of Representatives and not the committee which voted the articles of impeachment. The House was free to accept, reject, ignore or amend the Committee recommendations, and thus any alleged irregularity in the committee proceedings would have no effect on the action of the House of Representatives. There is no suggestion that the House did not meet openly or provide notice of its meeting.

IV. PROCEEDINGS BY THE HOUSE SELECT COMMITTEE ON IMPEACHMENT DID NOT DENY RESPONDENT THE RIGHT TO DUE PROCESS OF LAW OR DUE COURSE OF THE LAW. (Reply to Points IV and V, Brief in Support of Original Answer).

A. Respondent's Due Process Claims are premature.

The proceedings of the House Select Committee on Impeachment constituted only a preliminary step in the impeachment process. Respondent, however, attempts to categorize this one element as the beginning and end of all impeachment proceedings by the House and Senate and thereby claim a denial of some due process right he possesses. Again the Board of Managers submits that the evaluation of procedures utilized in light of due process standards must be done on the basis of the entire impeachment process. Cases cited by Respondent involve judicial scrutiny of procedures which resulted in termination of persons from public employment. In *Klein v. New Castle County*, 370 F. Supp. 85 (D. Del. 1974) the court found that the County Treasurer was protected by the county merit system which provided for a pre-termination hearing, and since he did not in fact waive that hearing, he was **illegally**

denied the hearing by his employers. The federal district court in *Jenner v. Board of Trustees of Village of East Troy*, 389 F. Supp. 430 (E. D. Wis. 1974) found that the chief of police - an appointee of the village board - was denied due process in his termination solely because one of the three trustees who heard the testimony at the pre-termination hearing and subsequently voted for termination, also had testified against the police chief and therefore was not an independent, neutral and detached decision-maker. Finally in *Gonzales v. Gonzales*, 385 F. Supp. 1226 (D. Puerto Rico, 1974) the court held that the change in status of a career employee of the Competitive Service of the Puerto Rican government without notice or hearing, which change allowed summary termination was in violation of the Personnel Act of Puerto Rico and violated the employee's procedural due process rights. In all cases the court looked at all the events culminating in termination, not merely the pre-termination hearing in *Jenner, supra*, or the change of status in *Gonzales, supra*, or merely the fact that no hearing was held in *Klein*. Yet that is precisely what Respondent asks this court to do - look only to a part of the procedures which may or may not eventually lead to his removal. And the part on which he focuses is not even analogous to a pre-termination hearing, rather it is in the nature of filing the charges or complaints on which a pre-termination hearing will be held. The actions of this body in hearing the evidence to be presented constitute the pre-termination hearing.

B. *The proceedings of the House Select Committee and the House of Representatives regarding impeachment are analogous to that of a grand jury and as such have not denied Respondent any due process right.*

Assuming, arguendo, that Respondent was entitled to some procedural due process in the very initial stages of the impeachment process, what protection was due? As stated by the court in *Gonzales*

"What standards of due process are applicable (what formality and procedural requirements for a hearing - [citations omitted]) depends upon the nature of the interests affected and the circumstances of the deprivations, [citations omitted], or the nature of the subsequent proceedings. *Boddie v. Connecticut, supra*, 401 U.S. at 378, 91 S. Ct. 780. The precise requirements of procedural due process are of necessity flexible and must be tailored to the circumstances of each case or class of cases." 385 F. Supp. at 1238, 1239.

Respondent attempts to analogize these impeachment proceedings to the class of cases dealing with disbarment. The Board of Managers submits that the analogy fails because even if Respondent were convicted herein and if the judgment of this body included disqualification from holding future office, Respondent is not "barred from his vocation" (pg. 10, Brief in Support of Original Answer) but rather he is terminated from future employment as an elected official. Furthermore, analogizing impeachment proceedings to disbarment proceedings puts the action of the House Select Committee on Impeachment and the House of Representatives in the posture of the Grievance Committee. Under Texas law the Grievance Committee may conduct investigations based on complaints, which investigations are private. If the committee is of the opinion that disbarment or suspension is called for a formal complaint is filed in the district court in the county of the accused residence. Article 320a-1, V.T.C.S. and Article XII, Secs. 11-24, Rules Governing State Bar of Texas. In *Willner v. Committee on Character & Fitness*, 373 U.S. 96 (1963) cited by Respondent, the applicant for admission to the New York Bar at no time was given the opportunity to appear before either New York tribunal considering his application for a hearing on the grounds for his rejection. This situation simply is not analogous or applicable to the instant case.

Regardless of Respondent's concept of these proceedings, impeachment proceedings, including both the preliminary inquiry and the impeachment by a legislative body, have been analogized by commentators to the action of a grand jury in its investigative and accusatory capacity. *Ferguson v. Maddox, supra* at 890; Select Committee on Impeachment, *Impeachment* (Tx. House of Rep., July 23, 1975), 2. The

analogy is apt, since impeachment is merely an accusation, not a determination of guilt.

To evaluate the procedures of the House in this impeachment matter, attention is first directed to the requirements of a grand jury. Except to the extent the procedure is controlled by statute, the procedure of a grand jury is informal, purely investigative, and free from technicalities. 38 C.J.S., *Grand Juries* Section 37, at 1036; *Levine v. U.S.*, 363 U.S. 610, reh. den. 363 U.S. 858 (1960); *Coppedge v. U.S.*, 311 F.2d 128 (D.C. Cir. 1962), *cert. denied*, 373 U.S. 946. The accused, or person subject to a grand jury investigation, is ordinarily not entitled as a *matter of right* to appear before the grand jury, or to be heard, or to have witnesses sworn and examined in his behalf except to the extent such rights are established by statute. 38 C.J.S., *supra*, Section 39, at 1038; *Duke v. U.S.*, 90 F.2d 840 (4th Cir. 1937), *cert. denied*, 302 U.S. 685; *Lopez v. State*, 252 S.W.2d 701 (Tx. 1952), *cert. denied*, 344 U.S. 893. The accused has no *right* to be represented by counsel at the investigation. *United States v. Central Supply Ass'n.*, 34 F. Supp. 241 (N.D. Ohio 1940). And the accused has no *right* to cross-examine witnesses called by the grand jury to give information against him. *U.S. v. Levinson*, 405 F.2d 971 (6th Cir. 1968), *cert. denied*, 395 U.S. 906. A court may, in its discretion, grant a person accused of a crime the privilege of going before the grand jury while his case is under investigation. 38 C.J.S., *supra*, Section 39 at 1939. Similarly, impeachment committees have often granted those subject to their investigation the courtesy of appearing and taking part to various degrees in the investigations.

In the instant case, Respondent Carrillo was given notice of the Select Committee's investigation, the opportunity to appear in person at the committee hearings, to be represented by counsel at every public meeting of the committee, to present evidence before the committee, to cross-examine witnesses through the committee when the Chair deemed it appropriate, and to submit written questions to the Chair. Respondent was also given a complete 15-volume set of all the evidence adduced before the committee. Select Committee on Impeachment, *supra*, at 3034. Indeed, by letter of Respondent's attorney, Arthur Mitchell, to the chairman and vice-chairman of the Select Committee, the Committee was commended for the manner in which business was conducted; Mr. Mitchell declared also that "the record reflects the judicious approach to a difficult problem." *Id.*, App. E (letter dated July 21, 1975). Thus, because the investigatory stage of an impeachment proceeding is not adjudicative of any rights but merely accusatory, and because adjudication is effected at the Senate trial where full safeguards are afforded, any procedural safeguards which may have been required were clearly met at the investigatory stage.

Finally, Respondent's allegations that the collective effect of circumstances surrounding the impeachment process denied him due process are without merit. As stated above, the procedures of the House and the Select Committee on Impeachment afforded Respondent any due process safeguards to which he may have been entitled and such safeguards will continue through the culmination of the trial of the impeachment charges by the Senate. This body has the authority and responsibility to consider the charges made in the Articles of Impeachment and the evidence pursuant thereto. Pretrial publicity has not destroyed Respondent's ability for a fair and impartial trial by the Senate. And, whatever the alleged motivations for instituting impeachment proceedings in the House may have been, the validity of the Articles of Impeachment will be determined by the Senate after hearing the evidence.

V. THE IMPEACHMENT PROVISIONS OF THE TEXAS CONSTITUTION, ARTICLE XV, SECTION 1, ARE NOT VAGUE AND THEREFORE DO NOT VIOLATE THE DUE PROCESS REQUIREMENTS OF THE UNITED STATES CONSTITUTION. (Reply to Point VI, Brief in Support of Original Answer).

Respondent claims, without a great deal of specificity, that Article XV, Sections 1-5, of the Texas Constitution, under which impeachment proceedings in the House of Representatives were conducted against him, lack proper definitions of impeachable offenses and, therefore, are unconstitutionally vague. Quite the contrary, the impeachment articles in the Texas Constitution are the product of a wealth of English and American precedents and it was the English-American model upon which the framers of the Texas Constitution based their instrument. Also, subsequent Texas interpretation has expanded, Respondent's assertions to the contrary notwithstanding, upon the nature of impeachment and the principle upon which official conduct may be determined to be an impeachable offense. *Ferguson v. Maddox, supra*. The provision in the Texas Constitution for impeachment must be read in light of all the surrounding evidence regarding the nature of impeachment and the scope of impeachable offenses. The constitutional provision itself is *not* the sole source of information regarding the scope of impeachable offenses.

The framers of the Constitution of the newly annexed State of Texas were fully aware of the English-American parliamentary law procedure, and deliberately carried this model from their Republic Constitution (1936) to the State Constitution. Fehrenbach, T. R., *Lone Star*, 222 (1968); *Ferguson v. Maddox, supra*, at 892. As the Texas Supreme Court points out, "'impeachment' at the time of the adoption of the Constitution, was an established and well-understood procedure in English and American parliamentary law . . ." *Id.*, at 892. It is proper then to inquire as to the meaning of impeachable offenses as the English developed the procedure and as the United States later understood it. Berger, R., *Impeachment: The Constitutional Problems*, 87 (1973).

The controversy over what constitutes impeachable offenses has generally centered on whether impeachment is limited to indictable criminal conduct or whether noncriminal, official misconduct is a ground for impeachment. Berger, R., *Impeachment for High Crimes and Misdemeanors* (1971); Fenton, P., *The Scope of the Impeachment Power* (65 NW.U.L.REV. reprint); (both articles reprinted in Committee on the Judiciary, House of Representatives, *Impeachment: Selected Materials* [House doc. 93-7] [Oct. 1973] at 617, 663 res.) The general conclusion from a study of English precedents is that impeachable offenses include general official misconduct, such as breach of official duty or abuse of official position. Fenton at 671, Yankwish, L., *Impeachment of Civil Officers under the Federal Constitution* (reprinted from 26 GEO.L.J. May 1938) in Committee on Judiciary, *Id.*, at 692. Impeachment was used in several English cases to reach offenses which were perceived by Parliament to work against the system of government. Staff of the Impeachment Inquiry, Committee on the Judiciary, *Constitutional Grounds for Presidential Impeachment*, 83d Cong., 2d sess. (Comm. print, Feb. 1974), at 5. For example, charges brought in English cases included abuse of official position and oath to have personal property appraised at less than real value, procuring offices for persons who were unfit, squandering away the public treasury, improprieties in judicial office such as browbeating witnesses and commenting on their credibility, misapplication of funds, corruption by using official position to obtain property from other persons unfairly or at prices much less than real value, obtaining gifts from the sovereign for oneself, and sale of public offices. Staff of Impeachment Inquiry, *supra*, at 5-7; Berger, *supra*, in *Selected Materials*, at 628-31. Clearly the conduct identified in the recommended articles of impeachment recommended by the Select Committee and acted upon by the House falls into the general category of official misconduct as described by these English precedents. Respondent had been accused by the House of Representatives of diverting public monies, supplies, employees, materials, and equipment for his own personal benefit (Articles I, III, IV, VII and VIII), abuse of official responsibility by refusing to disqualify himself from cases in which he was politically and financially involved with a litigant (Article II), abuse of official power by attempting to influence membership of a

grand jury and school board (Article II), abuse of responsibility by doing private business with a governmental entity he served (Article V), abuse of power by causing funds to be paid to persons who were not entitled to receive them (Article IX, X and XI), and criminal conduct by filing false financial statements with the Secretary of State (Article VI). Even under the narrowest definition of an impeachable offense, Respondent's conduct would constitute such.

The American impeachment precedents also support the definition of impeachable offenses as general official misconduct. That the American experience should be similar to the English is to be expected from the nature of the origins of our constitutional order. As Alexander Hamilton wrote, in No. 65 of *The Federalist*, Great Britain served as "the model from which (impeachment) has been borrowed." The impeachment language in the United States Constitution, Article II, Section 4, provides that civil officers shall be removed upon conviction of "treason, bribery, and other high crimes and misdemeanors . . ." The Texas impeachment language contains no such limitation upon the impeachable offenses, thus the implication is that the class of impeachable offenses in Texas is broader than that under the United States Constitution. Interpretive Commentary, Article XV, Section 1, Texas Constitution. But despite such assertions, it can be demonstrated that even under the conceivably narrower 'high crimes and misdemeanors' language in the United States Constitution, the conduct with which Respondent is charged would be considered impeachable according to the American interpretation.

Texas case law has also held that judgment of impeachment is not void because no constitutional or statutory definition existed at the time of conviction designating the specific acts and conduct for which an individual could be removed from office. *Ferguson v. Maddox, supra*, at 891-92. The Supreme Court there acknowledged that at the time the Texas constitutional provision for impeachment was written, impeachment was understood to reach officials guilty of "official delinquencies or maladministration" or "grave official wrongs". *Id.* at 892. The court pointed out that "a definition can, at best, do little more than state the principle upon which the offense rests," and went on to state that the purpose of impeachment is "the protection of the people from official delinquencies or malfeasances." *Ibid.* Consequently, the court reasoned, no attempt was made by the framers to define impeachable offenses, and "the futility as well as the unwisdom of attempting to do so has been commented upon." *Ibid.*

The conduct of which Respondent is accused falls under the category of impeachable offenses as defined by the English precedents, the American experience, and state definition. No claim of vagueness as to the definition, particularly considering the nature of the conduct involved here, is supportable. Any official holding public office, by virtue of the oath of his office and the definition of the duties and responsibilities inherent in the office, is on notice that the criminal activity which Respondent is accused of committing would constitute impeachable offenses. It is in the nature of our republican form of government, and the deep-rooted suspicion of the American people of abuse of official power, that public officials are proscribed from engaging in the kinds of misconduct of which Plaintiff is accused. Impeachment, with conviction limited to removal from office and proscription from holding future office, is a well-known, well-understood, and proper remedy designed to safeguard the integrity of the office. There is nothing vague about the policy of impeachment contained in the Texas Constitution and articulated by the Texas Supreme Court as encompassing the type of activity with which Respondent is charged.

The Texas impeachment provisions have been in effect since before Respondent's birth. The body of common law which does specify the grounds for impeachment, implicitly adopted by the Texas provisions, has been well developed for an even longer period of time. The claim that Respondent had no notice, or cannot be held to have had notice, of the proscribed misconduct at the time of his actions is

simply ill-founded and false.

VI. PROCEEDINGS BEFORE THE HOUSE OF REPRESENTATIVES AND HOUSE SELECT COMMITTEE ON IMPEACHMENT DO NOT DENY RESPONDENT DUE PROCESS OF LAW BECAUSE THE PROPOSED ARTICLES OF IMPEACHMENT DO NOT AMOUNT TO THE ENACTMENT OF A BILL OF ATTAINDER OR EX POST FACTO LAW. (Reply to Point VII, Brief in Support of Original Answer).

Article XV, Sections 1-6, of the Texas Constitution and Article 5961, V.T.C.S., are not in conflict with Article I, Section 16, of the Texas Constitution which forbids the making of bills of attainder and ex post facto laws.

It is well settled that both the federal and Texas constitutional prohibitions of bills of attainder and ex post facto laws apply only to penal laws. *Trop v. Dulles*, 365 U.S. 86 (1958); *Bender v. Crawford*, 33 Tex. 745, 751 (1871). The United States Supreme Court has stated that

"Each time a statute has been challenged as being in conflict with the constitutional prohibitions against bills of attainder and *ex post facto* laws, it has been necessary to determine whether a penal law was involved, because these provisions apply to statutes imposing penalties. In deciding whether or not a law is penal, this Court has generally based its determination upon the purpose of the statute. If the statute imposes a disability for the purposes of punishment--that is, to reprimand the wrongdoer, to deter others, etc.--it has been considered penal. But a statute has been considered nonpenal if it imposes a disability, not to punish, but to accomplish some other legitimate governmental purpose." *Trop v. Dulles*, 365 U.S. 86, 95-96 (1958).

Again, addressing the question of whether a law is penal in nature so as to bring into play the constitutional prohibitions of bills of attainder and *ex post facto* laws, the Court stated,

"Where the source of legislative concern can be thought to be the activity or status from which the individual is barred, the disqualification is not punishment even though it may bear harshly upon one affected." *Flemming v. Nestor*, 363 U.S. 603, 614 (1960). *See also, Deveau v. Braisted*, 363 U.S. 144, 1960.

It is therefore clear that the purpose of the law in question is largely determinative of its penal or nonpenal classification. The Texas Supreme Court has explicitly determined the purpose of impeachment proceedings in Texas. The Court has stated,

"The Constitution, in relation to impeachment, has in mind the protection of the people from delinquencies or malfeasances The primary purpose of an impeachment is to protect the state, not to punish the offender. True, he suffers, as he may lose his office to be disqualified from holding another; but these are only incidents of a remedy necessary for the public protection." *Ferguson v. Maddox*, 114 Tex. 85, 263 S.W. 888, 892 (1924).

Respondent's suspension from office upon impeachment, pending the outcome of the trial by the Senate, is an integral part of impeachment proceedings deemed necessary for the protection of the public. The purpose of the suspension is identical to that of permanent removal by impeachment, public protection, and is decidedly not penal in nature. Thus, the constitutional provision proscribing bills of attainder and ex post facto laws does not apply to impeachment provisions, including Respondent's suspension from office.

This result is also mandated by the general rule that one part of a constitution will not be allowed to render another part inoperative if the two may be harmonized by any reasonable interpretation. *Hanson v. Jordan*, 145 Tex. 320, 198 S.W.2d 262 (1946). And even if such harmonization could not be accomplished (which it obviously can), the impeachment provisions would not fall. Contrary to what Respondent asserts in his brief, the rule in Texas is that in construing apparently conflicting constitutional

provisions, a general provision must yield to a special provision. *City of San Antonio v. Toepperwein*, 104 Tex. 43, 133 S.W. 416 (1911).

Respondent's argument that his impeachment would constitute an ex post facto law is frivolous for an additional reason. He argues that impeachment pursuant to the Texas provisions, which fail to enumerate impeachable offenses, necessarily results in punishment for conduct that occurred prior to the creation of the offense. This argument rests on the faulty assumption, discussed in Point V, *supra*, that the impeachment provisions are too vague to provide notice of the conduct forbidden.

VII. THE RESPONSIBILITY OF THE SENATE TO PROCEED WITH THESE IMPEACHMENT PROCEEDINGS IS CLEAR AND NO CIRCUMSTANCES EXIST TO TERMINATE THE PROCEEDINGS ON GROUNDS OTHER THAN THE MERITS. (Reply to Point VIII, Brief in Support of Original Answer.)

A. *No prior jurisdiction in another forum exist to bar these proceedings.*

Respondent asserts that this proceeding should be terminated in light of the investigation being conducted by the Judicial Qualifications Committee pursuant to Article V, Section 1-a of the Texas Constitution. Respondent implies that the "prior jurisdiction" of that Commission should take precedence over the "jurisdiction" of this body. Such an argument is clearly ill-founded in view of Subsection 13 of Article V, Section 1-a:

"This Section 1-a is alternative to and cumulative of, the methods of removal. . . provided elsewhere in this Constitution."

Clearly impeachment may proceed while a removal proceeding is pending elsewhere and in fact may be advisable since the remedy provided in impeachment extends not just to removal from office but also disqualification from holding public office in the future. Art. XV, Sec. 4, Tex. Cons. The Texas Supreme Court has held that, absent statutory authority, no other body may permanently disqualify a district judge. *In re Laughlin*, 265 S.W.2d 305 (Tex. 1954). Moreover, the subsequently enacted Section 1-a of Article V grants no such power to the Judicial Qualifications Committee. If the Senate is of the opinion that the evidence adduced in this proceeding is so compelling as to warrant conviction and disqualification for the protection of the state, it and it alone has the authority to impose such judgment.

Respondent further asserts that this proceeding should be terminated because impeachment proceedings cost too much, have an adverse impact on the political atmosphere of the State, are political in nature, and are discarded with respect to district judges in the proposed new Constitution. The Board of Managers submits that none of these arguments are meritorious. Article XV, Sec. 2 of the Constitution states that "Impeachment of . . . Judges of the . . . District Court shall be tried by the Senate." The importance of this extraordinary proceeding was recognized by the framers of the present Constitution and the responsibility of the Senate to try the Articles of Impeachment voted by the House in this instance is clear. The primary consideration is and should be the charges and the evidence, and it is on this basis that the Senate should fulfill its constitutional mandate. Because these proceedings may involve the expenditure of funds, affect the "political atmosphere" of the State, or not be used in the future has no bearing on whether or not Respondent should be convicted of impeachment charges preferred against him.(5)

(5) Respondent's assertions that the proceedings in the Federal District Court for the Southern District of Texas, Corpus Division, concerning federal charges against Respondent have become moot, since the Senate has recessed until the conclusions of such proceedings.

B. *Press coverage of Impeachment Proceedings do not deny Respondent a fair trial.*

The extraordinary power of impeachment was vested in the House and Senate by the framers of the Constitution of Texas just as in the federal constitution. That an impeachment proceeding by its very nature would be of statewide interest - or nationwide interest was as clear in 1876. But no attempt has ever been made to vest this power with an obscure group unknown or unavailable to the public. Rather the elected representatives of the people were designated as the jury and the only jury for the trial of impeachment charges. No other jury panel or jurisdiction, judicial or otherwise can consider impeachment charges or render a verdict of conviction and disqualification. The wisdom of this choice is clear as the "primary purpose of impeachment is to protect the State, not to punish the offender." *Ferguson v. Maddox, supra*. Undeniably high public interest exists as it should since it is the protection of their interest which is the question in these and any impeachment proceedings. But that did not deter the founders of this state from trusting this body to be capable of fulfilling their responsibility to try impeachment charges in a dignified and impartial manner.

Finally, Respondent should not be heard now to complain that "Allowing such persuasive media coverage will turn what by rights should be solemn proceedings into a circus" and "it will be impossible to prevent material interference with the impartiality and fairness required in the courtroom." (pg. 20, Brief in Support of Original Answer). Counsel for Respondent was invited to comment on proposed rules relating to the allowing press coverage by both the Chairman of the Committee on Administration and the Senate as a whole. While he asked that press coverage not be allowed to disrupt orderly proceedings, he at no time expressed objection to the press being present, nor did he indicate any belief that a carnival or circus atmosphere would necessarily result from the presence of the press. Respondent's contention for termination or delay of the impeachment trial on this ground is without merit.

VIII. THE ARTICLES OF IMPEACHMENT RELATING TO CONSPIRACY ARE SUFFICIENTLY SPECIFIC. (Reply to Point IX, Brief in Support of Original Answer.)

Respondent asserts that the Articles of Impeachment charging conspiracy lack the specificity required under the rules of criminal and civil pleadings. It has been long established, and already set out in this brief, that impeachment proceedings are not criminal in nature and the strict standards of criminal pleadings do not apply. To briefly reiterate, Article XV, Section 4, of the Texas Constitution provides that impeachment carries no criminal sanctions. Article I, Section 10, of the Texas Constitution provides that an indictment by a grand jury is not a prerequisite for impeachment proceedings when the Respondent is charged with an offense criminal in nature. The Texas Supreme Court has stated:

"The purposes of an impeachment lie wholly beyond the penalties of a statute or the customary law." . . . The primary purpose of an impeachment is to protect the state, not to punish the offender.' *Ferguson v. Maddox, supra*, at 892.

Likewise allegations of impeachable offenses are not strictly bound by rules of civil pleadings since impeachable offenses are not susceptible to definition as "statutory offenses or common-law offenses, or even offenses against any positive law." *Ibid*.

The Board of Managers submits that the Articles of Impeachment alleging conspiracy, however, meet the standings for civil pleadings. In fact, conspiracy could be proved without even appearing in the pleading.(6) *State v. Ford Motor Co.*, 169 S.W.2d 504, 513 (Tex.Civ.App. 1943), *aff'd*, 175 S.W.2d 230 (Tex. 1943)(7)

(6) Indeed, Respondent may be impeached for the acts he is alleged to have committed in the "conspiracy" articles even if he is found to have committed them single-handedly, without assistance from, and apart from conspiracy with,

anyone else.

(7) Respondent's reliance on the *Ford* case is misplaced. First, the Supreme Court's statement that "the petition in a suit for penalties must state all the statutory requirements with the same degree of certainty that is required in a criminal case," 175 S.W.2d at 233, is on its face inapplicable to an impeachment proceeding which is neither penal in nature nor governed by any statutory requirements. Second, the holding of the Court, as opposed to its statement of general principles, was to affirm a judgment for the plaintiff even though its petition "did not name the time, place nor parties" to the conspiracy with which the defendant was charged.

To say that Respondent was unaware of the charges against him and the facts supporting those charges ignores Respondent's attendance and participation in the proceedings of the House Select Committee on Impeachment, the transcript of the proceedings which Respondent received and other communications between Respondent and the House of Representatives.

The Board of Managers submits that each Article of Impeachment which alleges a conspiracy gives Judge Carrillo full, fair and adequate notice. It is immaterial and irrelevant whether one categorizes the standard of pleading to be either criminal or civil in nature. The degree of specificity required in the Articles of Impeachment is measured by standards totally separate and apart from the customary criminal standards and civil standards. Even though the trial in the Senate is judicial in nature; and even though the trial will be conducted as is a trial in a customary courtroom; nevertheless, the requirements of notice pleadings are in a separate and distinct category. *Ferguson v. Maddox, supra*. The House of Representatives is not required to allege in its Articles of Impeachment an offense cognizable by any positive law. Therefore, the language of the Articles of Impeachment is allowed to be totally flexible and should be drafted so as to reasonably describe the matter for which the offer should be held accountable. Since there is no definition of an impeachable offense, how can there be a definition of the required language in the Articles of Impeachment? The answer to this question is that there can be no specificity in an Article of Impeachment. Common sense and the rules of fairness would, however, dictate that the Articles be drafted so as to give the officer fair and adequate notice as to what the prosecution intends to prove. This has been done in the instant case in each and every Article of Impeachment.

IX. ACTS CHARGED IN THE ARTICLES OF IMPEACHMENT ARE IMPEACHABLE OFFENSES. (Reply to Points X and XII, Brief in Support of Original Answer)

A. Impeachment in Texas is not limited to acts directly involved in the administrative or discretionary duties of office.

Respondent contends that impeachment can be grounded only on official misconduct and that, as a matter of law, he may not be impeached. While Respondent does not provide the court with any definition of official misconduct, clearly in even the narrowest of applications the conduct complained of in Articles II and VI is inextricably tied to his actions as a district judge.

Respondent would have the Senate adopt a position that an official may not be impeached for any act other than one directly related to his statutory or constitutional duties. Respondent however, ignores the purpose for impeachment and its use in the past. The Texas Supreme Court has stated:

"It was settled that the wrongs justifying impeachment need not be statutory offenses of common-law offenses or even offenses against any positive law. Generally speaking, they were designated as high crimes and misdemeanors, which in effect meant

nothing more than grave official wrongs." *Ferguson v. Maddox, supra*, at 892.

The Board of Managers submits that "grave official wrongs" means not only misconduct in executing the duties of an office but also while in his official position engaging in conduct which is so offensive that it brings his office, in this case the judiciary, itself into disrepute. In this case the articles of Impeachment charge conduct which is equatable to indictable offenses, theft of money, goods and services, which could be designated as "high crimes and misdemeanors" when engaged in by a district judge sworn to uphold the law.

Turning to conduct which has been sustained as an impeachable offense in Texas, Governor James E. Ferguson was convicted on the following impeachment charges among others:

Article 1

"That there was paid from the funds of the Canyon City Normal School deposited with the Temple State Bank on August 23, 1915, a note of \$5,000.00, together with \$600.00 interest, due by Jas. E. Ferguson to the First National Bank of Temple, Texas. That said amount has never been refunded to the State of Texas. That in part payment of the total due for the building of the Canyon City Normal College he used other funds, a portion of which belonged to the State, and the balance being in his hands as Governor, and deposited to his credit as Governor in the American National Bank of Austin, which acts constitute a violation law." The vote for sustaining this Article being 27 for and 4 against.'

Article 11

"That in this investigation of James E. Ferguson by the Committee of the Whole House of Representatives said James E. Ferguson testified that during the Regular Session of the Thirty-fifth Legislature and shortly thereafter he received from parties certain currency in varying amounts, the total of which was about \$156,500. That said transaction is unusual and questionable, and that the said James E. Ferguson, when questioned as to who loaned him this money, declined to answer, though the officer of the Committee of the Whole appointed to pass on the admissibility of testimony ruled that he should answer, and the Committee sustained said ruling. That he is thus not only in contempt of the House and its Committee, but he insists that he is not required to give before the Representatives of the people of Texas an accounting of said \$156,500 in currency which he received during sessions of the Legislature or shortly thereafter, and the receipt of such sums in currency, and the failure to account for same, constitutes official misconduct." The vote for sustaining this article being 27 for and 4 against."

Article 14

"That by an express provision of the Constitution and his oath of office the Governor is bound to enforce all laws of the State of Texas. The laws of Texas during the period of his administration expressly forbade State banks to lend money in excess of 30 percent of its capital stock. This was known to the Governor, yet in violation of this provision of the law he induced the officers of the Temple State Bank to lend to him, James E. Ferguson, an amount far in excess of that authorized by law, which loans were made during the years 1916 and 1917." The vote for sustaining this article being 26 for and 5 against."

None of these articles deal with any "official conduct" of the governor but rather conduct Mr. Ferguson engaged in while he held the office of Governor. In some of these acts he violated the laws of Texas which he had sworn to uphold, just as

Respondent has been charged with violating laws he has sworn to uphold.

Respondent's contention that since a district judge has no control over the disbursement of county funds, improper disbursement or receipt of those funds is not an official act of the district judge and therefore unimpeachable, also fails, possibly of its own weight, but clearly in light of the Ferguson trial. The state banks of Texas, not Governor Ferguson were vested with the power of lending money. (See Article 14, *supra*). The offenses for which Ferguson was impeached was obtaining the money in violation of the law. The offenses charged in the instant case are obtaining payment for goods or services in violation of the law. If a county erroneously disburses funds, regardless of the county's liability, certainly the individual responsible for the actions inducing the faulty disbursement can and should be held to account.

Attention should also be given to the other constitutional provisions relating to the grounds for removal of a district judge. Art. XV, Sec. 6 provides that a district judge may be removed if his "habits and conduct are such as to render him unfit to hold such office." Art. V. Sec. 1a(6)A provides a district judge may be removed for "willful or persistent conduct, which . . . casts public discredit upon the judiciary or administration of justice;" The specific inclusion of these grounds in the more restrictive removal proceedings belies the fact that such conduct was meant to be beyond consideration under the broad impeachment provisions of the constitution. The Board of Managers therefore submits precedence exists in Texas to sustain impeachment on the conduct charged in the Articles of Impeachment.

B. Impeachment in other jurisdictions is not limited to acts directly related to the discretionary or administrative duties of the office.

The Respondent cites Feerick, 39 Fordham L. Rev. 1 (1970) in support of his contention that only acts of official misconduct may be grounds for impeachment. This article deals primarily with the impeachment of federal judges. The impeachment of federal judges is governed by Article II, Section 4 of the United States Constitution.

"Section 4. The President, Vice President and all civil officers of the United States, shall be removed from Office on impeachment for, the conviction of, Treason, Bribery, or other high crimes and Misdemeanors."

The similarity then between the U.S. Constitution and the Texas Constitution as interpreted by the Supreme Court of Texas in *Ferguson v. Maddox, supra*, would appear to make the comments of Mr. Feerick in his article quite appropriate. After reviewing the precedents at common law under English parliamentary law and the twelve cases of impeachment at the federal level [pursuant to the provisions of Article II, Section 4, U.S. Constitution, *supra*,] Mr. Feerick concludes as follows:

"To be impeachable, an act must fall within one of two categories. It must violate some known, established law, be of a grave nature, and involve consequences highly detrimental to the United States. In the alternative, it must involve evil, corrupt, wilful, malicious or gross conduct in the discharge of office to the great detriment of the United States. Acts which result from error of judgment or omission of duty, without the presence of fraud, or from the misconception of duty, without the presence of a willful disregard, are not impeachable."

Respondent's reliance upon Berger, *Impeachment, the Constitutional Problems*, 1973, is misplaced. In this important work Mr. Berger traces the history of impeachment cases tried under both English and American parliamentary law. In the introduction to the work Mr. Berger admonishes:

"To grasp the place of impeachment in the constitutional scheme, and its potential role for the future, we need better to understand the use to which it was put in the past. For it was with the historical past in mind that the founders wrought." p.6

Having followed this admonition, he concludes at p. 195:

"That English impeachment comprehended nonofficial conduct seems tolerably clear."

Then in discussing the impeachment cases brought under the American federal system, he points out that this point was raised by the very first impeachment case, that of Senator William Blount in 1797. Senator Blount's counsel contended that the Senate lacked jurisdiction for the reason that Senator Blount was not accused of "misconduct in office". The point was left open, however, when it was determined that a Senator was not a "civil officer" within the meaning of Article 2, Section 4 of the U.S. Constitution.

Later in 1912, Judge Robert Archbald, Judge of the U.S. Court of Appeals for the Third Circuit was convicted on five articles out of thirteen articles of impeachment. He was convicted of Article 13 which charged him with obtaining credit from and through persons in litigation before him; attempting to influence litigations before the Interstate Commerce Commission for a financial consideration; *using his influence and position to induce various railroads to enter into business contracts from which he profited; using his position to influence speculative business ventures for his own profit.*

Of this case Mr. Berger quotes Chief Justice Taft from an address before the American Bar Association saying that the conviction was "most useful in demonstrating to all incumbents of the federal bench that they must be careful in their conduct outside of court as well as in the court itself and that they must not use the prestige of their official position, directly or indirectly, to secure personal benefit." Berger, at 199.

In 1936, in the impeachment case of Judge Halsted L. Ritter, United States District Court for the Southern District of Florida, the judge was charged in seven articles of impeachment. In the first six articles he was charged with unlawfully receiving a fee from a former law partner, with raising a receiver's fee from \$15,000.00 to \$75,000.00, with illegally engaging in private law practice and receiving fees from this practice and with failure to pay income taxes on certain income in 1929 and 1930. In the seventh article he was charged with: "committing the 'high crimes and misdemeanors' detailed in Articles 1-6, 'the reasonable and probable consequence of the actions or conduct of Halsted L. Ritter * * * as an individual or as such judge, is to bring his court into scandal and disrepute, to the prejudice of said court and public confidence in the administration of justice therein, and to the prejudice of public respect for and confidence in the Federal judiciary and to render him unfit to continue to serve as such judge * * * Wherefore the said Judge Halsted L. Ritter was and is guilty of misbehavior, and was and is guilty of high crimes and misdemeanors.'" p. 53, Appendix, Report of the Committee on Rules and Administration to accompany Senate Resolution 390, 93rd Congress, 2nd Session (1974).

On the first six articles a majority of the Senate voted, "guilty" on five of the six. On none of the first six, however, was there a two-thirds majority for a finding of "guilty". On the seventh article, however, the vote was 56-28, thus convicting the judge on this final article.

With the conviction of Judge Ritter, the death knell was sounded on the contentions that only misconduct in office could form the basis for impeachment. The finding of guilty on Article 7 broadened the basis for impeachment to include acts which destroy the public confidence in the judge in his fitness to administer justice.

Mr. Berger refers to the recent case, *In Re Haggerty*, 241 So. 2d 469 (La., 1970). *Haggerty* was a case brought by the Judiciary Commission of Louisiana charging a violation of Art. IX, Sec. 4, Par. B. of the Louisiana Constitution as amended by Act No. 661 of 1968:

"A justice or judge may be removed from office or retired involuntarily for wilful misconduct relating to his official duty or wilful and persistent failure to perform his duty, or for habitual intemperance, or for conviction, while in office of a felony."

Although this is not an impeachment case, the Judiciary Commission concluded that a hearing should be held upon the proposition of the removal of the respondent judge from office for the reasons and on the grounds of wilful misconduct relating to his

official duties, wilful and persistent failure to perform his duties, and habitual intemperance.

After a six day hearing the Commission concluded that the judge was guilty of charges warranting removal.

The charges which primarily concerned the Commission and the Supreme Court of Louisiana were:

“Wilful misconduct relating to official duties, namely gross and persistent violations of Canons I(8), IV(9), VI(10) and XVII(11) of the Canons of Judicial Ethics adopted by the Supreme Court of Louisiana on October 13, 1960 as follows:

(8) I. THE JUDICIAL OBLIGATION.

The assumption of the office of judge casts upon the incumbent duties in respect to his personal conduct which concern his relation to the state and its inhabitants, the litigants before him, the principle of law, the practitioners of law in his court, and the witnesses, jurors and attendants who aid him in the administration of its functions.

In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private political or partisan influences; he should administer justice according to law, and deal with his appointments as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity. As a necessary corollary, the judge must be protected in the exercise of his judicial independence.

(9) IV. AVOIDANCE OF IMPROPRIETY.

A judge's official conduct should be free from impropriety and the appearance of impropriety and his personal behavior, not only upon the Bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach.

(10) VI. ESSENTIAL CONDUCT.

A judge should be industrious, temperate, attentive, patient, impartial, and, since he is to administer the law and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts.

A judge should be prompt in the performance of his judicial duties. He should recognize that the time of litigants, jurors and attorneys is of value and that habitual lack of punctuality or diligence creates dissatisfaction with the administration of the Court.

A judge should be considerate of jurors, witnesses and others in attendance upon the Court.

(11) XVII. PERSONAL INVESTMENTS AND RELATIONS.

A judge should refrain, as far as is reasonably possible, from all relation which might affect him in the impartial performance of his judicial duties. He should

refrain from all relationships which would prejudice or reasonably appear to prejudice his judgment.

A judge should not utilize information coming to him in his judicial capacity for his private advantage.

"1. In participating and assisting in the organization of an assemblage for indecent purposes at the DeVille Motel in the City of New Orleans on December 17, 1969;

2. In obtaining and assisting in obtaining certain lewd and obscene motion picture films for showing at the assemblage;

3. In participating with others in the assemblage and in the showing and exhibiting of certain lewd and obscene motion pictures and still photographs.

4. In contributing financially toward the cost of the assemblage;

5. In arranging for, or assisting in the arranging of, the attendance of three prostitutes at the assemblage;

6. In promoting or assisting to promote the three prostitutes to perform certain lewd and indecent acts, as well as acts of prostitution, at the assemblage;

7. In exhibiting personal conduct and behavior unbecoming a member of the judiciary at the time of the appearance of the officers of the New Orleans Police Department at the DeVille Motel and in striking the police officers, on the aforesaid date;

8. In participating in and condoning the participation of others in acts which violate the criminal laws of the State of Louisiana relating to obscenity and prostitution, on that date;

9. In associating with persons with known criminal records and reputations;

10. In participating in illegal gambling activities;

11. In conducting himself in such a manner as to bring disgrace and discredit upon the judicial office which he holds, resulting in a loss of public respect and confidence in his ability to perform his duties.'

Although *In Re Haggerty*, supra, is a case tried by the Judiciary Commission, the constitutional grounds for removal are couched in the same terms as those contended for by the respondent in the instant case.

In this setting and although all of the misconduct alleged occurred in a private capacity the Louisiana Supreme Court said that the public has a "deep and vital interest" in the "office of judge". * * * "The official conduct of judges, as well as their private conduct, is closely observed. When a judge, either in his official capacity or as a private citizen, is guilty of such conduct as to cause others to question his character and morals, the people not only lose respect for him as a man but lose respect for the court over which he presides as well". 241 So. 2d. 469-478.

When the Court concluded that the private conduct of the judge "cast dishonor upon the judicial office" and was therefore "prejudicial to the administration of justice" it followed the path of the House of Commons, which charged in 1680 that Chief Justice Scroggs "by his frequent and notorious excesses and debaucheries" brought "the highest scandal on the public justice of the kingdom". Berger at 201.

From the foregoing discussion it can be seen that respondent's contentions concerning misconduct committed in a private capacity are totally without merit.

Finally it should be noted that the United States Senate determined that the case of Judge Ritter, supra, was such as to deprive the judge of his office. In a closely analogous case one perhaps more egregious in its consequences, the Senate of the State of Texas should determine that the conduct of respondent has disintitiled him to serve as a district judge. The Supreme Court of Texas has said that except in cases lacking jurisdiction, the Senate is the arbiter of the law without fear of judicial intervention. *Ferguson v. Maddox*, supra.

X. THE RESTRICTIONS OF ARTICLE 5986, V.A.T.S., ARE INAPPLICABLE TO IMPEACHMENT PROCEEDING, AND IT IS PREMATURE TO DETERMINE THE EXTENT TO WHICH, IF AT ALL, THE SENATE SHOULD EXERCISE THE "PRIOR-TERM DOCTRINE" AS A RULE OF SELF-RESTRAINT. (Reply to Point XI, Brief in Support of Original Answer.)

Respondent asserts that Article 5986, V.A.T.S., prevents his removal for actions alleged to have occurred prior to his latest election to office as District Judge of the 229th Judicial District of Texas on November 1, 1974. This assertion ignores that the Supreme Court of Texas has expressly held that Article 5986, V.A.C.S., is inapplicable to public officers whose modes of removal are provided for in the Constitution.

In *In re Brown*, 512 S.W.2d 317 (Tex. 1974), the Court held:

"Article 15, Section 7, of the Texas Constitution authorized the legislature to provide for the removal of officers for whom the modes of removal are not provided in the Constitution. This (removal) proceeding is authorized by the Constitution, and for that reason Article 5986 is not applicable." *Id.* at 320.

While the Supreme Court was there considering constitutional provisions relating to removal by the Judicial Qualifications Commission, the provisions of the Texas Constitution providing for removal by impeachment are no less excepted from the ambit of Article 5986.

It is true that the Court in *Brown* reaffirmed its holding in *In Re Laughlin*, 265 S.W.2d 805 (Tex. 1954), that as a matter of public policy, not of constitutional or statutory compunction, a district judge should not be removed, by either the Judicial Qualifications Commission or the Supreme Court, for misconduct known to the electors at the time the last election and forgiven by them as evidenced by their election or reelection of such judge. Respondent argues that, at the very least, this judicially-created "prior-term doctrine" is applicable in cases of impeachment and requires the House to affirmatively determine the absence of public knowledge. There are several things wrong with this argument. First, neither *Brown* nor *Laughlin* held the "prior-term doctrine" applicable to impeachment proceedings. As indicated above, the Legislature's power of impeachment, while partaking of common constitutional genesis with the Supreme Court's power of removal, is considerably broader than the latter - both in terms of conduct justifying removal and the consequences thereof. It does not follow, that the judicial gloss of the "prior-term doctrine" should apply to both.⁽¹²⁾ Simply because the Supreme Court has indicated that as a matter of judicial self-restraint, it will not exercise its constitutional removal power to remove a judge whose misconduct was known to the electors, does not mean that the same constraint should be adopted by the Senate. Second, and most importantly, because it is the Senate and not the House which is to sit in judgment on Respondent, it is premature to attempt to address the merits of the "prior-term doctrine" in the impeachment context. The extent to which the Senate may deem it appropriate to apply such doctrine of self-restraint is an issue for the Senate in the first instance. It is no more appropriate to speak of "burden of proof" in assessing the House's accusatory proceedings than it would be in assessing the work of a grand jury.

(12) For example, the Supreme Court, unlike the Senate, has no power to bar a district judge from holding office in the future. It is therefore logical for the Court not to remove a judge for misconduct known to the electorate and forgiven in the past since the electorate may again forgive by re-electing the removed judge. On the other hand, the Senate's power to disqualify forever an impeached judge from holding office implies that there are some forms of misconduct which cannot be forgiven in future elections. It logically follows that past forgiveness by the electorate should not immunize such misconduct.

Finally, and this is added solely by way of guidance to the Senate, the "prior-term doctrine" is essentially a motion of waiver or ratification premised on

"public access to full information." *In re Brown, supra*, at 321. As such, it is clearly in the nature of an affirmative defense with the burden on the accused officer to prove facts justifying its application. To suggest, as Respondent does, that the Board of Managers must prove the absence of full knowledge by the public would impose the impossible task of proving a negative. It is hornbook law that the party claiming waiver or ratification must himself prove it.

CONCLUSION AND PRAYER

For the reasons and authorities set out above, the Board of Managers respectfully prays that the Senate, setting as a court of impeachment, deny all relief requested by Respondent in his Original Answer and Brief in Support of Original Answer.

Respectfully submitted,

/s/ Terry Doyle
TERRY DOYLE

JOHN L. HILL
Attorney General of Texas

JOHN W. ODAM
Executive Assistant Attorney General

/s/ Elizabeth Levatino
ELIZABETH LEVATINO
Special Assistant Attorney General

Counsel for Board of Managers

CERTIFICATE OF SERVICE

I, Elizabeth Levatino, counsel for the Board of Managers, certify that I have on September 22, 1975, placed two copies of this Brief in Reply to Original Answer in the United States Mail, postage prepaid to Mr. Richard Haynes, Suite 610, 711 Fannin Street, Houston, Texas 77002 and hand delivered two copies to Mr. Arthur Mitchell, 315 Westgate Building, Austin, Texas.

/s/ Elizabeth Levatino
ELIZABETH LEVATINO

ADJOURNMENT

Senator Doggett moved that pursuant to the September 24, 1975 telegram from the President of the Senate and in accordance with Article III, Section 10 of the Constitution, the Senate, sitting as a Court of Impeachment, stand adjourned until 5:00 o'clock p.m. tomorrow.

The motion prevailed.

Accordingly, the Senate, sitting as a Court of Impeachment, at 10:05 o'clock a.m. adjourned until 5:00 o'clock p.m. tomorrow.

SEVENTH DAY
(Saturday, October 4, 1975)

The Senate, sitting as a Court of Impeachment, met at 5:00 o'clock p.m., pursuant to adjournment, and was called to order by the Senator from Jackson, Senator Patman.

The roll was called and the following Senators were present: Doggett and Patman.

Absent-excused: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

There was no quorum present.

COMMUNICATION FROM PRESIDENT

The Presiding Officer laid before the Court the following Communication from the President:

The State of Texas
Office of the Lieutenant Governor
Austin

October 4, 1975

Dear Senator Patman:

You are hereby designated to serve as presiding officer over the session of the Court of Impeachment on October 4, 1975.

Thank you for your assistance in this matter.

Sincerely,

/s/
William P. Hobby

Honorable William N. Patman
The State Senate
Austin, Texas 78711

The Secretary/Clerk read the Communication.

ADJOURNMENT

Senator Doggett moved that pursuant to the September 24, 1975 telegram from the President of the Senate and in accordance with Article III, Section 10 of the Constitution, the Senate, sitting as a Court of Impeachment, stand adjourned until 10:30 o'clock a.m., Monday, October 6, 1975.

The motion prevailed.

Accordingly, the Senate, sitting as a Court of Impeachment, at 5:01 o'clock p.m. adjourned until 10:30 o'clock a.m. Monday, October 6.

EIGHTH DAY
(Monday, October 6, 1975)

The Senate, sitting as a Court of Impeachment, met at 10:30 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present: Adams, Aikin, Braecklein, Brooks, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, Meier, Mengden, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: Clower, McKnight, Moore and Ogg.

Absent: Andujar.

A quorum was announced present.

Senator Don Adams offered the invocation.

LEAVES OF ABSENCE

Senator Moore was granted leave of absence for today on account of important business on motion of Senator Schwartz.

Senator McKnight was granted leave of absence for today on account of illness on motion of Senator Creighton.

Senator Clower was granted leave of absence for today on account of important business on motion of Senator Mauzy.

The President laid before the Senate the following Communication:

October 3, 1975

The Honorable William P. Hobby
Lieutenant Governor of Texas
State Capitol
Austin, Texas 78711

Dear Governor:

According to the rules of the Senate adopted on September 3, 1975, for the upcoming impeachment trial, I respectfully request that I be excused for Monday, October 6, 1975. I have been assigned to trial in Harris County in the matter of Hoff, Et Al -vs- Lindsay, Et Al in the 61st District Court of Harris County. The matter involves the Texas Election Laws and is an injunctive hearing. It will only be a one-day matter since the case will not be tried on the merits.

Thank you for your consideration of this matter.

Very truly yours,

/s/
JACK C. OGG

The Secretary/Clerk read the Communication.

There was no objection and the Leave of Absence was granted.

APPEARANCES

Judge O. P. Carrillo, Respondent; Honorable Arthur Mitchell, Honorable Richard Haynes, Honorable Jan Fox, Attorneys for Respondent.

Board of House Managers; Honorable Terry Doyle, Counsel; Honorable John L. Hill, Attorney General of Texas; Honorable Liz Levatino, Assistant Attorney General of Texas on behalf of the Board of Managers.

THE PRESIDENT: Senator Moore requests that the record reflect that he has requested a copy of today's proceeding to be forwarded to his office for his perusal.

SENATOR TRAEGER: Mr. President.

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: Parliamentary inquiry.

THE PRESIDENT: State your inquiry.

SENATOR TRAEGER: Mr. President, I don't believe there's a member of the Senate that at one time or other during these proceedings is not going to have important business. What is going to be the policy of the Chair and of the Court as to the fact that our being absent will put us in the position of missing some of the evidence, either by the prosecution or the defense? I would like to know our exact position in this, how practical guidelines are going to be drawn and exactly what we can expect as we weigh the merits and importance and relevance of the important witnesses.

THE PRESIDENT: First of all, the Chair would urge every Member of the Court very strongly to be present as much of the time as is possible, even at expense to yourself. It is, however, a fact of life that this is a body of thirty-one people, who have other demands on their time, Court appearances and so forth. It has certainly been the practice in all prior trials in which there were absences from time to time. I think as a practical matter that is inevitable, but I would urge very strongly each Member of the Senate to make every effort to be present every day.

SENATOR TRAEGER: Thank you, Mr. President.

THE PRESIDENT: In the event that any Member of the Court is unavoidably absent, of course he should read the transcript of these proceedings during the time of his absence.

ACTIONS OF THE PRESIDING OFFICER

October 6, 1975

The President laid before the Senate the following:

Re: Officers of the Court

Pursuant to Rule 2 of the Special Rules of Impeachment for the Trial of O. P. Carrillo, Judge of the 229th Judicial District, I hereby designate Mr. Don Rives and Mr. Steve Bickerstaff as Officers of the Court and with privileges of the floor as provided in Rule 14.

/s/
William P. Hobby

Re: Officers of the Court

Pursuant to Rule 2 of the Special Rules of Impeachment for the trial of O. P. Carrillo, Judge of the 229th Judicial District, I hereby designate the following persons as Officers of the Court with privilege of the floor as provided in Rule 14.

Lowell Gault	Betty King
Claiborn Crain	Kay Hughes
Harrison Cole	Margrette Vollers
Rodney Kelly	Joy Weil
Tim Peebles	Glenda Fuller
Chris Saylor	Terry Bradshaw
Doug Hill	Phyllis Knight
Mike Plake	Jaye Thompson
Lolly Garcia	Cindy Read
Mark Szuchman	Peggy Brinkman

/s/
William P. Hobby

The Secretary/Clerk read the Actions.

THE PRESIDENT: Will the Court Reporter, Mrs. Joy Weil, who has not been sworn, please present herself at the Bar to be sworn at this time?

Whereupon the following oath was administered by Lieutenant Governor Hobby to Mrs. Weil:

“You do solemnly swear or affirm that you will correctly transcribe and report all of the proceedings on the trial of O. P. Carrillo, on impeachment, so help you God.”

MRS. WEIL: I do.

Each member will find on his desk the Journals of the trial. So far, the thick Journal, which is the Journal of the first day, of course, contains the Answers filed by Judge Carrillo. The smaller Journal, which contains the proceedings of several days, contains the Board of Managers' response to that Answer.

Chair, at this time, recognizes Mr. Arthur Mitchell, Counsel, to read the pleadings that he may have at this time.

MR. MITCHELL: Thank you, Mr. President. I have filed a motion of Respondent for order of witnesses and other relief, Mr. President.

(Verbatim Copy of Original Document as received)

THE SENATE OF THE STATE OF TEXAS
COURT OF IMPEACHMENT
MOTION OF RESPONDENT FOR ORDER OF WITNESS
AND FURTHER RELIEF

Comes now O. P. CARRILLO, Respondent, and requests the Board of Managers through its counsel to give to Respondent a list of witnesses and copies of all statements taken therefrom, which list should show the following:

I.

1. The name, address, order of presentment of each witness;
2. The Article of Impeachment to which the witness's testimony will relate;
3. The Respondent prays for this relief to permit him to adequately defend and to prepare for cross examination and to fully and completely develop the case as justice requires.

II.

BILL OF PARTICULARS

Respondent requests further that in the event that this Court overrules the special exceptions contained in Respondent's Answer, numbered Special Exception 1 to Article I, Special Exception 2 to Article II, Special Exception 3 to Article III, Special Exception 4 to Article IV, Special Exception 5 to Article V, Special Exception 6 to Article VI, Special Exception 7 to Article VII, Special Exception 8 to Article VIII, Special Exception 9 to Article IX, Special Exception 10 to Article X (as appearing pp. 56 - 64 of the Record of Impeachment trial of Judge O. P. Carrillo, September 3, 1975), that this Court grant this Bill of Particulars to require more particular pleading and pleading with specificity of the Articles of Impeachment and specifically that the Board of Managers be required to plead specifically as to:

Article I: the name of the conspirators and the time and place of conspiracy.

Article II: actionable misconduct, that is the acts of misconduct relating to maladministration in the office while the Respondent was in office following a Certificate of Election dated November, 1974; otherwise, as stated by Respondent in his Answer, impeachment will not lie, there being an admission on the part of the House that no maladministration has occurred.

Article III: the specific time and place of the occurrences of the alleged acts of misconduct; name of any conspirator, and the time and place of the alleged conspiracy.

Article IV: the facts which would make said conduct alleged in Article IV, 1, 2, 3, 4, 5, subject to impeachment; the same on their face do not involve official misconduct.

Article V: specifically the time, place and persons engaged in said conspiracy.

Article VI: that the Respondent was willfully and intentionally involved in the composition of said financial statement and the extent to which he was and the instances in which it is incorrect.

Article VII: facts as relate to the Article which make the same impeachable relating to the performance of his office as district judge.

Article VIII: name, place, time, and subject matter of the conspirators and conspiracy and/or combination and/or agreement.

Article IX: time, place and persons with whom he conspired to defraud and the ways in which he could misappropriate county funds when in the hands of the county officials, or stated otherwise, how he accomplished misappropriation of county funds.

Article X: the time, place and persons entering into said alleged conspiracy and the methods by which same was entered and the act of the district judge relating to county funds paid to an individual.

WHEREFORE, Respondent prays his Motion be granted in all things as regards the order of witnesses and the subject matter involved as well as statements taken therefrom along with his Bill of Particulars.

DATE: 10.6.75

Respectfully submitted,

ARTHUR MITCHELL
RICHARD HAYNES
315 Westgate Building
Austin, Texas 78701

By /s/Arthur Mitchell
Arthur Mitchell

ATTORNEYS FOR RESPONDENT
O. P. CARRILLO

MR. MITCHELL: And, in addition, I would like at this time with leave of the President, to request a postponement of the proceedings. And, the reason for that postponement, I would like to outline, if I could, the problems that Counsels have in connection with the proceeding in the trial of impeachment. As the President and the Court know, we have just completed a lengthy and complicated trial in Corpus Christi with the jury returning on Thursday, October 2nd. Both Counsel, that is, Mr. Haynes, was pre-committed in Federal Court in Houston on Friday, and I was pre-committed in Duval County in a companion case and attended docket Friday with the result that we are, of course, put to the test under Rule 33 of the Federal Rules to file a Motion for New Trial, which we intend to do. We have not prepared a formal written motion for postponement because Counsel felt possibly we could accommodate and discharge our duty to our client. However, it becomes apparent from the contents of the motion and from the circumstances that it would be impossible to completely discharge our duty to our client.

We request a postponement to permit us to fully explore, prepare a complete Rule 33 motion, which, as the Court well knows, is due within seven days from the date that the jury returns its verdict, which is Thursday. We want to blueprint to the Court that this is indeed a critical stage of the trial, that is, the preparation of the motion for new trial which, as the Court is aware, constitutes the assignment of error on appeal.

We are reluctant to proceed today without a request for postponement because of two reasons: One, as the Court well knows, the Supreme Court mandates that each accused in a Federal and State trial have competent Counsel. We are fearful that if we are called upon to discharge our duty here today and to work continuously through this week, that, in some fashion or manner, that we, as attorneys for Judge Carrillo, will not fulfill the dictates of that mandate, that is, that he have competent Counsel in preparation of a motion for new trial, which is a critical document and which is a

critical stage of the trial. We reluctantly, therefore, request a postponement until Thursday to permit us to prepare the Rule 33 motion and to file it in Corpus Christi to the end that the constitutional mandate of competent Counsel be complied with in that trial.

Ancillary to the request for postponement to fulfill our obligation in that Federal trial, we felt also that, for this trial, we have not had adequate time to prepare ourselves, and that this additional time will give us an opportunity. And that, one, we need to read the Answer filed by the Counsel for the Board of Governors--and I suppose he has filed one, although we haven't received a copy of it yet. We need the additional time not only to read that Answer, but to prepare an Answer, if need be, as we had previously requested the Court.

And, then, thirdly, we need that additional time to move in accordance with the Court's action on the Respondent's Answer.

Consequently, Mr. President and Court, we request a postponement for the primary reason that it is necessary that we have the additional time to prepare a motion for new trial in the U.S. v. Carrillo case and to the end that we are desirous of discharging the constitutionally mandated duty to be competent Counsel in that case, and ancillary thereto to prepare here and thereby expedite this trial by being able to read the answer, to prepare the answer if need be, to be properly prepared to dispose of the dilatory pleas, the pleas to the jurisdiction, the pleas in abatement and special exceptions.

Thank you, Mr. President.

MR. PRESIDENT: Mr. Doyle?

MR. DOYLE: Mr. President and Members of the Senate, or, more properly, I guess, Members of the Court, this is the first we've heard of any attempt to postpone this matter. I would point out to the Members of the Court that the Articles of Impeachment were voted, and have not been amended, some several months ago by the House of Representatives.

I would point out to the Members of the Court that although I appreciate the problems that the accused herein may have with respect to more than one charge, it's not my fault, and it's not the Court's fault.

I would point out to the Court that if indeed the question of adequacy of Counsel arises in the mind of the accused here that there are other attorneys who are available and have been available to this accused who has known for some months that he had a Federal indictment for which he had to stand trial, that he had an impeachment for which he had to stand trial. I would point out to you that we replied. We filed our brief in response to the brief of Mr. Mitchell on September 23rd with the Clerk of this Court. On September 22nd, the day before, we sent a copy of that brief to Mr. Mitchell's office where it was hand delivered to his employees.

I would further point out to Members of the Court that the Senate is here assembled for the purposes of hearing this trial. We owe -- or you gentlemen owe -- a certain duty to the taxpayers of the State of Texas. I, as representative of the Board of Managers, recognize and appreciate the cost to crank this thing up every day. And I hope that's not lost on this Court. I don't think that this Court would be at all out of line in proceeding to trial at this time. It's somewhat late to come in and ask to shut this thing down again for their convenience.

We agreed, if you'll remember, the last time we convened to adjourn and give them time to try the other case. And that's been done. I just think at some point we have to say -- we recognize that the accused here has a Federal criminal case which he is involved in. But he also has an impeachment case which he is involved in. And, under the Constitution of the State of Texas, my duty as representative of the Board of Managers, and the Court's duty as Members of the Senate of the State of Texas is to

try that case. And, sooner or later, its got to be done. And I will submit to you that later is here -- now.

Thank you very much.

THE PRESIDENT: Senator from Galveston.

SENATOR SCHWARTZ: Mr. President, for the purpose of debate, I would respectfully move at this time, if the motion is in order, to postpone further consideration of this matter before the Senate, the Court of Impeachment, until December the 2nd, at 10:30 a.m. December the 1st is a Monday. I'm sorry, Mr. President. December 1st, 1975 -- subject to that date being acceptable to Counsel for the defendant.

The second part of my motion, if that motion is voted on, and should that motion pass favorably, would be a motion that the per diem of the members be discontinued until December the 1st or such time as we might return so that we do adhere to our obligations to the people of this State in that regard also, recognizing the cost of the burden of the State of this very necessary proceeding under the circumstances.

That first motion, Mr. President, I made, if Counsel for the defendant would care to respond if that's not an acceptable motion -- viewed from their standpoint, then I won't argue the motion further. I would withdraw it. Because I think it's important that any such motion to postpone for that period of time be acceptable to the defendant in all cases. Again, I don't think that this impeachment process demands any speedier trial than any other due process might demand. I think that the impeachment trial demands the result that might follow logically in any regard if the impeachment trial proceeds in an orderly fashion under the law and under the rules of the impeachment court.

I have several concerns that I will address myself to in arguing that motion after we hear from Counsel for the defense. But I think it would be inappropriate to argue it now without knowing whether that is an appropriate consideration viewed from their standpoint. I would say for the record, and I think it must be unequivocally clear, that I have spoken to no one either on the defense or the House Managers' side about this motion. I have spoken to one or two Members of the Court as well as the Presiding Officer of the Court about my opinion as to the propriety of continuing this impeachment trial under the circumstances where the accused in this impeachment trial has been found guilty in federal court and his attorneys must engage in the post-trial proceedings.

SENATOR MEIER: Mr. President. Parliamentary inquiry.

THE PRESIDENT: State your inquiry.

SENATOR MEIER: Under Rule 8 of the Federal Rules adopted by this Court, is it not true that all questions submitted to the Court be decided on the vote of the majority of the members present without debate?

THE PRESIDENT: That's true.

SENATOR MEIER: I raise the point of order that the Senator is debating a motion he hasn't even made yet.

THE PRESIDENT: The Chair at this time will recognize the Senator from Jasper for the purpose of making the motion requested by the defense in order to get it properly before the Senate.

SENATOR ADAMS: Mr. President and Members of the Court, in accordance with the request of the Presiding Officer in a statement that I made before the Administration Committee, I would agree to make any motion that the defense desired, and, at this point, I move that this case -- and reserve the right to vote on that motion however I desired. And, at this point, I would like to move, Mr. President, that this Court stand in recess until 9:30 a.m. Thursday morning, October the 9th, 1975.

THE PRESIDENT: Responding to the point of order of the Senator from Tarrant, the Senator's citation of the Rules is, of course, correct. However, technically, the matter being discussed here now is adjournment of the Senate. And the Chair will shortly put that question -- of course, the shorter time period question coming first on the shorter time period.

SENATOR TRAEGER: Mr. President.

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: Mr. President, Senator Adams, making a motion on behalf of the Defense, as per the rules, is it proper to make a substitute motion?

THE PRESIDENT: Yes, sir.

SENATOR TRAEGER: I would like to move to make a substitute motion that the date that he gave of Thursday be moved to next Monday as a practical matter, logistical matter of tearing into the middle of a week, being here a day or two, then going home, unless we're going to stay through Saturdays and Sundays. I would therefore like to take the time difference in a very small but practical reason as far as the Court, I think everybody involved, I would like to substitute Monday, October -- whatever that may be.

THE PRESIDENT: 13th.

SENATOR TRAEGER: 13th.

THE PRESIDENT: The Chair has now two substitute motions, October 13th and December 1st.

Although the motion to adjourn is a privileged and nondebatable motion, nonetheless, there are issues here involved that go beyond the question on the average motion to adjourn. The Chair would therefore respectfully ask the Court to suspend both the Rules of the Court and the Senate in order to permit whatever debate is desired by Members of the Senate on this point.

Is there objection?

MR. DOYLE: Mr. President, I did not provide the information to the Court a moment ago about things that perhaps I should have. I would like to advise the Court before the Court takes a vote of some actions that I have taken pursuant to taking this up today and the reasons for taking those actions, and at whatever time the Chair wishes me to make that known --

THE PRESIDENT: You are recognized for that purpose, Mr. Doyle.

MR. DOYLE: Mr. President, Members of the Court, as anyone that has been around here for the last few days knows, I waited until the absolute last minute to issue subpoenas in this case because I didn't know whether the Senate was going to crank us

up today or whether we were going to be put off again. I was in touch with the agents or employees of the Lieutenant Governor as late as Friday afternoon, approaching 5:00 o'clock, before I issued subpoenas. I now have issued sixteen subpoenas. I have requests in the Clerk's office for twenty-two additional subpoenas, but sixteen of them have been not only issued, but executed. I have got witnesses on the way up here. Now, I would like to point out to you that the reason I did this was that finally Friday afternoon, late, a representative of the Lieutenant Governor's office, whom I tried to stay in touch with to know whether I should go to this expense or not. I visited with him as late as about 5:00 o'clock Friday, at which time he informed me that he had been in touch with Mr. Mitchell, and Mr. Mitchell indicated that he would be here at 10:30 Monday morning. I have got sixteen people coming, and I just thought you ought to know about that. And I think I made every effort and waited until the absolute last minute to issue those subpoenas in deference to the defense in this case.

Thank you.

THE PRESIDENT: Chair recognizes Senator from Galveston.

SENATOR SCHWARTZ: Mr. President, I renew my request that the Chair ask Counsel for the Defendant to respond to whether they have any objection to my motion so that I might know whether to present argument on it or whether to withdraw it.

MR. MITCHELL: We have no objection, Mr. President.

SENATOR SCHWARTZ: Members of the Senate, --

SENATOR HARRIS: Mr. President, will the Senator yield?

MR. PRESIDENT: Yes. Senator yields to Senator Harris from Dallas.

SENATOR HARRIS: I'm sort of sympathetic with your idea, one question comes to mind though. If I am not mistaken, I saw somewhere that it was set before the Judicial Qualifications Commission on November 3rd or some early day of November. Do you have any knowledge of this, and what effect it would have?

SENATOR SCHWARTZ: I was going to present the facts of this, Senator. Let me just present my view of why it is important in my judgment to postpone this.

There are several important things that I think are going to occur: Number 1, the Federal case in Corpus Christi, in my judgment, is not concluded in its entirety insofar as Counsel for the defendant's responsibility in that case, and the accused in that case is concerned, until the sentencing is concluded on November the 14th. Now, that is not for me to assert one way or the other, but in my own feeling, as a Member of this Court, I would want this Court to proceed after that matter had been fully concluded, and every opportunity had been given Counsel and everybody else to dispense with all matters in that Federal proceeding before we begin, in its entirety, from the standpoint of due process, and the right of competent Counsel. Secondly, I would say to you that the Judicial Qualifications Commission will have time to review it and for that proceeding to have been concluded, based upon my understanding of how that Commission might respond to its responsibility by December the 1st, and that would have been concluded.

The issue of impeachment before an Impeachment Court is simply one of adhering to our Constitutional duties under the present Constitution. The Constitution does not demand a result any more than the result which might be obtained in any other way. I know of no urgency which commands that the result be obtained by an

Impeachment Court. I know of no urgency which demands that the issue be tried by an Impeachment Court before every other process has had its opportunity to function, and then this Court hears the evidence before this Court, which may be entirely different than the evidence from any other Court, but under any circumstances, it would be legitimate for us to wait until December the 1st.

Now, let me recognize one other possibility so that you will be aware of it, and know that at least I am worried about it. If the Legislative Article of the new Constitution is adopted on November the 4th, it will not provide for a right of the Senate to sit as a Court of Impeachment in a Judicial matter, insofar as District Judges of this State are concerned. My latter statement is true, there would be Judicial offices which we could sit as a Court of Impeachment on, I guess, but they would apply to statewide elected offices. It would not apply to the Office of the District Judge. Under the new Constitutional provision, which would become effective on January the 1st, a Judicial Officer of a District Court level in the unified Court system would have the issues of his misconduct resolved by a Judicial Qualifications Commission only. Now, I think that in light of the post-trial matters facing the accused in this Impeachment Trial and Counsel, in light of the Judicial Qualifications Commission's matters which have been set, which we know are to be heard by a duly qualified statutory body, appointed and selected for the very purpose of determining matters within the Judiciary, in light of the Constitutional issue that's going to be resolved on November the 4th, in light of the fact that we might -- indeed, certainly I think this Senate would agree that we would not be entitled to a per diem during that continuous -- for that period of time or postponement -- in light of all those considerations, there is no prejudice to any party, to the State, to any human being that I can conceive of, particularly where there is no objection from Counsel for the defendant or the defendant by the delay of this matter until December the 1st.

I know of absolutely no reason that would mitigate against that delay except the feeling of urgency that we must proceed for some reason to the impeachment trial simply because we are here today. I don't agree with that particular thesis. I think we might be far better off here on December the 1st for the same purpose at that time.

Now, my judgment may not be the will of this body. My judgment is simply a judgment I have arrived at my concerns about many, many matters of involvement --

SENATOR ADAMS: Senator yield?

THE PRESIDENT: Yes. Senator yields to the Senator from Jasper, Senator Adams.

SENATOR ADAMS: Senator Schwartz, what are you going to do about the statute which says, "The Senate so convened, shall continue in session until such matters are disposed of." Are you going to shirk your statutory duty?

SENATOR SCHWARTZ: No. We are proceeding, Senator, but we are not the exclusive body -

SENATOR ADAMS: We aren't proceeding in a very deliberate manner.

SENATOR SCHWARTZ: Well, Senator, it would have been my judgment when we were here before to tell the Federal Court to just sit down there and wait until we finished. If I had felt that way about it, and if you had felt that way about it, we should have hustled up, sucked in our guts, and said, "Mr. Federal Court, as we are here for the purpose of an impeachment. And if the Federal system doesn't like it, you can wait." We didn't do that, you see --

SENATOR ADAMS: That's kind of the way I felt, Senator Schwartz. To avoid a confrontation, I voted to allow this Court to adjourn until that conclusion, but I'm not prepared to do that today because I am going to follow my statutory duty that's prescribed right here in Article 5963 of Vernon's Annotated Civil Statutes, and the Constitution of this State. We are convened, and we ought to continue from day to day until we conclude this matter, as mandated by the Statute of the Constitution.

SENATOR SCHWARTZ: I don't think the statutes mandate that we stay here from day to day where there are two other proceedings of like character going on at the same time.

SENATOR ADAMS: "The Senate so convened shall continue in session until such matters are finally disposed of. . . ." How do you continue in session without being here?

SENATOR SCHWARTZ: We were convened on September the 3rd, I think.

SENATOR ADAMS: I thought we had been over that. How do you convene and continue in session until matters are disposed of without being here?

SENATOR SCHWARTZ: Well, Senator, I'm just saying that not being here tomorrow is no different than not being here last Friday, and that's my position, or the week before that, or the week before that, Senator. And there is absolutely no difference -- the only difference is that when we are not here next week, it will be for a very good reason, and a very logical reason, in my judgment, as to the reason we weren't here last week, because there was another proceeding in progress at that time.

SENATOR ADAMS: There was a trial in progress at that time, and to avoid a confrontation with the Federal Court at Corpus Christi, this Court adjourned and yielded to it. That's why we weren't here.

SENATOR SCHWARTZ: Well, Senator, I will tell you, I have been through a Judicial Qualifications Commission hearing representing a defendant in one of those cases a year ago, and, Senator, I will tell you, that's a trial.

SENATOR ADAMS: The Judicial Qualifications Commission, is that what you are talking about?

SENATOR SCHWARTZ: Yes, that's a trial.

SENATOR ADAMS: The Judicial Qualifications Commission didn't get interested in this matter until the House of Representatives passed Articles of Impeachment, as far as I can tell.

SENATOR SCHWARTZ: I am simply --

SENATOR ADAMS: I can't tell much of anything about the --

SENATOR SCHWARTZ: I am simply telling you, -- listen just a minute, Senator. I acted as an Attorney for a Judge in a Judicial Qualifications Commission hearing, and that is a trial before a Court in which witnesses testified under oath, and in which every element of a trial was present, that's present in any other trial, and I want to tell you, I think a lot more of that system than I think perhaps of yielding to a Federal Court trial, which to me, is almost foreign jurisdiction.

SENATOR ADAMS: Just tell me, Senator, where is the Judicial Qualifications Commission?

SENATOR SCHWARTZ: Where is it?

SENATOR ADAMS: Yes. I have never heard of them before until this came up, and hadn't heard a whole lot of them since this came up.

SENATOR SCHWARTZ: I will guarantee you that the Judicial Qualifications Commission is alive and well, and functioning in Texas, and every --

SENATOR ADAMS: Where?

SENATOR SCHWARTZ: It's functioning right here in Austin, Texas, and I will tell you every Judge in this State knows it's functioning. You ask one, if you don't think so.

SENATOR ADAMS: Well, I certainly disagree with you.

SENATOR SCHWARTZ: I can recommend you to one particularly that you can ask.

SENATOR ADAMS: How long did that proceeding that you represented that Judge before whatever Commission it was, how long did that take?

SENATOR SCHWARTZ: Took about two weeks to try, and I want to tell you, that it was a secret trial under the Statutes and Senator --

SENATOR ADAMS: You mean to tell me, you're asking an open Court to yield to a secret trial? That is totally and absolutely --

SENATOR SCHWARTZ: Senator, don't give me that demagoguery about open and closed --

SENATOR ADAMS: I'm just handing you the same demagoguery back to you that you handed this Senate on a daily basis during the regular session.

SENATOR SCHWARTZ: I understand that. But we are here on a serious matter, and you know why the Judicial Qualifications Commission functions, as it does, and you probably read the Statute and know more about it than I do, so let's not play "country" here today.

Thank you, Mr. President.

MR. PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: I'd like to amend the motion I made a moment ago to Tuesday, October 14th, instead of Monday, October 13th.

MR. PRESIDENT: Thank you. There are three motions to adjourn before the Chair. The first one by Senator Adams on behalf of the defense until 9:30 a.m. Thursday, October the 9th; the second by Senator Traeger -- what was your motion, 10:30, sir?

SENATOR TRAEGER: Yes, sir.

THE PRESIDENT: 10:30 a.m., Tuesday, October 14th. And lastly the motion by the Senator from Galveston for 10:30 a.m., Monday, December 1st.

Question comes first on the shortest time, the motion of the Senator from Jasper to adjourn until 9:30 a.m., Thursday.

Secretary, call the roll.

SENATOR HANCE: Mr. President, point of inquiry.

THE PRESIDENT: State your inquiry.

SENATOR HANCE: If all three of these are voted down and we would go ahead and start today, then we could, say adjourn Wednesday or Thursday to give him the weekend to file the Answer in this case in Corpus. Would that be correct?

THE PRESIDENT: That is correct.

MR. MITCHELL: Excuse me, Mr. President. The deadline is Thursday, seven days from the date the verdict was returned. That's the deadline under Federal Rule 33, which would be by Thursday of this week.

THE PRESIDENT: That is this coming Thursday.

MR. MITCHELL: Yes, and its got to be taken to Corpus Christi; it has to be hand delivered. We can't put it in the mail and expect it to get there.

THE PRESIDENT: Do any other members of the Court desire to be heard on the motion to adjourn?

The question comes first on motion to adjourn until 9:30 a.m., Thursday morning, October the 9th.

Secretary, call the roll.

Nays: Adams, Aikin, Braecklein, Brooks, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, Meier, Mengden, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: Clower, McKnight, Moore and Ogg.

Absent: Andujar.

THE PRESIDENT: There being no "Yeas" and twenty-six "Nays", the motion to adjourn to October 9th fails.

The question now comes on the motion of the Senator from Guadalupe for 10:30 a.m., Tuesday, October 14th.

Secretary, call the roll.

Yeas: Lombardino, Longoria, Mauzy, Mengden, Santiesteban, Schwartz, Snelson and Traeger.

Nays: Adams, Aikin, Braecklein, Brooks, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, McKinnon, Meier, Patman, Sherman and Williams.

Absent-excused: Clower, McKnight, Moore and Ogg.

Absent: Andujar.

THE PRESIDENT: There being eight "Yeas" and eighteen "Nays", the motion to adjourn to October 14th fails.

The question now comes on the motion of the Senator from Galveston for 10:30 a.m. Monday, December the 1st.

Secretary, call the roll.

Yeas: Doggett, Farabee, Gammage, Harris, Lombardino, Longoria, Mauzy, Patman, Santiesteban, Schwartz, Traeger and Williams.

Nays: Adams, Aikin, Braecklein, Brooks, Creighton, Hance, Harrington, Jones, Kothmann, McKinnon, Meier, Mengden, Sherman and Snelson.

Absent-excused: Clower, McKnight, Moore and Ogg.

Absent: Andujar.

THE PRESIDENT: There being twelve "Yeas" and fourteen "Nays", the motion to adjourn to December the 1st fails.

The Chair now recognizes Mr. Mitchell for other Dilatory Pleas.

MR. MITCHELL: May it please the Court, for the purpose of reference, Mr. President, I would like to refer to the official Journal; to certain pages. For example, our Jurisdictional Pleas appear on Page 49; our Pleas in Abatement appear at Page 53; our General Denial at Page 55; our Special Exceptions, 1 through and including 10, appear at Page 56 through 64 of the official Journal; our Affirmative Defenses appear at Page 64.

I will direct my attention, with leave of Court, to the Jurisdictional Pleas, Dilatory Pleas and Pleas in Abatement, being at Page 49 and 53 of the Journal.

The Plea to the Jurisdiction, appearing on Page 49, is divided into various subdivisions. The first of which is "Lack of Jurisdiction in the Senate to Consider the Invalid Articles of Impeachment." The Plea to the Jurisdiction has its genesis in the concept that at 12:00 o'clock midnight on June the 2nd, 1975, the 64th Legislature adjourned sine die in conformity with the provisions of Article 5422 and Article III, Section 24 of the Texas Constitution, that the power ceased in the Legislature itself or in the Committee to continue thereafter and that an attempt under Article 5962 to continue as viable past that date is invalid, in that it is our position that Article 5962 cannot do what the Constitution precludes, the Constitution terminating the session sine die -- so that any action taken by the subcommittee or the full House thereafter is invalid, consequently there being no inceptive power in the House to institute the Articles and to enact the Articles, there is no jurisdiction to convene the Senate to try the Articles.

Our second Plea to the Jurisdiction is intertwined with the lack of jurisdiction as it relates to the sine die discussion in our Answer. And it in turn relates to the inability of the House Select Committee to act, in that there is no power to delegate by the Constitution the impeachment power to a subcommittee. The Legislative Reorganization Act and the statutes which permit committees to function during interims presuppose functions which relate to legislative enactment, not to impeachment. Impeachment procedures, of course, being sui juris, not within the specific provisions of the Statute or the Constitution -- that is the Legislative Reorganization Act permitting interim committees to function. There being no power

therefor by reason of a peculiar nature and the sui generis nature of the impeachment, there being no power in the committee itself -- there is no power in this Senate to try Judge Carrillo on the Articles returned by them.

Mr. President, may I ask, does the President desire that I present all of the jurisdictional points that are interrelated, or can they be handled separately?

THE PRESIDENT: I would appreciate it, Mr. Mitchell, if you would present all the jurisdictional points together unless some Member of the Court wishes a division of the question. We will vote on them all at the same time.

MR. MITCHELL: All right.

The Respondent further contends and advances this argument in his Answer and that is that the enabling resolution, H.S.R. 161, noticed the Respondent that he was charged with an impeachable offense, to wit: that he was under indictment by a Federal Grand Jury on multiple counts of Federal income tax evasion. This was the sole charge contained in the original House Simple Resolution 161. There was a 24-hour notice given to the Respondent of that charge. Counsel was willing to admit the charge, but since the House Select Committee proceeded from that point to expand the inquiry over the objection of the Respondent to include matters which were not included in the original resolution and of which the Respondent had no notice. Intertwined in this ground for the invalidity of the procedure would be, therefore, the due process considerations involved -- due process considerations being substantive due process and procedural due process.

It is our position that the impeachment procedure at that point became unconstitutional; therefore questions of jurisdiction arising on the grounds, one, substantive due process being violated in that the provision of the Texas Constitution itself wants substantive due process, not placing an official on notice of specific impeachable offenses as it does; and two, that the procedure here in the House wants procedural due process, because one, the House Simple Resolution in fact didn't put the Respondent on notice what he was being impeached for and as a matter of fact misled him -- stating you are going to be impeached because you were indicted and then proceeded to impeach him and to introduce evidence against him on each and every charge from beating the neighbor's dog on down the line to busting the church windows.

We contend, therefore, that the proceeding is invective in terms of the Constitution. I have heard here this morning -- we have talked about expenses for subpoenas and we have talked about delays here and there, but I say we ought to talk about the constitutional rights of the Respondent. And it is outlined in our answer that there are the following constitutional defects in this procedure procedurally: One, no reasonable notice, horizontally or vertically. That is no reasonable notice of 24 hours by wire to present yourself and answer this charge. And then when we presented ourselves, then the charge expanded -- went across the continent and up and down the valleys. Therefore, there is no reasonable notice in terms of time, no reasonable notice in terms of charge. In fact, there is no reasonable notice in the original resolution as regards dates, times and places at which the committee hearing could be held, no reasonable notice of the nature of the charges. We were not given at the hearing a right to cross examination until after -- until after the fact, which, of course, is not adequate. We were given no right to make objections. We were given no right -- unqualified right to introduce any testimony, except after the fact.

Now the committee -- everyone seems to take the position that the impeachment procedure is like a grand jury and therefore that the defendant or the accused has no rights during the course of the procedure. Well, I'm not willing to buy that. There's not a grand jury in the State of Texas that's ever met and returned an indictment in which the person who is indicted loses and is suspended from an office of a valuable franchise. The impeachment procedure, let's face it, was born four and five centuries

ago when the concept of due process was in its infancy, when the concept of constitutionally protected rights were nil. And what has happened is that the Supreme Court of our land and the Constitution of our land have outstripped it. There are no provisions built in for notice, there are no provisions built in for protection, there's no provision built in so that a citizen who happens to be an officeholder -- you, or this Judge or anybody -- can be assured that somebody is not going to crank up and put him on the spot and strip him of his constitutional rights. He would have been better off if he had been charged with a misdemeanor in one of ya'lls communities, he would have the right to counsel, by the Supreme Court's Fifth Circuit mandate; he would have the right to know the nature of the accusation against him and he would have the right to have counsel, rather than being a Judge from Duval County.

Now if we can turn the clock on in this state and in our nation, say that a man charged with a misdemeanor is entitled to these rights, he's entitled to have a counsel to protect him, etc. -- then I say we can say it for this man.

Our position is that the constitutional rights were violated in the original procedure and once the poisoned root picks that poison up the fruit is going to be poisoned. And this is the fruit. We say you cannot divorce it and you can't cut it off. And this body is not going to get picked up and caught up into that flow, I'm certain. We had five weeks of trial based on one character of notice and we didn't know from day to day what we were going to be required to defend the following day.

Consequently, may it please the Court, on Page 52 of the Journal, we have set out specifically the due process denial, that is the procedural due process denial and the substantive due process denials.

One other point: This committee had on several occasions several multiple executive sessions. Now I can't represent to you gentlemen when they had them or where they went or what they did, because I wasn't put in privy with them, wasn't given notice of them. Now this very body has passed the Texas Open Meetings Act in line with the spirit today that's on a national level that you do not brand someone in a star chamber proceeding. And that's right, that's the way it should be. We take the position that the House of Representatives and the House Select Committee acted upon information and data that was procured in violation of Article 6252-17, which is the Texas Open Meetings Act. I cannot represent to this body what data was acquired, what data was not acquired, but I can represent that there were meetings held outside the presence of counsel, outside the presence of the respondent and that data was gathered, put together and part of the input into these Articles pending today comes from that evidence. And that is just as illegal as it can be. Now, I didn't make the law. I abide by it, and hopefully I will abide by it. The body of the law was made right here in this august body right here. That either means what it says or it doesn't. We say that there were executive sessions which we were not privileged with attending. Therefore, intertwined into our due process consideration and the invalidity that stems therefrom is the fact that this man -- that there have been hearings on a public level by a public agency wherein we had no notice whatsoever, no right to be present, no right of confrontation, no right of cross-examination. In other words, just take that Constitution and light it and burn it and throw it out the window. In addition -- and, again, I don't want to be misunderstood by this Court. We say that singularly and collectively and cumulatively, as the Courts say, there is a cumulative want of due process, and therefore an invalidity and avoidance.

In addition, Mr. President, we have pled, in addition to the Plea to the Jurisdiction, what, for a better -- for a better expression, because we don't have any precedent except, of course, Judge Price's case. I'm standing where a man from Williamson County stood, and I'm so damned proud, I don't know what to do. Governor Moody defended that judge over in Bastrop County, and I'm very proud I'm here. I'm from Williamson County.

The only precedent we have that used that case is to cite Governor Ferguson. But in that case, it is suggested in that case and in the precedent that there can be a case for legislative restraint. And I think that's what Senator Schwartz was trying to say.

We have here, I think, a perfect example of a case for legislative restraint and abatement, and I will run through those rapidly.

One, prior jurisdiction by Judicial Qualifications Commission. And Senator Adams from Jasper said, "When did they get in?" The answer that appears in the Journal shows that the first inquiry made by the Texas Judicial Qualifications Commission was made in May of this year, and an answer made and an issue joined and a hearing set. Of course, that's a constitutional body. So, we say prior jurisdiction of the Judicial Qualifications Commission.

Two, the basic defect -- that is, the second point now deals with the basic defect of the impeachment procedure. It has fallen in disrepute until this year when on a national level it came back into the fore, and everybody got impeached. We had it all over the country like we hadn't had it in years. And that is that impeachment was historically cast aside because it lent itself to political infighting. It permitted the use of an august legislative body and the arm of that body for the purposes of accomplishing political body blows. And there is no doubt, and the evidence has been introduced in this case, that the very gentleman that introduced it in the House walked with the attorney for this man's political fold, and we say that the Legislature and particularly the Senate of this state should not dirty its hands and dig its hands into that sewer pot up to its elbow and get involved in the political infighting of Duval County, and that's what is occurring. Now political infighting is great. This body makes its life off of it. You all are in it like I will never be in it. This is a part of your soul and your heart. That's fine. But I say -- and I'm willing to -- I buy that system above and beyond any that is in existence. But, for God's sake, don't let it destroy or reach across a constitutionally protected right and pull a lever on a man and say, "Well, thank God. You are the price that we are going to pay for it."-- Sans due process, sans competent counsel, sans rights. So, we say that the Legislature, the Senate, should in all propriety say, "Wait a minute. We're not going to lend the dignity of this great body to a political squabble that has been going on in that county for a hundred years, and if Mr. Canales, Mr. Parr and Mr. Carrillo and Mr. Jones want to have it out, let them have it out at the polls where they'll have it." If there are any criminal violations, you can rest assured Uncle Sam or the Attorney General of Texas with his myriad investigators down there are going to find it. Then, we will have an opportunity to present our case at the Bar hopefully where due process prevails, and where rationality prevails. The evidence in support of that plea is the sworn Answer of Representative Canales filed in the -- first of all, the disbarment case of Archie Parr and the sworn affidavit filed in the companion case.

We say, therefore, that this is a classical prototype case, may it please the Court, where we don't worry about whether a subpoena has been issued or not or whether I've issued a whole bunch of them. This is a case where the Senate has the right to exercise legislative restraint in favor of jurisdiction of courts that have previously attached, jurisdiction of the Judicial Qualifications Commission. We have followed our pleas to the jurisdiction -- juris dilatory pleas. I haven't made an attempt to separate them and cut them with a thin knife. I don't know anybody who knows the difference between them. I have been doing it twenty-five years. The Judge says that's a dilatory plea and that's a Plea in Abatement. In other words, we have given you a capsulated form of our Pleas in Abatement, of our Pleas to the Jurisdiction. I know that you all have had the time to study the Answer, and please refer to the Answer in its written form to those page references in the Journal over mine. In addition, Mr. President, I don't know whether you want me to, but I have, of course -- we have levied Special Exceptions to each and every Article of Impeachment, beginning with Article I on Page 56, containing II on 56, III on 58, IV on 59, V on 60, VI on 61, VII on 61, VIII on 62,

IX on 63, X on 64. And, in the event they are overruled, we have filed this morning a Bill of Particulars so we know whose cat we did strike and who we did conspire with so we can defend it.

Thank you, Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President, Mr. Mitchell was speaking from and making reference to, all throughout his presentation, his written brief, which he has had on file for some time. And we have learned just recently -- we just learned a few moments ago the Members of the Court have had his brief in this form for some time. I likewise learned just a few minutes ago that the Members of the Court have had our response only for a few moments. In view of the hour, if you would like, I can -- if we adjourn now, the Senate could have an opportunity to take a look at this before I make my remarks in reply to Mr. Mitchell's statements.

THE PRESIDENT: Why don't you go ahead and make your argument at this time, sir?

MR. DOYLE: Mr. President, if it please the Court, there have been several comments this morning about the Judicial Qualifications Commission, and comments by members of the Court as well as Counsel for the accused where they are, why haven't they done it if they have previous jurisdiction? There have been comments made by Mr. Mitchell, and there are comments in his brief about you gentlemen ought to let this thing slide and let somebody else take over and let other people do the work. Those are all good ideas. And I -- nobody here wishes any more than I do that the Judicial Qualifications Commission had stepped in and done its job, and this proceeding that we're engaged in now would not be necessary. But, then again, it might be necessary. What Mr. Mitchell has not made reference to and what Members of the Court that were asking to put this off have not made reference to is this: The Constitution of Texas provides for impeachment. It provides for impeachment of district judges. It provides for not only the removal from office if an impeachment is sustained, but a judgment which says that person shall never again hold office in Texas. Nobody else in Texas can do that except this Senate. That is a constitutional provision. It perhaps ought not be here. Some people make good arguments that we ought not have impeachments, but we do have impeachments. And this body is the body that tries impeachments under our Constitution. And, for one, I'm glad that it does. It's a sensible solution. It's an extraordinary legal remedy to meet extraordinary legal problems. And if you think these legal problems are not extraordinary, visit with me again after about two weeks of this trial or a week of this trial. Gentlemen, you're going to see things that you just can't believe go on in the State of Texas. As I stand before you, I pray that it's the worst in Texas. I pray that no place else in Texas do things go on like you're going to see went on in the next few days. It's horrible. Now, what Mr. Mitchell has suggested to you this morning by way of his remarks that he just made is "Let's cut this off now. Let's look at my arguments about due process. Let's look at my arguments about what the House did and did not do and should and shouldn't have done, and let's stop it all right here and not go any further." That's what his pleadings are suggesting to you this morning. I would submit -- I would point out to you that we have filed a brief in response to his brief and Answer. You've been given it, but you've been given it just a few moments ago. Now, in great detail, we explain, controvert, give you case law to contravene each point that he made this morning, and each point that he's made in his brief. I will suggest that you read that. I will suggest that if you're seriously considering some of these dilatory motions that you read that before you make your -- before you have your vote on those questions.

Some of the things that he's -- well, just to go through briefly with you what Mr. Mitchell has suggested, first, Mr. Mitchell suggests that the House didn't have any authority to impeach. And he says that the House didn't have any authority to impeach because of any number of reasons. I will submit to you that Mr. Mitchell has neglected to look at the House as a constitutional body that sits in impeachment. The House and the Senate are legislative bodies under normal circumstances. But, we have specific constitutional provisions which are pointed out in our answer, our answering brief. We have specific constitutional provisions that turn the House and Senate into something other than a legislative body. And that is what controls in this instance. There is no question that the House had authority to sit as a Court of Impeachment. He further attacks the House Select Committee on Impeachment and its authority to act. I would suggest to you that you look at -- and it's provided for you in the Journal, the House Select Committee on Impeachment's Resolution which created it. He mentions that the Select Committee went beyond what was first set out in the original or -- the original impeachment resolution. The basis for that resolution was the Judge had been indicted for income tax evasion. I would suggest you look at the House Resolution which extended the jurisdiction of the Select Committee and empowered the Select Committee to act in recess time. And, if you'll see, there is quite spelled out in black and white "indictment for income tax evasion and other charges."

I would point out to you that at the very first hearing, Mr. Mitchell ranted and raved five minutes about due process, right to counsel and so forth. At each of the hearings that were conducted by House Select Committee on impeachment, not only was the accused present, but his lawyer was present. He sat right beside him. I would ask, if you have not done so prior to now, look at the record of the House Select Committee on impeachment. You'll see time and again where Mr. Hale asked Mr. Mitchell, "Mr. Mitchell, do you have any other evidence you wish to present? Mr. Mitchell, do you have any other witnesses? Mr. Mitchell, do you have any questions?" I would submit to the members of this Court, this accused has had more due process, has had more breaks than any accused that I've ever had anything to do with in any case, either civil or criminal. He's been given every benefit of every doubt. The prosecuting agency in this instance, the House of Representatives, has bent over backwards to make sure that on each occasion his rights were protected, and at every step of the proceedings, he's had every opportunity to do whatever he wanted to. He was given the right to cross-examine. He was given the right to subpoena witnesses. You'll find one instance where his -- two instances where his subpoenas were denied, and I think if you'll look at what the circumstances were surrounding that, there is not a one of you sitting here that wouldn't have done just what DeWitt Hale did. There was no reason to subpoena eight or ten district judges from South Texas and bring them up here, which is what he was asking the Select Committee to do.

With respect to the Open Meetings Act, we have submitted to you a detailed analysis, a detailed legal study on what the position of the Board of Managers is with respect to the Open Meetings Act and the executive sessions which the Committee had. To some of those executive sessions, I was privy. To some others, I was not. At the ones that I was privy to, they were indeed matters that any client would have taken up with his counsel outside of a public body. It's perfectly normal. I know that you gentlemen on occasions -- as Senators -- have had the same thing arise --, that there is nothing immoral about it, nothing illegal about it. The records of the Committee will adequately and completely reflect that no action was taken by the Committee at any executive session. All actions that were taken by the Committee were taken at open meetings, there is a record. Not only were they taken at open meetings, at almost every one of them Arthur Mitchell was present and the accused was present.

With respect to his due process arguments, again, I'm not going to bore you with arguing. I have set out our arguments in a detailed brief. They just don't hold any water. He has not at any stage in this proceeding been denied due process. He has

known what's been going on from the very day this thing started. Impeachment is a constitutional process. There is precious little case law on impeachment. An impeachable offense is whatever this Court says is an impeachable offense. We cannot amend our pleadings. We are bound by the Impeachment Resolution as passed by the House and sent to the Senate.

It is completely absurd to suggest that the Senate be able to go behind the Resolution and look at what the House did. Under the Constitution, if the House had brought to the door of the Senate a Resolution stapled to a garbage can and called it an Impeachment Resolution, you would have had to accept it as an Impeachment Resolution under the Constitution. I submit to you that that's not what happened. What has happened is, as you are well aware, the House Select Committee spent weeks conducting an investigation.

The Select Committee's work product was sent to the Floor of the House. The House of Representatives in an orderly fashion, as it would on any number of legislative matters, considered the work of the House Select Committee. It ratified the work of the House Select Committee, and then voted independently as a body, as a House of Representatives, as an impeachment Article, as an Impeachment thing. The House was not acting as a legislative body when it impeached. The Senate is not acting as a legislative body when it tries an impeachment.

The House went through, under its own rules, and I submit to you the Constitution makes it quite plain that the House can adopt and run itself by its own rules, the Senate can adopt and run itself by its own rules, that's exactly what's taken place up until today. Now, we are here just as the Senate was here in 1917, just as the Senate was here in 1931, to do what is obviously a most distasteful chore to the members of this Senate. I submit to you that I agree with you -- it's distasteful. But I submit to you as a citizen of Texas, and in this instance, I assure you I am not speaking as an advocate, in such matters as impeachment, I for one want the legislative branch of our government to have that duty. Because one hundred and fifty of them run for office every two years, and then sixteen over here run every two years, one hundred sixty-six of one hundred eighty-one are answerable to the public every two years. It seems to me that's the kind of group that you ought to have handle such matters as impeachment. Impeachment is indeed an extraordinary legal process. It is what amounts to, "the buck stops here" on matters involving disobedience or misbehavior of high elected or appointed officials. It seems most logical to me in 1975, just as it did 600 years ago, to have the people who are answerable to the voters, able to say to high elected officials, "This conduct is wrong. This conduct is bad. This conduct is going to remove you from office. This conduct is going to keep you from ever again holding public office." That's what we are here about, gentlemen.

I submit to you that the dilatory pleas of the accused have no merit whatsoever. For a more detailed discussion, a more legal and scholarly discussion of those arguments, which I am not going to waste your time with this morning, I would very much appreciate your reading the brief, it's quite short.

I appreciate your time.

THE PRESIDENT: The Question now before the Court, "Should the Pleas to Jurisdiction for the Senate sitting as a Court of Impeachment be sustained." Those in favor of sustaining the Pleas to Jurisdiction, vote "Aye." Those not in favor, as your name is called, vote "No." The Secretary will call the roll.

Yeas: Mauzy.

Nays: Adams, Aikin, Braecklein, Brooks, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, McKinnon, Meier, Mengden, Patman, Santiesteban, Schwartz, Sherman, Snelson,

Traeger and Williams.

Absent-excused: Clower, McKnight, Moore and Ogg.

Absent: Andujar.

THE PRESIDENT: There being one "Yea" and twenty-five "Nays", the motion to sustain the Pleas to Jurisdiction will be denied.

Chair at this time, Mr. Mitchell, will put as a separate issue, Pleas in Abatement. It was the Chair's understanding that you wish to vote on all the Pleas of the Jurisdiction as one matter?

MR. MITCHELL: Yes.

THE PRESIDENT: Pleas in Abatement as another. Do you care to present additional argument?

MR. MITCHELL: Mr. President, my only comment, first, I would like to note one point to the Court, and that is that at the hearings before the Subcommittee, the Committee through its Chairman, admitted that Judge Carrillo was not charged with any act of misconduct in the discharge of his duties as District Judge. I am sure everybody is cognizant of that.

I offered to submit for examination the attorneys from that district who would testify that this gentleman does conduct his office correctly. He discharges his duties of his office, and was told that there was no question raised at that proceeding that Judge Carrillo disabused the privileges of his office, or was guilty of any act of maladministration in office. So we are talking about acts of misconduct, if it please this Court, that do not relate to the man's discharge of the duties of his office as District Judge of the 229th District. And I ask specifically if I could have that Stipulation of Record, and was assured that it was there. Consequently, this trial is on acts of misconduct, if it please the Court, that do not relate to Judge Carrillo's discharge of his duties of the 229th Judicial District. So we say the abatement, in addition to the arguments previously advanced, lies in a case, certainly that this is precisely the same argument made by Governor Moody in the thirties, where Judge Price was concerned, and that is the impeachment is not the proper procedure for the removal of an official accused of an act of misconduct not relating to the performance of his official duties.

Now, gentlemen, you all can proceed, and there is not anybody in the State of Texas that is more powerful than this body sitting here; but I am going to say this, please exercise some restraint so that history, when it looks back on this procedure and put this record under a magnifying glass, doesn't say, "My Lord, what was the Senate of the State of Texas doing?" Regardless of whether we are accountable to ourselves and our conscience and our Lord, we are accountable to the Lord and to history, and that's all I am saying. I am saying, here we are, yes, we are going to go right on with this procedure, but remember in addition to the other pleas that we have made, that there has been, as I understand the record, no charge that this man has performed an official act of misconduct which precludes discharging his duties. Now, one or two other things, Mr. President, if I might be permitted.

Counsel stated in the record, as regards all these characteristics of due process which attended this procedure, of course, in the record itself, and may I refer you to it, it speaks of at least two items. One, the Notice itself, the Notice coming out -- being issued on the 19th of May, being set for hearing on May the 20th. That's, of course, in the record. Then the Notice states, "Judge, you are going to be charged tomorrow for acts of misconduct. We would like to see you in Austin. You will not have the right of

cross-examination." These are contained in the record. And, of course, as I understand due process, the right to cross-examination and the reasonable notice requirement, of course, are implicit.

Thank you, Mr. President.

MR. DOYLE: Mr. President.

THE PRESIDENT: Yes.

MR. DOYLE: Could I be advised by Mr. Mitchell -- he made some reference to some stipulation which I am not advised about.

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: Yes. The record of the procedure before the impeachment on two occasions I had subpoenaed Randall Nye and four or five attorneys from that district to testify that Judge Carrillo attended his duties diligently, he did not --

MR. DOYLE: So, your reference was to something that took place prior to impeachment?

MR. MITCHELL: No. No. My reference is to something that took place before the impeaching body. As I understand it, the Chairman stated that there was no need to present the lawyers of that district in there to show that this man discharged his duties because there was no, mind you, no consideration before that body -- that is, that Select Subcommittee -- or contention before that body that this gentleman didn't perform his duties as a District Judge.

MR. DOYLE: What I'm trying to establish is, I have not stipulated nor agreed to anything in this trial, and I want the record to reflect that accurately at this point.

THE PRESIDENT: Yes. Question now before the Court is, "Shall the Pleas in Abatement be sustained?" Those in favor of sustaining the Pleas in Abatement will vote "Aye." Those opposed, vote "No." Secretary will call the roll.

Yeas: Mauzy and Traeger.

Nays: Adams, Aikin, Braecklein, Brooks, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, McKinnon, Meier, Mengden, Patman, Santiesteban, Schwartz, Sherman, Snelson and Williams.

Absent-excused: Clower, McKnight, Moore and Ogg.

Absent: Andujar.

THE PRESIDENT: There being two "Yeas", and twenty-four "Nays", the Pleas in Abatement are not sustained.
Senator Aikin.

SENATOR AIKIN: I move the Senate stand recessed until 1:30.

THE PRESIDENT: Senator Aikin has moved the Senate be in recess until 1:30. All of those in favor say "aye". Those opposed say "no".

The motion prevailed.

Accordingly, the Senate, sitting as a Court of Impeachment, at 11:58 o'clock a.m. took recess until 1:30 o'clock p.m. today.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 1:30 o'clock p.m. today.

THE PRESIDENT: Mr. Mitchell, do you care to argue on your plea for relief at this time?

MR. MITCHELL: On the motion, Mr. President? Yes, I would like to, if I could argue on that.

THE PRESIDENT: The Chair recognizes Mr. Mitchell for a motion.

MR. MITCHELL: Thank you, Mr. President. The motion, Mr. President, which we filed prior to the date of the hearing, the motion of the Respondent, my client, Judge Carrillo, for a list from the Attorney for the Board of Managers of the order of witnesses. As can be easily determined and ascertained from the multiple counts and the number of witnesses, Mr. President and the Court, we feel that by having the witnesses in advance and the designation generally, which Article of Impeachment that witness will be tendered in connection with, that it will facilitate our presentation and will facilitate the trial and hopefully save some time. So that we're not calling back witnesses that we could have -- had we known were going to take the stand, could have, for example, authenticated a simple document. And we feel very strongly, if it please the Court, that by knowing in advance the order of the presentment and the name, the address and the Article of Impeachment to which the witness will relate, this will facilitate the trial. This is no more than is done usually in any federal case and in most state cases.

In addition, if it please the Court and Mr. President, we would like -- we are filing in tandem with this motion for order of witnesses and further relief a request for Bill of Particulars, which go hand in hand with our Special Exceptions and perhaps it would be proper for me not to argue the Bill of Particulars until the Court has passed on the Special Exceptions. It presupposes the overruling of the Special Exceptions and we simply request in line with the federal rules and the state rules in a criminal procedure -- and while we are cognizant of the fact that this is not pure criminal -- that we would like to be put on notice further as to the specifications contained in the various articles set out in the Articles of Impeachment. In addition, Mr. President, I don't wish to be out of order, but I would like to move or have moved to reconsider our motion for postponement that was previously presented this morning, if it would be proper. I'm not too well acquainted with legislative procedures, but we would like to reurge that motion along with our motion for order of witnesses and for further relief as set out in the written motion. The motion to continue to Thursday, to recess.

THE PRESIDENT: Your motion to recess until Thursday, Mr. Mitchell, is a unique motion, in the sense that since it received no votes, every member of the Senate voted on the prevailing side and is therefore eligible under the rules to reconsider. Are there motions to reconsider the vote by which the Senate refused to adjourn until 9:30 next Thursday?

SENATOR MAUZY: I will make a motion.

THE PRESIDENT: The Senator from Dallas makes a motion to reconsider the vote by which the Senate refused to adjourn until 9:30 tomorrow morning.

MR. DOYLE: Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Either I misunderstood the Senator's motion or your statement. Is it until Thursday or Tuesday?

THE PRESIDENT: Until Thursday, wasn't it?

SENATOR MAUZY: Yes, Your Honor, that was it.

THE PRESIDENT: This is a reconsideration of the motion that Senator Adams made on behalf of the defense.

SENATOR TRAEGER: Mr. President.

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: I would like to ask the defense's reaction as to -- I moved this morning to substitute that until next Tuesday for the logistics and administrative reasons involved being in the middle of the week and I would like to know if that's acceptable to the defense and if so, then, I would ask Senator Mauzy to change his motion to that effect or I will make a substitute motion. Can we ask Mr. Mitchell for an answer on that?

MR. MITCHELL: Yes, that is acceptable to the defense.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President, that's not acceptable to the prosecution. After the vote this morning, sir, I caused to be issued the remaining subpoenas that I discussed with the Court this morning. I now have witnesses scheduled to start this afternoon, tomorrow, Friday and right on up through Monday, Tuesday and Wednesday of next week following the vote that the Senate took this morning.

THE PRESIDENT: Senator, the Chair will hold the motion to reconsider is out of order. If you wish to make a substitute motion to adjourn, the Chair will entertain that motion.

SENATOR MAUZY: I first move to reconsider the vote by which the Senate refused to adjourn until next Tuesday. And if that motion prevails, I will then move to adjourn until next Tuesday at 9:15 a.m., which will be different.

SENATOR ADAMS: Mr. President.

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: Mr. President, I would like to raise a point of order that a motion to reconsider a vote to adjourn is improper.

THE PRESIDENT: Point of order sustained.

SENATOR ADAMS: Thank you.

SENATOR MAUZY: I move that the Senate stand adjourned until 9:15 next Tuesday morning, October the 14th -- at 9:15.

SENATOR PATMAN: Parliamentary inquiry.

THE PRESIDENT: State your inquiry.

SENATOR PATMAN: What about the request of defense counsel about the Bill of Particulars and the list of the order of the witnesses? Is the prosecutor going to provide those? Is that agreeable or are we going to vote on that before we take the motion to adjourn?

MR. DOYLE: Mr. President, that question is obviously directed at me. Do you wish me to reply?

THE PRESIDENT: Please, Mr. Doyle.

MR. DOYLE: Mr. President, I know of no rule of law which would require us to provide a list of the witnesses in advance. I know of no rule of law which would enable the defense or one side of the lawsuit to get into the file of the other side of the lawsuit. Now as I indicated to Mr. Mitchell at an earlier occasion, and to Mr. Haynes, I will make every effort to let them know who is coming up. And I will do that just because it will help get this trial under way and help expedite the trial itself, but I do not wish -- but I'm not going to agree that any order be entered requiring us to do that, because I don't want to get trapped, you know, at some point where it's not necessary. I do not think the rules or statutes of the State of Texas nor any jurisdiction require us to do that.

THE PRESIDENT: Senator Mauzy, would you withdraw your motion to adjourn until we dispose of this matter?

SENATOR MAUZY: Yes.

THE PRESIDENT: Mr. Doyle, does that complete your argument against the motion of the defense here?

MR. DOYLE: Mr. President, that's all I have to say. I know -- this will be a first if I'm required to give all of my evidence to the other side in advance, I will say that.

MR. MITCHELL: Well, we don't want any evidence, Mr. President. It's standard practice in every criminal case for the prosecution upon request to give a list of the witnesses to the defendant, unless he's got something to hide and we're not asking him to telegraph his testimony, it simply facilitates movement of the case. If he feels that by reason of that request, an affirmative order by this body, that he's being taken advantage of, then we will withdraw the request and we will proceed accordingly.

THE PRESIDENT: Mr. Doyle, is the list of witnesses whom you have subpoenaed a matter of record?

MR. DOYLE: Yes, subpoenas have -- the persons that I have asked to have subpoenaed are in the Clerk's records, I'm confident. Mr. Mitchell withdraws his request, so I guess that means I need say nothing further.

I would again point out to the Court that Mr. Mitchell has talked in terms of this being a criminal proceeding, it is not a criminal proceeding, it is a civil proceeding and I assume we are proceeding under the Rules of Civil Procedure and not the Rules of Criminal Procedure.

THE PRESIDENT: Mr. Mitchell, did you withdraw the request?

MR. MITCHELL: Conditionally, only upon his position, Mr. President, I don't want to bicker with him in front of this body, they have got a lot of other things to do besides listen to me and him. If he wants to do it that way we will do it that way, but when we call a witness back five weeks from now and ask him a question that could have been put to him this afternoon, I just don't want him to object to it.

THE PRESIDENT: Mr. Doyle, the Chair here has a list of a number of witnesses that have been subpoenaed by the Board of House Managers, a list, also, of a number of witnesses that have been subpoenaed by the respondents. Is there objection by counsel of either party to this information being supplied as soon as it's available to either side?

MR. DOYLE: I have no objections to that, Mr. President. I assume what's on file in the Clerk's office is a matter of record. And I might add that we have subpoenaed witnesses as near as possible in the order in which we intend to use them.

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: Well, that statement satisfies me, Mr. President. If he had made that at the outset we could have gone on with the business.

THE PRESIDENT: In that event -- I assume it will be done anyway, but the Chair will direct the Secretary or the Clerk that as soon as a subpoena is issued, that the other side be notified. Does that then dispose of number one in your motion, Mr. Mitchell?

MR. MITCHELL: Yes, it does. Thank you, Mr. President.

THE PRESIDENT: Mr. Mitchell, do you wish to submit arguments on the second part of your motion, the Bill of Particulars?

MR. MITCHELL: Mr. President, the Bill of Particulars portion of the motion is in tandem and locks in and ties in with the Special Exceptions and it appears in the Journal on Page 56 through and including 64. These go hand-in-hand.

The Special Exceptions starting on Page 56 interrelate directly to the construction of the Articles of Impeachment. And they appear in the Journal at Page 6. The problem being that Respondent is not able in reading the Articles of Impeachment to properly prepare his defense, if it please the Court, in that the same are vague, indefinite and general in many respects and regards as set out in our answer, and do not place us on notice of the specific acts of misconduct which we are required to defend. For example, multiple Articles of Impeachment charge conspiracy between Judge Carrillo and various and other persons unnamed. And it's good law whether the proceeding be characterized as civil or criminal or quasi-civil or quasi-criminal or sui juris and all that gobbledygook aside that its got to be a charge that this man knows

what he's been charged with. If he has been charged with a conspiracy, we request the Articles set out the date, time, place and the persons involved in this conspiracy so that we can be prepared to subpoena these folks in and make a determination if in truth and in fact there was such a conspiracy. Now, that conspiracy allegation, if it please the Court, appears in Article II, and it appears in Article III and it appears in Article IV. It appears to a certain degree in Article V. It also appears directly by name in Article VII, VIII, IX, X. And, to the extent that the Articles do not plead with particularity and specificity the specifics as regard the contract or agreement or the combination or agreement between -- alleged to be entered into by Judge Carrillo and other persons, we are unable to defend those Articles of Impeachment. And we request Special Exceptions simply require that there be a repleading so that we may be put on notice as to the specific acts of misconduct.

In addition, the Articles do not charge on their face acts of misconduct relating to the official discharge of his duties of the 229th Judicial District Court, and we request and the point is raised by Special Exception that, for example, paying groceries in Article I, we would like to know how paying groceries by the County is interrelated with an official act of misconduct in discharging his duties as a Judge of the 229th Judicial Court.

The second facet, then, of our Special Exceptions are those articles which relate to acts of misconduct wholly divorced from and apart from the discharge by Judge Carrillo of his duties as a Judge of the 229th Judicial District Court. We pray the granting of those Special Exceptions so there may be an interrelation and repleading so we can determine whether or not there is ground for impeachment in those Articles, if it please the Court.

The difficulty, if it please the Court, we have is that in the Constitution and the statutes there are procedures for removal by address for negligent conduct or misconduct, which is not related to the official discharge of his duties as a Judge. Whereas, the impeachment, it appears, the Impeachment Article of the Constitution is limited to removal for misconduct in -- directly within the scope of his authority as a Judge. And, for that reason, the Special Exceptions call for an interrelation of misconduct alleged in the Articles of Impeachment to his performance of his duties as the Judge. I believe that fairly well summarizes it, if it please the Court, and the President, the substance of the Special Exceptions, summarizing, that is, insufficiency of the allegations as regards the conspiratorial allegations and the insufficiency of the allegations generally as relates to the conduct of Judge Carrillo of his Office and to an impeachable act of misconduct.

Thank you, Mr. President.

THE PRESIDENT: Mr. Doyle?

MR. DOYLE: Mr. President and Members of the Court, counsel overlooks probably the most important single constitutional point before you. The Board of Managers cannot amend its pleadings. You have before you a Bill of Impeachment which is the work of the other House of the Legislature, not sitting as a House of the Legislature, but sitting as an integral part of the impeachment process. Now, once that Bill of Impeachment leaves that Chamber and gets to this Chamber, we can't amend it. And Mr. Mitchell well knows that we can't amend it. Because I, nor any member of the Board of Managers, has authority to change the charges as they have been made by the entire House of Representatives. So, we are bound from the day that Bill reached the front door of this Chamber until the day we get through with this trial. We are bound by what's on the four corners of that instrument. We cannot amend. We cannot amend our pleadings to meet his exceptions, assuming his exceptions were good, which they are not.

Now, with respect to the conspiracy allegations, I will point out to you again, for the umpteenth time, this is a civil trial. This is not a criminal trial. The sufficiency of the pleadings in an impeachment process are sufficient to the extent that satisfies the Court, which is this body. Now, if you wish to cut us off, if you wish to shut down my ability to present evidence, then you can do it in this manner by saying what you want to say with respect to his exceptions. But that's the only thing you're saying if you take the position that Mr. Mitchell is suggesting that you take. What you're saying is, "I don't want to hear any evidence." The conspiracy allegations are just another way of saying, "This is the misconduct that the Texas House of Representatives sitting as an impeaching body, thinks is conduct which is reprehensible." That's all it is. It has no other legal significance whatsoever. The sufficiency of it is as sufficient as you want it to be.

Now, if you want to tell the people of Texas and tell me, and tell the Board of Managers, "We don't want to hear your evidence on certain of these points," then all you have to do is sustain the exceptions. But, if you want to hear the evidence, then you can't sustain his exceptions. Now, if you choose to do that, you are perfectly within your constitutional right, because there is no appeal from whatever you decide, or impeachable offenses. And there is no appeal from whatever you decide you are willing to hear evidence of. But, you must remember that neither I nor the Board of Managers can do anything about the pleadings. We're bound by them until this thing is over.

Now, with respect to the conduct that he was to limit this to, just the conduct as a Judge, again I would point out to you that is absurd. People have been impeached in the United States and been adjudged guilty, and impeachment sustained for being drunkards, for not -- the first impeachment trial that anybody has any knowledge of, the first one that there is anything recorded about, a fellow was impeached for lying to the Parliament and for refusing to spend money as agent of the King, as had been appropriated by Parliament. Now, that was what the impeachment allegations said, and that was what was sustained. They told a lie to Parliament. There have been many instances of people who have been impeached and removed from office for drinking too much whiskey. And I am not going to bore you with other examples. People have been impeached for all kind of things. People can be impeached for whatever the trying body finds to be sufficient grounds for removal from office. And that's exactly where we are here today. You are about to decide whether you want to shut us down on evidence or not. And that's what it boils down to. And I'll tell you that constitutionally, there is no appeal. You are the sole judge of what you're going to hear. You are the sole judge of what is impeachable conduct and what is not impeachable conduct. I trust that you will abide by the Constitution of Texas which says, "when a Bill of Impeachment hits that front door, you deal with it as a Court." And I trust that's what we'll proceed to do here.

THE PRESIDENT: There is a question before the Court which is a motion by Mr. Mitchell, Counsel for the respondent, that the prosecution be required to furnish a Bill of Particulars. I recognize Mr. Mitchell to close briefly on his motion.

MR. MITCHELL: Mr. President, hand-in-hand as stated earlier in arguing these Special Exceptions, goes a Bill of Particulars. If I may be permitted to comment on one comment of counsel as regards the validity of our Special Exceptions -- I don't think it goes hand-in-hand. It's certainly bad law to state to this body that we are not going to be able to present -- the Board of Managers is not going to be able to present any evidence on an Article of Impeachment if the Special Exceptions are sustained. I don't think it follows. I think that's a non sequitur. If we are here to answer a "specific indictment," then what does it avail us to defend if we don't know what we're being charged with? All we're asking by the Special Exceptions is that the Board of Managers point the finger clearly. What is it we've done? Now, hand-in-hand with that

request are the Bill of Particulars. Our Bill of Particulars states that in the event that this Court overrules these Special Exceptions contained in respondent's Answer, then we would request that the Board of Managers be required to file a supplementary statement of charges specifically, and Article I, the name of the conspirators and the time and place of conspiracy without the need or necessity to amend the Articles, so that we don't run afoul of counsel's argument that you can't amend them. We say, "All right. Fine. If you can't amend them and the -- and that's the position, then we say, We request a supplementary Bill of Particulars as to Article I, to name the conspirators and time and place of the conspiracy. Two, on Article II, we would request a Supplementary Bill of Particulars as to acts of conduct, that is, relating to the maladministration in office while Judge O. P. Carrillo was in office following his certificate of election in November of 1974.' That's the date of his election. Otherwise, as stated by the respondent in his Answer, impeachment will not lie, there being an administration on the part of the House rules maladministration or official misconduct has occurred.

The third request for Bill of Particulars is that as to Article III, that the House be required by Supplementary Bill of Particulars to plead the time and place of the occurrence of the alleged actions of misconduct in Article III, the name of the alleged conspirators and time and place of alleged conspiracy.

Next, by Bill of Particulars, that the House be required in connection with Article IV to set out the facts in the Supplementary Bill of Particulars which would make said conduct set out in the Bill of Particulars number four, that is Articles IV, Subsection 1, 2, 3, 4 and 5 subject to impeachment -- the same on their face not involving official misconduct and not constituting grounds for impeachment.

Next, that by Supplementary Bill of Particulars, that the House Managers supplement Article VI, that is that the respondent was willfully and intentionally involved in the composition of said financial statement and to the extent -- and the extent to which he was involved in the composition of that financial statement, and its interrelation to official misconduct.

MR. MITCHELL: Next, in the event this Court overrules the exceptions, that the House be required by Supplementary Bill of Particulars to supplement Article VII, to allege facts as relate to that Article which makes the offense or act of misconduct impeachable, or stated in another way, which related to the performance of his duties of his office as District Judge.

Next, if the Court please, we would request that the House Managers plead by Supplementary Bill of Particulars, as to Article VIII, the name, place, time and subject matter of the alleged conspiracy between the respondent and other persons, and/or the combination or agreement identifying the conspirators, and the subject matter of the conspiracy.

Next, that Article IX be supplemented by a Bill of Particulars to allege time, place, and persons with whom the respondent is alleged to have conspired to defraud, and the means or manner in which he could misappropriate county funds, while in the hands of County Officials, administered by County Officials, he being only the District Judge of the District.

Next, we request, and finally that in the event the Special Exceptions are overruled that the House Managers through its Counsel's office file a Bill of Particulars as regards Article X of the Impeachment Articles so as to supplement the allegations as to the time, place and persons entering into the alleged conspiracy, or the time and place of the making of the agreement with the persons involved and the subject matter of that agreement, and the interrelation of that agreement with the act of a District Judge as it relates to County funds that are administered by the Commissioner's Court, and other duly constituted agencies of the County.

Thank you, Mr. President.

THE PRESIDENT: The question before the Court is, "Should the Bill of Particulars be granted?" Those favoring the motion of the defense to grant the Bill of Particulars vote "aye". Those opposed, vote "no" as your name is called. The Secretary will call the roll.

Yeas: Brooks and Gammage.

Nays: Adams, Aikin, Braecklein, Creighton, Doggett, Farabee, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, Meier, Mengden, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: Clower, McKnight, Moore and Ogg.

Absent: Andujar.

THE PRESIDENT: There being two "Yeas" and twenty-four "Nays", the motion to grant a Bill of Particulars is lost.

Further arguments presented by the Defendant?

MR. MITCHELL: Pardon me?

THE PRESIDENT: Do you have any further motions?

MR. MITCHELL: No. Thank you, Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President, Members of the Court, before we proceed with our first witness, I would urge that the Chair, Counsel for the Defense and Counsel for the Board of Managers, take a few moments to discuss some mechanical problems that I think if we can reach some agreements on, we can significantly shorten the trial, and some of the very matters that Mr. Mitchell expressed a concern over in his arguments. If we can just sit down and get some rules to go by that we could very likely save ourselves several days of trial time. I think now would be the time to do it.

THE PRESIDENT: Is the sort of conference you have in mind, Mr. Doyle, is it the sort of thing that would take fifteen minutes or a couple of hours? What I'm trying to get here is, would it be appropriate at this point to adjourn for the day and have such a conference, or are you talking about the kind of thing that a fifteen minute, thirty minute recess would handle, what's your feeling on that?

MR. DOYLE: Mr. President, I really don't know. It depends, if it worked out to be as fruitful as it could, then it might take longer than half an hour or an hour. If it is not very fruitful at all, it won't take but about 15 or 20 minutes. But we might ought to take a crack at it. That's my only suggestion. Frankly, I have discussed this with Counsel previously, Mr. President, and we thought we would have an opportunity to do it before we got this far along, and we just haven't had an opportunity to do it.

THE PRESIDENT: Mr. Mitchell, what is your feeling?

MR. MITCHELL: Mr. President, I would like to first of all -- I understood there was a substitute motion as regards -- I don't want to be out of order, but a motion to reconsider as regards to adjournment, and in answer to the question put directly to Counsel, we will be glad to sit down and talk with him about anything, any time, at any place.

MR. DOYLE: Mr. President, I might suggest, if the Chair is fearful of wasting time by us stopping now to do it, we can proceed with our first witness now, but I really think we would be making a mistake by not taking a crack at reaching some agreement.

THE PRESIDENT: I want to recognize Senator Mauzy for his motion here in a moment, Mr. Doyle. If you don't feel that the time would be lost, if you could proceed with your first couple of witnesses, then we could have this conference toward the end of the day.

MR. DOYLE: Yes, I think that would be fine.

THE PRESIDENT: That might be better use of the Senate's time.
Senator from Dallas.

SENATOR MAUZY: Mr. President, in response to the request of Counsel for the Respondent, I move the Senate stand adjourned until 9:15 next Tuesday morning.

THE PRESIDENT: Senator from Lamar.

SENATOR AIKIN: Mr. President, if I may, I would like just to say a word. It was my motion to adjourn the Senate on the 3rd of September until the 29th. It later became apparent that -- and we were thinking of a week earlier, it became apparent that it would take another week, and we took at the suggestion of the Lieutenant Governor, and under his leadership, October the 6th, which is today. I knew that -- I think I know that this is just as distasteful to most of you as it is to me, that most of us need to be at home, and we certainly don't relish this sort of service. I am certainly not going to vote for any motion for December. It seems to me that we are here and that we ought to go ahead and tend to the business at hand and try to get it over with, with as much dispatch as possible, and be fair with everybody concerned. But we are all here, and it's my feeling that we ought to go ahead and get through with the business at hand so we can get back home and go back to work.

THE PRESIDENT: Senator from Dallas, Senator Mauzy, moves the Court stand adjourned until 9:15 next Thursday morning. Question is on that motion. Secretary call the roll.

SENATOR MAUZY: I made the motion until Tuesday of next week.

THE PRESIDENT: Motion for 9:15 next Tuesday.

SENATOR MAUZY: Tuesday, October 14th.

THE PRESIDENT: Tuesday, October 14th. You have heard the motion. Those in favor, vote "aye". Those opposed, vote "no" as your name is called. Mr. Secretary, call the roll.

Yeas: Lombardino, Longoria, Mauzy, Mengden, Patman, Santiesteban, Schwartz, Snelson, Traeger and Williams.

Nays: Adams, Aikin, Braecklein, Brooks, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, McKinnon, Meier and Sherman.

Absent-excused: Clower, McKnight, Moore and Ogg.

Absent: Andujar.

THE PRESIDENT: There being ten "Yeas" and sixteen "Nays", the motion to adjourn is lost.

Mr. Doyle.

MR. DOYLE: Mr. President, we are ready. Our first witness will be Mr. Walter Meek.

THE PRESIDENT: Call the first witness. Where is your witness?

MR. DOYLE: I'm sorry, he's up on the third floor.

SENATOR PATMAN: Point of inquiry.

THE PRESIDENT: Senator from Jackson, state your inquiry.

SENATOR PATMAN: Are witnesses to hear the testimony from other witnesses?

THE PRESIDENT: No, sir. Under the Rules adopted by the Court last month. They are under The Rule, that is, they are not permitted to hear testimony of other witnesses.

Mr. Mitchell, would you and Mr. Doyle come to the rostrum for just a minute, please?

THE PRESIDENT: Court will come to order.

Mr. Meek --

SENATOR TRAEGER: Mr. President, prior to swearing in could I ask a parliamentary inquiry?

THE PRESIDENT: State your inquiry.

SENATOR TRAEGER: Is a motion to adjourn or recess in order anytime during these proceedings?

THE PRESIDENT: From a parliamentary point of view, yes, sir.

SENATOR TRAEGER: Mr. President, in that case I would like to make another motion to adjourn until next Tuesday at 10:30 in the morning and I would like to say the reason I feel that motion is important -- I know normally you cannot speak for or against a motion for adjournment, we just had a speech a moment ago against. The point was brought out for the convenience of the members of this Senate the reason that we should continue and the expense thing. I think the fairness to the individual

being tried is the paramount importance that this body should consider. And I think that the unfinished proceedings of federal court, which Mr. Mitchell pointed out this morning, which are as I understand not a -- there's no possibility of postponing those, as you can in a state court, serve as reason enough that this Senate should give the accused a fair and proper right of delaying until next Tuesday in consideration of -- before we start hearing any witnesses, start the further procedure on this trial. For those reasons I would like to move again for adjournment until Tuesday morning at 10:30.

MR. HAYNES: Mr. President, would you permit --

THE PRESIDENT: Senator, that motion has just been defeated by --

SENATOR TRAEGER: Sir, it's a corrected time, the other motion was 9:15, mine is 10:30.

MR. HAYNES: Mr. President, will you hear from Counsel just a moment on that, please?

THE PRESIDENT: Yes.

MR. HAYNES: One thing that was not made apparent this morning, that in addition to the fact that we have a responsibility to O. P. Carrillo in the Federal case pending in Corpus Christi by this Thursday, that is the motion for new trial and the motion to stay the judgment, we also have a responsibility to his brother, Ramiro Carrillo, who is not a party to this lawsuit.

THE PRESIDENT: Mr. Haynes, you have a responsibility to this Senate and you knew that full well as of the time the verdict was returned in Corpus, your obligation was to be in this Senate at 10:30 this morning, ready to go.

MR. HAYNES: Well, we were, but we have not had a chance to comply with the requirements of producing a motion for new trial to go through the notes of three weeks of trial and brief the points of law that are necessary in order to inform the Court there where we think he needs informing about the various rulings of the Court. So we really have not had time. It's a matter of record we have not had time.

THE PRESIDENT: All right. The Chair is going to put one last time this motion to adjourn. Chair hopes that motion will be defeated and the Senate without further fooling around will proceed about its business.
Secretary, call the roll.

MR. DOYLE: Mr. President, may I be heard on that?

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President and members of the Court I would point out to you before you take this vote that Mr. Mitchell and Mr. Haynes announced this morning that one of these valuable days that they feel like they need for their client last Friday they used by making appearances in other courts in other cases for other Defendants. Thank you.

MR. HAYNES: Mr. President, if you would permit, one of the obligations I had last Friday was before The Honorable Allen B. Hannay, United States District

Judge in Houston sitting in the Southern District. If there's any Member here who believes any Officer of that Court can fail to comply with the requirement to be present I would like to talk to him and find out how it is that is accomplished.

THE PRESIDENT: The Chair will point out, Mr. Haynes, Rule 33 of the Federal Rules of Criminal Procedure "The motion for new trial based on other grounds will be made five days after a verdict of the finding of guilty or within such further time as the Court may fix during the five day period." In other words, that period can be extended at the pleasure of the Court in Corpus Christi.

Question on the motion to adjourn until -- when was it, Senator?

SENATOR TRAEGER: 10:30 next Tuesday morning, sir.

THE PRESIDENT: Secretary, call the roll.

Yeas: Lombardino, Longoria, Mauzy, Mengden, Patman, Santiesteban, Schwartz, Traeger and Williams.

Nays: Adams, Aikin, Braecklein, Brooks, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, McKinnon, Meier, Sherman and Snelson.

Absent-excused: Clower, McKnight, Moore and Ogg.

Absent: Andujar.

THE PRESIDENT: There being nine "Yeas" and seventeen "Nays" the umpteenth motion to adjourn fails.

Mr. Meek, would you raise your right hand, please, sir?

"You do solemnly swear or affirm that the evidence you give upon this hearing by the Senate of Texas of impeachment charges against O. P. Carrillo shall be the truth, the whole truth, and nothing but the truth, so help you God."

THE PRESIDENT: Mr. Doyle.

WALTER W. MEEK, was called as a witness, and having been first duly sworn, testified as follows, to wit:

DIRECT EXAMINATION

(Questions by Mr. Doyle:)

Q Would you state your name, please, sir?

A Walter W. Meek.

Q How are you employed, Mr. Meek?

A I'm the County Auditor of Duval County.

Q And how long have you been the County Auditor of Duval County?

A 15 years.

Q In your duties as Auditor of Duval County, Mr. Meek, are you charged with keeping such records as cancelled checks, claims upon which those checks may or may not have been paid and other such matters?

A Yes, I am except for the cancelled checks. The treasurer is the custodian of the cancelled checks.

Q Now, Mr. Meek, before I get into you identifying certain Exhibits, could you tell the members of the Court how Duval County handles its welfare obligations -- and when I say welfare, I mean how does Duval County go about assisting people that live in the county who are in need of assistance from the county government?

A Would you state the last part of that question, Mr. Doyle?

Q All right. Let me just rephrase it, Mr. Meek. Are you familiar with the way Duval County has over the past few years tended to its welfare problems?

A Yes, of course, I'm only familiar with it through the bills that come through my office.

Q I understand, Mr. Meek. Could you tell the Senate, or members of this Court, approximately how much money the past few years Duval County has spent each year on its welfare budget?

MR. MITCHELL: Object, to be irrelevant.

THE PRESIDENT: Objection overruled.

Q You may answer the question, Mr. Meek.

A The present budget that we have just finished allots \$60,000 to them, that's down from \$150,000, which is about the average run heretofore.

Q Well, now the \$60,000 -- or rather was \$150,000 allocated in recent years or was that amount of money actually spent?

A I'm sorry, sir, I just didn't get all of that.

Q You indicate that the budget that Duval County just adopted calls for the county to spend \$60,000 on welfare. Is that correct?

A That's right.

Q Now you indicated previous years a different figure. Is that correct?

A Other years what, sir?

Q A larger figure.

A Oh, yes, very much larger.

Q Did they spend the larger amount of money or just allocate the larger amount of money?

A No, it's spent.

Q All right. So you indicated in other years they spent as much as \$150,000 a year on welfare?

A That's right.

Q Now would you describe to members of the Court how this money was spent? How -- let's take an example, Mrs. Jones that's in need of medical care or groceries, how would she go about getting assistance from the county?

MR. MITCHELL: Mr. President, we're going to object, that would be hearsay. This man's a County Auditor, he has not shown any expertise in the area of outlining or administering the welfare program. It would be hearsay as to the Respondent.

MR. DOYLE: Mr. President, I will requalify him if it will satisfy Counsel.

THE PRESIDENT: . Go ahead and qualify him, Mr. Doyle.

Q Mr. Meek, you have been an employee of the county for 15 years. Is that correct?

A That's right.

Q Do you sit in on from time to time meetings of the County Commissioners Court?

A Yes, at times.

Q Are you familiar with the method of dispersing welfare funds, actually carrying out of the budgetary allowance which you have previously described to us? Do you know how it mechanically works?

A Yes, I do.

Q And you are an officer of Duval County and have been for 15 years?

A That's right.

Q Do you supervise the payment of the bills?

A I do.

Q Do you supervise the payment of the welfare claims?

A I do.

Q So you are familiar with that system?

A I'm familiar with it, yes.

Q Would you describe to the members of this Court how that system works in Duval County?

A Well, it's very informal. You mentioned attending Commissioners Court, things like that rarely come up before the Court. They're handled independently of the Court as a rule by the individual Commissioners, County Judge and other officials in the county.

Q All right. Would you describe to us, Mr. Meek -- with Counsel's permission, could you -- let's just use an example of a Mrs. Jones or Mr. Smith, who are in need of food or medical attention. How would they go about it?

A They would approach their Commissioner or some other county official or some welfare worker and state their case and they would be given a slip of paper -- if it were groceries they needed to go get a certain amount of groceries or to see a doctor or hospitalization, just as informal as that.

Q Okay. So a needy person then would obtain a slip of paper from one of the Commissioners or from some other person entitled to issue such and they would take that to whomever they needed to see. Is that correct?

A That's correct, sir.

Q Now what does that person do with that piece of paper after he performs the services or gives the goods to the needy person?

A He usually includes that with the sales slip that he uses to bill the county for their money.

Q Okay. So if I was going to give Mr. Jones or Mrs. Smith or whoever \$10 worth of groceries would I take this slip and attach it with the bill and then send it back to that same Commissioner or to your office, or to where, to get my money?

A The bill would be sent to my office in the form that you've stated.

Q The bill --

A With the original order together with the sales slip, yes.

Q All right. So the needy person would ultimately get what they needed and the person who provided what they needed would send the bill, which you would ultimately pay. Is that correct?

A It must be my hearing, I just didn't get that.

Q Okay. Perhaps I'm talking too fast for you, Mr. Meek, I apologize.

MR. DOYLE: May I approach the witness?

(HOUSE EXHIBIT NO. 1 WAS
MARKED FOR IDENTIFICATION.
H 1 (1)-(38))

SENATOR TRAEGER: Mr. President, point of inquiry.

THE PRESIDENT: State your inquiry.

SENATOR TRAEGER: Am I to understand in reviewing the rules previously adopted that beginning -- written questions may be submitted by Members of the Court to the witnesses? Does that take place after the examination and cross-examination?

THE PRESIDENT: Yes, the rules so specify. Send up your questions at any time, but the rules provide that those questions will be propounded after both direct examination and cross-examination.

SENATOR TRAEGER: Thank you, sir.

MR. DOYLE: Mr. President, if I might be heard while waiting on that to come back. What I'm about to introduce is originals of certain county records, and I would request of the Court with Counsel's permission that once they are introduced and verified as being accurate that we make copies of them and let Mr. Meek take the county records back so the county can continue doing business with them.

THE PRESIDENT: Is there any objection to that from Counsel for the Respondent?

MR. MITCHELL: No, Mr. President. No objection -- once there has been proper authentication to the motion to withdraw and return the originals to the proper repository in the county.

SENATOR LONGORIA: Mr. President, point of inquiry.

THE PRESIDENT: State your inquiry, Senator from Hidalgo.

SENATOR LONGORIA: After these documents are introduced, if they are introduced at all, are we as the jurors and judges entitled to look at these documents?

THE PRESIDENT: Yes, Senator.

SENATOR LONGORIA: I was wondering when we can see them.

MR. PRESIDENT: Mr. Doyle, what provisions would you suggest to Mr. Mitchell and Mr. Haynes for making the documents available for the inspection of Members of the Court?

MR. DOYLE: I would suggest, Mr. President or at least I think the Court ought to discuss this. Before this trial is over, we will have introduced literally pounds of paper, maybe tens of pounds of paper. And these particular documents are rather -- well, they are real important to this Article -- and the Court and Counsel for the Defense have just agreed that we will be able to make copies of them and let Mr. Meek take them on back down and put them back in the county records where they belong after they have been introduced. Now, at the time we make those copies, I see no reason for not making enough copies for each Member of the Court to have them available at his desk.

THE PRESIDENT: They will be reproduced and they will be in the Journal.

MR. DOYLE: That's the last thing I was going to say. You might consider not doing that since a great deal of this information is going to be, if not all of it, reproduced and placed in the Journal which is supposed to be on your desk tomorrow anyway.

Okay, Mr. Meek. Now, what I'm handing you is marked House Exhibit No. 1. And it contains a series of items. Would you just take what's been marked as H, which has been marked as No. 1 and House 1, and tell the Court what that is?

A That's a bill from the Cash Store of Benavides for \$665.00. That's what it says on the jacket anyhow. That's what it is. Dated 1970.

Q Now, what does it contain?

A It contains a sales slip with a list of names, each one -- opposite each name is the sum of \$30.00. They are allowed that much each.

Q Now, that -- now, that list that you're talking about that you just described, is it a list that is provided for -- is it a list made up by the county for some person in behalf of the county, or is it the instrument that's made out by the Cash Store?

A No, I think this is a -- this particular list, yes, is written by the owner of the Cash Store, I'm sure. That is, it's on his sales slip.

Q Now, in the terms of your office and the people that do business down in Duval County, what is this envelope referred to as?

A We call it in our office a jacket.

Q And what does it represent?

A It's just an envelope really to keep that particular --

Q Is this what's commonly referred to as a claim?

A That's right, the jacket --

Q All right. Now, this jacket contains a series of bills, doesn't it?

A That's right.

Q Invoices. Is that accurate or not, sir?

A That's accurate.

Q Now, corresponding with the invoices. Now, the invoices -- when I say invoice, I'm talking about this little bill right here. Now, this is what's made out by the Cash Store, isn't it?

A That's right.

Q What is a Cash Store, Mr. Meek?

A I have never been in it. I suppose it's a grocery store.

Q You have seen it on the street, haven't you?

A That isn't my native town and I don't go around there.

Q That's right. You don't live there. Now, what is attached to the bill, Mr. Meek? What is this other instrument?

A That's an order from the -- on form of the Duval County Welfare Department.

Q Now, this is what the person would then obtain from his Commissioner or from some other person authorized to issue them that he would take down and -- to the store to get what he needed; is that correct?

A That's correct.

Q Now, the one that's marked H-1(1), what's the date on this one?

A 1970.

Q Okay.

A June 10th.

Q And what's the date on --

MR. MITCHELL: May we interrupt at this point, -- Mr. President, we are going to object to anything that occurred prior to January 1st, 1975, in that Judge Carrillo's certificate of election is dated November '74 whereby he was elected to this office January 1st, 1975, and any fact or circumstance occurring in 1970 is totally irrelevant and immaterial to the impeachment of the Judge for an act of misconduct which occurred during his current term. We might have an understanding we are going to object so we won't have to constantly interrupt this witness or any other witness, as being our position that the Certificate of Election washes out, if any, acts of misconduct official or non-official from January 1st, 1975 prior thereto.

MR. PRESIDENT: Mr. Doyle?

MR. DOYLE: Mr. President and members of the Senate, it was just perhaps bad luck that I pulled this one out first. What we have is a series of plans. And what Article I alleges is that Judge Carrillo took from the County systematically over a period of time \$300.00 a month to which he was not entitled.

MR. MITCHELL: Wait a minute. We are going to object to a jury argument at this time or argument to the Court. If it please the Court, it's quite a simple objection that the act of misconduct not occurring during the current certificate date of the current certificate of election is irrelevant and immaterial.

MR. DOYLE: Mr. President, if I might continue.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: We're going to show you with this series of claims and other series of claims a system which started, goodness knows when, and continued right on up through '72, '73, '74 and into '75. Now, the first claim I happened to pull out was a 1970 claim. But we have other claims going from before that right on up until just immediately prior to the impeachment proceedings in the House of Representatives.

MR. PRESIDENT: Mr. Doyle, is this evidence offered to show a course of conduct?

MR. DOYLE: Exactly.

MR. PRESIDENT: It is admissible for that purpose. Objection overruled.

MR. MITCHELL: Pardon me, Mr. President. A course of conduct upon whom? There is no evidence Judge O. P. Carrillo is interrelated at all to the transaction. The matter being a matter of the Commissioners Court and the welfare agents. We are going to object that on the grounds of the course of conduct, it would be hearsay as to this Judge is not, I think, by stipulation of a member of the Commissioners Court, if it please the Court.

MR. DOYLE: Mr. President, if Mr. Mitchell will be patient, after I introduce the claims and get them into the record, I will have additional testimony to show exactly how Judge Carrillo systematically took \$300.00 a month from Duval County over a period of years.

MR. PRESIDENT: You may proceed, Mr. Doyle.

(Questions by Mr. Doyle:)

Q Mr. Meek, the small piece of paper is that which is produced by the Cash Store and submitted to the county for its payment.

A That's right, sir.

Q The larger piece of paper is what is carried or handed to the proprietor of the Cash Store as evidence that he is in need of welfare assistance and that assistance has been authorized by some county official; is that correct?

A That's correct.

Q Now, on the one I've shown you, can you tell us who -- which county official authorized this one, for instance?

A No, I can't. It's signed by -- I don't have any idea.

Q Okay.

A I think it's signed by the Welfare Officer.

Q It's not important.

A It originated with her.

Q How about the next one -- let's first establish this, Mr. Meek. The particular one that we're looking at, which is House 1 (11), contains three bills is that correct?

A That is correct.

Q All in the month of June of 1970; is that correct?

A That's correct.

Q And what would the names on this -- on this list let's take the first one. June 3rd. What do the names on the instrument -- let's refer to this as the county's instrument.

A All right.

Q What are the names on the county instrument? Who are they?

A Well, the Welfare Officer, Mrs. Elvira de Leon --

Q Right.

A -- is -- but she didn't initiate this necessarily. I mean --

Q Who did?

A Well, there is no --

Q Whose name is -- whose signature is above --

A That's someone signing for her.

Q Do you recognize Ramiro Carrillo's signature?

A I think so.

Q Isn't that his signature on the one you have?

A No, I can't say --

Q How about the next one? Isn't that -- isn't it clearly his on the next one?

A Yes. I don't know whether that's his signature. I mean --

Q All right. It's not important at this time.

A I'm not familiar with it.

Q Okay. So, in this instance, all three of these are in the same claim jacket --

A That's right.

Q -- or is it four?

A Four.

Q All four of these are in the same claim jacket. Now, would that indicate that one check went out to pay all four of these?

A That's correct.

Q And, so, the number of county instruments and invoices or bills might vary from claim jacket to claim jacket?

A Correct.

Q But each claim jacket should represent one check issued by Duval County to whomever had furnished the goods to the needy person; is that right?

A That's right.

Q Now, Mr. Meek, I would like for you to take a look at the rest of what I've had marked as House Exhibit No. 1 and the Exhibit contains numbers 1 through 38. And I would like to ask you if you'll take a moment to examine those and be sure that they are indeed records of Duval County which have been properly kept in Duval County at the Duval County Courthouse.

MR. DOYLE: Mr. President, if I might be heard while the witness is examining those. For the purposes of the Clerk or whoever is going to be in charge of the Journal, the outside of the jacket is important to the proceedings, and for the advice of the Court is significant of these instruments, but what is really significant in these instruments are the little pieces of paper that he and I were discussing, and if you are going to reproduce them, it's going to be necessary to reproduce them, for them to have it to obtain any meaning to the Court, you are going to have to reproduce each of those Exhibits in its entirety, all the little pieces of paper inside with the names on them.

MR. MITCHELL: Mr. President, I don't want to be picky, but I am going to object to Counsel's commenting on the weight to be given these documents. The Court is setting out here and is well, well competent to give these documents, and the testimony from the witness stand, the proper weight. We are going to object to his characterization and the weight to be given to any of the evidence.

THE PRESIDENT: Objection sustained.

Mr. Doyle, please do not characterize the evidence in that manner.

Mr. Doyle, Mr. Mitchell, Mr. Haynes, this being about the middle of the afternoon, and a logical break in the proceedings, would you object to the witness continuing his examination after a recess?

MR. MITCHELL: No. We invite a break.

MR. DOYLE: No, sir.

MR. PRESIDENT: All right. If there is no objection, the Court will stand recessed until 3:15.

Accordingly, the Senate, sitting as a Court of Impeachment, at 2:58 o'clock p.m. took recess until 3:15 o'clock p.m. today.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 3:15 o'clock p.m. today.

THE PRESIDENT: Court will come to order.

Mr. Doyle.

MR. DOYLE: Are you ready, Mr. President?

DIRECT EXAMINATION RESUMED

(Questions by Mr. Doyle:)

Q Mr. Meek, you have examined all of the claim jackets and the contents of the claims that I have handed you, which are as a group marked House Exhibit No. 1?

A Yes.

Q Now are they the claim jackets and information which are duly kept in your office as Auditor of the County of Duval?

A That's right, they are from my office.

MR. DOYLE: Mr. President, we would offer those into evidence at this time and before that I would like to tender those to Counsel for the defense so that they might examine them.

MR. MITCHELL: Mr. President, in the interest of time may we reserve the right simply to have an opportunity to look at them perhaps at the afternoon break for purposes of objection and let Counsel go on with the examination.

THE PRESIDENT: There will be no objection to that, Mr. Mitchell.

MR. DOYLE: Do I understand that they are admitted into evidence subject to any objection and ruling to the contrary later?

THE PRESIDENT: Right.

Q Now Mr. Meek --

MR. DOYLE: Mr. Clerk, would you mark these checks as House Exhibit No. 2?

**(WHEREUPON, HOUSE EXHIBIT
NO. 2 WAS MARKED FOR
IDENTIFICATION.
H-2(1)-(12))**

Q Now Mr. Meek, I'm going to hand you now what's been marked as House Exhibit No. 2, which contains a series of cancelled checks numbered one through twelve and ask you if those are checks of Duval County which contain your signature, I believe.

A Yes, they are.

Q Now those checks, I believe each are made out to whom?

A Cash Store.

Q All right. All of those checks are made out to the Cash Store?

A Yes.

Q Now the claims which you have previously identified as county claims were all claims submitted to Duval County by the Cash Store. Is that right?

A That's correct.

Q Now Mr. Meek, the claims run from June of 1970 until November of 1974. Is that correct?

A That's correct.

Q Now the checks do not correspond, do they, Mr. Meek?

A No, they don't.

Q The checks that I have handed you are from December of '72 through November of '74. Is that correct?

A December of '74, yes.

Q Is the last check December of '74?

A 23rd of December, '74, yes.

Q Okay. Now Mr. Meek, that would indicate that there are some checks that we do not have. Is that correct?

A That's correct.

Q Now, do you know what happened to those checks?

MR. MITCHELL: Objection, it will be hearsay.

MR. DOYLE: It's not hearsay if he knows, Mr. President.

A Not exactly, I know they disappeared.

Q Now the checks that you have identified, Mr. Meek, were they issued in payment of the claims or a portion of the claims that you examined just a moment ago?

A That's correct.

Q Are the claim numbers on the checks?

A Yes, they are.

Q Whereabouts on the check do they appear?

A (Indicating)

Q On the right side of the check, about the middle of the check. Is that correct?

A That's right.

MR. DOYLE: We would offer those into evidence, also, Mr. President.

MR. MITCHELL: We would object on the ground that those that predate January 1st, 1975 be irrelevant and immaterial to this procedure and secondly they would be hearsay as to Judge O. P. Carrillo, Mr. President.

THE PRESIDENT: The same ruling applies here, Mr. Mitchell. If these records are introduced to show a course of conduct, they're admissible for that purpose and that purpose only. The objection is respectfully overruled.

(Whereupon, House Exhibit No. 2 was received in evidence.)

Q Now Mr. Meek, Duval County is in South Texas. Is that correct?

A That's right.

Q Approximately what's the population of Duval County, do you know?

A Approximately 12,000 now.

Q And Mr. Meek, in the normal course of the county's business does the county pay its bills in response to claims such as this for other services, lights, water, gas and so forth?

A Do they pay it?

Q Yes.

A Yes, they do.

Q Okay. So the manner in which the Cash Store was paid on a claim basis is the same way in which any other person or entity providing services to the county would be paid. Is that right?

A Exactly.

Q All right. Mr. Meek, who would have decided whether -- who decides which claims to pay and which claims not to pay?

A It would be the Commissioners Court.

Q Have you attended Commissioners Court meetings wherein the Commissioners made such decisions?

A Yes.

Q You indicated earlier things were handled somewhat informally down there?

A I didn't hear that.

Q You indicated earlier that things were handled somewhat informally in Duval County.

A To put it mildly.

Q Well, would a Commissioner handle these kind of claims or would some other county official or would the Commissioner whose name appeared on the claim handle it or do you know?

A Well, to be quite frank with you, very often the individual bills weren't even examined, they were just okayed, the bills that I presented -- very often without examination.

MR. DOYLE: Okay. We will pass the witness.

CROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q Mr. Meek, let me ask you a few questions, please sir. Duval County is, I guess, run by the Commissioners Court system?

A That's right.

Q There are how many precincts in Duval County?

A Four.

Q And does each precinct have a Commissioner?

A That's right.

Q And does the Commissioners Court -- is it presided over by still a fifth official?

A Pardon me?

Q Is the Commissioners Court attended by still another official?

A The County Judge.

Q All right. And, so there are five folks actually that make up the Commissioners Court of Duval County?

A That's correct.

Q And let's take 1974, who was the County Judge, say in January, '74?

A Archer Parr.

Q All right. And do you know -- who, if you know, of your own personal knowledge was the Commissioner of Precinct 1 on the same date?

A I didn't get that.

Q Who was the Commissioner of Precinct 1 in January of 1974, Mr. Meek?

A Precinct 1, did you say one?

Q Yes.

A Daniel Tobin.

Q All right. And Precinct Number 2?

A Felipe Valerio.

Q And of Precinct 3?

A Ramiro Carrillo.

Q All right. And Precinct 4?

A Juan Leal.

Q All right. Now, as I understand your testimony, you previously stated the welfare procedure instituted by persons who are in need, they contact one of three persons, the Welfare Agent -- am I correct?

A It's not limited to that, no.

Q I say one of three routes, as I recall your testimony, Mr. Meek, one was the Welfare Agent, the needy person would contact the Welfare Agent.

A That's right.

Q Two, he could contact a Commissioner.

A That's right.

Q Three, would contact some other official, is that correct?

A That's right.

Q And that person, be it the Welfare Agent, the Commissioner or some other official, would verify supposedly the need of that applicant, is that correct?

A That's correct.

Q And that person would then be in turn approved to receive the goods or the services for which that needy person had cause -- needed.

A Approved to the Welfare Officer only, not -- the Commissioners Court didn't approve the bills except when they were finally paid, but it didn't approve the application.

Q Right. The first approval came to the Welfare Officer, isn't that correct, Mr. Meek?

A That's correct.

Q That Welfare Officer would have an opportunity at that point to pass on that need, am I correct?

A That's correct.

Q Now, these bills that have been just introduced in evidence here as H-1(1) and H-1(2), first of all, H-1(1) strictly was selected, I suppose, by you at the request of Counsel for the Board of Managers to include only grocery bills, if the checks H-1(2) are any indication, were incurred at the Cash Store, isn't that correct?

A That's apparently what they did, yes.

Q You're not telling this Court or the President that these are the only bills that were paid by and through the Welfare Agency?

A By no means.

Q Let's see if we can get some of the others. State whether or not the drug bills were -- drugs were bought and paid for?

A That's right.

Q How about say, services of medical and hospital?

A That too.

Q Also, groceries at other places other than the Cash Store, am I correct?

A That's correct.

Q Any and all services, would you tell us, Mr. Meek, that the needy folks of that community required would be purchased by the Welfare within the confines of the law, isn't that correct?

A I'm afraid I didn't understand.

Q Any and all services that needy folks of the County needed would be purchased by the Welfare?

A That's right.

Q So that we are looking at a few checks here for groceries from the Cash Store, and you are not telling the Court and the President that these are the only services or goods that were provided the welfare folks of that County?

A Of course not.

Q All right. Now, once the Welfare -- let's suppose Mr. -- somebody in Mr. Ramiro Carrillo's precinct came to Mr. Ramiro Carrillo and would want groceries,

would he in turn, as I understand your testimony, submit that to the Welfare Agent, is that correct?

A That's correct.

Q And do you know the procedure that the Welfare Agent -- is that the State or Federal, do you know. Is that the one over at San Diego, or where is that located, that Welfare Agent, the one we are talking about say in '74?

A The one we are talking about?

Q Yes, sir.

A That's located in the Courthouse at San Diego.

Q All right. Would he not then take the necessary applications of the applicant, Mr. Meek? He would take the necessary information from the applicant, is that correct?

A You mean the Welfare Officer?

Q Yes.

A No. It's my understanding, and as I say, I am not at that end of it, I don't know. But, I don't think that the Welfare Officer interviews each one of these that comes in with a slip requesting a Welfare Officer to make out an order for them.

Q All right. The applicant comes to the Welfare Officer with the slip though, that's been issued by either the -- say the Commissioner or some other official, is that correct?

A Yes.

Q Now, the Welfare Officer, he approves that, does he not?

A That's right.

Q Then the applicant goes to the businessmen that provides these services, I suppose?

A That's right.

Q So if it's groceries, he can go to a number of grocers in Duval County?

A That's right.

Q If it's drugs, he can go to a number of drugstores?

A That's right.

Q Now, once the service or the goods are furnished by the applicant, then a bill is made out, I suppose by the store?

A That's right.

Q Or the services such as if it would be a doctor or dental, etc., am I correct?

A That's right.

Q And that finds its way then through and to the Commissioners Court, am I correct?

A Yes. Well, it comes to our office first. We prepare them for review by the Commissioners Court.

Q All right. So that the bill, the statement along with the application comes to the Auditors office, you document it for presentment to the Commissioners Court on the docket of the Commissioners Court?

A That's correct.

Q And the Commissioners Court meets when?

A First Monday in every month.

Q And it is presided over by the County Judge, am I correct?

A That's right.

Q And your office makes up the agenda of the claims to be presented to the Commissioners Court, am I correct?

A Did you say agenda?

Q No. I say, your office makes up the series of claims?

A That's right. Yes, sir.

Q All right. Now, the Commissioners Court, let's talk about it for a minute in Duval County. Is it a Court of Record, that is, are there minutes taken?

A Well, we have to keep the minutes.

Q Your answer would be then to my question, yes.

A Yes.

Q Isn't that correct? There are minutes taken, isn't that correct?

A That's right.

Q On each and every matter coming before the Courts, there are minutes taken, as far as you know, am I correct?

A I didn't get that question.

Q I say, on each and every matter coming before the Courts, there are minutes taken, to the best of your knowledge?

A That's right.

Q All right. It's not a secret procedure is what I'm asking? It's not a secret matter, the Commissioners Court of Duval County doesn't meet in secret, does it?

A No.

Q It is a public and open meeting, am I correct?

A That's right.

Q And among the matters that come before it at a regularly scheduled meeting that is recorded would be the presentment of these claims and approval, am I correct?

A Individually?

Q Individually, collectively, however you want to put it. They have to be approved by the Commissioners Court, don't they?

A They do, but they are approved in bulk.

Q All right. Now, Mr. Meek, once they are approved in bulk or individually, that approval is by resolution, is it not?

A Yes.

Q Formal action of the Commissioners Court, am I correct?

A That's right.

Q And then you and your office takes on the chore of carrying out the mandate of the Commissioners Court, am I correct?

A Yes.

Q Now, you're not telling this Court that you ever paid any of those claims that were not formally and correctly and properly approved by the Commissioners Court, say in '74, '75 or '68, are you, Mr. Meek?

A They have all been approved.

Q Right. And you are not telling this Court that you have ever approved one that you personally didn't have the authority of that Commissioners Court by resolution to pay, am I correct?

A Now, you lost me.

Q I say, you are not telling this Court that you ever acted outside of the authority of that Commissioners Court in approving these claims, am I correct?

A No, I haven't.

Q Sure you haven't. Whether they were approved in bulk, or singularly, or in Chinese, you had no authority to pay them unless that Court authorized you to pay.

A That's correct.

Q And, you never pay them, I suppose, until that Court authorizes you to pay them?

A That's correct.

Q Now, once the Court's order was handed down approving them, and I suppose you would take them into your office, and undertake through the secretarial staff to do the actual typing -- tell us how that was done, please, Mr. Meek?

A When we get them back to my office?

Q Yes, sir.

A Well, they are all ready for payment, bills have been reconciled against what we have paid the individual or the company, whatever it may be, and my assistant goes right ahead and writes the checks for them.

Q All right. Now, is that assistant, is that Octavio Hinojosa?

A That's right.

Q Now, Octavio Hinojosa, once he gets the authority from the Commissioners Court to come through you, then Mr. Hinojosa actually does the check writing, and I believe he also codes it, doesn't he?

A He what?

Q He puts the code number on them?

A That's right.

Q In fact, that's his private code system?

A That's right.

Q So that I could take a check, such as H-2(1) -- look at H-2(1) -- H-1, I'm sorry. I should make that H-2(1), which is a check dated January '73 -1973, January 16th, and by that code, trace it into H-1, and pick up that same code, could I not?

A That's right.

Q Now, then Mr. Hinojosa, I suppose his office types the checks up, Mr. Meek, or do you know, please, sir?

A What?

Q Does Mr. Hinojosa's office type up the checks, do you know?

A Yes, he does.

Q All right. Then, who mails them?

A He mails them out.

Q All right. They go out of his office, am I correct?

A That's correct.

Q Well now, the reconciliation procedures, will you please tell the Court what reconciliation procedures are employed by your office as County Auditor, if any, to make a determination to see that the checks go in the right place with the right invoices? What do you do when they get back to your office? Is there any follow-up reconciliation, Mr. Meek?

A I'm afraid I don't follow you. If you are wondering how we get the right check with the right bill, that's simple.

Q I want to hear it. How do you do it?

A Same way you pay your gas bill, you write out a check for it, and you don't send it to the telephone company.

Q All right. So that, in other words, the screening process of that claim commences with the person going to that Welfare Agent, that's the first one?

A State your question.

Q The first screening of these claims would that be the first contact with the Welfare Agent, assuming it's initiated there at the Welfare Agent?

A That's right.

Q All right. Then the second would be when they are in your office and you are documenting for presentation to the Commissioners Court?

A That's right.

Q And the third, I suppose, is when they are spread upon the minutes of the meeting of the Commissioners Court for the determination of whether they are going to appropriate County money to pay them, correct?

A That's right.

Q And the next would be when they are actually voted on, I suppose, is that correct?

A That's right.

Q And then the next would be when you are instructed by the action of the Commissioners Court, and then actually draft the checks?

A That's right.

Q And then, I suppose, and if I am wrong, correct me, Mr. Hinojosa makes some sort of cross check on them too, does he not?

A That's right. He handles them from the time they come into my office until the time they go out.

Q All right. Now, is there any follow-up check procedure, any follow-up procedure? I notice for example, all of these that are H-2(1) are payable to the Cash Store, and all endorsed, "Cash Store, Abel Yzaguirre". All right. Is there any follow-up procedure whereby documentation in your office is noted, Mr. Meek, when these checks are paid and a bill is being paid, is there any follow-up there?

A On the checks themselves?

Q Yes, sir.

A Not at all. The Treasurer is custodian of the cancelled checks, and we have no further use for them in my office.

Q Actually in the Auditor's -- you co-sign the checks, don't you?

A That's right.

Q And the Treasurer co-signs the check?

A That's right.

Q So that, actually, once Mr. Hinojosa makes up the checks, once you have taken a look at them and gotten the instructions from the Commissioners Court, they are made up and go to Mr. Hinojosa, then you sign them, do you not, Mr. Meek?

A That's right.

Q And I suppose you check them again?

A That's right.

Q To be sure you sign it correctly?

A That's right.

Q And you are not giving to me a blank check on the County, or somebody else?

A That's right.

Q Then, once you do that, you take them to the Treasurer himself, is that right?

A That's right.

Q So that on each and every check, there is the County Auditor, and the approval by the County Treasurer, am I correct?

A That's right.

Q And incidentally, there is also the County Clerk?

A That's right.

Q All right. So that there is -- when do they get to the County Clerk's office? When does the County Clerk approve them?

A Well, at different times. Usually he's the -- he won't sign unless I have signed them. He's the second man, and the Treasurer gets them last.

Q All right, sir. So, you sign them, because I suppose you are closer to the --

A That means I approve the bill.

Q Right. Then it goes from you to the Treasurer, and he approves them?

A Yes.

Q And he's free to make any investigation he wants, am I correct?

A Right.

Q And once the Treasurer signs them, it's your signature, and his signature, then the County Clerk signs them, correct?

A That's right.

Q All right. Have you ever seen Judge O. P. Carrillo at any of these meetings of the Commissioners Court held in this year, last year or five years A.D., espousing or requesting the action of this Court in connection with any of these claims, specifically those listed in H-1(22), Mr. Meek?

A No. I have never seen him at a Commissioners Court at all.

Q Now, I notice in H-1(2), there are bills from various and sundry -- there are notations from various and sundry persons, some -- and I believe you mentioned the third category of persons who would initiate or approve the claims when Mr. Doyle asked you, and that would be as regards other officials of the County?

A That's right.

Q Now, let me ask you and direct your attention to that category, is it usual -- was it usual and customary in Duval County that various officials would have that authority that has been recognized through custom?

A Not specifically. That authority wasn't given them, but I'd like to repeat, things are done very informally there, and the welfare in Duval County, just like the whole country, is pretty much of a mess, and it's not too hard to always find someone that will --

Q All right. Now, that's officials that we are talking about, would that be any elected official, for example, Mr. Parr, would he have that authority?

A Yes. He wouldn't have the authority, he could do it, though.

Q Well, he would do it, and his authority apparently would be recognized, is that correct?

A That's right.

Q And is that true, is it a safe assumption that that would be true with any and all other officials that wanted to exercise that authority, and has it been a custom that they have?

A Well, it depends on how well the other official stood in with the powers that be.

Q All right. Well, your answer to the question then would be, yes, to the extent that they were recognized in the County, or what is your answer?

A What is what?

Q What would be your answer? I am trying to get as carefully as I can, Mr. Meek, your response as regards those areas where other officials -- I believe you testified other officials would be authorized to initiate the welfare procedure. I think you listed the welfare workers, the Commissioners, and other officials. And I just want to know, is it usual and customary in that County to recognize other officials as initiating the procedure?

A Well, let's say that it's done, not all the time, but I mean it wouldn't be unusual if the Sheriff okayed someone's -- I don't know that he ever has, but it wouldn't be unusual.

Q Wouldn't be unusual in that County, is that correct?

A Not at all.

Q And have you on occasion and while you were in attendance at the Commissioners Court meetings at the first Monday of the month had cause to observe where a Commissioner, or some other person would object to an official giving or initiating, say welfare?

A Well, to be perfectly frank with you, the welfare affairs are not discussed unless they are talking about cutting down or increasing the budget, but not individual items on the welfare.

Q Mr. Meek --

A The bills that is on the welfare.

Q I believe your testimony was earlier that there had been about \$150,000.00 worth of welfare authorized to be paid in that County prior to this year?

A That's what was paid, not necessarily authorized.

Q What was paid, is that correct?

A That's correct.

Q All right. And how long has that been the amount paid to your personal knowledge, Mr. Meek?

A That one figure, I wouldn't -- I would have to hazard a guess, but it's some years more, and some less. The last few years, it has been running around \$150,000.00.

Q And how long have you been the County Auditor?

A Fifteen years.

Q Has it been that way for as long as you have been there?

A No. Some years ago, it wasn't quite that high, but it's always been too high.

Q Always been too high for the fifteen years that you have been there?

A Right.

Q All right. Now, one other question. I didn't get your answer, do the checks in H-2 -- now, do you understand what I'm referring to when I say H-2? I'm talking about these checks, do these checks correspond to the vouchers in H-1(1)? Do you understand my question?

A I'm afraid I don't.

Q All right.

MR. MITCHELL: May I approach the witness, Mr. President?

Q (By Mr. Mitchell): I hand you, Mr. Meek, what's been introduced as H-1(22), and as soon as I get them, I will hand you H-2, and ask you if these checks correspond with the documents in H-1(22)?

A From a casual spot check that I have made of them, they don't.

Q All right. There is no interrelationship -- if the Courts wanted to look at them and see for example on H-1, there is no interrelation between the claims and the documentation of the claims in H-1, and the checks in H-2, is that your testimony?

A Well, as I say, that's -- I didn't compare each one, but for the simple reason the first was dated 1970, and those checks are not in existence.

Q Now, in looking at H-1(22) again, so the record is clear, they appear to be in order in terms of having been signed by the County Treasurer, all of them, am I correct?

A That's right.

Q And the County Clerk, and yourself, as the County Auditor?

A That's right. They are all payable to the Cash Store at Benavides, Texas.

Q And they are all endorsed, "Cash Store, Mrs. Lauro Yzaguirre", is that correct?

A That's correct.

Q Each and every one. And Mrs. Yzaguirre -- as a matter of fact, do you know whether she in fact owns the Cash Store?

A No, I don't.

Q You do not. But Judge Carrillo's name does not appear anywhere on the items appearing in H-1(22), am I correct?

A None that I have seen.

MR. MITCHELL: All right. Counsel, may I have H-1, please?

MR. DOYLE: The Clerk is copying them. They are being photographed. I have some copies.

MR. MITCHELL: Well, maybe I can ask him.

MR. DOYLE: Copies will be made available to you.

Q (By Mr. Mitchell): Mr. Meek, you examined, did you not, H-1?

A That's right.

Q Now, when you prepared that Exhibit, were you asked specifically to pick out or to emphasize any specific checks, particularly with Judge O. P. Carrillo's name on them? How were you instructed to put that H-1(1) together, if you were?

A Just the bills to the Cash Store, as far as I know.

Q All right. And, as a matter of fact, they contain notations from many people, do they not?

A They what?

Q I say they contain notations from many people authorizing the purchase of groceries, do they not?

A That's right.

Q And having looked at them summarily or rapidly, I think probably in that whole stack there were, what, eight or nine or ten which appeared to be authority from Judge Carrillo? Do you recall looking at them that closely?

A Authority from Judge Carrillo?

Q Yes.

A I couldn't vouch for that. I don't --

Q Who else besides the Commissioners and the -- strike that fragmentary question. Let me go now to this third category. We talked about the Welfare Office. Could you tell us where that office was addressed? Where was it located, the Welfare Office, Mr. Meek?

A You mean the County Welfare Office?

Q Yes.

A See, there is a State Welfare Office there too. County is in the Courthouse, County.

Q State Welfare Office is where?

A In the old San Diego State Bank building.

Q Over at San Diego, Texas?

A That's right.

Q How is that system managed? Do you know the procedure?

A State welfare?

Q Yes, sir.

A No, but I think ours is in conflict with the State. In other words, I think that it is -- the two systems conflict, that is, in a wasteful way.

Q Well, you are passing judgment on whether it's waste. I gather from the answers to the questions, you are anti-welfare anyway. Aside from your personal judgment as to philosophy of welfare, and addressing your answers to the questions themselves, you're saying that the State Welfare system was administered separate and apart from the County; is that correct, Mr. Meek?

A That's correct.

Q All right. Now, did the State Welfare also send in their request, Mr. Meek, if you could tell us, to the County to be paid? Was there an involvement of the County?

A No. We have nothing to do with the State Welfare.

Q But there were -- do you know how these systems were initiated at all, how the State's system was initiated, how it was initiated in Duval County?

A How the State what?

Q Do you have any personal knowledge on how the State Welfare system was triggered or initiated in the County?

A No, sir, I have an appointment with the man who runs it there. I want to find out more about it.

Q All right. When you do, will you come back up here and give us the benefit of your observations, please? All right.

Other officials, now, you mentioned perhaps the Sheriff, perhaps the County Judge, that is Judge Parr at that time.

A That's right.

Q The Commissioners, four of them, correct?

A That's right.

Q How about the Deputy Sheriff? Did you notice any of them going through there from the Deputy Sheriff?

A You mean whether they can give orders?

Q Yes.

A That wouldn't surprise me, but I have no knowledge of that.

Q Who else that your personal recollection serves you that authorized the payment, besides the folks we've mentioned?

A None of this is from my personal recollection. I -- we get the bills from the welfare office. We don't check on who okays them. Because from the welfare office, it comes to us, and then the Commissioners. If they okay it, there is nothing I can do about it.

Q That's precisely the point I tried to make at the outset. Those requests were all screened at a basic level by the welfare office, aren't they, Mr. Meek?

A That's correct.

Q They go from that office into your office and from your office to the Commissioners Court, and they are voted and they're paid and it comes out of that County Treasurer, isn't that correct?

A That's correct.

Q And that agent down there, that Welfare Agent, who is he? What's his name? What's the man's name?

A I didn't --

Q Who was that Welfare Officer? What is his name? It's not Judge Carrillo, is it?

A Elvira de Leon.

Q How long has she been the Welfare Officer? Do you know, Mr. Meek?

A What's that?

Q How long has Mrs. de Leon been with the welfare office?

A Oh, Lord. Since before my time, I think.

Q Which is beyond 15 years?

A Yeah.

Q And every bill that was presented to the County for let's say last year or say as long as you can remember, was one presented by you, am I correct, Mr. Meek? Nobody else presented those bills but you, to the Commissioners Court for payment; is that correct?

A Nobody what?

Q Nobody would present them or had the authority to present those bills but you? We don't have anybody else presenting --

A Well, we present them. Other people can carry them into the Commissioners. The Treasurer does quite often.

Q All right. The Treasurer and you and your staff?

A Yes. In other words, the way the bills get to the Commissioners has no significance at all.

A I don't know -- in fact, I rarely take them -- usual routine is too boring to sit through.

Q Well, whether they are boring or not, this man is being charged in Article I of misconduct relating to that very procedure, though; am I correct, Mr. Meek? I have to ask you some questions about the procedure. You'll be patient with me, will you not? I said, whether boring or not, and whether they are approved in bulk or not or how they are approved, nevertheless, it is important to Judge Carrillo you will concede that is the point. Am I correct?

A I'm sorry. There are too many echos in this Chamber. Because I know I'm not that hard of hearing.

MR. MITCHELL: We have no further questions of this witness.
Thank you, Mr. President.

THE PRESIDENT: Mr. Doyle?

REDIRECT EXAMINATION

(Questions by Mr. Doyle:)

Q Mr. Meek, I've handed you what's been introduced as House Exhibit Number 1. It's a series of claims; is that correct?

A What?

Q I've handed you a series of claims which have been introduced as House Exhibit Number 1.

A That's right.

Q All right. Would you pull out of that Number 7, House Number 7? Have you got it?

A You mean --

Q Number 7. The one marked Number 7 up in the upper right-hand corner.

A Oh, I see. I see. Your Number 7.

Q Yes, sir. All right. Now, would you take out the contents of that envelope, please, sir?

A All right, sir.

Q Now, remember the larger of the two pieces of paper there, the one that had, "Duval County Welfare Department," written on the top of it?

A Yes.

Q Have you got the one in your hand dated July 3rd, 1970?

A July 3rd, 1970. Yes.

Q All right. Now, that is the instrument that the needy person would pick up from one of the Commissioners or whoever to go and obtain his groceries with; is that right?

A That's correct.

Q All right. Now, on the bottom of that instrument on the right-hand side, there is a signature, isn't there?

A That's right.

Q Now, that's the signature of the person who's receiving the benefits; isn't that right?

A That's right.

Q Now, on the left is another signature, that of Elvira de Leon.

A That's right.

Q Now, that's the way that system was supposed to work, isn't it?

A That's correct.

Q Now, would you look at the one dated in that same stack, the one dated December the 3rd, 1969?

A December 3rd?

Q Yes. Same -- the County's form, the one that has "Duval County Welfare Department," written on top of it. There ought to be one in there about three or four down, December 3rd, '69. 12/3/69.

A All right.

Q Now, would you take that one and take a look at it for us? Now, on the left-hand side, where on the first one, Mrs. de Leon's signature appeared, you see the signature of Ramiro Carrillo, don't you?

A That's a name I see. I am not familiar enough with his signature.

Q All right, sir. Now, on the right-hand side where the name of the person receiving the goods is supposed to be, just one word is written, isn't it?

A Sent.

Q Sent, S-e-n-t, is all that's there, isn't it?

A That's right.

Q Do you have any personal knowledge as to what that means?

A I have no idea at all.

Q Now, on that order, the one you have in your hand, there are five names written down, aren't there?

A That's right.

Q Rosa Chapa?

A That's right.

Q Jose Sendejar?

A That's right.

Q Mike Ruiz?

A That's right.

Q Rosa Garza?

A I suppose that's meant to be Garza. It's not very clear.

Q The last name is Filomino; is that correct?

A That's correct.

Q And opposite each of those names is the figure \$20.00; isn't that correct?

A That's correct.

Q Let's look back again now at the first one you looked at, July the 3rd, 1970. Have you got it in your hand?

A Yes, I have.

Q At the same place on it, where you have that list of names on the other one you have just got groceries, \$15.00, don't you?

A I don't have a sales slip on that. Yes, on the Welfare Department's statement.

Q Yes.

A Groceries \$15.00, yes.

Q There's not a list of names on it, is there?

A No.

Q Now in response to Mr. Mitchell's question you appeared to indicate that on each occasion a welfare official screened these people, that is not accurate, is it, Mr. Meek?

A Will you state that again, I'm sorry.

Q All right. In response to Mr. Mitchell's questions you indicated that the system was supposed to be such that a Welfare Agent reviewed each of these applications as they tried to get some groceries?

A That's right.

Q That's how it was supposed to work, isn't it?

A Yes.

Q That's not the way it in fact worked, is it, Mr. Meek?

A No, sir.

MR. MITCHELL: We object, that would clearly be hearsay, this man's the Auditor not Welfare Agent, Your Honor and it certainly is an inadmissible conclusion.

MR. DOYLE: Mr. President, I'm attempting to clear up what Mr. Mitchell misled this witness into saying.

MR. MITCHELL: I'm going to object to that and move to strike it. That's not a proper way to object. He's resorting -- Mr. President, to make that statement about me before this Senate and this body is highly improper and I move to strike that.

THE PRESIDENT: Objection is sustained. Strike the testimony.

Q Mr. Meek, when is the first time your office saw the instruments upon which the county based the sending out of this money?

A When the bill is brought to our office.

Q And the bill is brought to your office by the guy that sold the goods?

A That's right.

Q So in this instance if it's the Cash Store, Mr. or Mrs. Yzaguirre would send to the county a bill saying, "this is what you owe me." Is that correct?

A That's correct.

Q Now you indicated in cross examination by Mr. Mitchell that persons other than the store owner or the provider of goods sometimes brought the bills to you. Is that accurate?

A Yes.

Q You indicated that sometimes the Commissioners brought bills in?

A That's right.

Q All right. Now, was there any way for you to know if indeed -- if you will look at the December 3rd, '69 claim.

A Yes.

Q Is there any way for you to know if Rosa Chapa got any groceries?

A No way at all.

Q Is there any way for you to know if any of those persons listed got any groceries?

A No.

Q Is there any indication on that claim that any welfare person, any person employed by the welfare department reviewed that claim at all?

A No.

Q Where the signature of the welfare person ought to be is the signature of Ramiro Carrillo. Isn't that correct? Or the name of Ramiro Carrillo?

A Name, yes.

Q And where the signature of the persons, in this instance five persons, should have been is the word sent. Isn't that correct?

A That's correct.

MR. DOYLE: Pass the witness.

REXCROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q As a matter of fact, Mr. Meek, you didn't have personal knowledge of anything about which you have testified to except when the matter got to you out of the Commissioners Court for the filling out of checks. Isn't that a fair statement?

A That's right.

Q And I don't even believe you testified earlier that you even sent the checks out. I believe somebody else did that, didn't they, Octavio, or someone else?

A The checks?

Q Yes.

A Yes.

Q So you can't even tell this Court whether the people to whom the checks were addressed even got them, much less whether they endorsed them and cashed them or anything about them, to your personal knowledge. Am I correct?

A Correct.

Q Ramiro Carrillo is and has been the duly elected Commissioner of Precinct 2, has he not?

A Three.

Q Three, I am sorry. The answer would be yes. Is that correct, Mr. Meek?

A (Witness nodding head affirmatively.)

Q You suggested earlier and I don't want to duplicate this, there was some magic in the numbers \$20.00. What is that? Is that the limit, is that why so many of those are in the amount of \$20.00? Or is there any magic in the number \$20.00?

A Not that I know of.

Q All right. For the purpose of your future testimony would you mind when you go back today or tomorrow to Duval County, if you would make a list of all of the other claims for the period corresponding to that which you have selected for the counsel for the House Board of Managers and give this -- and make a list, giving us the persons who initiated -- whether it be the Commissioner, County Judge, the Sheriff, Deputy Sheriff or any other official -- would you please do that for us and the recipient, whether it's a drug store or whether it's a grocery store, or other drug stores say for the year -- the years '74 and '75, because we're going to subpoena you to bring that information in to give the Court a full picture of all of the welfare services performed by the county. Would you mind doing that for us, please, sir?

A I wouldn't mind, I'm sure, if I could understand what you mean.

Q Well, you have selected here Cash Store checks, have you not, Mr. Meek?

A I have what?

Q There has been selected in H-2 Cash Store checks, correct?

A You mean the checks I have here? Is that what you're talking about?

Q Yes, the checks that you have here are all Cash Store, the Yzaguirre store.

A I don't have any checks here.

Q Well, I believe you authenticated them as H-2?

A Yes, sir, these appear to be all Cash Store checks.

Q All right. My question simply is, would you please get the name of the payee of other checks for the years '74, '75, that is if there are other grocery stores -- I know there are pharmacies. I know there are checks payable to various pharmacies, aren't there?

A Yes.

Q To hospitals?

A Yes.

Q Doctors, am I correct?

A That's right.

Q Surgeons -- the whole spectrum of welfare services, I want to give the Court, if I can some indication through you as a follow-up witness of the full services, so that --

A I'm sorry, I just can't understand a word you're saying.

Q Well, I'm sorry, Mr. Meek, we have always had that problem, you and I. I guess I will back off and start again.

Let me ask you this way.

A All right.

Q You're not telling the Court that the only checks that are in your office are from the Cash Store?

A I never intimated that.

Q Would you mind listing representative payees for '74-'75 that you can present to this Court, other payees. Is that clear?

A Yes.

MR. MITCHELL: All right. Your witness.

MR. DOYLE: No other questions.

THE PRESIDENT: Mr. Meek, under the rules of this trial members of the Court who wish to direct questions to a witness have reduced those questions to writing and placed them on the rostrum here and I will now propound those questions to you.

This is a question submitted by Senator Traeger. "In Duval County are county welfare payments ever approved or disapproved at any time by the District Judge?"

THE WITNESS: No, not that I know of. I have never heard of it.

THE PRESIDENT: A question from Senator Longoria. "Is the Court to understand that you co-signed the checks?"

THE WITNESS: Yes.

THE PRESIDENT: "Why did you sign the checks?"

THE WITNESS: I don't know of any way to get out of it.

THE PRESIDENT: Question from Senator Adams. "Are all welfare claims, both state and county, screened by the State Welfare Office?"

THE WITNESS: That I don't know. I don't know a thing about how the welfare is run, state welfare, that is.

THE PRESIDENT: A series of questions from Senator Hance. "Was Judge Carrillo entitled to any type of supplement from the county?"

THE WITNESS: No, he does get -- not that I can recall.

THE PRESIDENT: Senator Hance, a negative answer to your first question obviates the rest.

A series of questions from Senator Mauzy. "Mr. Meek, do you know of your own personal knowledge if Judge O. P. Carrillo conspired with others to have Duval County pay for groceries to which he was not entitled for his personal use and benefit?"

THE WITNESS: Do I understand that correct? Do I know of my personal knowledge?

THE PRESIDENT: Yes, sir.

THE WITNESS: No, I do not.

THE PRESIDENT: Mr. Meek, you're excused. Thank you.
Senator from Jackson.

SENATOR PATMAN: Mr. President, just before the witness was excused by Mr. Mitchell he asked him if he minded preparing a certain list and the answer was, as I heard it, yes. Do I understand it that yes, he does mind and he will not furnish it or yes he doesn't mind and will furnish it?

THE WITNESS: If I may answer that. I just didn't understand the question I'm sure I will be willing to prepare any kind of list that he wants, but I don't know what he wanted.

THE PRESIDENT: Mr. Mitchell, if you will prepare a subpoena describing in detail what you want the Court will issue that subpoena.

This witness is excused.

MR. DOYLE: Mr. President, I would like the Court advised that we may need to recall Mr. Meek, and I don't want him permanently excused, he's still under subpoena.

THE PRESIDENT: Still under subpoena and under The Rule.

MR. MITCHELL: Mr. President, may I ask one question that was raised by one of the questions to him by the Court.

Mr. Meek, would you mind if I asked you one more question. There was a question put to you in regard to supplements. Let me ask you, do you know of your own personal knowledge that Judge Carrillo does not receive any supplement from the county? You don't have any personal knowledge that he received any supplement from the county, do you?

THE WITNESS: None that I know of.

THE PRESIDENT: Mr. Meek, excuse me, could you repeat your answer into the microphone?

THE WITNESS: No, not to my knowledge. He received no supplement from the county, other than -- if he receives anything it's according to the law, but not out of my office.

THE PRESIDENT: Thank you.

(Witness excused.)

THE PRESIDENT: Mr. Doyle, would you call your next witness?

MR. DOYLE: We would like to call next Mr. Rudolfo Chapa.

THE PRESIDENT: Would Mr. Rudolfo Chapa take the stand, please. Mr. Chapa, please raise your right hand.

"You do solemnly swear or affirm that the evidence you give upon this hearing by the Senate of Texas of impeachment charges against O. P. Carrillo shall be the truth, the whole truth, and nothing but the truth, so help you God."

RUDOLFO CHAPA, the witness, called by the State, having been first duly sworn, testified as follows, to wit:

DIRECT EXAMINATION

(Questions by Ms. Levatino:)

Q Would you state your name for the record?

A Rudolfo Chapa.

Q Do you have a nickname?

A Yes, ma'am.

Q What is that?

A Tete, T-e-t-e.

Q Pardon me? Would you repeat your nickname?

A T-e-t-e. Tete.

Q Tete, how long have you lived in Benavides, Texas?

A 36 years.

Q Do you reside there now?

A Yes, ma'am, I still live there.

Q Have you lived there continuously in Benavides for 36 years?

A Well, I worked in Cotulla for three years.

Q And when did you move to Cotulla?

A 1970.

Q When did you return to Benavides?

A In '73, in December.

Q And have you lived in Benavides since December of '73?

A Yes, ma'am.

Q Are you married?

A Yes, ma'am.

Q Do you have any children?

A Yes, ma'am.

Q How many?

A Two girls.

Q All right. Are you employed?

A Yes, ma'am.

Q And where do you work?

A I work for the Water District.

Q How long have you worked for the Water District?

A About 16, 17 months, somewhere in there.

Q Have you worked with the Water District since your return to Benavides in 1973?

A Yes, ma'am.

Q And what is your salary with the Water District?

A \$500.00 a month.

Q Okay. Do you know that Duval County has a system where they would buy groceries for some people?

A I heard.

Q Have you ever received groceries that were paid for by Duval County?

A Well, O. P. bought me some groceries one time.

Q And when was that?

A '67.

Q What did you do? When you say O. P. bought you some groceries? Did he give you the money to buy the groceries?

A No. He gave me a piece of paper for my wife to buy some groceries, fifteen or twenty dollars.

Q Where did you take that piece of paper?

A Cash Store.

Q How often did this happen?

A Oh, about three or four times.

Q Okay. And that was all in 1967?

A I guess in about '67, probably would be in '68, I really don't remember, but mostly in about '67.

MR. MITCHELL: Pardon me, Counsel, let me object.

Your Honor, and I will not interrupt anymore. I move to strike all the testimony as being remote and far removed from Judge Carrillo's Certificate of Election which legally became operative, November, 1974, for office, January 1st, 1975, and further, that it's hearsay, and we move, as to Judge Carrillo, to strike it.

THE PRESIDENT: Ms. Levatino.

MS. LEVATINO: Your Honor, we were just getting this in to show that his name will appear on a number of claims that have already been introduced into evidence since the time that Counsel objects to.

THE PRESIDENT: This evidence, like previous evidence is introduced, to establish a course of conduct?

MS. LEVATINO: Right.

THE PRESIDENT: The evidence is admissible for that purpose. Objection overruled.

Q (By Ms. Levatino): Since 1967, have you ever received food from the Cash Store which was paid for by either a governmental entity or someone other than yourself?

A No, ma'am.

Q Do you shop at the Cash Store?

A Yes, ma'am.

Q Do you pay for your own food when you shop at the Cash Store?

A Well, I get some groceries because I do my shopping in Alice, and whatever I need, I go to the Cash Store and put it down, and then I pay by the month, I go pay my bills.

Q So you pay like at the end of each month for the groceries you bought that month?

A Yes, ma'am. Because I get paid by the month. And then --

Q Just hold those for me. Mr. Chapa, I'm showing you a series of claim forms which have been introduced in evidence as H-1, number four. Would you look through those forms, and do you see some slips that look like receipt slips on which your name appears?

A Yes, ma'am. Just a minute.

SENATOR MAUZY: Mr. President, The Rule has been invoked and this witness is still in the hearing room while another witness is testifying. I think we should hold up and let Mr. Meek outside the hearing.

MR. PRESIDENT: Could you speak a little louder, Senator?

SENATOR MAUZY: Mr. Meek is under The Rule, Your Honor, and he's been in the Chamber while another witness is testifying.

THE PRESIDENT: The Sergeant-at-Arms will remove Mr. Meek from the floor.

Q (By Ms. Levatino): Would you look at a slip dated 11/6/70?

A Yes, ma'am.

Q Okay. Does your name appear on that slip?

A Yes, ma'am.

Q And what is the dollar figure appearing next to your name?

A Well, it's \$20.00.

Q Did you on the sixth of November, 1970, receive \$20.00 worth of groceries from the Cash Store?

A No, ma'am.

Q Okay. Would you then -- there are also some long yellow slips in that packet, I believe. Would you look through those yellow slips and see if your name appears on any of those long yellow slips?

A Here's one of them.

Q Would you read to the Court what that slip says, please?

A "Cash Store give Tete Chapa \$20.00 groceries, O. P."

Q Okay. Did you ever take this slip to the Cash Store, to your knowledge, to get \$20.00 worth of groceries?

A No, ma'am.

Q Okay. Thank you. Are there any other Tete Chapa's that you know of in Benavides?

A Not that I know.

Q Are there any other T. Chapa's that you know of in Benavides?

A Well, there is another, my brother Tula Chapa, but that's his nickname.

Q Where does your brother live?

A In Corpus.

Q Has he lived in Benavides recently?

A No. He's been -- he lived in Corpus for 10 or 12 years.

Q So you would be the only T. Chapa or Tete Chapa?

A Well, there was another man named Thomas Chapa, but he has been dead for years.

Q For years? Would you put a number of years on that?

A Well, it has been many years. I can't remember, 10 or 12 years, or --

Q Okay. Mr. Chapa, did you ever pick up groceries for some other person at the Cash Store other than for your own use?

A I used to pick up groceries there for O. P. sometimes.

Q And when did you do that, Mr. Chapa?

A Oh, when I used to work for his brother in the county.

Q What years would those, be?

A That's '67, '68 or '68, '69 and '70.

Q When you would pick up the groceries for the Judge, would you pay for those groceries?

A No, ma'am. I just signed a ticket.

Q What kind of a ticket was that?

A Just a piece of paper where you put that adding machine --

Q Like an adding machine tape?

A Then just put "O. P." then put my signature, "Tete" on the bottom.

MS. LEVATINO: Okay. Pass the witness.
Thank you.

CROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q I believe you are the brother of Reuben Chapa, are you not, Tete?

A Yes, sir.

Q I believe there are several other Reuben Chapa's or R. Chapa's are there not, that live in the Duval County area aside from your brother?

A There are a lot of R. Chapa's.

Q As a matter of fact, Tete, going back to 1967, '66 and '67, I believe you testified that Judge Carrillo helped you and your wife get some groceries, is that correct?

A 1967?

Q You and your wife were in need of that at that time, isn't that correct?

A Yes, sir.

Q Without being disrespectful, ya'll had a need, and you went to him and he helped ya'll?

A Yes, sir. Because I used to work with him.

Q Yes. As a matter of fact, I believe he helped you in many other ways too, didn't he, Mr. Chapa?

A Yes, sir.

Q Pay the doctor bill when your first baby was born?

A Well, he used to give me an order for the county, and the county used to pay for it.

Q He in fact -- well, you were needy and needed help, and you are not suggesting that there is anything improper in that, are you?

A I didn't understand your question.

Q I said, you're not suggesting there is anything improper, you had a need, and that need was met by the welfare people?

A Oh, yes. And whenever I need something, I would just go up there to O. P. I need some groceries, and he helped me out about four times.

Q And paid your doctor bill on the second daughter I believe didn't he?

A And when doctor bills -- well the County was paying for them and I would go up there and ask for an order, and the County gave me a \$100.00 order to pay the bill.

Q Well, you availed yourself when there was a need, and there is nothing improper about that? We're not suggesting that, are we?

A Well, just one time he helped me out.

Q Let me -- do you still have Exhibit H-1(4) there in front of you, Mr. Chapa?

A What was the number again?

(Thereupon, the witness was handed a document.)

Q (By Mr. Mitchell): Now, the sum and substance of your testimony, as I understand it, is that in 1967, you had a need and you availed yourself of the welfare processes there in Duval County, and you testified that perhaps three or four times in 1967, and perhaps one other time, you used the welfare processes there to purchase groceries at the Cash Store; is that about what you testified to?

A Well, I said that -- and like I say, I needed groceries, and I'd just go with O. P., and I made a ticket to him.

Q And what was your testimony, now, specifically as to the last time that you were given groceries from the Cash Store, Mr. Chapa? What's the last date?

A On the groceries --

Q Yes, sir.

A Well, like I say, I don't remember. I used to work in Cotulla, and sometimes I used to come over and spend a week-end with my mother, and sometimes I used to go with O. P. to the ranch and get some groceries with him, some meat or beer, or whatever it is.

Q Right. As a matter of fact, I believe -- can you testify safely that you either picked up groceries directly or for him or your own account in '68, '69 -- '67, '68, '69 for sure?

A Some groceries at the Cash Store?

Q Yes, sir.

A Yes. There was, like I say, I used to sign those tickets on a piece of paper, adding machine papers --

Q And they are similar to the ones you have been questioned about here by the attorney for the Managers, this Exhibit called H-4? You recall those questions put to you by the lady from the Attorney General's office?

A Well, most of them.

Q All right.

A At the time, I wasn't here.

Q Is it your testimony, Mr. Chapa, that you did not pick up any groceries on your own account in the year '70?

A On my own account?

Q Yes. Did you go by and get any groceries for yourself in 1970 that you recall?

A For my own -- no. Because I wasn't working here then. I was in Cotulla.

Q And did you go by and pick them up for someone else?

A For who? Just like I say, when I was -- suppose I come over on a week-end and spent a week-end with O. P. at the ranch, and he said, "Let's go get a case of beer, or go get a case of beer and some meat", I'd go and just sign a ticket.

Q Well, I don't know whether I understand you or not. Is your answer that you had gone by there in 1970 and gotten some, or have not?

A Well, I don't remember.

Q Now, I believe these are the three, Tete. Let's look at these and see if these are the ones that you were looking at when you answered the questions put to you. There are four of them, I believe, here. Take a look at them. These are all dated in 1970, are they not?

A This is.

Q Well, take a look at them all.

A Yes.

Q All right. Now, let's take the one you have in your hand there. Your name doesn't appear at all on this one, does it, the first one?

A No.

Q All right. And --

A It's right over here, I guess. Let's see, right there, "Tete Chapa".

Q All right. So that the record is abundantly clear, your name does not appear on the Duval County Welfare Department official voucher, does it? Now, take a look at that, that white sheet there, Tete.

A No.

Q All right. And it does not appear on what appears to be the Cash Store check or bills signed by Abel Yzaguirre, does it?

A No.

MS. LEVATINO: Mr. President.

Q But it does appear, and your testimony is, to be on this little -- looks like a yellow tablet, says "Cash Store. Give Tete Chapa \$20.00 groceries," and it does appear to be on this little yellow sheet; is that correct?

A Yes. But it's --

Q Correct?

A Yeah. That's what it says there.

Q That is you, Tete Chapa, right?

A Yes. But it doesn't say a date on it.

Q All right. And you can't tell this Court under oath, can you, whether, as a matter of fact, that yellow slip goes with the white official form or Mr. Yzaguirre's little bill, can you, because your name doesn't appear on any of these other documents, am I correct?

A Yes.

Q All right.

MS. LEVATINO: Mr. President, for the purposes of the record, there are a number of those forms in there. We would ask Counsel to please identify them by date where possible so the record will be clear on this.

MR. MITCHELL: Well, I'm aware of the -- Mr. President, they are undated. That's the problem. The yellow ones are undated, for the record. The white one which has been identified as the official one is dated 11/13/70. And the bill is also dated, and it's dated 11/18/70.

Q It does not appear, does it, that the --

THE PRESIDENT: Mr. Mitchell, could I see the bill there?

MR. MITCHELL: Yes, sir.

A Here's that other one with my name there.

Q Well I'll get to that one. Just hold on.

MR. MITCHELL: Now, these go with it, apparently, Mr. President. I would like to have those stapled together if we can.

THE PRESIDENT: Ms. Levatino, the yellow slips attached do not bear dates.

MS. LEVATINO: Yes. I understand that. But they are attached to another form which was being referred to on which no date was given.

MR. MITCHELL: Are you straight, Counsel? The reason I couldn't refer to it by date, they are undated, as pointed out by the President.

MS. LEVATINO: But --

Q All right. Let me make sure I've got the record clear. Looking at this exhibit which is, I suppose, H-1, four of H-1 dated 11/13/70 -- are you with me, Tete, or am I losing you?

A No.

Q All right. Your name is not anywhere on this official form, is it?

A Not on that one.

Q Nor is it on the bill of the Cash Store, am I correct?

A No, sir.

Q Although there is a yellow slip which you have identified attached hereto that says -- see if I read it correctly, because you are under oath. "Cash Store. Give Tete Chapa \$20.00 g-r-o gro," and there appears to be some initials, am I correct?

A O. P. Carrillo.

Q Well, it doesn't say O. P. Carrillo there.

A Well, it's O. P.'s signature anyway. I recognize his signature.

Q Tell us what it says?

A O. P. Do you want me to say it a little louder? It's O. P.

Q All right. Now, you state this just as loud as you said O. P. Does that \$20.00 carry forward into this white invoice?

A No.

Q Louder.

A No.

Q Does that \$20.00 carry over into cash carry?

A You don't have to yell at me. I can hear you. All right?

Q Does it carry over into the bill? Yes or no?

A I said no.

Q So, it would appear that even though you had a little slip that might have had O. P.'s signature on it, it wasn't filled out and put into the official voucher. That's what Mr. Meek identified as the white form from the Welfare Agent, nor was it billed to the store. And Mr. Meek identified that little slip as being the bill made out by the store. Doesn't look like you got anything, does it?

A I did sometimes. Sometimes, I didn't.

Q Not by that one, though. Am I right?

A I really don't know. Like I say, it doesn't have a date on it.

Q That's precisely my point. You really don't know, do you, Mr. Chapa?

A It doesn't have a date, like I told you a while ago. I used to come in and get the groceries for O. P.

Q All right. Well, you got your own groceries, didn't you?

A Yes.

Q And you got plenty of welfare on your own, didn't you? You mentioned that. Let me ask you, isn't it a matter of fact you got plenty of welfare year in and year out, on your own, didn't you?

A No.

Q You didn't get groceries year in and year out '66, '67, '68 and '69?

A Welfare?

Q Yes, sir.

A No, sir.

Q You never got any welfare groceries?

A No, sir.

Q You never got any welfare services?

A No, sir. He helped me once, like I said. And Ramiro Carrillo, his brother, gave me that claim for \$100.00. That's about it.

Q Well, this is the second time in three days you have taken the stand to testify against this man, isn't it?

A That's right.

Q And you would go anywhere to testify against him, wouldn't you?

A No, sir.

Q And you are really mad because Ramiro --

A Because they are using my name, and I didn't get that food. Is that clear?

Q Well, now, you look at the invoice 11/13/70 and see where they used your name.

A You would have done the same thing if they were using your name.

Q Mr. Chapa, please.

A There is no name. My name is not there.

Q All right.

A But it's over there on one of those.

Q All right. Let's look at one of the others. Here is one. 11/7/70. Is it on this?

A No.

Q It ain't on that one either, is it?

A No.

Q And it's not only on the official form, its not on the grocery store form, is it?

A No. Let's look them over again.

Q Well, take your time.

A No.

Q Now, let's look at the one, the 10/18/70. Is it on there?

A No.

Q That's the official welfare form, that white one. And that other is the bill from Cash Store, isn't it? Cash Store? Right? Your name is not on that, is it?

A No.

Q Now, I show you one on H-1(1), 6/22/70. Is your name on that one?

A Yes. On both of them.

Q All right. That's the white one and the grocery one, isn't it?

A Yes.

Q For how much?

A \$20.00.

Q You can't tell this Court under oath whether in fact you went in there and bought that for \$20.00 in 1970 in November as indicated by the invoice, isn't that true?

A Like I say -

Q You can't remember?

A Bring me the papers where I signed the tickets, and I'll tell you if it's my signature. Like I said, I used to come from Cotulla and get some groceries with O. P. and go over to the ranch.

Q I have never quarreled with that fact, Mr. Chapa. The information has been, and by a statement of Counsel, there might have been a time or two that your name was used. And I'm suggesting that at no time can you tell this Court under oath that where your name was involved you didn't get groceries; isn't that correct?

A Like I told you, I got some groceries in 1967.

Q '68?

A Maybe once like I said awhile ago.

Q And maybe once in '70?

A No.

MR. MITCHELL: No further questions of this witness, Mr. President. Thank you.

REDIRECT EXAMINATION

(Questions by Ms. Levatino:)

Q Mr. Chapa, can you tell this Court under oath that on November 6, 1970 you did not receive groceries from the Cash Store which were paid for by the county?

A Like I say, if I got the groceries, they were not for me. It was like I said, I used to come on weekends and go with O. P. to the ranch.

Q Okay. Did you, to your knowledge, receive groceries in October of 1974, which the county paid for?

A No, ma'am.

Q Okay. Did you in November of 1974 receive groceries for which the county paid?

A No, ma'am.

Q Okay. I'm going to show you two more Exhibits marked H-1(37) and H-1(38). Would you look at this Exhibit first? Look at the claim forms inside there.

A It's not open, is it? Oh, here it is. Sorry.

Q Does your name appear on the Cash Store slip and/or the county welfare slip for either of those two dates?

A Says "T. Chapa."

Q And what is the date on that?

A 10-14-1974.

Q Thank you. Would you look at the claim forms in H-1(38)? Does your name appear on the Cash Store or the county invoice on any of those claim forms?

A Here is another "T. Chapa, \$40.00".

Q What is the date of that?

A 11/11/74.

Q Did you on November of 1974 receive groceries paid for by the county?

A No, ma'am.

MS. LEVATINO: Okay. No further questions.

MR. MITCHELL: May I have the exhibits, please, Counsel, H-1(37) and H-1(38)?

RECROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q I believe, Mr. Chapa, you stated earlier there lives in that community a Mr. Thomas Chapa; is that correct?

A Yes, sir.

Q And your name is actually not T. Chapa, it's Rudolfo Chapa, isn't that correct?

A Yes, sir.

Q And you have a nickname called "Tete," isn't that correct?

A Yes, sir.

Q As a matter of fact, when you signed that name, you signed it "Tete" period?

A Yes, sir.

Q You don't sign it "T. Chapa," is that correct?

A No, sir.

Q You can't tell this Court under oath that the purchases that were made in October of '74 were not in fact purchased by Mr. Thomas Chapa?

A No.

Q All you know is you weren't there and you didn't buy it?

A Well, Thomas Chapa has been dead for years.

Q Well, you've got some Thomases -- some other Chapas, do you not, that are T. Chapas?

A Thomas Chapa in Benavides?

Q I said T. Chapas.

A Not that I think so, not that I know.

Q All right. Each of these tickets, that is H-1(37) and H-1(38) are signed by Lauro Yzaguirre, are they not?

A Yes, sir.

Q And they indicate that Lauro Yzaguirre owns the Cash Store -- isn't that true?

A Yes, sir.

Q And you know Lauro Yzaguirre?

A Yes, sir.

Q And she knows you. Is that correct?

A Yes, sir.

Q And had you purchased anything in her store, Lauro would have known it, isn't that correct?

A Yes, sir.

Q And had -- like this purchase -- the attorney for the Board of Managers showed you an invoice 11/11/74, which had A. Hinojosa, F. -- it's illegible, looks like Pena and T. Chapa and it's signed by Lauro Yzaguirre. That's the one you were looking at. Is that correct?

A Yes.

Q And it appears that Lauro Yzaguirre signed for the Cash Store, isn't that correct?

A It is signed here.

Q Yes, and you know Lauro Yzaguirre?

A Yes, sir.

Q And you don't think Lauro Yzaguirre would sign a T. Chapa or an A. Hinojosa -- or an F. Pena would come in and purchase groceries and that she sold them if that weren't the fact, do you?

A I don't know.

Q Well, you know as a matter of fact she wouldn't, would she?

A I don't think so.

Q I think your name appears once, does it not, Mr. Chapa in the -- that's 11/11/74 invoices out of all of those, isn't that correct, sir?

A Yes, sir.

Q And then I believe it appears once in the October, again -- yes, that appears to be a purchase made 10/14/74 and that's also signed by Cash Store, Lauro Yzaguirre. And I will ask you the same question, you don't think -- you know Lauro Yzaguirre, do you not?

A Yes, sir.

Q Do you think she would sign a receipt where a purchase was made if the purchase was in fact made by someone?

A I wouldn't know.

MR. MITCHELL: All right. No further questions.

THE PRESIDENT: Ms. Levatino?

MS. LEVATINO: No questions.

THE PRESIDENT: Mr. Chapa, under the rules of this trial after direct examination and cross-examination has been completed, members of the Court send their questions up to the rostrum and it is my duty to ask you at the conclusion of the questions by the lawyers of the two parties.

This is a question sent up by Senator Mauzy. "Mr. Chapa, do you know of your own personal knowledge that Judge O. P. Carrillo conspired with others to have Duval County pay for groceries to which he was not entitled for his personal use and benefit?"

THE WITNESS: Maybe. I wouldn't know.

SENATOR TRAEGER: Mr. President, we can't hear the answer.

THE PRESIDENT: Would you repeat your answer?

THE WITNESS: I wouldn't know.

THE PRESIDENT: Your answer is you wouldn't know?

THE WITNESS: I wouldn't know.

SENATOR PATMAN: Does that mean he does not know?

SENATOR MAUZY: Mr. President, I think the question has to be answered yes or no.

THE WITNESS: Could you read that again. I didn't understand it very well.

THE PRESIDENT: "Do you know of your own personal knowledge if Judge O. P. Carrillo conspired with others to have Duval County pay for groceries to which he was not entitled for his personal use and benefit? Do you know from your own personal knowledge?"

THE WITNESS: I don't think so, like I said.

THE PRESIDENT: Then in answer to the direct question, do you know of your own personal knowledge that he conspired to do this?

THE WITNESS: No.

THE PRESIDENT: The answer is no. It's now 4:52. Do Counsel for either parties anticipate that Mr. Chapa will be recalled?

MR. DOYLE: I don't think so, Your Honor.

MR. MITCHELL: We might -- excuse me, Mr. President -- we might in connection with another witness, but it will be a very short recall.

THE PRESIDENT: Mr. Chapa, in view of the fact that the possibility exists that you might be recalled for further testimony in this case it is my duty to warn you that you're under The Rule, that you're not to converse with any other person except Counsel for the two parties concerning the proceedings before this Court, do not read any report of or comment on testimony before the Court. A person violating such instructions may be punished with contempt, do you understand that?

THE WITNESS: Yes, sir.

THE PRESIDENT: Thank you, Mr. Chapa. You're excused for the time being.

(Witness excused.)

THE PRESIDENT: In view of the lateness of the hour the Chair proposes in a moment to recognize the Senator from Lamar for a motion to adjourn.

The Chair would request that Counsel for both parties, as well as Judge Carrillo, such Members of the House Board of Managers that may be present -- I would request that on adjournment that you meet in my office.

Senator from Lamar.

SENATOR AIKIN: Mr. President, I'm going to move to recess until -- or adjourn until 9:15 in the morning. I really would rather make it 9:00, but we have some that can't get here and so I'm going to make it 9:15, if that's agreeable with everybody and I think it is, I have talked with, I think, all the members of the Senate.

THE PRESIDENT: Senator from Lamar moves the Court stand adjourned until 9:15 tomorrow morning. All in favor say "aye", those opposed "no". The "ayes" have it.

Accordingly, the Court, sitting as a Court of Impeachment, at 4:54 o'clock p.m. adjourned until 9:15 o'clock a.m. tomorrow.

NINTH DAY (Tuesday, October 7, 1975)

The Senate, sitting as a Court of Impeachment met at 9:15 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present: Adams, Aikin, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: Gammage and Ogg.

Absent: Andujar.

A quorum was announced present.

Pastor Curtis A. Johnson, Lutheran Campus Minister, Austin, offered the invocation as follows:

Lord, make us wiser than serpents, discerning as hawks, elegant like the mourning dove, swift as roadrunners, and committed to be more than buzzards. Grant that this day we fall into no sin, neither run into any kind of danger; but that all our doings, being ordered by Thy governance, may be righteous in Thy sight. Amen.

LEAVES OF ABSENCE

Senator Gammage was granted leave of absence for today on account of important business on motion of Senator Schwartz.

The President laid before the Senate the following communication:

Text of telegram telephoned in at 10:45, October 7, 1975 (message will be delivered later today).

This is to serve as notification that I will be unable to be present when the Senate opens the impeachment hearings Tuesday morning, October 7, 1975. The matter in which I was assigned to trial today, Cause No. 1045582 in the District Court of Harris County, was abated in the said District Court. Because of the emergency nature of the suit, a writ of mandamus must be filed in the morning with the Court of Civil Appeals asking that the judge proceed to trial (hearing). I will also file suit in federal court as a double-pronged attack of the question of jurisdiction. I hope to be through in time to catch the noon airplane to Austin and be there for the afternoon session. Thank you for the courtesies extended.

Jack C. Ogg

The Secretary/Clerk read the Communication.

There was no objection and the Leave of Absence was granted.

APPEARANCES

Judge O. P. Carrillo, Respondent; Honorable Arthur Mitchell, Honorable Richard Haynes, Honorable Jan Fox, Attorneys for Respondent.

Board of House Managers; Honorable Terry Doyle, Counsel; Honorable John L. Hill, Attorney General of Texas; Honorable Liz Levatino, Assistant Attorney General of Texas on behalf of the Board of Managers.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: We are ready, Your Honor. Our first witness will be Mrs. Lauro Yzaguirre.

THE PRESIDENT: Will Mrs. Lauro Yzaguirre please come forward? Mrs. Yzaguirre, would you stand and raise your right hand?

"You do solemnly swear or affirm that the evidence you give upon this hearing by the Senate of Texas of impeachment charges against O. P. Carrillo shall be the truth, the whole truth, and nothing but the truth, so help you God."

THE PRESIDENT: Mr. Doyle.

MRS. LAURO YZAGUIRRE, the witness, called by the State, having been first duly sworn, testified as follows, to wit:

DIRECT EXAMINATION

(Questions by Ms. Levatino:)

Q Mrs. Yzaguirre, would you state your name for the record?

A Mrs. Lauro Yzaguirre.

Q You live in Benavides, Texas?

A Yes, ma'am.

Q How long have you lived there?

A About fifteen or sixteen years.

Q Do you work in Benavides?

A Yes, ma'am.

Q Where do you work?

A I work at the Cash Store.

Q What is the Cash Store?

A It's a grocery store.

Q When did you start working at the Cash Store?

A Well, about fifteen or sixteen years ago.

Q What did you do when you first started working at the Cash Store?

A Well, I sold and cleaned, errands, all kinds of work in the grocery store.

Q In the last few years, what do you spend most of your time doing at the Cash Store?

A Tending to the books and bills.

Q Taking care of the books?

A Yes, ma'am.

Q Okay. Do the customers in your store always pay cash when they buy groceries, or do they sometimes charge their groceries?

A They sometimes charge.

Q Okay. How do you keep track of how these people charge groceries, how much they owe you?

A We have adding machine tapes and we clip them to each individual, and at the end of the month we add those tickets to each individual, and at the end of the month they come and pay for them.

Q So for example, Mrs. Jones would come in, get groceries, you would add it up on the adding machine tape?

A Yes, ma'am.

Q For the amount of the groceries. She would sign that, and you would put it in your drawer?

A Yes, ma'am.

Q At the end of the month, you would add up her bill; she would come in and pay for it, is that correct?

A Yes, ma'am.

Q What do you do -- do you do with the adding --

A I keep them in a drawer, and each individual has a name clipped to theirs.

Q What do you do with their tapes at the end of the month?

A Well, at the end of the month when they come pay me, they pay then I give the customer their ticket.

Q You give those adding machine --

A Adding machine tapes. That's what --

Q -- back to the --

A To the customer that pays.

Q Does Judge Carrillo have a charge account with your store?

A Yes, ma'am.

Q How long has he had a charge account with your store?

A A long time. As long as I remember.

Q As long as you remember?

A Three or four --

Q Since you have been working at the Cash Store?

A Yes, ma'am.

Q Does he come in personally and get groceries?

A Yes, ma'am.

Q Then he charges them and signs a slip?

A Yes, ma'am.

Q Do other people come in and get groceries for Judge Carrillo?

A Yes, they do.

Q Do they charge these groceries to this account?

A Yes, ma'am.

Q How do you know they are getting groceries for Judge Carrillo?

A They would tell me they were for Judge Carrillo.

Q Would they sign the slip?

A Yes, ma'am.

Q Did they sign their name or the Judge's name or --

A They signed their name.

Q Did they sometimes sign both names?

A Sometimes. But they signed their name.

Q What people, for example, would come in and get groceries for Judge Carrillo?

MR. MITCHELL: Excuse me, Mr. President. Now that we've passed the preliminary stage, I would like to request that Counsel be instructed to be more specific in her questions. We are talking about this year, last month, 1960, 1965 or the year before.

Q Okay. In 1974 --

THE PRESIDENT: Please be as specific as you can.

Q In this last year, what people, for example, would come in and get groceries for Judge Carrillo?

A Roberto Elizondo, Tomas Elizondo and Patricio Garza and the Judge himself.

Q In 1973, last year, year before last?

A Same.

Q Would these people generally come in in '72, '71, consistently since you remember?

A As long as I remember, yes.

Q Okay. Would you look at this envelope and tell me what's in there?

A They are the tapes we use, like I explained -- adding machine tapes that we keep for the customers.

Q Have you seen those particular tapes in that envelope before?

A Yes, ma'am.

Q Did you give that to me yesterday?

A Yes, ma'am.

Q Now, you said usually you would give the customer the tapes back --

A Yes, when they pay.

Q Why did you have those tapes yesterday?

A Well, because, like I said, they were kept there because Mr. Carrillo had a budget of \$300, and --

MR. MITCHELL: Now, just a minute. That's going to be nonresponsive, and we are going to move to strike it, and it's hearsay. She can get around to that in due order when the question is put to her. We object.

A Well, I kept them. Because if he had paid them, he would have taken the tickets with him.

Q Okay. When did you find those tapes?

A I found these bills about, say, a week ago or two weeks ago, a week or something.

Q Where did you find them?

A Well, I put my kids to clean the store, and they were behind the meat market.

Q Okay.

A And you can tell the envelope is very dirty.

Q Okay. So, then --

A I didn't hide the tapes or nothing --

Q Okay.

Q Would you look at those tapes and is the name O. P. Carrillo or the initials O. P. on each one of those tapes?

MR. MITCHELL: Mr. President, we are going to object. We, by courtesy of Counsel this morning, were given a copy of those and we're going to object, they're not authentic. They're not in the handwriting of O. P. Carrillo and would be hearsay as to Judge Carrillo.

THE PRESIDENT: Ms. Levatino?

MS. LEVATINO: We are not trying to prove that this is Judge Carrillo's handwriting at this time. We merely ask if that name appeared on the slip.

MR. MITCHELL: With that statement of Counsel we withdraw our objection, with the understanding that she's not trying to authenticate it as Judge Carrillo's signature.

THE PRESIDENT: Objection is withdrawn, please proceed.

Q Is the name Judge Carrillo or are the initials O. P. on each one of those little slips that you have in your hand?

A Some, yes.

Q Would you look at all of them and see if they're on all of them?

A No, they are just on some.

Q Okay. Would this set of tapes represent a month of groceries which had been charged to Judge Carrillo?

A Yes, ma'am.

Q Are there any dates on those tapes?

A Yes, there are. Yes, ma'am.

Q What are those dates?

A One is 8/19/72.

Q So that would be August --

A August, 1972.

Q Are there any other dates that you see?

A Yes, 8/24/72 -- that would be August 24, '72.

Q Would this represent the August 1972 bill of Judge Carrillo?

A It would.

MR. MITCHELL: Just a minute. We're going to move to strike that. We have already objected, Your Honor. She keeps injecting by assuming -- leading -- a controversial -- a fact in controversy as regards Judge Carrillo. She's already stipulated she's not introducing them to tie them in with Judge Carrillo and we withdrew our objection. By that question she has now forced that conclusion. We object, it's leading and it's hearsay.

THE PRESIDENT: The State will please refrain from leading.

Q What is the total on the tape -- the one tape that totals up all the other tapes, what is the total bill?

A \$302.27.

MS. LEVATINO: I would like to offer Exhibit H-3 at this time.

MR. MITCHELL: Object on the grounds not properly authenticated and would be hearsay as to this Respondent.

THE PRESIDENT: Ms. Levatino.

MS. LEVATINO: I'm offering this to show the normal course of keeping the charge accounts in Mrs. Yzaguirre's store, not as to whether or not any of the signatures are Judge Carrillo's.

MR. MITCHELL: May I state in connection with that statement of Counsel that this is the only set of tapes that are in existence and that in a prior hearing this lady testified under oath that there were none. And for that reason, Mr. President, we are going to object to that conditional statement of Counsel for the offer. And may I have the witness on voir dire in order to lodge a more specific objection?

THE PRESIDENT: Ms. Levatino, are you in a position later on to make the connection to show that these are Judge Carrillo's?

MS. LEVATINO: It is our position, Your Honor, that these tapes represent the method in which charge accounts were kept by Mrs. Yzaguirre in her store, the method in which they were kept. Later on we plan to show and to authenticate through other witnesses who have signed these tapes some of the signatures on these particular tapes.

THE WITNESS: Can I --

MS. LEVATINO: Just a minute.

THE PRESIDENT: Ms. Levatino, do you object to Counsel for the Respondent having this witness on voir dire?

MS. LEVATINO: No, I do not.

VOIR DIRE EXAMINATION

(Questions by Mr. Mitchell:)

Q Mrs. Yzaguirre, for the purposes of an objection, let me ask you, didn't I ask you on May the 27th of this year whether or not you had any of those tapes?

A Yes, you did, sir.

Q And you told me there were none in existence.

A There were none at the time.

Q Just a minute and answer my question. I asked you and you told me there were none in existence?

A At the time, sir.

Q All right. And you told me at that time, further, that you had searched the records and you couldn't produce any at that time?

A I did, yes, sir.

Q And when did you find these and what did you do with them when you found them?

A I found them about a week ago and I didn't find them, my children found them, they were cleaning the store and they found them. I did not find them, they gave them to me.

Q All right, what did you do with them?

A I kept them -- I brought them here yesterday.

Q All right. Did you mark on them in any way?

A Sir?

Q Did you mark on them in any way?

A No, sir.

Q And these that you have are only for the month of --

A August of '72.

Q 1972?

A Yes, sir.

Q Now you ain't got no more, have you?

A No, sir.

MR. MITCHELL: We object, again, if it please the President. First of all, it's irrelevant and immaterial to an impeachment proceeding in which the Certificate of Election is dated November, 1974. And, secondly, they're improperly authenticated.

THE PRESIDENT: Ms. Levatino?

MS. LEVATINO: We can offer these for the purpose of showing the method in which these charge accounts were kept, that there were charge accounts at her store kept in this method, and not to show the authenticity of any one signature on those tapes at this time.

THE PRESIDENT: Do you propose at later testimony, Ms. Levatino, to connect these charges with Judge Carrillo?

MS. LEVATINO: Yes, Your Honor. Yes, Mr. President.

THE PRESIDENT: Overruled.

(WHEREUPON, HOUSE EXHIBIT NO. 3 WAS MARKED
FOR IDENTIFICATION. H-3(1)-(29))

DIRECT EXAMINATION RESUMED

(Questions by Ms. Levatino:)

Q Mrs. Yzaguirre, are you familiar do you know about a program in Duval County where the County would pay the Cash Store for groceries that some people got at your store?

A Yes, I do.

Q Does the Cash Store receive checks from the County to pay for some groceries given to some people?

A Yes, ma'am. They do.

Q I'm going to show you now an exhibit which has been introduced as H-2(12), and would you see if you can recognize this?

MR. MITCHELL: Counsel, I hate to interrupt you, but did you have the prior exhibit marked, and if it's marked, has it been offered -- the adding machine tape?

MS. LEVATINO: This is H-2(12).

MR. MITCHELL: No, I'm talking about the previous adding machine tapes; was that marked as H-3?

MS. LEVATINO: Yes.

Q (By Ms. Levatino): Do you recognize that check?

A Yes, ma'am.

Q Would you tell us what it is?

A It's a check to the Cash Store for -- you want the amount?

Q Yes.

A \$805.00.

Q Okay. Is that check endorsed by you?

A Yes, ma'am.

Q So would this represent a check which you received from the County to pay for groceries that some people received at your store?

A Yes, ma'am.

Q Okay. You said your charge customers come in at the end of the month and pay for their bills, and you give the adding machine tapes --

A Yes, ma'am.

Q Does Judge Carrillo -- you said he has a charge account. Does Judge Carrillo come in at the end of the month and pay for his charge account?

A No. Because -- well, just the difference because --

Q Well, does he pay for his charge account?

A Just the balance.

Q When you say the balance, what do you mean by the balance?

A Well, because his brother told me he had a \$300.00 budget.

MR. MITCHELL: Now just a minute. We are going to object to what his brother told, and move to strike that, that's hearsay.

THE PRESIDENT: Ms. Levatino?

MS. LEVATINO: We have alleged a conspiracy, Your Honor, and we don't believe it's hearsay. She heard it from the brother.

THE PRESIDENT: The testimony will be admitted at this time, subject to being stricken later if necessary.

Q (By Ms. Levatino): Okay. Would you finish your answer, Mrs. Yzaguirre?

A Well, if his brother had given me the authority, I would have taken those \$300.00 from his account.

Q Well, let's go back. I just showed you a check for \$805.00 marked Exhibit H-2(12) to the Cash Store. When you got this check and endorsed it, what would you apply, what accounts in your store would you apply it to?

A I would apply \$300.00 to the Judge's account, and the rest to the Commissioner, Ramiro Carrillo.

Q Okay. You said the Judge would come in and pay the balance of his account?

A Sometimes, or sometimes I would carry his credit to him wherever he was.

Q When you say the balance, do you mean something over \$300.00?

A Yes, ma'am.

Q Okay. You saw before some adding machine tapes that had a number on it that was over three hundred dollars. If you received a check that month, and the adding machine tapes, I believe, were \$302.27 what would the balance represent that you are referring to?

A Well, if he didn't come in at the end of the month and pay those two dollars, I would carry it to the next month and put the balance of the month of August, to the month of September and add it to the September bills.

Q Okay. I'm now going to give you three exhibits that were introduced yesterday as H-1(38), H-1(37) and H-1(35). Would you open H-1(38), please?

A (Witness complied with request).

Q How much was the total claim for that month, which I believe was reflected on the front of that check, on the front of that claim jacket?

A \$805.00.

Q And I have just shown you Exhibit H-2(12), which was for \$805.00, which you endorsed?

A Yes, ma'am.

Q Does that represent the amount for the claim jacket labeled H-1(38)?

A Yes, ma'am.

Q So inside that, you see a number of claim forms. Look at one dated 10/7/74, Duval County Welfare Department.

A (Witness complied with request).

Q Do you have that?

A Yes, ma'am.

Q What is the first name you see on that list?

A Pat Gomez.

Q Did you apply \$40.00 of a check labeled Exhibit H-2(12) to an account for Pat Gomez?

A No, I did not.

Q Did Pat Gomez have an account with you?

A No, ma'am.

Q Did Pat Gomez ever receive welfare groceries from you?

A No, ma'am.

MR. MITCHELL: That would be hearsay, we object.

MS. LEVATINO: That's not --

MR. MITCHELL: What Pat Gomez received, we submit would be hearsay.

THE PRESIDENT: Evidence will be admitted for the time being, subject to being stricken at a later date.

Q (By Ms. Levatino): Did you, Mrs. Yzaguirre, at the Cash Store ever give Pat Gomez groceries for which he did not pay?

A Did I give groceries to Pat Gomez?

Q Yes, ma'am.

A No, ma'am, I did not.

Q Okay. The next name is Mary Williams. Did Mary Williams ever get groceries at the Cash Store which she did not pay for, and the County paid for?

A Well, maybe Mary Williams, maybe was one of the ones I gave food.

Q Okay. Did you apply part of the money which I showed you in Check Number H-2(12) to an account for Mary Williams?

A Yes, ma'am. I think I did.

Q The next one is M. Garza. Did you ever give groceries to a person named M. Garza?

A No, ma'am.

Q The next one I believe is Hilda Gomez. Can you read that?

A No, I cannot.

Q Okay. Do you know anyone in Benavides named Hilda Gomez, or with a name similar to that that you would have given welfare groceries to?

A No, ma'am.

Q The next name is J. Carrillo. Have you ever given welfare groceries to a person named J. Carrillo?

A No, ma'am.

Q Okay. That claim adds up to what dollar amount?

A \$200.00.

Q All right. Look at the claim for November 25th, 1975 -- '74.

A Okay.

MR. MITCHELL: Excuse me, may we just have an objection to all questions as regards all matters occurring before January of 1975 so that we might not be put to interrupting Counsel and her putting questions to the witness on grounds that the Certificate of Election here is dated November '74, Judge Carrillo taking office in January of '75. Also, may we just have a running objection to all leading questions put, which there have been very many of, and, too, on all hearsay subject to the connection, so that we won't continue to interrupt Counsel?

THE PRESIDENT: All right. The record will show that Counsel for Respondent has entered a running objection to all questions as described.

Q (By Ms. Levatino): Okay. Mrs. Yzaguirre, are you looking at the one dated 11/25/74?

A Yes, ma'am.

Q Would you read off the names on that slip?

A K. Garza, I think that's one that -- I mean I initialed a lot of names, but there is a K. Garza that I think received --

Q E. Carrillo?

A No, ma'am.

Q Okay. Would you read off the last three names?

A E. Carrillo, O. Saenz, E. Galvan, and Jose Moreno.

Q So you say O. Saenz, E. Galvan, and Jose Moreno, you never gave them welfare?

A Not to my knowledge.

Q All right. Now, would you turn to the Exhibit marked H-1(35)?

A (Witness complied with request).

Q Would you look at the date, 6/7/74 -- I'm sorry, 6/17/74, pardon me.

A Okay. 6/17--

Q '74.

A Yes, ma'am.

Q Okay. Would you read off the names on that card?

A R. Garcia, P. Lopez, J. Tamez, Jose Garza and R. Chapa.

Q To your knowledge, did you give any one of those people any welfare groceries for which they did not pay you?

A No, ma'am.

Q Okay. Attached to that date slip, 6/17/74, is an invoice or a sales slip, do you recognize the handwriting on the sales slip?

A This right here?

Q No, attached to that little --

A This right here?

Q No. This.

A Oh, yes, ma'am.

Q Okay. Attached to the voucher labeled 6/31/74, there is a sales slip, do you recognize the handwriting on that?

A Yes, ma'am.

Q Is that your handwriting?

A Yes, ma'am.

Q It is signed, I believe, "Lauro Yzaguirre?"

A Lauro Yzaguirre, that's my husband.

Q Did he sign it, or did you sign it?

A I did.

Q Okay. Thank you. In that set of -- that you have in your hand, there is a slip dated 6/20/73?

A Yes, ma'am.

Q Who's that slip made out to?

A Caritina G. Canales.

Q Okay. And do you know Caritina Canales?

A Yes, ma'am. I do.

Q Did you get her welfare groceries?

A Yes, ma'am.

Q Okay. On that slip, who has authorized the giving of those groceries?

A Mr. Gonzalez.

Q Do you remember receiving this slip?

A Yes, ma'am.

Q And did you give those groceries to Mrs. Canales?

A Yes, ma'am.

Q Did you have any question in your mind about giving those groceries?

A Yes, I did.

Q Why?

A Well, because Mr. Canales was not working for Mr. Carrillo, the Commissioner, anymore. So I called Mr. Gonzalez, who had given him the authorization to give this --

MR. MITCHELL: Just a minute, now. Mr. President, we are going to object. I thought we could expedite this, but the question is leading, assumes a controverted fact, and the answer is hearsay about what Mr. "X" got authority from Mr. "Y", who told him something from Mr. "Z", and we move to strike it.

THE PRESIDENT: Ms. Levatino?

MS. LEVATINO: I will rephrase the question.

Q (By Ms. Levatino): Mrs. Yzaguirre, who was Mr. Cleofas Gonzalez?

A He used to work with the Commissioner, Ramiro Carrillo.

Q And at some point, did he stop?

A Yes. I don't remember the date, but he stopped.

MR. MITCHELL: Why don't you just address the question. We object again to hearsay and leading.

MS. LEVATINO: Well, we withdraw the question, Your Honor.

Q (By Ms. Levatino): Mrs. Yzaguirre, do Rosa and Tete Chapa have a charge account at your store?

A Yes.

Q Do they pay for their charge account?

A Yes, ma'am.

Q Did you ever apply any of the checks you received from the County to their account?

A Not to my knowledge.

Q Do Patricio and Rosa Garza have a charge account at your store?

A Yes, ma'am.

Q Did you ever apply any of the money you received in a County check to their account?

A No, ma'am.

Q Do you know a person named Mike Ruiz?

A Not to my -- I don't know.

Q Do you ever recall giving a person named Mike Ruiz some groceries from your store that were paid for by the County?

A Not to my knowledge.

Q Do you know a Consuela Hinojosa?

A Yes, ma'am.

Q Does Miss Hinojosa get groceries at your store?

A No, ma'am.

Q Have you ever given her groceries that the County paid for?

A No, ma'am.

Q Do you know a Jose Sendejar?

A Yes, ma'am.

Q Does Mr. Sendejar get groceries at your store?

A Yes, ma'am.

MR. MITCHELL: Excuse me, for the purpose of delivering an objection, I would like to have Counsel inform Counsel whether she's pulling those names out of the air, or whether they appear on an exhibit, Mr. President, somewhere that I can look to and determine whether or not I have an objection. Otherwise, the testimony would be -- the questions are highly improper and would call for hearsay.

THE PRESIDENT: Ms. Levatino?

MS. LEVATINO: Counsel, all these names appear on Exhibits 1 through 38 introduced yesterday.

MR. MITCHELL: Thank you.

Q (By Ms. Levatino): Do you know a Jose Sendejar?

A Yes, ma'am.

Q Have you ever given him welfare groceries that he did not pay for?

A Not to my knowledge.

Q Okay. Mrs. Yzaguirre, do you know of your own personal knowledge that a scheme existed where Judge Carrillo and Ramiro Carrillo had some kind of an arrangement where each month for three hundred dollars worth of groceries which Judge Carrillo picked up, or someone picked up for him, were paid for by the County?

A Yes, I do.

MS. LEVATINO: Okay. Thank you. Pass the witness.

CROSS-EXAMINATION

(Questions by Mr. Mitchell:)

Q Well, you got the money, didn't you?

A You're asking me?

Q Yes. You got the money, didn't you, the \$300.00?

A Well, that was owed to me for groceries.

Q Just a minute. You got the money, the \$300.00 went to you?

A To my store, yes.

Q Sure. If there was a scheme and you knew about it, you were a part of it, because the money came to you, didn't it?

A Yes, for my groceries.

Q Just answer the question.

A Well, I'm answering it the right way.

Q And if you told this Court under oath that you would not sell any groceries to anybody until they signed a ticket, am I correct?

A Yes.

Q And if you sold groceries to someone that you knew did not exist and did not sign a ticket, you would be stealing from the County, wouldn't you?

A I wouldn't because I thought the Commissioner had -- it went in my mind, I would get this blank, and I hadn't given food to these people -- well, maybe Mr. Carrillo gave them money, you know, these people would go there and ask for money because they needed money, and this is the way the arrangement was made. I don't know. That's what's -- it went in my mind. But I was not stealing from the County.

THE PRESIDENT: Mr. Mitchell, please wait for cross-examination until the direct is completed.

MR. MITCHELL: I thought she was through. She passed the witness.

THE PRESIDENT: I'm sorry. Please proceed.

Q (By Mr. Mitchell): All right. Let's see if we can't bring the Court up to date. You previously testified under oath -- see if I'm correct -- first of all we have already established that there were no tickets?

A That's right.

Q And the only ones you have been able to produce, I believe, were found by your kids behind -- somewhere in the store?

A Yes.

Q And the only ones that those are, are the ones for the month --

A August '72.

Q Let me ask the question and I will get through, and you can answer it, would you mind doing that?

A No.

Q All right. The only one that you have got that you have been able to produce after telling us under oath in May that you had none, were for the month of August of 1972, correct?

A That's right, sir.

Q And those are the ones that have been marked, and you have identified as H-3?

A That's right.

Q Tell us what -- is that all the tickets?

A That's all the tickets, that's right.

Q And you have also -- that's the first change you are going to make in your testimony, that since the time you testified in May, you did find these tickets?

A Yes.

Q All right. Now, you can't really tell us under oath whether Judge Carrillo signed any of those tickets, am I correct?

A Yes, I can.

Q Well, you have told us earlier that as a matter of fact, Judge Carrillo -- I think you testified earlier, Judge Carrillo, one, never did come to your store and sign any ticket?

A I never said that.

Q Your testimony is today that you never told us that before?

A I said he would come and pick the groceries himself, that's what I said.

Q Well, now, Mrs. Yzaguirre, as a matter of fact, you previously testified under oath, you did not know that the groceries were taken for the Judge or to his house or anywhere near Judge Carrillo, am I correct?

A All I said is that his workers would come and pick up the groceries, where they would take them, I don't know.

Q Let me ask you something, how long have you been in Austin, and where have you been since you have been here?

A Sir?

Q Have you been given your testimony to go over? How long have you been in Austin?

A I got here at fifteen until twelve yesterday.

Q All right. And have you been given your testimony that you previously gave back in May to go over? Have you had a chance to review your testimony?

A No, sir.

Q You don't recall at that time, you were asked specifically whether or not, first of all -- you testified that you did not know that the groceries were taken for Judge Carrillo or to his home?

A That the worker would just take them, that's what I said.

Q Isn't that correct, that's what you testified?

A Yes.

Q All right. Then you also testified that Judge Carrillo never did tell you that Pat Garza or Tomas Elizondo or Roberto Elizondo had any authority to charge anything to Judge Carrillo, didn't you also testify to that?

A Just because they -- I didn't know they worked for him. I had the Judge's --

Q Just a minute. Now, let's get one thing at a time. You have testified previously that nobody, that is Judge Carrillo specifically, never told you that anybody had any authority to charge on his account, isn't that what you testified to?

A Because I knew -- okay. I go along with you on that.

Q Judge Carrillo never did tell you that Pat Garza, Roberto Elizondo or Tomas Elizondo had authority to charge to him, isn't that what you testified to before?

A Yes.

Q All right. Two, you have also testified previously that you did not have any signed slips with Judge Carrillo's name on it?

A That's right.

Q And you also testified previously that you did not know that any of the groceries that were taken from your store on accounts of folks representing that they could buy on Judge Carrillo's authority were taken to Judge Carrillo or for him, or to his house; isn't that correct?

A Right.

Q And you also testified before that the way the method worked, -- and you have testified today essentially the same thing, -- that is persons would come into your store and charge groceries -- is that correct?

A That's right.

Q And that you would have a white ticket from the welfare folks, isn't that correct?

A Yes.

Q And you have seen some of those in evidence that the lady there representing the Board is showing you, am I correct?

A Yes, sir.

Q Then you would deliver the groceries on that order, am I correct?

A Deliver them?

Q Well, you would give the people the groceries?

A To some people, that's what I said, yes.

Q And then you would also have them sign a ticket, a sales slip?

A Yes, for that, yes.

Q Right. And the names on that sales ticket would correspond with the names on that white ticket?

A Some would, yes.

Q Well, you wouldn't sell groceries to somebody who had no authority, would you?

A You don't live over there.

Q Well, let me ask you this. I will take that up right where you left it, and that is, as a matter of fact, Mrs. Yzaguirre, you never did sell any groceries to somebody that wasn't in existence and wasn't in front of you, am I correct, or did you?

A Just the names that were brought me -- just to those that were brought to me on those papers, and I just copy what they brought me and copied to that sales ticket. I didn't make those names up.

Q Well, I want to know who brought them?

A Mr. Ramiro Carrillo, the Commissioner.

Q All the time?

A Well, one or two times, Gonzalez, but recently, Mr. Ramiro Carrillo did bring me those white slips with the names written on it. I wouldn't make those names up.

Q But we don't have any, as far as you are concerned -- let me start -- let me see if I can't get some order out of this. As I understand it, you testified that the people would come in with the order, and you would make out that order ticket, that some of them had been introduced in evidence, is that correct?

A All of these have been introduced, the people didn't bring me this, Mr. Carrillo would bring me this.

Q You're telling us, you would sell groceries to people that you did not know existed?

A I would give groceries to people that would come for two or three, all the rest were names that were on this list, that made up for that check that was brought to me.

Q Well, did you have reason to suspect that those persons were non-existent?

A Well, probably they lived, but I didn't give them groceries. I mean, they probably exist, but I didn't give them groceries.

Q Who would you give the groceries to, Mrs. Yzaguirre?

A I would apply the check to the Judge's account and to Ramiro Carrillo's account is what I did.

Q As a matter of fact, what we're talking about is that Judge Carrillo had authority for the purposes of welfare to go up to \$300.00 on persons he referred to you through the welfare method? Isn't that what you really --

A Probably.

Q Yes. And that when the tickets would come in, that is, the white tickets, they were for you to know that he was referring them to the store, and you would honor the white tickets and deliver the groceries and charge it to the county?

A I would not deliver the groceries just to the people, some two or three that really took the groceries. Two or three, maybe five, but not more than five that really took the groceries.

Q And tell us what your average account ran in that grocery store every month from accounting?

A Oh, maybe eight, \$900.

Q All right.

A And who else's account would you charge to besides Judge Carrillo? Would you charge to the Sheriff or the Deputy Sheriff or Commissioner?

A Just to the Commissioner.

Q All right. Let's see, now, if we can get the people whose account you would credit for welfare purchase at your store. I suppose to the Commissioner of Precinct 3?

A It was under Ramiro Carrillo. It was not Commissioner or anything. Ramiro Carrillo's account. That's all that we had. We didn't have any Commissioner or --

Q Well, he was the Commissioner, wasn't he?

A Well, sure. But we didn't have his name on it "Commissioner." We had his account under Ramiro Carrillo, and we had the Judge's account under O. P. Carrillo. We didn't use Judge O. P. Carrillo or Commissioner Ramiro Carrillo. We didn't use that.

Q Would you have sold me groceries had I walked into your store last year?

A Sir?

Q Would you have sold me a bunch of them if I walked in your store?

A I sell to anybody that walks in my store.

Q And you would submit to the county my bill and get your check and go on, am I right?

A Not -- if you had -- I wouldn't give them to you. Unless you brought me a welfare signed by Mr. Ramiro Carrillo, because I knew Mr. Ramiro Carrillo. I didn't know you.

Q That's the point I'm making, Mrs. Yzaguirre. You knew the Commissioner as well as the Judge -- as well as other people in the County that had the authority --

A The authority to -- that's the truth.

Q Right. Otherwise, you would be stealing from the County, too.

A That's true. They were officials. That's why I would give them --

Q So every ticket you submitted to the County you knew was going to be acted on by the County, and you knew the money was coming to you, and you were honest about each and every one the best you could be; is that correct?

A To the best of my knowledge --

Q And you gave the groceries for every dollar you charged the County, didn't you?

A I gave every cent of the groceries, the amount of money, but what I -- but two or three really were recipients of the Welfare Department. That's what I'm trying to say.

Q You had to be right, otherwise you would end up defrauding the County, wouldn't you --

A You had better believe it, sir. And I wouldn't do that.

Q I know you wouldn't. And you're not up here telling us that you are, that you joined anybody else in defrauding the county, are you?

A No.

Q Now, I'm curious about Exhibit No. H-1(38), "Lauro Yzaguirre." What were you doing signing your husband's name to that.

A It's not signing his name. It's just copying the thing to put "Cash Store. Lauro Yzaguirre," because the store is in his name.

Q I am not fussing at you, Mrs. Yzaguirre. I just want to know --

A I hope not.

Q -- if you sell groceries to all them folks that lady called out awhile ago to you, and then selling groceries to them folks, and then signing your husband's name on the ticket.

A Because I do all the paperwork.

Q You're not telling this Court that you signed it to hide anything?

A Sir, I didn't understand your question.

Q You're not telling this Court you signed your husband's name to that ticket to hide anything?

A Of course not.

Q You are sure you delivered the groceries to the people that those tickets represent, aren't you, Mrs. Yzaguirre?

A To some of the people that were there on the welfare slips, yes, sir.

Q All right. Now, have you got Exhibit No. H-3 up there? I'm sorry, H-2.

A No, sir. H-2?

Q May I have it, please? Those are a bunch of checks payable to you for your store. How much business would you do with the County on an annual basis, Mrs. Yzaguirre, at your store?

A I wouldn't know.

Q Well, I'm looking at the Exhibits that have been introduced into evidence by the Counsel for the Board there, and they show anywhere from \$600.00 to \$700.00 a month.

A Something like that, yes.

Q Is that about what you did?

A About.

Q Now, I notice also that each and every one of these checks -- now, the ones we are talking about, H-2, and they are checks -- do you have the Exhibit there with those invoices in them, Mrs. Yzaguirre?

A You said H-2.

Q All right. Hold on just a minute. I'm going to show you these checks. All these checks -- these are H-2(1) through and including (12). Am I correct? Look at them there, please, ma'am. They are all payable to you, and they are all endorsed by you. Am I correct?

A This is not -- these two are not.

Q Well, who is Abel Yzaguirre?

A He's my father-in-law.

Q So two of them, H-2(1) and (2) are "Cash Store. Abel Yzaguirre," am I correct?

A That's right.

Q I notice they are all above \$300.00 and in odd amounts, \$625.00, \$680.00, all payable to your store and all went into your bank account, I suppose?

A Suppose.

Q Am I correct? Judge Carrillo didn't get all this money?

A No.

Q You all got all the money?

A Yes.

Q All right. Let me ask you this, whose account -- what other accounts would be credited with the balance of the money above the \$300.00? I say the \$380.00 or the \$390.00 or the \$400.00, Mrs. Yzaguirre? How did you determine that? How would you know to credit the rest of the money above the \$300.00?

A I knew -- give credit to Ramiro Carrillo.

Q Did you just do that automatically?

A Yes. I mean -- It went like this. I just came in and did it automatically.

Q Those are folks he had sent over there to buy the groceries, so you credited the Judge's account with the \$300.00, and the balance would be credited to Ramiro Carrillo, the Commissioner's account?

A Yes.

Q All right. Did you have any purchases that were made through the State Welfare Office, Mrs. Yzaguirre, that come through your store?

A State welfare?

Q Yes. Did you all handle any from over at San Diego -- that office?

A Sometimes they would send Katy Vela -- if that's what you mean --

Q Yes. Ms. de Leon?

A Yes.

Q How would you all handle that? Would she send you a regular document or --

A Katy Vela would bring the lady -- that's what I remember -- and I would give the groceries to her. But that was not done very often.

Q All right.

MS. LEVATINO: Mr. President, could you ask the witness to speak in the mike? We can't hear her answer.

THE PRESIDENT: Would you speak into the mike?

A Okay. Do you want the answer? Well, he asked me about all this state welfare. I said -- Katy Vela would bring a lady and I would give the groceries, but we didn't do that very often -- That's what I just said.

Q Now, I believe you previously testified also, Mrs. Yzaguirre, if I recall your testimony, that you did not know all the people whose names appeared on the various tapes, am I correct?

A That's right.

Q And you have so testified here today, am I correct?

A That's right.

Q But that you also testified you would not ever deliver or knowingly deliver any groceries on account of a nonexistent person or fictitious person so as to defraud the county, am I correct?

A Yes.

MR. MITCHELL: May I have H-3, please?

Mr. President, I'm going to ask the witness, if I might be permitted, questions on cross-examination with H-3(1) without the intent to waive our objections to the authenticity.

Q Now, these are the ones, I believe, that you --

MR. DOYLE: Mr. President.

THE PRESIDENT: Mr. Doyle?

MR. DOYLE: May Counsel and I approach the bench a moment?

THE PRESIDENT: Please.

Q (By Mr. Mitchell): Mrs. Yzaguirre, as a matter of fact, I believe Judge Carrillo would pay you with his own personal checks on his own personal account?

A Sometimes when there was a balance.

Q Well, you keep saying that.

A Well, I keep saying that because that's the truth.

Q Well, I'm not worried about whether it's the truth or not. I'm wanting to know where you're getting it all. The personal checks that Judge Carrillo would give you would be for an account that would be incurred or at your store above the \$300.00?

A Wait -- not recently. Recently, we had just credited some balances because he never came to the store to ask -- you know, I just carried it as a credit or balance. Because for say a year or something, he never came to ask for his balances or something.

Q Let me see if I can understand it. Then, he had a welfare credit of \$300.00, but on occasion, that would go above the \$300.00 a month, and when it went above the \$300.00 a month, he would either pay it personally out of his personal checks -- and I think we have some personal checks to you in your store.

A By recently, about a year --

Q Of course, then, he would pay you personally for an amount that would go above that which was allowed to him on welfare?

A Yes --

Q He doesn't owe you anything now?

A Yes.

Q How much does he owe?

A I think the date is June. I don't know exactly the date. Not over \$5.00.

Q Doesn't sound like a rip-off artist to me. Owes you \$5.00 in June? Let me see if we can get it to you before the day is out.

Pass the witness.

A Don't worry.

REDIRECT EXAMINATION

(Questions by Ms. Levatino:)

Q Mrs. Yzaguirre, I just want to ask one question. You have seen many exhibits that have County welfare vouchers up there with a number of names on them. You testified that some few of these people you gave groceries to that were paid for by the County.

A Yes, ma'am.

Q Most of these people, you did not give groceries to, is that correct?

A Most of them, yeah. That's right.

Q You did sell groceries to Judge Carrillo or someone who said they were taking groceries for Judge Carrillo?

A Yes, ma'am.

Q When you received the checks which corresponded to the vouchers which I have shown you, did you apply \$300.00 of those checks to Judge Carrillo's account?

A I did.

Q And why did you do that?

A Because his brother --

MR. MITCHELL: We object. Wait a minute. The objection would be hearsay on why she did it. It would be speculation.

A Well, can I answer it some other way?

THE PRESIDENT: Overruled.

Q Go ahead and answer the question.

A Because his brother had told me he had a \$300.00 budget, and that's why I was doing it, because he was the Commissioner, and I would have done it if you or anybody else would come and tell me to do it, because, well, you know, you were not the official there or anybody, so I did it because I was told to do it.

MS. LEVATINO: Thank you, Mrs. Yzaguirre.

RE CROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q Who else besides your husband sold groceries in the store and you?

A All my kids worked there.

Q All right. What are their names?

A The oldest is Beatrice Yzaguirre Benavides. She's married now.

Q She worked in the store, and sold groceries?

A Yes. They all do.

Q That's this year and last year? How long?

A Oh, that would be since they were young.

Q All right. What's her first name again, Mrs. Yzaguirre? I'm sorry.

A Now, is Beatrice Yzaguirre Benavides, because she's married now.

Q All right. Beatrice Yzaguirre Benavides?

A Right. And the boy is Jesus Olivares Yzaguirre. He's seldom around the store.

Q Is he tending to the shop while you all are here? Is your husband up here with you?

A No. We're closed. He was just operated. He's at home.

Q Who else sold in the store besides you and your husband, your boy and --

A No. I said my boy is never at the store, that's what I said. My boy seldom works, because he plays football and all of that. He's never there. The other one, Nena Anna Yzaguirre and the little one helps there and helps me take the bottles out and everything. Laura Nena Anna is her name.

Q How about your daddy-in-law, Abel?

A He's sick. He's not at the store anymore.

Q I notice, those checks were endorsed by him.

A He was there, you know, before he was sick.

Q Are all of those folks, then, your family members running the family store and also groceries?

A Yes.

MR. MITCHELL: May I have one minute, please?

Q Mrs. Yzaguirre, I hand you what appear to be copies of checks dated in '72 and various and sundry dates of that year that are payable to Cash Store. Do you recognize those as checks to Cash Store from Judge Carrillo -- some of them. Let me hand them to you.

MR. HAYNES: What is the Exhibit number?

MR. MITCHELL: Well, we don't have a clerk. I guess they would be Respondent's 1.

Mr. President, may we mark these as Respondent's 1 for the purpose of the record please? I'll have the clerk to when he comes back. This is Respondent's 1 that I have handed the witness.

THE PRESIDENT: That will be fine.

THE WITNESS: Well, where is the -- I have to see if my endorsement is on the back.

(WHEREUPON, RESPONDENT EXHIBIT NO. 1 WAS MARKED
FOR IDENTIFICATION. R-1(1)-(37))

Q I understand the endorsement. They are payable to Cash Store, are they not?

A Yes, they are.

Q And they appear to be checks given by Judge Carrillo to the Cash Store. Is that correct?

A Yes.

MR. MITCHELL: Mr. President, I'm trying to avoid calling this lady back as an authenticating witness. I will be glad to do so. I thought I could expedite it. She has raised a question as to the endorsements and if put to the test, I will have to produce the originals. Otherwise, I would like to offer them for the record.

MS. LEVATINO: Could we see them?

MR. MITCHELL: Yes. I'm suggesting there's a defect in them, the best evidence rule would probably apply. All sorts of other rules would probably apply.

MS. LEVATINO: Mr. Mitchell, did you say you have the original of these?

MR. MITCHELL: Yes, I have got some additional originals here.

MS. LEVATINO: Additional, or the ones that you have shown us here?

MR. MITCHELL: Jan, are they additional or are they the originals? -- Yes, these are the originals -- let me show them to the witness.

Q They appear to be signed and endorsed by "Cash Store, Abel Yzaquirre". Is that right?

A Yes, sir.

Q And that's your -- that's your daddy-in-law?

A Yes, sir.

Q And these appear to be original checks -- Judge Carrillo, Cash Store, '73 -- look through them, please, ma'am and see if you can recognize them all, each and every one of them?

MR. MITCHELL: Counsel, they are additional to the ones that you are holding that's marked as R-1 -- these are '71 -- these are '73 and we have got a whole bunch more.

MS. LEVATINO: Your Honor, we will object to these being introduced, the ones that he's just handed Mrs. Yzaquirre. We met this morning to exchange documentary evidence as well as copies. We would like a chance to look at these and possibly render an objection or not. We did not see these this morning.

MR. MITCHELL: Mr. President, I withdraw them all. I will put them back in next week.

THE WITNESS: I can explain them.

MR. MITCHELL: That's all right. I don't want you to explain them. She's objected to them, I don't want you to talk about them.

Q When did Abel Yzaquirre quit working in the store?

A I don't remember.

Q Ma'am?

A I don't remember.

MR. MITCHELL: Your witness.

THE PRESIDENT: Mr. Mitchell, Ms. Levatino, would you approach the bench?

CROSS-EXAMINATION (Continued)

(Questions by Mr. Mitchell:)

Q Mrs. Yzaguirre, how long were you absent from the operation of the store because of your illness?

A Oh, about two years.

Q You were absent from the store for about two years? And what two years were you absent from the store?

A About 1970 to about the late '71's, something like that.

Q All right. It's not that I'm -- it's an unfortunate thing and I don't want to embarrass you, but you really weren't in the store.

A You won't embarrass me at all.

Q You weren't in the store at all in '70 and '71?

A '70 and '71.

Q And perhaps some of '72?

A That's right, probably just the beginning of '72, yes.

THE PRESIDENT: Mrs. Yzaguirre, under the rules of this trial after examination and cross-examination have been completed it's my duty to put to you questions asked by Senators, by members of the Court.

THE WITNESS: Yes, sir.

THE PRESIDENT: And I will do so at this time.

First of all, let me try to clear up one thing that seems to be underlying a number of these questions from Counsel for both parties. You have said that you did not give any of the signed -- you didn't give the groceries to any of the people who signed the sales slips. Is that correct?

THE WITNESS: I gave it to the ones that signed the -- I gave food to the ones that signed it under Mr. O. P. Carrillo. Is that the way -- I mean, I don't know what -- you meant to the Judge? Is that what you meant?

MR. MITCHELL: We can't hear the witness. Talk in the microphone, please, ma'am.

THE WITNESS: No, I don't know if you're asking me about the Judge's account or what. I mean, I don't know what --

THE PRESIDENT: Well, let me be clear about this. You gave the groceries to the people who signed the slips.

THE WITNESS: Sure I did.

THE PRESIDENT: The cash register slips.

THE WITNESS: Yes, sir.

THE PRESIDENT: Now then you gave the signed slips to people who came in and paid at the end of the month?

THE WITNESS: No, sir, I don't think you're -- either I'm not understanding or you're not understanding, because you're asking me if I gave -- like Tomas Elizondo and Patricio Garza -- you're asking me if I gave them the groceries?

THE PRESIDENT: Yes, and then at the end of the month --

THE WITNESS: They were charged to O. P. Carrillo. Of course, I gave the groceries to Tomas Elizondo and Patricio Garza and all those. Of course I gave the groceries to them.

THE PRESIDENT: You gave the groceries yourself?

THE WITNESS: No, my husband.

THE PRESIDENT: The thrust of the question Mrs. Yzaguirre is: Did you know yourself everything that was going on in the store, every transaction, whether it was handled by you or by somebody else in the store?

THE WITNESS: No, I knew -- just my section, just -- you know, one or two years -- you know, later years it was my husband.

THE PRESIDENT: A question submitted by Senator Lombardino: "Are you related to Judge Carrillo or to George or Archer Parr?"

THE WITNESS: No, sir.

THE PRESIDENT: "Are you related to Representative Terry Canales?"

THE WITNESS: No, sir, I don't think so.

THE PRESIDENT: Question by Senator Longoria: "Do you know of your own knowledge that Judge Carrillo, not Ramiro Carrillo, knew that the groceries that were being charged to him were being paid by the County?"

THE WITNESS: Yes, he did.

THE PRESIDENT: "Who was the first person who went to see you about coming to Austin to testify against Judge Carrillo? I'm not talking about the person who served you with a subpoena but the person who first talked to you, politician,

neighbor, relative --"

THE WITNESS: When my husband was subpoenaed. When my husband was subpoenaed.

THE PRESIDENT: Nobody has talked to you about coming and testifying in the trial before you or your husband was subpoenaed?

THE WITNESS: No, sir.

THE PRESIDENT: Do you belong to the Parr Party or to the Carrillo Party in Duval County?

THE WITNESS: I don't belong to any party. I have friends with either party. To me everybody is the same.

THE PRESIDENT: Mrs. Yzaguirre, this is a question submitted by Senator Jones: "How did you know which names were for credit to the Judge's account or was it simply a total due from the county?"

THE WITNESS: It was simply a total.

THE PRESIDENT: Questions from Senator Mauzy: "Mrs. Yzaguirre, do you know of your own personal knowledge if Judge O. P. Carrillo conspired with others to have Duval County pay for groceries to which he was not entitled for his personal use and benefit?"

THE WITNESS: Yes, I know now.

THE PRESIDENT: Would you tell me the name, Mrs. Yzaguirre, or names of persons with whom he conspired?

THE WITNESS: By that you mean the ones that signed the bills or what?

THE PRESIDENT: "Would you please say if such a conspiracy was oral or in writing?"

THE WITNESS: Oral, to me oral.

THE PRESIDENT: All right. When did this conspiracy occur?

THE WITNESS: I don't remember.

THE PRESIDENT: "Can you please tell us the value of the groceries which Judge O. P. Carrillo received for his personal use and benefit? When and where he received the groceries and what he did with the groceries, all based on your personal knowledge?"

THE WITNESS: When and where. That means -- where, I guess at the store he would get the groceries and where, well, I suppose they were taken to his ranch or -- that's what I -- that's all I know, I mean.

MR. DOYLE: Mr. President, she didn't answer the "when".

THE WITNESS: When?

THE PRESIDENT: Yes, when did Judge Carrillo receive the groceries?

THE WITNESS: Well, during -- I mean every month they would come in every day or twice a day or something to take groceries.

MR. DOYLE: Mr. President, I would suggest that the question is probably aimed at, you know, what period of time.

THE PRESIDENT: Yes, could you tell the Court over what period of time?

THE WITNESS: When he started doing this stuff?

THE PRESIDENT: Yes.

THE WITNESS: I don't remember.

THE PRESIDENT: Mrs. Yzaguirre, you have said that you don't remember the precise times when Judge Carrillo received the groceries or over what period of time. Could you make a guess? Could you give the Court an approximation of the time when Judge Carrillo began receiving groceries? The time, if any, when the practice ceased.

THE WITNESS: Well, to my knowledge about -- maybe two or three years ago, you know, maybe before, but to my knowledge about two or three years ago. To my knowledge.

THE PRESIDENT: Mrs. Yzaguirre, I think you have answered this question, but just to make it abundantly clear, do you know of your own personal knowledge that Judge Carrillo received these groceries?

THE WITNESS: Yes, I do.

THE PRESIDENT: How do you know that, Mrs. Yzaguirre?

THE WITNESS: How do I know that? Because he used to come and pick them up and his ranch hands would pick them up. That's how I know.

MR. MITCHELL: May I put a question to the witness?

THE PRESIDENT: Yes.

MR. MITCHELL: I thought we had already been over that, but apparently not. Mrs. Yzaguirre, I thought I asked you back in May and I ask you today, as a matter of fact you didn't know where the groceries went. Do you recall that back in May?

THE WITNESS: That's right.

MR. MITCHELL: Every time somebody gets ahold of you they unbuckle you.

THE WITNESS: No, they --

MR. MITCHELL: Now I'm going to ask you one more time.

THE WITNESS: Okay.

MR. MITCHELL: Look at this. Now I'm looking at Page 90, Counsel. "Question --" This is put to you by the Committee --

MS. LEVATINO: What volume?

MR. MITCHELL: Volume 5, May 27th.

Question: "Did you know that these groceries were taken for the Judge to his house for him to use?" See if I read your answer correctly. "I don't know -- I mean I don't know. They just took them and charged them to him, where they take them I don't know..."

THE WITNESS: That's the truth.

MR. MITCHELL: Wait a minute, Mrs. Yzaguirre. "...I don't follow them around to see where they go." Now that's what you testified then, isn't it?

THE WITNESS: Yes.

MR. MITCHELL: And you were under oath, then, weren't you, in May?

THE WITNESS: It's true, I don't know whether they took them to the ranch or to the house or where.

MR. MITCHELL: That's how come I'm not married. Mrs. Yzaguirre --

THE WITNESS: You're better off not married.

MR. MITCHELL: You were under oath in May when you testified that you didn't know, am I correct?

THE WITNESS: Yes.

MR. MITCHELL: And you're under oath today aren't you?

THE WITNESS: Yes, sir.

MR. MITCHELL: And you testified four or five times that you knew Judge Carrillo got it, because he came in there and got it, got the groceries. And you testified to that under oath today, didn't you?

THE WITNESS: Yes.

MR. MITCHELL: Don't you understand that that's inconsistent with the testimony you gave in May under oath, that you didn't know where they went, you didn't follow them around to see, you didn't know where they went?

MS. LEVATINO: Mr. President?

THE PRESIDENT: Ms. Levatino?

MS. LEVATINO: We object on the grounds it's not an inconsistent statement. She has not said that she saw where the groceries went, except that they were picked up by the Judge in her store. And by people that work for the Judge. She has not said anything other than that.

MR. MITCHELL: Well I submit it's inconsistent with -- when the witness testifies under oath she does not have any personal knowledge and suddenly today is filled with it.

THE WITNESS: If you come to my store -- can I tell you this?

MR. MITCHELL: No, let me ask you some questions again. Did you also testify back there that nobody gave you any authority to let anybody have any groceries in this man's name, Judge Carrillo's name?

THE WITNESS: It was Judge -- when I came in he was charging already. I knew he was charging --

MR. MITCHELL: It's a simple question, Mrs. Yzaguirre. I'm not interested in what you know, I want you to answer the question put to you directly. Did you testify you did not know -- did you testify in May that nobody, particularly Judge Carrillo, did not tell you or that Pat Garza or the Elizondo brothers had any authority to charge any groceries to him?

THE WITNESS: No, I took for granted he was a Judge and would pay for them.

MR. MITCHELL: Well, that's something else. You took it for granted because he was a Judge that he would pay for it, is that right?

THE WITNESS: Because he was a high official or whatever it is.

MR. MITCHELL: Well, what about all of these questions that were put to you about a conspiracy and all the personal knowledge? What do you know about a conspiracy? Do you even know what it is?

THE WITNESS: A what?

MR. MITCHELL: Do you even know what a conspiracy is?

THE WITNESS: I sure do.

MR. MITCHELL: What is it?

THE WITNESS: Some people getting together to do harm to somebody else.

MR. MITCHELL: Is that what you're charging this man with?

THE WITNESS: I'm not charging this man with anything, because he's my friend.

MR. MITCHELL: You're not charging him with entering into a conspiracy?

THE WITNESS: No.

MR. MITCHELL: I have no further questions.

THE PRESIDENT: Mrs. Yzaguirre here are some additional questions from Members of the Court. Questions from Senator Clower: "How frequently were groceries purchased to the account of Judge Carrillo, daily, weekly, monthly?"

THE WITNESS: Sometimes daily, weekly. It would vary.

THE PRESIDENT: Another question from Senator Clower: "Who paid for Judge Carrillo's groceries before two or three years ago?"

THE WITNESS: Well, I think he did. I mean, to my knowledge when I started -- you know, deducting this \$300.00, I guess the County paid for them too, I don't know.

THE PRESIDENT: Are you saying you don't actually know?

THE WITNESS: Way back, no.

THE PRESIDENT: Before two or three years ago, who paid for Judge Carrillo's groceries before three years ago?

THE WITNESS: You mean '70 or '71?

THE PRESIDENT: Yes.

THE WITNESS: I don't remember.

THE PRESIDENT: All right. A question from Senator Sherman: "Each month, did you prepare a list of welfare customers for the County?"

THE WITNESS: I did not. They were brought to me.

THE PRESIDENT: All right. Question from Senator McKinnon: "Was there any change in the method of operation for charging groceries to Judge Carrillo when the impeachment proceedings began in the House of Representatives, was there any change in your practice?"

THE WITNESS: Yes. Because I dropped completely all business with all government, County or anything.

THE PRESIDENT: All right. Who initiated that change?

THE WITNESS: I did myself because with all this, I'm sick and tired of coming and going.

THE PRESIDENT: "Are there other people besides yourself employed in the Cash Store in Benavides?" This question is by Senator Mauzy.

THE WITNESS: In the store?

THE PRESIDENT: Yes.

THE WITNESS: Well, my family, my children and my husband.

THE PRESIDENT: All right. Do other people ever sell groceries to customers in the Cash Store when you were not there?

THE WITNESS: My family.

THE PRESIDENT: Is it possible that other sales people at the Cash Store filled grocery orders for welfare recipients when you were not there?

THE WITNESS: Probably would, but they would -- if they would, they would tell me when I would come back, or they put everything in my desk, and I would do all the rest.

THE PRESIDENT: Question from Senator Farabee: "Do various accounts shown in the exhibits indicate groceries in amounts -- in the round amounts, such as twenty dollars, thirty dollars and thirty-five dollars? How is it possible to sell an amount of groceries which come to an even numbered sum of money each time in a series of even numbered amounts such as \$20.00, \$25.00?"

THE WITNESS: Well, I explained this before, and I will explain it again, that we don't have a bank in Benavides, and I was doing a good deed, and look where I got. People would come, not just the Judge, but all my friends would come and either would go on a trip or see a doctor, they would come and make a check and put, "Cash Store" for ten dollars or fifteen dollars or two hundred or three hundred, and it was cash that I was giving them.

MS. LEVATINO: Mr. President, I don't believe she understood that question.

THE PRESIDENT: Well, --

THE WITNESS: I was explaining the round -- well, maybe I didn't understand.

THE PRESIDENT: The question, Mrs. Yzaguirre, in the Exhibits there are repeated sales shown for sales of groceries to welfare recipients for exactly twenty dollars.

THE WITNESS: Oh, now I understand. I thought you were talking about the checks. Well, these were brought to me like that, the Commissioner brought the names and the amounts already made out, and it was all figured up, how they come in round figures, but people in the grocery stores know they don't come in round figures.

THE PRESIDENT: Mrs. Yzaguirre, that really is the point of the question. There were repeated sales shown for amounts coming out, not only to an even dollar, but to an even multiple of five, like twenty-five, or thirty or thirty-five. I think we all know from going into a grocery store that you don't come out with exactly \$25.00.

THE WITNESS: Yes.

THE PRESIDENT: Could you clear that up?

THE WITNESS: Could I clear up why those welfare things came in odd numbers?

THE PRESIDENT: Yes, in round dollar numbers.

THE WITNESS: Because when the Commissioner brought me those welfare slips, they came in rounded numbers, that's the only explanation. And I would copy to my sales slip with a name and the round number to make up for that \$800.00, \$600.00 or whatever it was.

THE PRESIDENT: Well, I'm still having a little trouble understanding how a person goes into your store, not just one person, but many persons, and month after month and goes through your store, picks up groceries, whatever they are buying, and comes out with a purchase of exactly \$25.00.

THE WITNESS: Now, I get what you want. You want to know for those three or four people that we gave, came to round numbers, is that what you are asking?

THE PRESIDENT: Yes.

THE WITNESS: Well, because if they lacked \$2.13, they would buy things up until they came to the \$25.00 they gave them or the \$30.00 they gave the three or four persons that they gave them to, they would get candy to make up for \$25.00 or \$30.00 or \$40.00 they gave to the recipients that really got the money, I mean the groceries. Did I answer you?

THE PRESIDENT: Yes. This is a question, Mrs. Yzaguirre, from Senator Mengden: "You answered the question, you don't live down here. Would you please tell the Court how business is conducted where you live?"

THE WITNESS: Well, it's conducted with faith and we all -- like a close family, and we all -- when people come to the store and you know them and trust them, and that's the way it works. We know each other, and everybody knows everybody.

THE PRESIDENT: I think what Senator Mengden is really driving at in his question, Mrs. Yzaguirre, was your statement or your response, "You don't live down here" meaning you don't really --

THE WITNESS: Well, what I meant is you don't live down here, like for example if -- for example, the Commissioner would call me and say, "Give \$15.00 or \$20.00 to this person." And I would take the Commissioner's word and just when this lady would come in, make a ticket, sometimes just a tape machine and put Ramiro Carrillo, and let the lady sign it, and of course, clip it to Ramiro Carrillo's account. Does that answer the question?

THE PRESIDENT: Yes. Question from Senator Traeger: "Didn't you question the fact that you were being paid for groceries supposedly sold to people whom you knew had not gotten them?"

THE WITNESS: Yes.

THE PRESIDENT: You did question that fact?

THE WITNESS: Say it again.

THE PRESIDENT: All right. Didn't you question the fact that you were being paid for groceries that supposedly went to certain people, but you knew that those people didn't get those groceries?

THE WITNESS: Yeah. It went into my mind, and I said, maybe these people had gone to the Commissioner, and people always are there asking for favors, they need this or they need medical things, so it entered my mind. That's why I said that maybe the Commissioner had given them money, and that's the way it would get paid back, I guess. I don't know.

THE PRESIDENT: Question from Senator Snelson: "Did you keep any books where you kept records of your accounts receivable?"

THE WITNESS: No, I did not.

THE PRESIDENT: No records showing accounts payable or accounts receivable?

THE WITNESS: No. Because those little machine tapes, at the end of the month, when the customer comes and pays, and I give them the tapes. That's why I don't have any records.

THE PRESIDENT: All right. Now, after you returned the sales slips, I guess they are cash register tapes?

THE WITNESS: Cash register tapes.

THE PRESIDENT: To the individuals who paid their bills, what permanent record did you have showing these transactions?

THE WITNESS: All I did was register them in the register and pass it to the sales book.

THE PRESIDENT: How did you account to the State Comptroller for sales taxes due the State?

THE WITNESS: We have a book especially for taxable items, and at the end of every three months I'd add those taxable items.

THE PRESIDENT: The Comptroller hasn't raided you recently?

THE WITNESS: Not yet.

THE PRESIDENT: Question from Senator McKinnon: "Did you ever give cash for the difference between the authorized welfare payments and the amount of the groceries?"

THE WITNESS: I myself, never -- I gave credits and due him, or due him, no money. I don't remember anything.

THE PRESIDENT: All right. You nor no member of your family?

THE WITNESS: Not to my knowledge.

THE PRESIDENT: Well, Mrs. Yzaguirre, if you gave credit, then you must have maintained some kind of records.

THE WITNESS: Well, those little sales tickets, I would put the balance on O. P. Carrillo or whatever, and clip it to his account. You know, just the little tape, say \$13.00, \$14.00 balance or whatever the balance, and put the balance for say February or March, or whatever it was.

THE PRESIDENT: This question is from the Court's General Counsel, Colonel Jaworski: "Did you testify in the criminal trial in Corpus Christi, where Judge Carrillo was the Defendant?"

THE WITNESS: I did not.

THE PRESIDENT: Does either side propose to recall Mrs. Yzaguirre?

MR. MITCHELL: Mr. President, may I ask the witness another question?

THE PRESIDENT: Mr. Mitchell.

REXCROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q I haven't learned my lesson yet, so I will come back at her. Mrs. Yzaguirre, is it your testimony that you were in the store in '72, or that you were not in the store in '72?

A I said maybe I was, you know, at the beginning or something.

Q Well, it's very important because you previously identified --

A Well, --

Q Under oath the Exhibit that was introduced, H-3?

A H-3, because I found those.

Q Were you in the store at the time they were incurred?

A I don't think so because the one that made those out is my father-in-law, that envelope was very old, and it was my father-in-law.

MR. MITCHELL: We renew our objection. We move to strike on the grounds that she would not have any personal knowledge on Exhibit Number H-3, if it please the Court.

Q Let me ask you now, Mrs. Yzaguirre, is it your testimony that you would tabulate the Judge's account, that is the welfare account that's chargeable to him on a monthly basis, once a month, and that would be the only time you would tabulate it?

A That's all the machine tapes.

Q Well, let me show some checks for the year 1972, and perhaps you can explain them, for example, why there would be say as high as three checks from Judge Carrillo to your store in the month of July, '72, two in the month of January. Let me show you these and perhaps I will ask you some questions about them.

(Whereupon the witness was handed the documents.)

MS. LEVATINO: We have no objection to the introduction of the checks you gave us before. Is this a new batch?

MR. MITCHELL: Yes. That is Number R --

THE PRESIDENT: These, I believe, have been marked, or should be marked R-1, and I have another similar group you might want to take after I get them identified, I will let you have them, Ms. Levatino.

Q Let me ask you for example, here are three checks that are from Judge Carrillo to the Cash Store, July 12th, and two on July 24th, am I correct?

A Yes.

Q All endorsed Abel Yzaguirre, which would be your father-in-law, am I correct?

A Yes.

Q There appear to be three checks that went from Judge Carrillo, at least on his personal account to that store in the month of July, 1972, is that correct?

A Yes, to the Cash Store.

MR. MITCHELL: May we have these marked as R-2, Mr. Schnabel, and hand them to the Counsel there, please?

(WHEREUPON, THE INSTRUMENTS HERE ABOVE DESCRIBED WERE IDENTIFIED AS RESPONDENT'S EXHIBIT NUMBER 2, R-2(1)-(3))

Q I will hand you what appears to be -- see if you can recognize them as two checks in the month of January of '72 to the Cash Store, both endorsed by Abel Yzaguirre. Do you recognize those, first of all, your daddy-in-law's signature on the back? Take them please, and examine them.

A Yes.

Q There appear to be two checks to your store for that month from Judge Carrillo's personal account, am I correct, for the month of January, 1972?

A Yes.

MS. LEVATINO: Counsel, pardon me, are you offering these to show that Judge Carrillo paid some bills during these months or for some other reason?

MR. MITCHELL: I am offering those checks for full force of the evidence, that is to contradict this witness that the account was totaled up once a month and to show that Abel Yzaguirre was running the store at the time she testified earlier that those tapes were given to her.

MS. LEVATINO: Will there be later testimony tying these checks and payment of the account?

MR. MITCHELL: This is the lady that owns the store and knows it all, I thought I'd just use her.

MS. LEVATINO: We'll object to that.

Q I hand you some checks now for the month of April, 1972, and it appears to be two checks from Judge Carrillo to the Cash Store endorsed by your daddy-in-law, Abel Yzaguirre, one for one hundred eighty-three dollars, and one for thirty-eight dollars.

A That's right.

Q Is that correct?

A Yes, sir.

Q I hand you now what appear to be three checks for the month of May -- I'm sorry, two checks for the month of May, 1972, one for \$128.00 and one for \$48.00 to the Cash Store, both of which are endorsed by Abel Yzaguirre, am I correct?

A Yes.

Q What was your answer please?

A Yes.

Q You recognize those checks, the signature of your daddy-in-law on those?

A Yes.

Q I hand you two checks dated November -- show you two checks from Judge Carrillo to the Cash Store, and I believe they are endorsed by Abel Yzaguirre for the month of November, 1972, and hand them to you and ask you, please, ma'am, to examine those and see if those -- if you recognize your daddy-in-law's signature on those?

A Yes, sir.

Q Of course, those transactions, it's quite possible you had no personal knowledge of, because I don't believe you were in the store during that period of time, am I correct?

A Yes.

MR. MITCHELL: We offer R-1 believe it's 1, 2, 3, and 4, Mr. President.

MS. LEVATINO: We will object to R-2, 3, and 4 on the basis of verification and --

THE PRESIDENT: I'm sorry. I couldn't understand the last part.

MS. LEVATINO: We object to, I believe, is it 2, 3 and 4, Mr. Mitchell? Basically on the basis of authenticity until we have had further opportunity at recess to look over these Exhibits R-2, 3, and 4.

MR. MITCHELL: Mr. President, for the record, it's 2, 3, 4, 5, and 6, all being checks payable to the Cash Store, endorsed "Cash Store" by Abel Yzaguirre in the months indicated by the authenticating witness. And we submit she has testified that she recognized the signature of her daddy-in-law, and I suppose the signature of O. P. Carrillo, and consequently would be authentic. We would submit.

MS. LEVATINO: Counsel, for what purpose are you introducing these? I couldn't hear you if you said it.

MR. MITCHELL: For all purposes. To impeach this witness and for the truth of the matters contained therein. That is, he had his own personal running account, was paying it. It wasn't being totaled once a month as the witness testified. In that one year, there are three or four -- there were three or four or five months that -- two checks per month.

MS. LEVATINO: We renew our objection to those Exhibits.

THE PRESIDENT: The Exhibits will be admitted subject to objection at a later time on subsequent examination.

Mrs. Yzaguirre, a question from Senator Farabee: "The tickets in the Exhibits show the names of the number of people with the last name of Carrillo; Daniel Carrillo, V. Carrillo, M. and Nelda Carrillo, M. Carrillo, J. Carrillo, E. Carrillo, Leopolo Carrillo, Oliverio Carrillo and Daniel Carrillo. Do you know if any of these people are related to Judge O. P. Carrillo?"

THE WITNESS: I think some are. Yes.

THE PRESIDENT: Okay. Which ones do you know, Mrs. Yzaguirre, to be related to Judge Carrillo?

THE WITNESS: I think Oliverio -- not very close. Maybe third, fourth --

THE PRESIDENT: How about Daniel Carrillo?

THE WITNESS: Possibly, he's related, but, like I tell you, I don't know how close.

THE PRESIDENT: All right. How about V. Carrillo?

THE WITNESS: I don't know. It's an initial, and I --

THE PRESIDENT: M. and Nelda Carrillo?

THE WITNESS: Who?

THE PRESIDENT: The best I can make it out is M. and Nelda.

THE WITNESS: I don't know.

THE PRESIDENT: M. Carrillo?

THE WITNESS: Probably. I don't know. Of course, maybe --

THE PRESIDENT: J. Carrillo?

THE WITNESS: I am not that close to them. Probably. I --

THE PRESIDENT: J. Carrillo?

THE WITNESS: (No response.)

THE PRESIDENT: E. Carrillo?

THE WITNESS: You said Daniel first. Maybe it's the same. I don't know.

THE PRESIDENT: Leopolo Carrillo?

THE WITNESS: I guess they are kin. But I couldn't tell you how close.

THE PRESIDENT: All right. From your knowledge of these people, Mrs. Yzaguirre, are these well-to-do people? Are they poor people? Are they welfare cases?

THE WITNESS: Well, I guess -- I wouldn't call them well-to-do. And I don't know if you would call them welfare or not. I don't know.

THE PRESIDENT: Were any of their grocery bills paid by County welfare funds?

THE WITNESS: I think one or two in the list that I remember. I mean, probably. But --

THE PRESIDENT: Mrs. Yzaguirre, a few moments ago, in response to a question, you said you did not maintain or prepare any lists of welfare customers.

THE WITNESS: No, they were brought to me.

THE PRESIDENT: Mrs. Yzaguirre, there were a number of exhibits introduced yesterday, and I'll show these to you, which are lists of names, on what appears to be a sales slip, and opposite these names appear amounts, \$20.00, \$35.00, \$15.00, Juan Salinas -- I can't make the names out here.

Those are reproductions of documents put into evidence yesterday.

THE WITNESS: Yes, sir.

THE PRESIDENT: All right. Those are lists of names.

THE WITNESS: Yes, sir.

THE PRESIDENT: -- with amounts appearing opposite. Did you prepare those lists?

THE WITNESS: No. This was prepared by my father-in-law.

THE PRESIDENT: Some of them were signed Abel, which is your father-in-law?

THE WITNESS: Yes.

THE PRESIDENT: Some of them were signed "Lauro"?

THE WITNESS: Uh-huh.

THE PRESIDENT: You did not prepare those lists yourself?

THE WITNESS: Not this one. That's my father-in-law.

THE PRESIDENT: How about the one signed "Lauro"?

THE WITNESS: This one, I did.

THE PRESIDENT: All right. Where did you get the information -- How did you get the names to put on that list?

THE WITNESS: From this right here (indicating).

MR. MITCHELL: Could we have a page number, Mr. President?

THE PRESIDENT: I am looking at Page 419 of the Journal for today.

Now, Mrs. Yzaguirre has testified, Counselor, that from the voucher or document headed "Duval County Welfare Department," H-1(29), containing a list of names, and opposite these names, varying amounts totaling \$210.00 that she prepared the list appearing to the left, there, containing those same names, and totaling \$210.00, both documents being dated February 21, 1974.

MR. MITCHELL: Thank you, Mr. President, I so understand.

THE PRESIDENT: Mrs. Yzaguirre, it's a contention here in this Court that there was an understanding Judge O. P. Carrillo was to receive credit of \$300.00 a month from the county welfare payments. From whom and when were you given instructions to that effect, and were those instructions oral or were they in writing?

THE WITNESS: They were oral.

THE PRESIDENT: And who did you receive those instructions from, Mrs. Yzaguirre?

THE WITNESS: Well, they were there before, so -- there was a question in my mind. And when the Commissioner came, I asked his brother, and he said his brother had a \$300.00 a month budget. Because --

THE PRESIDENT: All right. Now, you say this was an understanding when you arrived there?

THE WITNESS: Well, I -- before me --

THE PRESIDENT: When you arrived there, who told you of this understanding? Who told you to make this credit to Judge Carrillo's account?

THE WITNESS: I did it myself.

THE PRESIDENT: Well, what --

THE WITNESS: I mean, I did -- that, I did, you know, up to '73, '74, that was my -- you know, since my husband took over, that was what I did, you know. But, prior to that, it was my father-in-law, and I -- what arrangements, I don't know.

THE PRESIDENT: All right. It was your father-in-law, then, who told you to continue to practice that --

THE WITNESS: Well, he was doing this, so I went along and just went along with what they were doing.

THE PRESIDENT: Counselor, I am referring at this time to H-1(12), which is a voucher or document from the Duval County Welfare Department containing a list of seven names. Now, opposite each of those names appears the amount, \$20.00 -

MR. DOYLE: Mr. President, we just simply can't hear you.

THE PRESIDENT: Okay. We are referring to Exhibit H-1(12), which is a document headed "Duval County Welfare Department --"

MR. DOYLE: Mr. President, might I suggest that when you refer to any Exhibits, you give a page number so the Members of the Court can follow?

MR. MITCHELL: That would be Page 353, I believe --

THE PRESIDENT: The particular document to which Senator Clower's question refers is duplicated at the bottom of Page 354, "Duval County Welfare Department," dated 7/8/70. Contains a list of seven names. A figure of \$20.00 appears opposite each name for a total of \$140.00.

Now, Senator Clower's question, Mrs. Yzaguirre is that, that --

THE WITNESS: Is that 8 or 7? Because --

THE PRESIDENT: It appears to me that Mrs. Yzaguirre is raising a question about the date on the slip.

THE WITNESS: It's very important.

THE PRESIDENT: Well, I don't think for purposes of this particular question it will be. It appears to me that 7 is written over the 8, so it's 7/8/70. But the question Mrs. Yzaguirre, now, "Each of those \$20.00 orders, did you sack up each one of those orders separately, give each one of those people \$20.00 worth of groceries?"

THE WITNESS: Well, I'm telling you the date, because if it's 8, it's 8/70, I was not at the store. I was not operated then. You see? Sir -- I was operated August 3rd, 1970. So --

THE PRESIDENT: Mrs. Yzaguirre, without reference to date, on this particular slip, then, if you will observe, there are many similar slips --

THE WITNESS: Uh-huh. Oh, yes.

THE PRESIDENT: Did you actually make up a separate order, separate --

THE WITNESS: Well, sir, this is not my writing. This is not my filing.

THE PRESIDENT: Thank you very much.

This is a question from Senator Snelson. "Mrs. Yzaguirre, after you came back to the store after your illness in late '72, did you automatically continue the \$300 credit, or did you get any new instructions?"

THE WITNESS: I continued --

THE PRESIDENT: I'm sorry. Could you --

THE WITNESS: I continued to do the same thing.

THE PRESIDENT: In other words, you just automatically continued to do the same thing that you have been doing?

THE WITNESS: What I had done before.

THE PRESIDENT: Thank you very much.
Are there any additional questions of Mrs. Yzaguirre?
Ms. Levatino?

REDIRECT EXAMINATION

(Questions by Ms. Levatino:)

Q About two questions. Mrs. Yzaguirre, would you look -- Do you have one of those claim forms still up there? Just to clarify this. This is the one you were referring to?

A Yes, it is.

Q Exhibit H-1(12), on these -- we have Duval County Welfare slips and some of these little Cash Store slips.

A Yes.

Q Okay. You have filled out Cash Store slips similar to these in Exhibit H-1(12)?

A Several.

Q Some of these I showed you are in other exhibits?

A Yes, ma'am.

Q Where did you get the names to put on these slips? Not the ones here. You didn't write it. But in some of the other exhibits.

A From the original welfare -- from the original welfare blank or whatever you call it.

Q By that, are you generally --

A By the Duval County Welfare Department. That's what I'm referring to.

Q Who brought you that slip, the Duval County Welfare Department slip?

A Like I said way back, I think once or twice, Cleofas Gonzalez, but the rest were brought by Commissioner Ramiro Carrillo.

Q Also, you made a comment that your father-in-law had told you to credit this \$300.00 a month of County money to Judge Carrillo's charge account. I believe you answered that?

A Well, I just went on with the same policy.

Q Did Ramiro Carrillo also tell you to credit \$300.00 of the County's check to the Judge's charge account?

A Yes, one time when I didn't know (inaudible) when he came I said where do I -- I told the Commissioner, I said how do I do this and he said, "Well, just credit O. P. -- O. P. \$300.00 because he has a budget of \$300.00 and the rest to my account."

MS. LEVATINO: Thank you, Mrs. Yzaguirre. Pass the witness.

RECROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q And you understood when he said he had a budget that he had the right to go up to \$300.00 on food welfare?

A That's right.

Q And just like anybody else might have a budget to go up to \$200.00 or \$300.00, just like the Judge did?

A He was an official.

REDIRECT EXAMINATION

(Questions by Ms. Levatino:)

Q Mrs. Yzaguirre, I would like to just clarify one question. Was it your understanding that Judge Carrillo had a \$300.00 budget for welfare or food or just to have welfare pay for groceries which he, it was your understanding, received?

A My understanding is for his food and that's my understanding, of course.

MS. LEVATINO: Thank you.

THE PRESIDENT: Mrs. Yzaguirre, some questions from Senator Farabee: "Did Judge O. P. Carrillo ever advise you of his arrangement with the County for payment of his groceries?"

THE WITNESS: No, he never did.

THE PRESIDENT: "Did Judge Carrillo, himself, go into the store and pick up the groceries, that is, go through and pick them out himself and charge those groceries to the County and have the County pay for those groceries?"

THE WITNESS: Well, actually they were charged to him and later the County would pay for the -- it was not under the County -- it was just under his name.

THE PRESIDENT: They were charged to him, but actually paid for by the County?

THE WITNESS: For those \$300.00.

THE PRESIDENT: Were those groceries that he actually picked out himself?

THE WITNESS: Some were, yes.

THE PRESIDENT: Thank you. Further questions of Mrs. Yzaguirre?

Referring to Page 417 of the Journal, a question from Senator Clower: Exhibit H-1(28) which I will now show you, Mrs. Yzaguirre.

"Were these groceries delivered as separate orders?"

THE WITNESS: No, sir.

THE PRESIDENT: How were they?

THE WITNESS: Like I tell you, they -- that's my father-in-law, see, that's not my signature, that's the one you showed me. This was made by my father-in-law, it's not my signature.

THE PRESIDENT: Thank you very much.

Question, Mrs. Yzaguirre, from Senator Creighton: "When the County would pay Judge Carrillo's account -- what or to whom would you deliver the Judge's cash tickets?"

THE WITNESS: Well, for awhile he never came, I just kept them there for awhile and then I just tore them up and -- but I would tear them up and nobody would pick them up.

THE PRESIDENT: Question from Senator Longoria: "Was it your understanding, Mrs. Yzaguirre, that the County would pay for groceries on orders placed by O. P. Carrillo for people who needed the groceries and used them for their own use and not for the use of Judge Carrillo?"

THE WITNESS: I don't understand.

THE PRESIDENT: Was it your understanding in these transactions that when the groceries were ordered by Judge Carrillo in another person's name that those groceries would be used by that person for their own use or would those groceries be used by Judge Carrillo?

THE WITNESS: In my personal knowledge I would believe it was used by the Judge. That's my opinion. I mean that's what I feel.

THE PRESIDENT: Are there further questions of Mrs. Yzaguirre? Does Counsel for either side propose to recall Mrs. Yzaguirre at a later time in this trial?

MR. MITCHELL: Perhaps, Mr. President, on one or two points.

MS. LEVATINO: We do not propose to recall Mrs. Yzaguirre.

THE PRESIDENT: Please, I couldn't hear you.

MS. LEVATINO: We do not propose to recall Mrs. Yzaguirre, she may be excused for us.

THE PRESIDENT: Question from Senator Traeger: "If the adding machine tapes were always given to the customers how do you account for the fact that the one statement for August of 1972 was still at the store?"

THE WITNESS: That's what I told Ms. Levatino. If he paid for those why did we find those tickets there. I guess God was with me.

THE PRESIDENT: Mrs. Yzaguirre, in view of the fact that Counsel for the Respondent has said you might be recalled at a later date it's my duty to advise you that you're still under The Rule. That is, you're obliged not to converse with any other person except Counsel for the two parties concerning the proceedings of this Court. You're not to read any report of or comment on any testimony before this Court. A person violating these instructions may be punished with contempt. Do you understand?

THE WITNESS: Do they expect me to be recalled today because I closed the store up? I mean I have to know if I may go back and they call me back -- I have to know.

MR. MITCHELL: Certainly we don't want to discommode the witness, Mr. President. Certainly we will have ample time to call her on the telephone if we have to have her back.

THE PRESIDENT: Mrs. Yzaguirre, you are excused at this time. You are free to go back to Benavides, but be sure we have the information where you can be reached if you're needed.

THE WITNESS: She has it.

THE PRESIDENT: Thank you very much.

(Witness excused.)

SENATOR SCHWARTZ: Mr. President?

THE PRESIDENT: Senator from Galveston.

SENATOR SCHWARTZ: Before our next witness is called, Mr. President, I would like to ask unanimous consent or in the absence of unanimous consent move the Senate as an Impeachment Court to be convened in Executive Session, exclusive to the Senate and its officers and its special counsel.

THE PRESIDENT: All right. Because these rules are unfamiliar to all concerned, let the Chair read the relevant portion of Rule 7: "Closed Court deliberation. The sessions of the Court are to be open, unless the Court votes that the Session be closed while the Court deliberates. No action may be taken in a closed session of the Court. A motion to close a session of the Court may be acted on without an objection, or if an objection is raised, the question is to be submitted to the Court and decided without debate by members of the Court." Senator from Galveston asked unanimous consent for the Court to resolve itself into Executive Session. Is there objection? The Chair hears none.

All not entitled to attend the Executive Session will please withdraw from the Chamber and gallery.

Whereupon, the Senate resolved itself into Executive Session at 11:27 o'clock a.m.

At the conclusion of the Executive Session, the President called the Senate, sitting as a Court of Impeachment, to order at 12:05 o'clock p.m. today.

THE PRESIDENT: Court will come to order. The Senator from Galveston.

SENATOR SCHWARTZ: Mr. President, consistent with the position I took yesterday, and announced that I would take today, I am moving that at the conclusion of the testimony today, that this Court of Impeachment recess or adjourn until November the 17th at 10:00 a.m. in the morning. November the 17th is a Monday, it is three days after the sentencing date which has been previously set by the Federal Court in the trial of Judge O. P. Carrillo in Corpus Christi.

SENATOR ADAMS: Mr. President?

THE PRESIDENT: Does the Senator yield?

SENATOR ADAMS: I have an inquiry of the Chair.

THE PRESIDENT: State your inquiry.

SENATOR ADAMS: Does this motion -- is this motion going to be debated?

THE PRESIDENT: This being a motion to adjourn to a further time, it is a debatable and not a privileged motion. Senator from Galveston.

SENATOR SCHWARTZ: Senator, I made the motion on that basis so it will permit debate, and give us an opportunity to discuss the merits or demerits of the motion in the proposed mood. I would also -- the motion is also made, and that date is

deliberately chosen because the Judicial Qualifications Commission is supposed to begin its hearing on November the 3rd, according to the information that we have received.

SENATOR ADAMS: Will the Senator yield?

SENATOR SCHWARTZ: I will in a minute. As I indicated yesterday, in the meantime, if the motion should prevail, I believe beyond any question that the Senate will forego any right to any per diem pay during that interim as we should have originally, but without thinking, did not include in the Caucus Report of the days in which we were not in attendance at this Court of Impeachment in Austin, Texas. It is my opinion that this is important from a variety of standpoints. I think most importantly, because there are two constitutional processes in being today in addition to this impeachment process, both of which I believe take precedent over the impeachment process in the sense of justice and in the sense of their priority. One of those is that there is and has been a Federal Court trial one part of which has been concluded. That part being a jury trial, upon which there was a finding of guilty by the jury. There are periods after the trial and before sentencing that require presence of Counsel for the Defense, work product and what have you. I do not believe a trial is concluded until the Defendant has been sentenced, if that Defendant has been found guilty. I don't believe Counsel's responsibility is concluded. The people of this State adopted a Constitutional Amendment providing for a Judicial Qualifications Commission, and I am not going to make a whole argument about it because Senator Longoria has got the figures on the Qualifications Commission. But the Judicial Qualifications Commission is constitutional, it functions, it has been organized to function in this case, a Master has been appointed to hear the matters concerning Judge Carrillo in this case, and we ought to permit that constitutional process to proceed, at least to begin. This impeachment process is not only -- the only process, it is not the best process, and those of us who have been here for these several days recognize that at best, it is the most difficult, the most laborious, and perhaps the least effective process to accomplish for the purposes of guilt or innocence of an individual. Now, we do not -- I do not believe that we will impair in anyway any cause of justice by the delay suggested here, but rather that when we return, we will still return to our constitutional duty. We are not abdicating any responsibility, we are not failing in any responsibility. I think what we would be doing if we postpone until November 17th is intelligently, not only facing our responsibility in this impeachment matter, but facing our responsibility to the people of Texas to let the constitutional process function. And I think the people will understand that, and I think the people will far better understand our acting and becoming an Impeachment Court at a proper time in the processes of this judicial deliberation in this matter than simply to say that we are a knee jerking outfit, and we are here because we are here, because we are here and we don't know how not to be here.

SENATOR ADAMS: Will you yield?

SENATOR SCHWARTZ: At that point, yes, sir.

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: Senator, let me ask you, where do you derive your information that the Judicial Qualifications Commission wants to meet in connection with this matter?

SENATOR SCHWARTZ: By a telephone call to the Judicial Qualifications Commission from my office.

SENATOR ADAMS: Who did you talk to?

SENATOR SCHWARTZ: This, Senator, is being reported to me, and I believe it.

SENATOR ADAMS: Who was the Master in the proceedings?

SENATOR SCHWARTZ: I understand it's Judge Meyers.

SENATOR ADAMS: Who are the other participants in that proceeding?

SENATOR SCHWARTZ: I'm not advised.

SENATOR ADAMS: Is it not your understanding that one of the participants is presently in a very lengthy trial and will not be able to proceed until he has concluded that trial, isn't that your information also?

SENATOR SCHWARTZ: I am not advised.

SENATOR ADAMS: Let me ask you then, Senator, the Constitution of this State prescribes two different methods of removal of District Judges, does it not?

SENATOR SCHWARTZ: I am advised by another member of the Senate that there may be as many as four.

SENATOR ADAMS: There are at least two?

SENATOR SCHWARTZ: Well, there is impeachment and the Judicial Qualifications Commission.

SENATOR ADAMS: All right, sir. In connection with the constitutional provision providing impeachment by the Senate, there are also statutes, are there not, to implement that constitutional proceeding?

SENATOR SCHWARTZ: Yes, there are.

SENATOR ADAMS: And one of those statutes is numbered Article 5963 in Vernon's Civil Statutes, is it not?

SENATOR SCHWARTZ: I think that's the statute you referred to me yesterday.

SENATOR ADAMS: I didn't read all of it to you yesterday, and I'd like to read a little bit more to you today. In the second paragraph of Article 5963 it says, "When it shall reconvene" we, the Senate, "shall reconvene for the purposes of disposing of such matters," matters of impeachment, "and thereupon, such matters shall be considered and disposed of as expeditiously as possible." Did you know that was in the statute, Senator?

SENATOR SCHWARTZ: Yes, sir. I am familiar with that.

SENATOR ADAMS: What do you define as expeditiously?

SENATOR SCHWARTZ: Let me tell you Senator, expeditious disposal of a matter before the Impeachment Court is the disposal of that matter in an orderly fashion within the jurisdiction of the judgment of the people who make up that Court, subject to --

SENATOR ADAMS: In other words, you would define expeditious as meaning, under the Call of the Governor on the 3rd or 2nd day of September, then recessing or adjourning until the 6th of October, and then recessing or adjourning until the 17th of November. And what will we do in November? Is that expeditious?

SENATOR SCHWARTZ: Let me tell you something, if justice dictates that this Court of Impeachment recognize other judicial proceedings, and if there is no objection from the Defendant or the Defense Counsel with regard to the decision of this Court of Impeachment, that is expeditious, that is as expeditiously --

SENATOR ADAMS: You're talking about justice, where is justice defined in the laws of this State? They are defined by the Legislature in the statutes, are they not, isn't that where justice is defined?

SENATOR SCHWARTZ: Justice is defined in the minds of the man when he determines what's right and what's wrong and what he has got the right to do, and not to do under the statutes, and what his conscience dictates.

SENATOR ADAMS: Justice in our society is defined in the statutes of the State as adopted by the Legislature. It is not defined in the minds of each man and each citizen of this State. It's defined by the duly organized and elected constitutional body, and that's us, and it's not defined in each mind of each man. That's where justice is defined, and justice in this statute says we should proceed expeditiously, and if we do not do that, we are shirking our responsibility and shirking our duty. And let me ask you another question.

SENATOR SCHWARTZ: You still don't understand.

SENATOR ADAMS: I understand what you are saying, Senator, that justice is in the mind of each man, and I'm telling you, Senator, that in an organized society, and in a duly constituted, elected body, justice is defined by the elected officials such as ourselves.

SENATOR SCHWARTZ: You are asking the question. Now, I want to reply to you for another 30 seconds. I have been down here since 1954. So far as I know, this Legislature since 1954 has not been able to write a single statute with any finality-- that everything we have done since 1954 has wound up somewhere being interpreted by some Court. Some mind in man has had to be applied to every single intelligent word of the English language, and if somebody decided what expeditious was once, and somebody else has decided a thousand times since then what that word means in the context of a given situation. And, Senator, you are just simply ignoring -- you're ignoring the billions and billions of brain cells that you have got working that tell you that what you have just said is wrong.

SENATOR ADAMS: Senator, I have never heard a Court -- I have never heard a duly constituted body define expeditious as continued and repeated postponements of the discharge of their obligation. I'd like to be heard against the motion whenever the time comes.

SENATOR TRAEGER: Will the Senator yield?

SENATOR SCHWARTZ: Yes.

THE PRESIDENT: Senator from Galveston yields to the Senator from Guadalupe.

SENATOR TRAEGER: Senator, is there any question in your mind that if we adjourn to the date you are suggesting that at that time we can still offer and give to the Defendant and to ourselves representing the public, a fair and equitable trial of this case?

SENATOR SCHWARTZ: I'm absolutely certain that a fair and equitable trial will prevail in a more orderly fashion commencing again on November the 17th than it could possibly continue at this time, under the circumstances facing this Court and the Defendant.

SENATOR TRAEGER: Well, there is no question in your mind and the question each Senator should ask himself, we are in no way forfeiting justice in this case by postponing, are we?

SENATOR SCHWARTZ: No. And I want to repeat what I said yesterday before I made my motion, I asked that the Presiding Officer ask Defense Counsel if there was objection by Defense Counsel to the postponement, because in any instance, in any postponement to which the Defendant might object would be in my judgment an improper postponement, because it's the Defendant's right to object if he believes that his process -- due processes are being denied. The objection yesterday was put to Counsel on the basis of whether they did or did not object, and Counsel said, and I quote, "We do not object." And I am operating on the basis that that condition exists still today. But what I am saying to you is that we are here in the interest of justice, and justice may better be served on November 17th than justice may be served today, particularly under the circumstances that I made the motion at the conclusion of today's testimony, and under the circumstances that we will return, and at that time, at least insofar as the Federal Court is concerned, the Federal Court processes will have been completed, concluded and terminated in the case, in the single case that's been tried by a jury.

SENATOR LONGORIA: Mr. President?

THE PRESIDENT: Senator from Hidalgo. Will Senator Schwartz yield for question?

SENATOR SCHWARTZ: Yes.

SENATOR LONGORIA: Senator, are you aware of the fact since 1967, when the Judicial Qualifications Commission was created, there have been 386 complaints by Judges and that based on their investigations that three Appellate Judges have resigned, or been disposed of, and six District Judges have resigned, or been disposed of, because of investigations as the law provides for the Judicial Qualifications Commission?

SENATOR SCHWARTZ: I am aware of those figures which you quoted to me, and I know another figure. There are substantial numbers of lesser Judges, Judges of lesser Courts, below the level of Appellate Judge or District Court that have been either voluntarily -- voluntarily removed themselves from office or been removed in a

combination of circumstances by the action of the Judicial Qualifications Commission, and I know that to be true. One of the things that I think is floating around somewhere in the minds of people is that the Judicial Qualifications Commission is non-functioning, and the Senator from Jasper led the Senate to believe that yesterday, I think, in jesting somewhat and saying, "Where is the Judicial Qualifications Commission?" The reason people don't know about the work that's been done by the Judicial Qualifications Commission is that they are permitted under the Constitution and the statutes to meet secretly and perform their function to remove Judges from public office who for some reason are not considered qualified to continue the service in that capacity in this State, and so there is no big play about it, no headlines. It's required to be done.

SENATOR LONGORIA: They don't have open hearings, no press to pick up the news and all that kind of stuff?

SENATOR SCHWARTZ: It is required to be confidential because that is the method in which we believe in the legislative process, and I believe people agree that the ends of justice are best served.

SENATOR LONGORIA: There is no reason why we should say the Judicial Qualifications Commission is not doing their job?

SENATOR SCHWARTZ: I think the Judicial Qualifications Commission is not only doing its job, but it's doing it well. And it's capable of doing it well, and I have no reason to believe that they are not doing that job well. And I will say to you, that we appropriate money to them every time the Legislature meets, they come before the Committee, they have been there a few sessions. They are functioning, they are behaving in exactly the manner that the Constitution and statutes presumed that they would behave.

SEANTOR LONGORIA: Senator, the people of the State of Texas must have confidence in the Judicial Qualifications Commission because they made it a constitutional office, didn't they?

SENATOR SCHWARTZ: That is correct, and, certainly, Senator, a hundred and eighty-one members of the Legislature of the Constitutional Convention decided that that was a more acceptable method of dealing with problems of District Judges than was an impeachment process by trial in the Senate. But I still maintain, and I want you to know and I want everybody else to know that I know and I will say here now there is no question in my mind but that this Senate will come back to begin its future deliberations on this impeachment trial. It's our duty under the present Constitution, and I know we will return, and I know we will respond, to that duty we have, and I know it will be done more fairly and in a better interest of justice when we return than we could now.

THE PRESIDENT: Senator from Harris?

SENATOR BROOKS: Would Senator Schwartz yield for a question?

THE PRESIDENT: The Senator yields for a question.

SENATOR BROOKS: Senator, are you contending in your argument here that this impeachment trial is going to be altered or its outcome altered by what the Judicial Qualifications Commission does or does not do?

SENATOR SCHWARTZ: Senator Brooks, I'm not contending that any deliberation of this body can be altered by anything which will occur outside this body. This body is duty bound to respond only to the evidence that's educed from the witnesses in whatever way it's educed, and from the law that's applied to that evidence under our impeachment rules. Now, that is the only thing which could influence this body. And I -- you know, the action of the Counsel, the accused, whatever the terms are, everything that takes place outside the Impeachment Court is extraneous in our judgment. However, we must be influenced, in my opinion, in terms of how expeditiously we proceed, and the order in which we conduct certain activities of this Court of Impeachment by the things that go on outside this Court of Impeachment, because it's impossible for us to avoid knowing those things are going on, and it's impossible for us to avoid knowing the consequences of those activities.

SENATOR BROOKS: But, Senator, isn't it true that if the Judicial Qualifications Commission meets on the 3rd of November and on that day they start their deliberation or their proceedings or whatever is appropriate that they appropriately do, they will not do that in one day. It will take at least two or three months for them to conclude all of their investigations and all of their hearings of complaints and hearings of witnesses, will it not?

SENATOR SCHWARTZ: Senator, I'm not advised at all nor will we ever be advised, because it's a secret proceeding about the extent to which that Qualifications Commission will go in educing testimony concerning the complaints in the case of Judge Carrillo. I'm only advised that they can make whatever judgment they want to in that case about what they want to hear, and what they don't want to hear, and whether or not that meets the requirement of their law.

SENATOR BROOKS: But if they call the Respondent to testify before them or if his presence is necessary for them to continue and conclude and complete their deliberation, then it seems logical to me that the Respondent would not be available to this Impeachment Court on November the 17th or any time during the time the Judicial Qualifications Commission is having it's proceedings.

SENATOR SCHWARTZ: Well, Senator, let me point out again, I do not control the Qualifications Commission. I do not vote there as to when they proceed and how rapidly. And I would not speculate about how long it would take them to perform their function. You may well be right. I do not believe that the function of hearing evidence will take as long as you said. But the total process, if there is some finding at the end of that, is much like a jury trial. You know, if evidence fails to support a finding that requires further action, then that's the end of it. If the evidence requires some further action on the part of the Judicial Qualifications Commission, then indeed other things must follow. I'm simply saying that we are here, and, in my -- and I do not agree with Senator Adams. The law doesn't demand nor does the Constitution demand, even though the word "expeditious" is used, that we assert at this action, take precedence over every other kind of action with regard to the processes against the same individual in all those actions. That's what I'm saying. And that's my presumption.

And, basically, my presumption is justice dictates that we behave in a manner that lets the processes function, that are functioning and that are constitutional as well in the process. Do not forget that the Judicial Qualifications Commission is a constitutional process. It is as much a constitutional process as this. We are simply in a dual process, and we're, I think, mistakenly trying to attempt both at the same time.

And, one, let me point this out, the Judicial Qualifications Commission constitutional process is under an act of about 1971 or 1965. And this constitutional

process on impeachment was that which was available under the 1876 Constitution. And I simply say that we have a right, Senator from Jasper, we have a right to exercise our intellect in this regard and to be fair and impartial in the trial of this matter.

Thank you, Mr. President.

SENATOR ADAMS: Will the Senator yield one more time?

SENATOR SCHWARTZ: Yes.

SENATOR ADAMS: Senator, in these statutes I've been quoting here, they are very explicit about time and things of that nature. Don't you think the Legislature, whenever they passed these statutes, had some idea when they prescribed for the Speaker of the House, and that the Governor must call the House within a certain period of time to consider Articles of Impeachment, and then thereafter the Senate must convene in a specific amount of time and consider Articles of Impeachment voted by the House, don't you think the Legislature has some idea when they passed this and that idea was to proceed, not just let things of this nature drag on and on and on? Don't you agree with me that's what they had in mind?

SENATOR SCHWARTZ: Senator Adams, since we are all in the Legislature --

SENATOR ADAMS: I know you are not going to agree with me, but I wanted to point out to the Senate through my questions --

SENATOR SCHWARTZ: Since we are all in the Legislature, I don't mind saying that when you say, "don't I think the Legislature had something in mind," presumes a great deal that I do not presume about the Legislature acting as a Legislature. Whoever drafted that statute set forth a schedule.

SENATOR ADAMS: That's right. And the schedule was for a purpose, was it not, Senator?

SENATOR SCHWARTZ: And used words which did what? And used words which guaranteed a Defendant a speedy trial, which is a right.

SENATOR ADAMS: It used words, Senator, which guaranteed that the Legislature wouldn't procrastinate. That's what they did.

SENATOR SCHWARTZ: And for whose benefit?

SENATOR ADAMS: For the people's benefit. That's what the whole idea of impeachment is about. It's a protection for the people of this state.

SENATOR SCHWARTZ: A dual protection.

SENATOR ADAMS: It is a protection for the people of this state against accused public officials. It is a method of removing accused public officials if found guilty of Articles of Impeachment. And the Legislature, when they set those and prescribed those time limitations, they didn't intend for the Senate, they didn't intend for the House to continually drag out the process and the procedure. They intended it as a protection, Senator. And you know that, and I know that, and I can't believe that you are standing there intellectually honest and telling this Senate that that's not true.

SENATOR SCHWARTZ: I don't know that and you don't know that. You don't know what that Legislature intended, except that by the use of those words, they intended the Legislature would not procrastinate on --

SENATOR ADAMS: You're making a motion to procrastinate.

SENATOR SCHWARTZ: You can call it what you like, Senator. You must define procrastinate the same as you define expeditiously.

THE PRESIDENT: Senator from Lamar.

SENATOR AIKIN: Mr. President, first, I would like to say this to some of you that have said something to me about debating this motion to adjourn. This motion is debatable. That is what we suspended yesterday. Neither Senator Schwartz nor Senator Traeger have been out of order on any matter. They, by unanimous consent suspended yesterday. I'm going to make a substitute motion over the motion from the Senator from Galveston. The Senate can do whatever it wants to.

I do feel that to adjourn until November or December or some -- I think it would almost make us the laughing stock. If it would be helpful, I made the motion to continue before, Mr. President, from September the 3rd and to the 29th. If it will be helpful to the Respondent here to file his appeal, I'm going to make a motion, a substitute motion for the Senator from Galveston's motion that at the conclusion of the testimony on tomorrow, that the Senate adjourn until next Wednesday morning, October 15th at 10:00 a.m. And that will give them two days this week and two days of next week, two full days. And I would hope that the Senate would adopt that substitute motion.

And, finally, I would like to hear from the Chair. I would like to ask unanimous consent, if the Chair wants to say something about that that he be privileged to do so.

THE PRESIDENT: The Senator from Lamar asks unanimous consent that the rules be suspended and the Chair be privileged to address the Senate. Is there objection?

The Chair hears none.

THE PRESIDENT: A few moments ago, the Dean of the Senate asked me if I wanted him to ask unanimous consent for this purpose. This is an unusual step, obviously, and one that I take with some reluctance. But I feel compelled to do so. First of all, we're all here to discharge an unpleasant task. It's not only unpleasant because we're all here at great personal inconvenience -- that is a trivial matter compared to the constitutional and statutory duty that we're here to discharge. The personal inconvenience aside, we're convened here for an especially unpleasant task, and that is the task of passing judgment on another human being. That's a task I would trust that none of us relish or would seek out. There are other procedures available for removing District Judges in this state. Specifically, as you all know, there are four procedures in the Constitution of 1876.

First of all, any ten lawyers practicing before a Judge may petition the Supreme Court for his removal. That procedure was followed a number of years ago. A District Judge was removed. He was subsequently reelected by the people. He is a sitting Judge today.

Next, there is the rarely used procedure of address where a Governor, upon the address of two-thirds of the membership of each House, may remove a District Judge.

More recently in the 1940's, another procedure was inserted into the Constitution, or, excuse me, it was earlier than that, I believe. The Judicial Qualifications Commission. None of these procedures are the same as a trial by the Senate, because no Federal Court, the Supreme Court of Texas, the Governor of the

State nor the Judicial Qualifications Commission can impose the penalty of disqualification for life of holding public office. Governor Moody in the 1931 trial of Judge Price argued that the existence of other means in The Constitution for removing District Judges excluded District Judges for the impeachment process. That view was overwhelmingly rejected, and I think properly so in 1931. It's been suggested by the Senator from Galveston that these proceedings should be postponed pending the action of the Judicial Qualifications Commission. If the Judicial Qualifications Commission had functioned as I believe it has been intended to do, we in all likelihood would not be here today.

The Senator from Galveston has suggested that these proceedings ought to be postponed until another phase of the federal trial in Corpus Christi takes place. The Judicial Qualifications Commission action has been postponed a number of times. It may well be that the federal action in Corpus Christi may be postponed. I don't know. Neither does anybody in this room. All those things are preparatory to the observation that if words mean anything, words written down on paper mean anything, they mean what the Senator from Jasper said. It's as clear as words in the English language written in law books can be, that this body has a constitutional and a statutory duty to perform an unpleasant task. To put it as succinctly as I know how, that's what we hired out to do.

The Senator from Galveston moves on the conclusion of testimony today that the Senate stands adjourned until --

SENATOR TRAEGER: 10:00 a.m., November 17th.

THE PRESIDENT: 10:00 a.m., November 17th. The Senator from Lamar makes a substitute motion that on the conclusion of testimony tomorrow, the Senate stand adjourned until 10:00 Wednesday, October the 15th. The question comes first on the substitute motion of the Senator from Lamar for 10:00 a.m., Wednesday, October 15th.

SENATOR TRAEGER: Can we get an expression from Counsel for the Defendant if that will be satisfactory?

THE PRESIDENT: The Chair has advised Counsel for the House Board of Managers and Counsel for the Respondent that it is the Chair's judgment this is a matter to be decided by the Senate. The Chair does not propose to recognize Counsel from either side.

Question on the motion for 10:00 a.m., October 15th?

SENATOR TRAEGER: Mr. President, point of inquiry.

THE PRESIDENT: Senator from Guadalupe, state your inquiry.

SENATOR TRAEGER: Senator Aikin's motion will preclude voting on Senator Schwartz's motion; is that correct?

THE PRESIDENT: That's correct.

SENATOR TRAEGER: And Senator Aikin's motion is essentially the motion that I made yesterday, only its been moved forward one day. But if it is adopted, we will not vote on Senator Schwartz's --

THE PRESIDENT: That's correct. The question comes first on the substitute motion of the Senator from Lamar that the Court stand adjourned until 10:00 a.m.

Wednesday, October 15th. Those in favor of that motion, vote "Aye". Those opposed, vote "No".

Clerk, call the roll.

Yeas: Adams, Aikin, Brooks, Creighton, Hance, Harrington, Mengden and Snelson.

Nays: Braecklein, Clower, Doggett, Farabee, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Meier, Moore, Patman, Santiesteban, Schwartz, Sherman, Traeger and Williams.

Absent-excused: Gammage and Ogg.

Absent: Andujar.

THE PRESIDENT: There being 8 "Yeas" and 20 "Nays" the substitute motion fails.

Question now comes on the motion of the Senator from Galveston to adjourn to 10 a.m., November the 17th. The members in favor of that motion vote "Aye" and those opposed vote "No".

Clerk will call the roll.

Yeas: Clower, Doggett, Farabee, Harris, Kothmann, Lombardino, Longoria, Mauzy, McKnight, Moore, Patman, Santiesteban, Schwartz, Traeger and Williams.

Nays: Adams, Aikin, Braecklein, Brooks, Creighton, Hance, Harrington, Jones, McKinnon, Meier, Mengden, Sherman and Snelson.

Absent-excused: Gammage and Ogg.

Absent: Andujar.

THE PRESIDENT: There being 15 "Yeas" and 13 "Nays" the motion prevails.

The Chair will now recognize the Senator from Lamar for motion to recess until 2:00 p.m.

SENATOR AIKIN: I make that motion, Mr. President, to recess until 2:00 p.m. today.

THE PRESIDENT: Senator from Lamar moves we stand in recess until 2:00 p.m. All in favor say aye and all opposed no. The ayes have it.

Accordingly, the Senate, sitting as a Court of Impeachment, at 12:44 o'clock p.m. took recess until 2:00 o'clock p.m. today.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 2:00 o'clock p.m. today.

THE PRESIDENT: Court will come to order. Mr. Doyle, will you call your next witness.

MR. DOYLE: Mr. President, at the instruction of the Board of Managers I have a request to make of the Court at this time.

THE PRESIDENT: State your request, Mr. Doyle.

MR. DOYLE: Mr. President and members of the Court, it is apparent by the Senate's action this morning that our testimony is necessarily going to be fragmented on this trial. In an effort to reduce that --

SENATOR MEIER: Mr. President, parliamentary inquiry.

THE PRESIDENT: State your inquiry.

SENATOR MEIER: If the Senate remains in session this afternoon will there not be a matter of an additional vote as far as anything about when the Senate might come back or we might not go or might not do anything.

THE PRESIDENT: That's correct, Senator.

SENATOR MEIER: So we can't read anything into the action we took earlier today, as far as parliamentary matters are concerned.

THE PRESIDENT: Well, Senator, the Senate did vote this morning to adjourn at the conclusion of testimony today to November 17th. And that is the existing parliamentary situation.

SENATOR MEIER: Thank you, Mr. President.

THE PRESIDENT: Counsel is entitled to take notice of that.

MR. DOYLE: Mr. President, in view of Senator Meier's remarks could you give me about ten minutes to consult with the Board of Managers before I conclude my statement?

SENATOR LONGORIA: Before he does what?

MR. DOYLE: Mr. President and Members of the Court, I have instructions from the House Board of Managers to make a request of the Court at this time. In view of the suggestions made by Senator Meier it would seem appropriate that before I conclude my request I have an opportunity to discuss with the Board of Managers whether or not they wish me to continue with this request.

SENATOR PATMAN: They didn't know about Senator Meier's attitude on this thing?

SENATOR MEIER: Senator, are you directing your question to me?

SENATOR PATMAN: Yes, sir.

MR. DOYLE: No, sir, I had no idea.

SENATOR MEIER: Mr. President, I will yield to Senator Patman if he's worried about any attitude I have.

SENATOR AIKIN: I move that the request be granted and let's go.

THE PRESIDENT: Is there an objection to granting Mr. Doyle's request for a ten minute recess.

The Chair hears none. The Court takes recess for ten minutes.

Accordingly the Senate, sitting as a Court of Impeachment, at 2:08 o'clock p.m. agreed to take recess until 2:18 o'clock p.m. today.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 2:18 o'clock p.m. today.

THE PRESIDENT: Court will come to order.
Mr. Doyle?

MS. LEVATINO: Mr. President, we're calling Mr. Patricio Garza. He will need an interpreter.

THE PRESIDENT: Mr. Garza, would you raise your right hand.

For the purpose of entering this into the record I will administer the oath in English and the interpreter will translate.

"Do you solemnly swear or affirm that the evidence you give upon this hearing by the Senate of Texas of impeachment charges against O. P. Carrillo shall be the truth, the whole truth, and nothing but the truth, so help you God."

Did the witness reply to that?

THE INTERPRETER: He nodded his head.

THE PRESIDENT: Would you please reply.

THE INTERPRETER: It is the truth what he is saying.

MR. DOYLE: Mr. President, I have no idea what the interpreter said.

THE PRESIDENT: Would the interpreter speak up. You have a microphone on?

SENATOR LONGORIA: Mr. President?

THE PRESIDENT: Senator from Hidalgo.

SENATOR LONGORIA: The interpreter did not say "So help me God". He did not complete the interpretation.

THE PRESIDENT: He did say the words.

THE INTERPRETER: What he says will be the truth.

THE PRESIDENT: Please answer it as he would answer it, yes or no.

THE INTERPRETER: He swears yes.

MR. DOYLE: Mr. President, could I ask you to instruct the interpreter to interpret each phrase that the witness utters so that we can understand what he said.

THE INTERPRETER: The witness said yes.

THE PRESIDENT: Please comply with Mr. Doyle's request.
Mr. Doyle?

PATRICIO GARZA was called as a witness testified in the Spanish language through an interpreter, having been first duly sworn, to wit:

DIRECT EXAMINATION

(Questions by Mr. Doyle:)

Q Mr. Garza, are you Patricio Garza?

A Patricio Garza.

Q Where do you live?

A Benavides.

Q How long have you lived in Benavides?

A Some 40 years.

Q Are you married?

THE INTERPRETER: He's married.

Q What is your wife's name?

A Rosa S. Garza.

Q Where do you work?

A With O. P. Carrillo.

Q Ask him if it's that same O. P. Carrillo that's sitting right over there?

A It's the same one.

Q What do you do for Mr. Carrillo?

A I tend to the whole ranch and the cows.

Q The Borjas Ranch?

A (No response.)

Q The Borjas Ranch?

A Works on the Borjas Ranch.

Q How long have you worked for O. P. Carrillo at the Borjas Ranch?

A About one year and eight months.

Q And prior to that where did you work?

A With the County.

Q And what did you do for the County?

A Many things, whatever they told me to do, fences --

Q Ask Mr. Garza if he recognizes what these are.

A The one underneath, yes.

Q Are these tickets like you sign at the Cash Store?

A Yes, they are.

Q Mr. Garza, do you trade at the Cash Store?

A For me?

Q Yes, for yourself.

A Yes, sir.

Q When you buy groceries at the Cash Store do you sign a ticket like this?

A No.

Q Do you sign another kind of ticket?

THE INTERPRETER: Could I ask the witness to repeat it? The tickets he signs are not the same as that one.

Q Now the tickets that you sign now -- the tickets that you sign now, do they look more like this kind of ticket? (Indicating). For purposes of the record, Mr. Garza, what I have shown you and ask you to identify is H-1(16), that is the ticket which is similar to the ticket that you now sign when you get groceries at the Cash Store?

MR. MITCHELL: What is his answer, I didn't hear.

THE INTERPRETER: That is not the ticket that he signed.

Q I understand that, Mr. Garza, but is it a small square like ticket that you sign now?

THE INTERPRETER: I will see if I can find one. I can't find it.

Q That's okay, Mr. Garza.

Now, Mr. Garza, in times past did you sign a ticket like this when you got groceries at the Cash Store?

A Only on orders of O. P. Carrillo who gave me the orders beforehand.

Q Now what I'm showing you now, Mr. Garza, is a ticket out of H-3(1).

MR. MITCHELL: What was his answer, please?

THE INTERPRETER: I did not make it out.

Q Mr. Garza, what is that letter?

A I do not know what letter it is, since I do not know how to read.

Q Ask him if he knows what number that is.

A I know the number and it is number three.

MR. DOYLE: Mr. President and Members of the Court, would you let the record reflect that what I have shown the witness is House Exhibit 3 -- and a ticket from House Exhibit 3. Is there any objection to the record reflecting that Counselor?

MR. MITCHELL: Not if you make the statement to the Court. I will accept it, Mr. President.

Q Now Mr. Garza, I am going to go over these tickets with you and ask you if your signature is on any of these pieces of paper.

A Fine.

MR. MITCHELL: Excuse me, Mr. President. May I request the interpreter to answer as the witness replies so that his answer goes into the record directly. He seems to get rolling around until he gets the answer he wants. I would request that he answer -- interpret as the witness answers, if you please, Mr. President.

THE PRESIDENT: Mr. Doyle, go ahead but ask the questions slowly, and get an individual answer to each question before you proceed.

MR. DOYLE: Mr. President, I think the complaint was not about me, but about the interpreter.

Q Mr. Garza, is this your signature?

A This one, yes, here.

Q Did you sign that ticket?

A This one I did sign.

MR. DOYLE: Counsel, would you stipulate with me that what he's identified as his own personal signature is H-3(2)?

MR. MITCHELL: Yes, the witness has testified that that is his signature.

A Also.

MR. DOYLE: Ask him to just look at the rest of these and pull out the ones that are his signatures.

A (Witness complies.)

MR. DOYLE: Counsel, in response to my request, Mr. Garza has pulled out additional tickets which he identifies as having signed personally, H-3(27), H-3(25), H-3(19), H-3(16), H-3(15) and H-3(14).

May we have that stipulation on those also?

MR. MITCHELL: Yes, Counselor.

Q Mr. Garza, who got these groceries when you signed these tickets?

A I took them to the ranch on his orders.

Q Whose ranch?

A Borjas Ranch.

Q For Judge Carrillo's benefit?

A Yes, sir.

A Did you take any of these groceries home to your house and eat them?

A Not to my house.

Q Do you also buy your own groceries at the Cash Store?

A For the house?

Q For his house.

A Yes, sir. Yes, I buy them there.

Q Who pays for your groceries?

A I pay.

Q Does the County welfare buy your groceries for you?

A Tell them that I personally buy them.

Q Has the County welfare ever paid for any of your groceries?

A Never, never.

Q Now, Mr. Garza, did the County pay for \$20.00 worth of groceries for you on May the 13th, 1974?

A No.

Q How about on May the 9th, 1974?

A Neither.

Q How about March the 3rd in 1974, \$35.00 worth?

A No.

Q How about January the 8th, \$35.00 worth, last year, '74?

A No.

Q January the 22nd, 1974?

A No.

Q They never have, have they Mr. Garza?

A Never has the County paid for any of them.

Q Not \$710.00 worth, Mr. Garza?

A The County has not paid for one half of one cents worth of food.

Q How about for your wife, Rosa, Mr. Garza, does she bring home groceries that the County has paid for?

A Never.

Q Do you know any other Rosa Garza in Benavides?

A You asked me that yesterday, there is one other.

Q And who is she?

A She is the daughter of Lasaro Garza.

Q Does she live in Benavides?

A She lived for a while in Benavides, I don't know where she is now.

Q When is the last time you saw her?

A I have not seen her, but I know there is one in Benavides belonging to Lasaro Garza.

Q Who told you that, Mr. Garza?

A My wife.

Q Are there any other Pat Garzas or Patricio Garzas in Benavides?

A I know of no other Patricio Garza in Benavides.

Q Who does the cooking at the Borjas Ranch?

A Who cooks? I cook.

Q Those groceries that you brought out there for the Judge, did you cook them or see them cooked?

A When I took them, I cooked them. When someone else took them, he or she cooked them.

Q Did Tomas Elizondo bring groceries out there?

A No, sir.

Q Roberto Elizondo?

A I can't tell you about Roberto.

Q Ask him if either of them ever brought groceries to the ranch to him to cook?

A Roberto Elizondo. He has brought them.

Q Did you ever go to the Cash Store with Roberto and Tomas?

A I don't remember either one of them having done so.

Q Did you ever go to the Cash Store with the Judge?

A Once again?

Q Did you go to the Cash -- did you ever go to the Cash Store with O. P. Carrillo?

A With him?

Q Yes.

A With him, yes I have been with him.

Q Did he sign the tickets like you did?

A Who, he?

Q Yes.

A Yes, he did.

Q Did he ever pay with cash?

A I don't remember about that.

Q He usually just signed the tickets just like you did.

A Those tickets, yes.

Q Did you go to the store with the Judge and see him sign tickets like that last year?

A No.

Q When was the last time?

A Year before last.

Q Ask him about -- how about the year before that?

A I don't remember him having taken out food.

Q Do you owe the Cash Store any money now?

A I? No.

Q I know what that means, but we have to put it in the record. When did you pay the Cash Store last?

A Last month -- no, last month.

Q Do you pay them every month?

A Every one.

Q When you get paid, you pay the Cash Store?

A I pay every one. I don't owe one cent.

Q How much money do you make?

A Once again?

Q How much money does he make a month from the Judge?

A Two hundred and twenty-five pesos.

Q Ask him how much he made when he worked for the County?

A The same thing.

Q Mr. Garza, are you aware that your name appears twenty-six times as having received free groceries under Duval County's welfare program?

MR. MITCHELL: We object, it's argumentative and speculative.

MR. DOYLE: It is not speculative -- Mr. President, Members of the Court, it is not argumentative, it is not speculative, it merely means that I have counted the number of times his name appears on the exhibits that I introduced yesterday. Now, I

will challenge my opposing counsel to count them with me if he would like to go over them one by one.

MR. MITCHELL: What we are going to object on is that he's invading the province of this Court. That's the ultimate issue to be tried, we submit, Mr. President. He hasn't identified those as being his own. We again object because it would be speculative and assumes a disputed fact.

THE PRESIDENT: Mr. Mitchell, you will have a right to cross-examine at the proper time.

Objection overruled.

Q (By Mr. Doyle): Are you aware, Mr. Garza, that your wife's name appears twenty-nine times as having received free groceries from the County Welfare program?

MR. MITCHELL: Same objection, Mr. President.

THE PRESIDENT: Overruled.

A No.

Q Are you aware, Mr. Garza, that the records that I just asked you about were prepared and delivered by Ramiro Carrillo to the proprietors of the Cash Store?

A I don't know what he's saying.

MR. DOYLE: Pass the witness.

CROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q Mr. Garza, may I ask you some questions, please? You have, I believe, during the time that you've been working for Judge Carrillo, you have been paid by Judge Carrillo \$225.00 a month?

A \$225.00, yes.

Q By Judge Carrillo?

A By Judge Carrillo.

Q And that when you buy groceries, you pay for those personally out of the money that you have, is that correct?

A With my money.

Q Now, back in 1972, Mr. Garza, as per some of those -- let me strike that and make the interpreter's job a little easier. Back in '72, when you bought groceries for Judge Carrillo, do you know whether he paid for those groceries too, just like -- do you know whether or not he paid for those groceries, Mr. Garza?

A I don't remember.

Q How many members do you have in your family, Mr. Garza, who purchase groceries for you besides yourself and your wife?

A Only my wife.

MR. MITCHELL: No further questions. Thank you, Mr. Garza.

MR. DOYLE: We have no other questions.

THE PRESIDENT: Does either side intend to recall Mr. Garza?

MR. DOYLE: We will call Mr. Garza back, Mr. President, but it will be -- I guess I will just have to handle the problem.

THE PRESIDENT: Mr. Garza, for today you are excused -- Mr. Garza, at this point in the trial under the Rules of this trial, it is my duty to ask you questions that members of the Court, members of the Senate wish to have answered. This is a question from Senator Clower: What are the dates on the tickets identified?

THE WITNESS: Which tickets?

THE PRESIDENT: The receipts that Mr. Doyle handed you and you identified as your signature.

THE WITNESS: I don't know how to read so --

MR. DOYLE: Might I reply, I didn't identify the tickets by date since I identified them by number only. If the Senator in question feels that he needs the information, we can just have the Clerk pick them up and take the dates off of the ones

MR. MITCHELL: We are talking about 8/72 and 8/24/72 for the month of August. Is it '72, as I recall?

MR. DOYLE: All of the tickets that were in that stack were from August of '72, but the specific tickets that he identified, I didn't pay any attention to the dates.

MR. MITCHELL: If my entries are correct, H-3 comes from one month in 1972, am I correct?

MR. DOYLE: That's correct.

MR. MITCHELL: So it would have to be within the month of August 1972 -- not before or after.

THE PRESIDENT: Senator Clower, is that answer satisfactory to you?

SENATOR CLOWER: Yes.

THE PRESIDENT: Mr. Garza, who paid for the groceries delivered -- purchased by the tickets?

THE WITNESS: I don't know.

THE PRESIDENT: Mr. Garza, this is a question from Senator Mauzy.

THE WITNESS: I say, no, I did not purchase a single cent from those receipts and foods.

THE PRESIDENT: Well, the question was, who paid the groceries that were purchased by the tickets?

THE WITNESS: Which food?

THE PRESIDENT: The groceries that were identified on the tickets that Mr. Garza signed.

THE WITNESS: I don't know.

THE PRESIDENT: Mr. Garza, do you know of your own personal knowledge if Judge O. P. Carrillo conspired with others to have Duval County pay for groceries to which he was not entitled for his personal use and benefit?

THE WITNESS: I don't know.

THE PRESIDENT: This is a question from Senator Longoria: "Mr. Garza, do you know of your own knowledge that Judge Carrillo did not pay for groceries which he or you got at the Cash Grocery and which were used at the Borjas Ranch?"

THE WITNESS: I don't know.

THE PRESIDENT: This is a question from Senator Lombardino. "Mr. Garza, are you related to Judge Carrillo?"

THE WITNESS: No.

THE PRESIDENT: "Are you related to George or Archie Parr?"

THE WITNESS: No.

THE PRESIDENT: Are you related to Representative Terry Canales?

THE WITNESS: No.

THE PRESIDENT: Mr. Garza, do you still work for Mr. Carrillo?

THE WITNESS: I still am.

THE PRESIDENT: Mr. Garza, that concludes the questions for you at this time. And for --

MR. DOYLE: Mr. President, if I might, by way of redirect, ask some questions which will clear up what obviously is confused in the minds of some of the Members of the Court.

THE PRESIDENT: Mr. Doyle.

THE WITNESS: What did he say?

THE PRESIDENT: Mr. Doyle wants to ask you some more questions.

THE WITNESS: Fine.

REDIRECT EXAMINATION

(Questions by Mr. Doyle:)

Q Before you went to work for the Judge full-time, did you work part-time on his ranch?

A What did he say? When I worked for the County, and tell him this, I worked five days a week. And Friday at about 5:00 p.m., I would go or be picked up and work Saturday and Sunday.

Q For O. P. Carrillo?

A (Witness nodded head affirmatively.)

Q For years, is that correct?

A No.

Q For how long?

A I don't remember.

THE PRESIDENT: Senator from El Paso?

SENATOR SANTIESTEBAN: That just really came out all wrong. The question was whether or not this gentleman worked for the County. The answer was, "Yes, I worked for the County all week long, I worked for the county. And at 5:00 o'clock, then, they picked me up and then I go work for Judge Carrillo," meaning the weekend. Right?

THE PRESIDENT: That was the way the Chair understood it, Senator.

Q Okay, Mr. Garza. Did you work weekends in 1974 last year?

A Yes, I worked.

Q The year before that?

A Also.

Q The year before that?

A No.

Q Ask him if he's real sure about that last answer.

A I am very sure because it will now be one year and eight months that I worked --

THE INTERPRETER: And I didn't catch the last part of it.

Q I'm not asking about your full-time work. I'm asking about weekends.

A With whom did he tell you that I was working?

Q I want to know if he worked weekends for several years back.

A No.

Q Ask him if he's absolutely sure.

MR. MITCHELL: We're going to object. Just a minute. The witness has answered it three times, Mr. President, that I can count.

THE PRESIDENT: Objection sustained.

Q When you worked weekends, Mr. Garza, would you pick up groceries on those occasions?

A No.

Q Mr. Garza, I'm going to show you some of these tickets from House Exhibit 3. On the bottom of H-3(2), you signed this, is that correct?

A Tell him that, yes, it is correct.

Q Who wrote "O. P. Carrillo" on the top?

A The guy in the store.

Q Ask him if that's true with respect to all the tickets. Just ask him if he ever wrote O. P. Carrillo's name on the top of the ticket.

A No.

Q Always the man in the store?

A It is so.

THE PRESIDENT: Mr. Doyle, have you passed?

MR. DOYLE: Yes. Pass the witness.

RECROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q Mr. Interpreter, make it clear to the witness I don't intend to embarrass them, but ask him -- as a matter of fact he can't either read or write in the English language -- is that correct?

A Yes. Only to put my name.

MR. MITCHELL: I have no further questions of the witness, Mr. President.

THE PRESIDENT: A question from Senator Traeger. "When you worked on the ranch for Judge Carrillo, did he furnish you food?"

THE WITNESS: He did, yes.

THE PRESIDENT: Question from Senator Clower. "Mr. Garza, how much was your salary when you worked on weekends for Judge Carrillo?"

MR. DOYLE: Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President, Senator Traeger's question is anything but clear. I am not sure whether Senator Traeger is inquiring whether he furnished the man's food day in and day out for his home or whether he fed him on the day he did work at the ranch. And I think that's very significant for the Court to know the difference.

SENATOR TRAEGER: May I respond to that question, Mr. President? The question was asked, when he worked for Judge Carrillo, "did he furnish your food?" That means, "While you were on the job and when you were working there, furnished food on the weekends of wherever you were working."

MR. MITCHELL: And he's testified.

THE PRESIDENT: Senator, Mr. Doyle's point is well taken. The question is ambiguously worded and I will take the liberty of rewording the question to be more specific. When you worked on the ranch for Judge Carrillo, did he furnish your food on the days that you worked for him?

THE WITNESS: Yes.

THE PRESIDENT: Did he furnish your food on days that you did not work for him?

THE WITNESS: No.

MR. DOYLE: Thank you, Mr. President.

THE PRESIDENT: A question from Senator Clower. "How much was your salary when you worked on weekends for Judge Carrillo?"

THE WITNESS: The salary was twelve pesos, ten pesos, six pesos.

THE PRESIDENT: Did Judge Carrillo personally pay you for your weekend work?

THE WITNESS: From Friday to Sunday?

THE PRESIDENT: Yes.

THE WITNESS: Yes, he paid for it.

THE PRESIDENT: Are there further questions of Mr. Garza?

MR. DOYLE: No, sir.

MR. MITCHELL: No further questions, Mr. President.

THE PRESIDENT: Mr. Garza, the Court thanks you for your testimony. You're excused for the day. It is possible, however, that you may be recalled at a later date. In the intervening time, you are not to discuss your testimony or proceedings of this Court with any person other than the lawyers for the two parties.

THE WITNESS: I do not understand that.

THE PRESIDENT: Make him understand.

Whereupon, the interpreter and witness conversed.

THE WITNESS: Yes.

THE PRESIDENT: Do you understand, Mr. Garza, that if you violate those instructions, you may be punished for contempt?

THE WITNESS: Yes, I do.

THE PRESIDENT: Thank you very much, Mr. Garza. You are excused.

Mr. Doyle, call your next witness.

MR. DOYLE: Our next witness will be Rosa Chapa.

THE PRESIDENT: Would you raise your right hand, please?

"You do solemnly swear or affirm that the evidence you give upon this hearing by the Senate of Texas of impeachment charges against O. P. Carrillo shall be the truth, the whole truth, and nothing but the truth, so help you God."

ROSA CHAPA

said witness having been first duly sworn and having been called on behalf of the Petitioner, testified as follows, to wit:

DIRECT EXAMINATION

(Questions by Ms. Levatino:)

Q Would you state your name, please?

A Rosa Chapa?

Q Where do you live, Ms. Chapa?

A Benavides, Texas.

Q How long have you lived there?

A Ten years.

Q Have you lived there continuously for the last ten years?

A No. I moved in 1970 from Benavides to Cotulla.

Q When did you return to Benavides?

A 1973.

Q 1973. Are you married?

A Yes, ma'am.

Q And who is your husband?

A Tete Chapa.

Q Do you work in Benavides?

A No, ma'am.

Q Do you buy groceries at the Cash Store in Benavides?

A Yes, ma'am.

Q Do you charge those groceries?

A Yes, ma'am.

Q Do you pay for those groceries at the end of the month?

A Yes, ma'am.

Q Have you ever received groceries from the Cash Store for which you did not pay?

A Yes.

Q When was that?

A That was in 1967.

Q How many times did you receive those groceries?

A Three or four times.

Q Since 1967, have you ever received groceries from the Cash Store that you did not pay for?

A No, ma'am.

Q Have you ever received groceries that your husband did not pay for?

MR. MITCHELL: Wait a minute. That would be --

A No, ma'am.

MR. MITCHELL: Hold on. We move to strike that. It would be hearsay what her husband did or didn't do, Mr. President.

THE PRESIDENT: Ms. Levatino?

MS. LEVATINO: I asked her what she received, not what her husband received.

MR. MITCHELL: I didn't object to that, Counsel. It is when you asked what her husband received I objected, and I moved to strike on grounds of hearsay.

MS. LEVATINO: I didn't ask what her husband received. I'll rephrase the question.

Q Have you ever received groceries that you did not pay for?

A No.

Q Have you ever received groceries since 1967 that you did not pay for?

A No.

Q Do you know if you ever received groceries that either you or your husband did not pay for?

MR. MITCHELL: Now, wait a minute. To the extent it would be -- as regards the question of her husband would be hearsay. We object. She can answer as to her own personal knowledge, Mr. President. But what her husband did or didn't do would be hearsay as to this witness, we submit.

MS. LEVATINO: I withdraw that question.

Q Are you aware that there have been introduced in evidence a number of Exhibits that have your name on them as having received welfare groceries?

MR. MITCHELL: Now, we object to the form of that question. It violates the basic Rule of placing the witness under the rule, and it's improper examination, and we object.

Q Mrs. Chapa, have I --

THE PRESIDENT: Objection overruled.

Q Would you answer the question?

A Would you repeat it, again, please?

Q Are you aware that there have been introduced into evidence a number of Exhibits on which your name appears that show you received groceries that you did not pay for?

A (No response.)

Q Did I show you some Exhibits that have your name on them?

A Yes, ma'am.

Q That showed that you received groceries that you did not pay for?

A Yes, ma'am.

Q Okay. Did you receive groceries that you did not pay for on October -- in October of 1972?

A No.

Q In December of 1971?

A No.

Q In May of 1971?

A No.

Q In March of 1971?

A No.

Q In February of 1971?

A No.

Q In January of 1971?

A No.

Q In December of 1970?

A No.

Q In June of 1970?

A No.

Q In October of 1972?

A No.

Q Do you know of any other Rosa Chapa that lives in Benavides?

A No, ma'am.

MS. LEVATINO: Pass the witness.

CROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q You did not receive groceries that you did not pay for in May of '71, January of '71, December of '70 and June of '70, in October of '72, is that your answer?

A That's right.

MR. MITCHELL: No further questions.

MS. LEVATINO: No further questions.

THE PRESIDENT: Mrs. Chapa, this is a question -- at this point in the proceedings, it is my duty to ask you questions raised that Members of the Senate desire to have asked. This is a question from Senator Mauzy. "Ms. Chapa, do you know of your own personal knowledge if Judge O. P. Carrillo conspired with others to have Duval County pay for groceries to which he was not entitled for his personal use and benefit?"

THE WITNESS: Yes.

THE PRESIDENT: Please tell me the name or the names of the person or persons with whom he conspired.

THE WITNESS: I don't know.

THE PRESIDENT: You don't know the name or names of any person with whom he conspired? Would you answer in the mike?

THE WITNESS: No.

THE PRESIDENT: Do you know if such a conspiracy was oral or was it in writing?

THE WITNESS: Writing.

THE PRESIDENT: In writing. That's your answer?
Can you tell me when this conspiracy occurred?

THE WITNESS: No, I don't remember.

THE PRESIDENT: Can you tell me the value of the groceries which Judge O. P. Carrillo received for his personal use and benefit?

THE WITNESS: \$20.00.

THE PRESIDENT: \$20.00. Can you tell me when he received the groceries?

THE WITNESS: In '71, '72.

THE PRESIDENT: Can you be more specific than that?

THE WITNESS: The date? December the 3rd -- no, just a minute -- March the 10th.

THE PRESIDENT: Of which year?

THE WITNESS: I don't remember.

THE PRESIDENT: Can you tell the Court where he received the groceries?

THE WITNESS: Cash Store, I guess.

THE PRESIDENT: Can you tell the Court again, based on your personal knowledge, what he did with those groceries?

THE WITNESS: Well, I guess he was using my name and got them for himself, I don't know.

THE PRESIDENT: This is a question from Senator Lombardino. Are you related to Judge O. P. Carrillo?

THE WITNESS: No.

THE PRESIDENT: Are you related to Archie Parr or George Parr?

THE WITNESS: No, sir.

THE PRESIDENT: Are you related to Representative Terry Canales?

THE WITNESS: No, sir.

THE PRESIDENT: Mrs. Chapa, a few moments ago in answer to a question, you said you believed a conspiracy between Judge Carrillo and others was in writing. When did you see the writing that contained this conspiracy?

THE WITNESS: That was in '67 when I got the groceries.

THE PRESIDENT: Where did you see the writing?

THE WITNESS: In a piece of paper, I guess.

THE PRESIDENT: Was the piece of paper -- when you saw it -- was it in the store or was it somewhere else? Where was the piece of paper?

THE WITNESS: Well, my husband brought it to me and then I took it to the store to get the groceries.

THE PRESIDENT: All right. What exactly did your husband bring to you that you took to the store to get the groceries?

THE WITNESS: A slip of paper.

THE PRESIDENT: What did the piece of paper say?

THE WITNESS: Give Mrs. Chapa \$20.00 or something like that of groceries, and then it was signed on the bottom O. P. Carrillo.

THE PRESIDENT: Same question sent up by Senator Clower and Senator Longoria. Mrs. Chapa, do you know what a conspiracy is?

THE WITNESS: What they're doing -- something that they are doing.

THE PRESIDENT: Who told you that Judge Carrillo conspired with anybody, that is, agreed with anybody or plotted with anybody to obtain groceries for him -- for his own use and benefit that were paid for by Duval County?

THE WITNESS: Who told me?

THE PRESIDENT: Yes.

THE WITNESS: I just found out, everybody knows.

THE PRESIDENT: If you found out through, some person or perhaps more than one person must have told you.

THE WITNESS: If I name everybody that told me -- my husband.

THE PRESIDENT: How do you know that Judge Carrillo used your name to obtain these groceries?

THE WITNESS: Because it's there and I didn't get the groceries.

THE PRESIDENT: Mrs. Chapa, I'm going to show you an Exhibit dated House -- labeled H-1(1), which consists of a voucher from Duval County Welfare Department dated June 3rd, 1970, and a list on which your name appears along with, I believe, six other names. Could you tell me if that's the slip of paper that you were referring to?

THE WITNESS: No, not this. It's just a plain paper.

THE PRESIDENT: Was it a piece of paper that looked like this?

THE WITNESS: It was just a piece of paper, typing paper or whatever it was, you know, a long slip. It didn't have anything on it, just in writing.

THE PRESIDENT: Was it a strip of yellow paper?

THE WITNESS: Yellow or white -- I don't remember -- probably yellow.

THE PRESIDENT: Thank you very much.
Further questions of Mrs. Chapa?

MR. MITCHELL: Yes, I would like to ask her some, if I might, Mr. President.

THE PRESIDENT: Mr. Mitchell.

RECROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q You stated in 1967, I believe, you got some groceries on a piece of paper that

MS. LEVATINO: Mr. President?

THE PRESIDENT: Ms. Levatino.

MS. LEVATINO: I believe it would be our turn to take the witness on questions before Mr. Mitchell after questions from the Senate. It's our witness --

THE PRESIDENT: I believe that's -- this will be your first redirect. Is that correct?

MS. LEVATINO: (Nodding head affirmatively.)

THE PRESIDENT: Ms. Levatino.

REDIRECT EXAMINATION

(Questions by Ms. Levatino:)

Q Mrs. Chapa, I may not have heard your answer before, do you know what the word conspiracy means?

A When you're doing something you're not supposed to, huh?

Q No, do you know what it means? Just answer my question. Are you sure what it means?

A No.

Q Okay. When you said you saw a writing -- a conspiracy in writing -- back in 1967 when you did get some welfare groceries, did someone bring you -- did your husband bring you a slip similar to a slip like this?

A Something like that.

Q Okay. What I'm showing you is marked H-1(2), and would have your name on it, "Please give ..." your name, so many "dollars worth of groceries." Is this the slip you're talking about?

A (Nodding head affirmatively.)

MR. MITCHELL: Well, she's testified she didn't recognize it, she said something like that, Counselor. I know you're straining to get that witness whipped back around, but I'm going to object to leading her.

Q Pardon me. Was the slip similar to this?

A Yes.

Q And what did you do with that slip?

A I took it to the Cash Store and gave it to the man there and got some groceries.

Q But this is the kind of writing you were referring to a little while ago?

A Yes, ma'am.

MS. LEVATINO: No further questions.

REXCROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q Now I believe, Mrs. Chapa, we have concluded that you don't really know what a conspiracy is. Is that correct?

A Yes, sir.

Q Did you have any discussion with the lady that's been questioning you about what it was? Did she tell you what it was or did anybody over there on that other side? Did they tell you what it was or tell you to testify what it was if I asked you what it was or somebody in the Senate? Did anybody tell you what to testify to if asked?

A What to testify to?

Q Yes, ma'am. Did anybody tell you, so that the record is clear now, that if anybody asked you out here what a conspiracy was, what your answer would be?

A I don't know what that word means.

Q All right. But you did testify that you knew personally that Judge O. P. Carrillo entered into a conspiracy, not knowing what that word meant, didn't you?

A I don't know what it means.

Q You previously testified from the stand under oath that you knew personally that Judge Carrillo entered a conspiracy, though, did you not, Mrs. Chapa, not knowing what the word meant?

A Maybe you used it another way and I knew what it means.

Q Mrs. Chapa, do you understand English?

A Not very much -- a little bit.

Q Did you understand the oath that was administered to you by the President?

A Yes.

Q Do you understand what that oath means?

A Yes.

Q And you testified earlier -- no less than thirty minutes ago -- what a conspiracy -- that Judge Carrillo, just sitting behind me, entered into a conspiracy and you didn't even know what the word meant, isn't that correct?

A All I know is he used my name and I didn't get those groceries. That's all I know.

Q I didn't ask you that. One more time I will ask you. You were asked the question whether or not you personally knew he entered a conspiracy and you testified under oath that he did and you didn't even know what conspiracy meant, isn't that what you just got through testifying to?

A Yes.

Q And you would go anywhere, wouldn't you, here, there, or yon because of your dislike and hate for this man, to put any kind of testimony on?

A I don't hate him.

Q You don't hate him?

A No.

Q But your husband does, doesn't he?

A I don't know.

Q Isn't it a matter of fact that your husband and Mr. Cleofas Gonzalez and Mr. Rudolfo Chapa -- you all have got a gang going where you follow him around putting it on him anyplace that anybody will listen to you?

A A what? A gang?

Q And this is the same O. P. Carrillo that paid your doctor bills when you had your first baby and second baby, isn't it?

A No, not the second baby. The first baby.

Q And when you had time to get that second baby and had to have a Caesarean operation and your doctor wouldn't perform a Caesarean because you didn't have the money, he made the arrangements for you to have the operation?

A He didn't pay for it, because we still owe the doctor and the hospital.

Q That wasn't my question. I said you couldn't get a doctor to perform the operation and this man got a doctor, didn't he, Mrs. Chapa?

A Yes, he got the doctor.

Q Well, I want to communicate to you his thanks.

MR. MITCHELL: No further questions.

THE PRESIDENT: Mrs. Chapa, a question from Senator Clower: "Do you know of your own personal knowledge who put your name on the Duval County Welfare Department grocery list?"

THE WITNESS: Who did it? I don't know.

THE PRESIDENT: Who was the County Judge of Duval County at that time?

MS. LEVATINO: Mr. President, at what time?

THE PRESIDENT: At the time that her name was placed on this list.

MS. LEVATINO: Mr. President, the exhibits show that that's been going on since 1970 into 1974 and the County Judge has changed since then.

MR. MITCHELL: What's going on since 1974? I don't see anything here but a written exhibit in August, 1972, Counsel, August the 19th and August 24, 1972, Counselor.

MS. LEVATINO: Pardon me, I stand corrected. It is October of 1972.

MR. MITCHELL: That's correct. And I want you to tell the Senate body that you misstated the record when you said it had been going on for four years. That's not correct.

THE PRESIDENT: Who was the County Judge in Duval County in 1972, Mrs. Chapa?

MR. MITCHELL: Archie Parr.

THE WITNESS: I don't know, I wasn't there in 1972. I wasn't living there.

THE PRESIDENT: Any further questions for Mrs. Chapa?

MS. LEVATINO: No further questions.

THE PRESIDENT: Does either side intend to recall Mrs. Chapa at a later time?

MR. MITCHELL: I can say one thing for sure, Mr. President, I don't want no more of her.

THE WITNESS: I don't want anymore of you either.

MS. LEVATINO: We do not intend to recall --

THE PRESIDENT: Thank you, very much, Mrs. Chapa. You're excused at this time.

THE PRESIDENT: Next witness?

MR. DOYLE: Mr. President and members of the Court, in fairness to my client, I must say at this point, if I am looking forward to a three week recess or six week recess, whatever November 17th is, there is no way I can put on the next witness and anticipate finishing with that witness at anything like a normal quitting time. If the Court will indulge me for about ten minutes and let me go talk to my witness, I will see if there is anyway I can shorten this testimony up in order to get it in this afternoon in some reasonable manner. I couldn't do it and allow time for cross examination. If they get into cross examination, there is obviously not going to be enough time for me to have my witness on redirect. I would respectfully request a ten minute break, at least a ten minute break at this time.

THE PRESIDENT: Is there objection to granting Mr. Doyle's request for a ten minute recess? Chair hears none. Court is recessed for ten minutes.

Accordingly, the Senate, sitting as a Court of Impeachment, at 3:35 o'clock p.m. took recess until 3:53 o'clock p.m. today.

AFTER RECESS

The President called the Senate to order at 3:53 o'clock p.m. today.

THE PRESIDENT: Court will come to order.
Mr. Doyle.

MR. DOYLE: Mr. President, and members of the Senate, in fairness to my client and in fairness to the Prosecution of this lawsuit, the next witness that I have scheduled to go on will take some time. His testimony is extremely important, by far the most important so far in this Article. In view of the Senate's action this morning, I think it's not proper to ask me to ask my client to go ahead and put this witness on at this time. If the Senate is indeed going to shut down and come back here in November, I would ask permission of the Court not to have to put this witness on at this time and to be allowed to put this witness on when we come back.

SENATOR HARRIS: Mr. President?

THE PRESIDENT: The Senator from Dallas, Senator Harris.

SENATOR HARRIS: If I might respond to that, it's his client and his lawsuit, he can handle his witnesses anyway he wants to handle them, that's my judgment.

MR. DOYLE: Well, Senator, I'm not suggesting that it's not. I'm just suggesting that in the orderly presentation of this lawsuit or any other lawsuit, there are certain things that you try to do to accommodate the Court and to accommodate the witnesses and everybody concerned. And it seems to me that at 4:00 o'clock in the afternoon of the day when I am looking forward to a six week delay, it would be better for me not to proceed with this next witness at this time, and I am asking the Court's permission.

SENATOR HARRIS: I don't think you need our permission. I am agreeing with you.

SENATOR JONES: Mr. President?

THE PRESIDENT: Senator from Taylor.

SENATOR JONES: Is Counsel's request that we adjourn at this time or -- I assume that's what he's requesting, if we are going to adjourn, let's do it now before he puts on his next witness?

MR. DOYLE: Yes, sir. That's essentially what I said. If we are not going to work for six more weeks, I would prefer not to start with the next witness at 4:00 o'clock in the afternoon. It would make for a much more orderly lawsuit if I could put the next witness on when we came back to work on November the 17th. That's what I am asking.

SENATOR SCHWARTZ: Mr. President?

THE PRESIDENT: Senator from Galveston.

SENATOR SCHWARTZ: Mr. Doyle, my question is, are you prepared at this time to consume some time in the introduction of documentary evidence? When we began the other day, you were suggesting that at some time, between you and Counsel opposing the Impeachment Articles, could be well spent in the marking and introduction of Exhibits or by some stipulation.

MR. DOYLE: We tried that this morning, and I showed Counsel everything I had for today. And the first thing out of the box, he introduced evidence which he had not shown me this morning. Obviously, he doesn't intend to abide by it.

SENATOR SCHWARTZ: But in the event -- is there anything you can do to enlighten this record or enlighten us about Exhibits which would not prejudice your case in any way, but just simply get some things marked and done while we are here?

MR. DOYLE: I see no point in doing that, Senator. Why should I bare my case to my opponent --

SENATOR MEIER: Raise a point of order.

THE PRESIDENT: State your point of order.

SENATOR MEIER: Rule 12 of the rules that have been adopted by this Court states that no member of the Court may discuss or comment on any matter relating to the merits of the proceedings before the Court except for other members of the Court and Presiding Officers of the Court. And the Attorney for the Board of Managers is not a Member of the Court. And I raise a point of order that this exchange between him and Senator Schwartz is out of order.

MR. DOYLE: I apologize to the Court.

SENATOR SCHWARTZ: Mr. President, that's not the way I read the rule with all due deference to Senator Meier. The question of Counsel as to his procedure or his ability to proceed is not improper. Now, at best, I might have to put that question in writing which I will be happy to do. I am simply asking that whenever we return, that what we do takes place in a little more orderly fashion in the terms of introduction of evidence and documentation than it has occurred since we have been

here.

THE PRESIDENT: Senator Meier, the Chair is going to hold that Rule 12 certainly does not apply to discussion between Members of the Court and Counsel for either party in open Court. The Rule about submitting questions in writing would be the appropriate rule under which to raise a point of order. Point of order respectfully overruled. Mr. Doyle.

MR. DOYLE: Mr. President, I certainly didn't mean to indicate to the Court or to any Member of the Court that I am not ready to proceed with this trial at this time. I am fully and totally ready, I can begin right now, and keep on putting on witnesses as long as you gentlemen are willing to sit here and listen to them, today, tomorrow, the day after.

SENATOR HARRIS: Point of inquiry.

THE PRESIDENT: State your inquiry, Senator.

SENATOR HARRIS: In view of Mr. Doyle's position on his witnesses and items, I totally subscribe to the problem and his attitude about how he wants to handle it, it's his business. And we did pass a motion this morning in the future as to when we recessed at the end of this day, that now is a good time to honor that motion that was passed by a vote of fifteen to thirteen.

THE PRESIDENT: The Chair is going to recognize the Senator from Galveston at this time.

MR. DOYLE: Mr. President, prior to the time that the Court adjourns, I would like to ask the indulgence of the Court in a problem that you have in a lawsuit of this magnitude, would you please recognize me to ask you some questions and get some direction from the Court at a time just prior to the time you adjourn?

THE PRESIDENT: Chair recognizes Mr. Doyle for that purpose.

MR. DOYLE: Mr. President and Members of the Court, I have caused to be issued subpoenas to some twenty or maybe thirty people whose lives have been disrupted, and who are either here, on their way, or making preparations to come here, and who have hired people to handle their businesses for them. I had, as you are perfectly aware, assumed a responsibility of seeing to it that the State of Texas pays those people the expenses for which they are justly entitled as witnesses herein, and I look forward to that same problem November the 17th. Now, in a civil case, as the attorney Members of this Court know, when you have a problem that is peculiar to a lawsuit, you obtain what is called a special setting, at which time you know when you come back that you are going to get to try your lawsuit. Now, in view of the problems that I have had here today and in view of the terrible imposition that we have made upon the lives of these people who are witnesses in this case, not always by choice, in fact, hardly ever by choice, could you please give me some direction about what I should do come November the 17th? Now, as I understand the Constitution and the laws of the State of Texas, when I come back on the 17th, I am assuming I am going to trial, but I assumed that Monday. Could you please, if there is anyway you can think of, let me know whether I should have these people back up here ready to go to trial again, or should I come back at that time and await the action of the Senate before I issue those subpoenas and incur that expense for the State of Texas?

THE PRESIDENT: Mr. Doyle has asked a very proper question and the Chair invites any of the fifteen members who voted to adjourn to answer his question.

SENATOR MAUZY: Mr. President.

THE PRESIDENT: Senator from Dallas, Senator Mauzy?

SENATOR MAUZY: Mr. Doyle, I suggest to you you have one day's worth of live testimony. And I would suggest to you further that you talk to those witnesses before you put them on the stand, because I think that would speed things along considerably.

MR. DOYLE: And I take it, Mr. Mauzy, or Senator Mauzy, that you're suggesting I have only witnesses for the 17th and make no arrangements for witnesses for the 18th?

SENATOR MAUZY: Mr. Doyle, what I said was -- your question was what should you have here available and ready on the morning of the 17th. I would suggest you have at least one day's worth of live testimony and that you talk to them in advance so you can get some idea as to how long they are going to take to properly develop whatever their evidence is. And like in any other lawsuit, you have your other witnesses standing by.

MR. DOYLE: You would go ahead and issue the 25 or so subpoenas that would be necessary to keep these people available to me?

SENATOR MAUZY: Mr. Doyle, as I understand compulsory process, that's necessary to compel the attendance of a witness.

MR. DOYLE: Can I take that, Mr. President, to be the suggestion of the Court on that issue?

THE PRESIDENT: I am not advised, Mr. Doyle.

SENATOR SCHWARTZ: -Mr. President, may I add, since Mr. Doyle is asking the question -- we've been asked, Mr. Doyle, to resubmit the motion of postponement for a date of the 18th as opposed to the 17th. It was my error. I believed that the 14th was the sentencing date. As I said on the floor of this Senate, I communicated with no person, about the date or the time or any place else, except the Members of this Impeachment Court. I didn't -- I was mistaken. That sentencing date is the 17th and not 14th. The Chair has asked me to resubmit that motion for the 18th, which I intend to do. I would join Senator Mauzy. If I were prepared to go to trial, Senator, and I think we're going to save the State money by what we're doing, and that will come in my motion in a moment, too, but I would suggest you try your lawsuit like we all try lawsuits. You are prepared to try whatever you can do at one time in the first day that you return. And you make other preparations on the contingency that you will be there the next day and the next day and the next day.

MR. DOYLE: Senator, I am not asking for anybody to make suggestions as to how I try the case. I feel competent in that regard. What I'm asking you is if I issue subpoenas necessary to prepare to try the case that week, I can't issue two or three subpoenas, Senator. And I -- if there is not any way that the Court can tell me, then all I'm suggesting is that the Court tell me, "Doyle, do what you think is right." But if there is -- if there is an indication ahead of time that when we come back here after the

delay, then we are not going to proceed at that time, if I could know that in advance, I could save the State several thousand dollars, and I could save the inconvenience to these witnesses, which you just can't measure in dollars, Senator.

SENATOR SCHWARTZ: Mr. Doyle, we are not really here taking a law course in procedure, but do you follow the practice that most lawyers practice, that you get out a subpoena, and then you talk to your witness and say, "Now, we will expect that you will be needed on the 19th of November --"

MR. DOYLE: Yes, sir.

SENATOR SCHWARTZ: "-- and you've been subpoenaed for that day, and you can expect a telephone call from me on the 18th --"

MR. DOYLE: Yes, sir.

SENATOR SCHWARTZ: " -- to tell you whether to be here on the 19th and the 20th?"

MR. DOYLE: Yes, sir. That's exactly the way I do it in almost every District Court that I've ever tried a case in. But this is the first one I've ever tried where ninety-nine percent of the witnesses live a couple or three hundred miles away from here.

SENATOR SCHWARTZ: You don't think you will be able to start them the day before you need them? Isn't that what you intended to do anyhow?

MR. DOYLE: Senator, I have -- certainly have no intention of appearing to argue with you or to take issue with this Court. I merely asked if there was some way that the Court could give me some suggestions as to whether or not I ought to have -- I ought to be prepared to finish this trial when I come back here or not. Now, if the Court cannot do that, that's fine. I'll just take it from there and do as I see fit. If the Court can give me some assistance, I can save the State of Texas dollars and I can save the inconvenience to these witnesses. I certainly don't want any Member of the Court to think that I'm attempting to be disrespectful. I am certainly not.

SENATOR PATMAN: Mr. President.

THE PRESIDENT: Senator from Jackson?

SENATOR PATMAN: Point of Inquiry, Mr. President. I would like to clarify a point on Rule 12. With respect to comments by Members of the Court with others, are we to restrain from expressing an opinion as to the appropriateness of an impeachment process of this type as to its -- and taking issue with the value when considered by the waste, if one judges it to be a waste, of both time and money that apparently is involved in a case like this? Is that inappropriate? Or can we take issue with the idea of impeachment in this day and time for this office without running afoul with that rule?

THE PRESIDENT: Yes, Senator, I think you are entitled to take exception to the impeachment process. Unfortunately, what you're not entitled to take exception to is the fact that the House has passed Articles of Impeachment, and imposed a duty on this Senate, which is now on the point of shirking.

SENATOR PATMAN: Thank you, Mr. President.

THE PRESIDENT: Mr. Doyle, have the Members of the Senate clarified your situation for you?

MR. DOYLE: No, Mr. President. Not in the least. But I'll just -- I'll do whatever I have to do.

THE PRESIDENT: Senator from Galveston for a motion.

SENATOR SCHWARTZ: Mr. President, I first move -- and I think it must be two separate motions. I first move, Mr. President, that the Senate of the State of Texas in any recess of more than 24 hours during conduct of this impeachment proceeding as a body waive any entitlement to any per diem for the days not actually spent in Austin, Texas, on attendance or in preparation for that impeachment proceeding.

THE PRESIDENT: You've heard the motion of the Senator from Galveston. Is there any discussion? Any objection to the adoption of the motion?

The Chair hears none. Motion prevails.

Senator from Galveston.

SENATOR SCHWARTZ: Mr. President, having been corrected as to the date of the sentencing of the trial in Corpus Christi of Judge O. P. Carrillo, and that date being the 17th, which I previously included in my motion to reconvene this Impeachment Court, and having been asked to do so, and thinking it proper so we don't come here and spend that extra day, I move that this Senate now stand adjourned until 10:00 a.m., November 18, 1975. That's unanimous consent to change my motion from -- I withdraw that. Thank you.

Mr. President, I ask unanimous consent to change that motion from the date of November 17th, 1975 at 10:00 a.m. to November 18th, 1975 at 10:00 a.m.

SENATOR ADAMS: Mr. President.

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: The Senator from Galveston does not need to ask unanimous consent of this body to change a motion to adjourn. This body can decide at any time when it wishes to adjourn. I thought I would just like to advise the Senator of the rules as regards to adjournment.

SENATOR SCHWARTZ: Senator, I've been asked to make this change properly. I feel like we could just come here and recess, which would be an inconvenience to all parties concerned. I would hope that we don't get into a battle over the motion. But I know of no one who has indicated that they are not for that change as such.

THE PRESIDENT: Senator, this is a motion to adjourn. And I think the appropriate motion is the motion that you stated rather than a unanimous consent to change the previous motion. The question before the Senate now before the Court is a motion to adjourn.

SENATOR TRAEGER: Sir, are we moving to adjourn now to the 18th? Has the change been accepted?

THE PRESIDENT: The motion before the Senate is the motion by the Senator from Galveston that the Court stand adjourned until 10:00 a.m. Tuesday, November the 18th.

SENATOR TRAEGER: Thank you, sir.

SENATOR HARRINGTON: Mr. President.

THE PRESIDENT: Senator from Jefferson.

SENATOR HARRINGTON: If this motion is defeated, where do we stand?

THE PRESIDENT: We stand just where we stand on the failure of any other motion to adjourn. The Court is still in session.

SENATOR HARRINGTON: The previous one doesn't stand up, then, does it?

THE PRESIDENT: No, the previous one would still be in effect. However, that's contingent upon a motion to adjourn today. In other words, the motion previously adopted by the Senate set at the conclusion of today's proceedings, the Senate would stand adjourned to November 17th.

SENATOR SCHWARTZ: Mr. President, you know, I'm not really trying to debate my -- I will say to the Court that I don't want to be in the position of defeating my own motion which has prevailed by the will of the majority of the Senate. I don't think that condition exists.

I see the Senator from Jasper smiling. Now, I have been in the Senate a long time, and I'm making this motion, if I make it, on the basis that, number one, I've been advised I was incorrect in a motion that I had made. The Chair has asked me to correct that motion. Now, if there is some member of the Senate that voted to adjourn and does not now feel that we ought to adjourn for that period of time, I'm not aware of it. And I'm making the motion in good faith. Now, if there is someone here who is not in good faith, I'm unaware of it and it would surprise me --

SENATOR MEIER: I just wanted to know if it was all right for me to go ahead and vote "No" like I did awhile ago, two times, and still be acting in good faith.

SENATOR SCHWARTZ: I'm hoping everyone will vote exactly like they did before.

SENATOR MEIER: You asked for unanimous consent and just because I voted "No" twice a while ago and I say that I object if you ask for unanimous consent you will understand that I'm not acting in bad faith, Senator.

SENATOR SCHWARTZ: I would want to tell the Senate that having been here as a member all these years that I'm not even afraid to make the motion. I do have faith and I make the motion.

THE PRESIDENT: Senator from Galveston moves the Senate stand adjourned until 10 a.m., Tuesday, November 18th.

Secretary, call the roll.

Yeas: Clower, Doggett, Farabee, Gammage, Harris, Kothmann, Lombardino, Longoria, Mauzy, McKnight, Moore, Patman, Santiesteban, Schwartz, Traeger and

Williams.

Nays: Adams, Aikin, Braecklein, Brooks, Creighton, Hance, Harrington, Jones, McKinnon, Meier, Mengden, Sherman and Snelson.

Absent-excused: Ogg.

Absent: Andujar.

THE PRESIDENT: There being 16 "Yeas" and 13 "Nays", Court stands adjourned.

Accordingly, the Senate, sitting as a Court of Impeachment, at 4:15 o'clock p.m. adjourned until 10:00 o'clock a.m., Tuesday, November 18, 1975.

TENTH DAY
(Tuesday, November 18, 1975)

The Senate, sitting as a Court of Impeachment, met at 10:00 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present: Adams, Aikin, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, McKinnon, McKnight, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: Mauzy, Meier, Mengden and Moore.

Absent: Andujar.

A quorum was announced present.

Brother Oscar L. James, Pastor, South First Baptist Church, Austin, offered the invocation as follows:

Let us bow. Our heavenly Father this morning we pray for mercy, we pray that you would grant us peace and that you would grant us wisdom. We thank Thee, Our Father, for this life that is ours, it is our prayer today that that life would be lived in accordance to Thy commandments. We pray your wisdom for this body of men and each participant today. And we thank you dear Father for the love that is shed broad in the hearts of your people that are called by your name. We pray as we turn from our wicked ways that we would seek your leadership in all things. Grant us this day the presence of the Lord Jesus Christ in our lives, that we might live accordingly his precious word. We thank Thee, Father, for the forgiveness of sins and it's in the blessed name of Jesus that we ask it all. Amen.

LEAVES OF ABSENCE

Senator Moore was granted leave of absence for today on account of illness on motion of Senator McKnight.

Senator Mengden was granted leave of absence for today on account of illness on motion of Senator Harris.

Senator Mauzy was granted leave of absence for today on account of important business on motion of Senator Clower.

Senator Meier was granted leave of absence for today on account of important business on motion of Senator McKinnon.

THE PRESIDENT: Senator from Smith.

SENATOR McKNIGHT: Mr. President, I move that the Senate postpone further consideration of the matters before us today and that the Senate stand adjourned until January 5, 1976, 10:00 a.m.

THE PRESIDENT: Senator from Smith moves the Senate stand adjourned until 10:00 a.m. on Monday, January the 5th.

Secretary call the roll.

SENATOR CREIGHTON: Wait just a minute, Mr. President. I request permission to speak.

THE PRESIDENT: Senator from Palo Pinto.

SENATOR CREIGHTON: Can I ask why?

SENATOR McKNIGHT: Mr. President -- thank you Senator, I certainly will. The Judicial Qualifications Commission is meeting, taking testimony. I believe it's improper for these two procedures to be going on at the same time. For that reason I move -- make this adjournment motion.

SENATOR LONGORIA: Mr. President, may I ask a question? I want somebody from the Judicial Qualifications Commission around here so we can ask him questions.

SENATOR McKNIGHT: I don't believe they have a part in this proceeding.

SENATOR LONGORIA: I realize that, but I would like to know from that source just what they have been doing, what they're anticipating, how much money is being spent for the proceedings and how far along they are. The Judge or somebody, are they here?

SENATOR McKNIGHT: I'm not advised Senator, but I understand they are moving in this direction, that this procedure is taking place at this time. And I do think it's improper for this Senate to take action while that procedure is in motion.

SENATOR LONGORIA: Would it be proper for us to ask questions to the Counsel for House Managers?

SENATOR McKNIGHT: It's all right with me, Senator.

SENATOR LONGORIA: Well, he's present, could I -- could he yield for a question, the attorney for the House Managers?

THE PRESIDENT: The chair is advised, Senator Longoria, that Judge Meyers, the Master of the Judicial Qualifications Commission proceeding is in Austin and is available for consultation if his input is needed today.

SENATOR LONGORIA: Well, now -- have they recessed? When are they going to pick up the pace again? When is the case set for hearing again, the Judicial Qualifications Commission? I read in the paper where they were supposed to meet sometime this -- right away or something. Is that correct?

SENATOR McKNIGHT: They are meeting now and they are taking testimony now. That's my understanding.

SENATOR LONGORIA: They are taking testimony now?

SENATOR McKNIGHT: Yes, sir.

SENATOR LONGORIA: This moment, right now, they're taking testimony?

SENATOR McKNIGHT: I don't know if at this moment, right now, Senator. I'm not advised. But they are here for that purpose.

SENATOR LONGORIA: I thought they were having the hearings in Corpus Christi.

SENATOR McKNIGHT: I don't know, Senator. But the Master of the Court is here at this time. He is in Austin.

SENATOR CREIGHTON: Will the Senator yield for a question?

THE PRESIDENT: Senator yields for a question from the Senator from Palo Pinto.

SENATOR CREIGHTON: Just suppose the Judge down there sentences Judge Carrillo and invokes a bond, sends him to the penitentiary for a period of time, what are we going to do? Try the Judge in absentia in the impeachment proceeding or what -- what's your plan on that?

SENATOR McKNIGHT: I'm not advised.

SENATOR CREIGHTON: Sir?

SENATOR McKNIGHT: I'm not advised.

SENATOR CREIGHTON: You're not advised?

SENATOR ADAMS: Mr. President, will the Senator yield?

MR. PRESIDENT: This is a non-debatable motion to adjourn. Is there objection to suspending the necessary rules to permit debate on the motion to adjourn?

SENATOR CREIGHTON: Yeah, I object -- oh, no, I withdraw it.

THE PRESIDENT: The chair hears no objection, the rules are suspended. Senator from Jasper.

SENATOR ADAMS: Will the Senator yield?

THE PRESIDENT: Senator yields to the Senator from Jasper.

SENATOR ADAMS: Senator McKnight, I wonder if the Judicial Qualifications Commission knew that we were going to meet up here today?

SENATOR McKNIGHT: Senator, I'm not advised.

SENATOR ADAMS: Reckon it's been in the paper?

SENATOR McKNIGHT: I beg your pardon?

SENATOR ADAMS: Reckon it's been in the paper?

SENATOR McKNIGHT: I suspect it has.

SENATOR ADAMS: They probably knew we were going to meet here today, don't you imagine?

SENATOR McKNIGHT: I'm not advised, Senator.

SENATOR CLOWER: Mr. President.

THE PRESIDENT: Senator from Dallas, Senator Clower.

SENATOR CLOWER: Have either of the parties filed any motions that we would be unaware of, motions for continuance, motions for a speedy trial or anything like that? I have been watching the context of this proceeding in the paper and I have been wondering what the opinion of the parties was.

THE PRESIDENT: Mr. Doyle, do you care to respond?

MR. DOYLE: Frankly, I couldn't hear his question.

THE PRESIDENT: Senator Clower, would you repeat your question?

SENATOR CLOWER: I'm wondering what are the feelings of parties as to whether or not we should proceed to try this morning or whether or not we should have a continuance. I would like to hear from the State, as well as from the Defense.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President, the Board of Managers is ready.

SENATOR LONGORIA: Mr. President, we can't hear back here. Can you speak louder?

MR. DOYLE: The Board of Managers has instructed me to announce that we're ready. I believe Senator Clower made some mention of motions or something, that's the part I couldn't hear. I know of no motions filed by either party, I believe -- if that's what your question was, Senator.

THE PRESIDENT: There are no motions on the President's desk.
Mr. Mitchell.

SENATOR McKNIGHT: Mr. President, in answer to Senator Longoria's question I have been advised that the Judicial Qualifications Committee has been meeting for nine days and has been taking testimony during that time.

SENATOR ADAMS: Mr. President.

THE PRESIDENT: Let's get a response from the Defense to Senator Clower's question. Mr. Mitchell.

MR. MITCHELL: We have no motions pending, Mr. President. We have been in trial since November the 3rd before the Judicial Qualifications Commission up to Friday, at which time we went to trial on a motion for a new trial in the Federal District Court all day Friday and all day yesterday up to 5:30. We announce ready to go to trial today before the Senate, but, of course, stand on whatever the wishes of the Senate are.

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: Have both parties announced ready for trial?

THE PRESIDENT: Both parties have announced ready.

SENATOR ADAMS: Ready to go. Thank you, sir.

SENATOR LONGORIA: Mr. President.

THE PRESIDENT: Senator from Hidalgo.

SENATOR LONGORIA: May I ask a question for Mr. Doyle, the attorney for the House Managers?

THE PRESIDENT: Yes, sir.

SENATOR LONGORIA: Mr. Doyle, have the House Managers told us how they feel about the postponement of this case until January?

MR. DOYLE: Senator, can you hear me? I apologize --

SENATOR LONGORIA: Is the majority of the House Managers for a postponement of this case until January or are they against it?

MR. DOYLE: At a meeting of the Board of Managers this morning, Senator, I was instructed to announce ready for trial. A discussion was held on that subject at a previous time and some rather unfortunate things occurred as a result of that meeting. And I think, perhaps, in view of that I have been instructed to announce ready at this time.

SENATOR LONGORIA: Well, you haven't answered my question.

MR. DOYLE: I'm sorry, Senator, I thought I answered your question.

SENATOR LONGORIA: No, I asked you whether the majority of the House Managers are ready to go to trial or whether the majority of the House Managers want to postpone the case until January.

MR. DOYLE: Well, in answer to that question I said the Board of Managers instructed me to announce ready this morning.

SENATOR LONGORIA: The minority or majority?

MR. DOYLE: The Board is ready, Senator. That was the announcement that I made.

SENATOR HANCE: Mr. President.

THE PRESIDENT: Senator from Lubbock.

SENATOR HANCE: I have a question to the Board of Managers as to the -- I don't think you have really answered what he was trying to get at, Mr. Doyle. His questions seemed to me to be, would you rather go to trial now or would you rather go to trial on January the 5th? And, also, I have a question to Mr. Mitchell, as to the Federal Court proceedings, it's my understanding that there was postponement until next Monday when the Judge will take into consideration your motion for new trial at that time. With that and in view of not only Thanksgiving, but also the Judicial Qualifications Committee meeting, then how would this affect this trial and would you rather go ahead and start now or would you rather postpone until January 5th? I would like for both of them to respond to this.

MR. MITCHELL: Senator, we are obligated to be in the Federal District Court for sentencing Monday afternoon and for a determination on a ruling by the Federal District Judge on the motion for new trial, which he's taken under advisement. Other than that requirement we are free to go to trial before the Senate today with the request that we would like to have the opportunity to go down there and be before the Federal Judge on Monday afternoon, other than that we have no commitments, we're ready to go to trial here.

SENATOR HANCE: You have no commitments to the Judicial Qualifications Committee? Is that correct?

MR. MITCHELL: As I understand it, it recessed in deference to this body on Thursday afternoon after taking two weeks of testimony.

SENATOR McKNIGHT: Mr. President.

THE PRESIDENT: Senator from Smith.

SENATOR McKNIGHT: May I ask for a vote now on my motion?

THE PRESIDENT: Further debate on the motion to adjourn, questions to the parties. Senator from Palo Pinto.

SENATOR CREIGHTON: Mr. President and members of the Senate, I think everybody knows the issue and it's clearly before us, both sides are here, the witnesses are present, both sides have announced ready to proceed with this trial and it's squarely on the Senate to make a judgment. This thing is not going to go away. In my opinion our constitutional responsibility requires us to proceed and give this man an orderly trial and I just hope that the Senate will vote to continue this thing and let's get this thing behind us. Let's start plowing and finish it. Thank you, Mr. President.

SENATOR HANCE: Mr. President, I have a question.

THE PRESIDENT: Senator from Lubbock.

SENATOR HANCE: I don't think Mr. Doyle ever answered my question.

THE PRESIDENT: What was your question?

SENATOR HANCE: The question was -- was not whether he was saying he was ready to go to trial, he said that ten times. My question was -- and it was the same thing as Senator Longoria was trying to get at -- had you rather go to trial now or had you rather wait until January 5th?

THE PRESIDENT: Mr. Doyle.

SENATOR HANCE: We know you're ready now and we know that you would be ready on January 5th, but which would be most agreeable to the Board of Managers? If you need to talk to them I hope that you would do so.

MR. DOYLE: We considered that very question this morning, Senator. And the position of the Board of Managers is that we're ready. We announced ready at the beginning, we opposed the previous motion for continuance, we are ready to proceed whenever the Senate tells us to proceed.

SENATOR HANCE: There's no answer to the question. That's fine.

SENATOR McKNIGHT: Mr. President.

THE PRESIDENT: Senator from Smith.

SENATOR McKNIGHT: I might make a short --

THE PRESIDENT: Senator from Smith to close on his motion.

SENATOR McKNIGHT: I would like to point out to the Senate as I previously have that the Judicial Qualifications Commission has been in session almost two weeks and has been taking testimony. They will reconvene and make their decision and make their findings prior to January 5th. I again urge the Members of the Senate to consider seriously the fact that the constitutional duty of the Judicial Qualifications Commission is going on at this time and that we do postpone. And I will ask you to vote "yes" on the motion to adjourn until January 5th.

SENATOR LONGORIA: Mr. President, parliamentary inquiry.

THE PRESIDENT: State your inquiry.

SENATOR LONGORIA: Mr. President, should this motion carry, would we, the Court here get paid in the meantime? I don't want us to get paid if it's going to be postponed. Is that part of the motion or not?

THE PRESIDENT: That's not part of the motion.

SENATOR McKNIGHT: It needs to be part of the motion. I concur, certainly, most heartily with Senator Longoria.

SENATOR LONGORIA: How about the House Managers?

SENATOR McKNIGHT: I don't know -- I don't know what the House Managers' pleasure is, Senator, but I think --

SENATOR LONGORIA: Can we find out?

SENATOR McKNIGHT: -- the pleasure of the Senate is that we only be paid when we're here in session. That was a part of our previous adjournment motion and with unanimous consent, Mr. President, I would like to amend my motion to include the phrase that we will not be reimbursed during this period of recess or adjournment.

SENATOR BROOKS: Parliamentary inquiry.

THE PRESIDENT: State your inquiry.

SENATOR BROOKS: Is it not true, Mr. President, that that motion has to be made similar to the way Senator Schwartz made it, so that you won't interfere with the regular reimbursement to which we're entitled for committee sessions or other work -- other Senate work not connected with the impeachment trial?

THE PRESIDENT: Yes.

SENATOR McKNIGHT: As it is connected with this proceeding. Thank you, Senator.

THE PRESIDENT: Senator from Taylor.

SENATOR JONES: Parliamentary inquiry.

THE PRESIDENT: State your inquiry.

SENATOR JONES: If it should be the determination of the Judicial Qualifications Commission that Respondent should be removed from office would that have the effect of precluding the necessity of our coming back? I'm of the impression it would not, regardless of what they do we have to complete this action.

THE PRESIDENT: Senator, it's the view of the Chair that whatever action that the Supreme Court might take upon recommendation of the Qualifications Commission that action would not affect the duty of this body to dispense with the charges preferred by the House in the Articles of Impeachment.

SENATOR CLOWER: Mr. President.

THE PRESIDENT: Senator from Dallas, Senator Clower.

SENATOR CLOWER: I would like to direct a question to the Defendant's attorney, maybe two questions. Number one is, has Judge Carrillo already appeared before the Commission and testified and will he have to testify further and are they participating in the affairs of the Commission from day to day as they make their investigation?

MR. MITCHELL: Senator, Judge Carrillo has appeared. And for the information of the Senate, John Odam and Ms. Levatino sitting over there with Counsel have been the attorneys prosecuting the action. Judge Carrillo has appeared and has been in attendance for the full two weeks -- not quite two weeks -- and he will continue, of course, to defend himself. As the Senate knows, the proceedings are secret and I'm precluded from commenting on them, but the mechanics are that -- so that the Senate is aware -- the very same people that are sitting over there now have been the very same people that sat down there on November 3rd. And we have been sitting down there since November 3rd. And we intend to go wherever we have to go to defend ourselves, here, there or yon.

SENATOR CLOWER: The next question would be directed to the Board of Managers. Have they subpoenaed any witnesses to appear here to testify this morning?

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Senator, the witnesses that were previously subpoenaed are still under subpoena.

SENATOR CLOWER: Are they here ready to testify if we were to begin -- to go to trial at this time? Do you have a witness to testify?

MR. DOYLE: Well, not all of them are here, but we have witnesses --

SENATOR CLOWER: One, just one --

MR. DOYLE: --prepared to testify.

THE PRESIDENT: Senator from Palo Pinto.

SENATOR CREIGHTON: Parliamentary inquiry.

THE PRESIDENT: State your inquiry.

SENATOR CREIGHTON: And I direct this to the Board of Managers. I mean -- suppose we proceeded to trial today and the Judicial Qualifications Commission did act, and inasmuch as we're going to have to conclude this process at some point in time, would it not be possible in an impeachment proceeding for the Board of Managers to carve from their Articles of Impeachment their best shot and that we could somewhat lengthen -- I mean shorten the testimony and that we could dispose of the matters of impeachment in that matter without taking weeks of testimony if they concentrated on their best Articles of Impeachment?

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President, Senate Members, the question appears to be one of law, which I don't think we should properly answer. As I understand the law of impeachment we are prohibited from amending the Articles of Impeachment, beyond that I think it would be improper for me to try to answer that question.

SENATOR OGG: Parliamentary inquiry, Mr. President.

THE PRESIDENT: State your inquiry. Senator from Harris, Senator Ogg.

SENATOR OGG: What is the cost to the State for the Senate to be in session on a daily basis for the impeachment trial or the estimated per diem cost?

THE PRESIDENT: Senator, the Legislative Budget Board staff has estimated that for the entire legislature to be in session it costs about \$13,000 a day more than not being in session. So if you divide that number, roughly by a third, I think you will probably come up with an estimate of about four or five thousand dollars for the Senate to be in session as opposed to not being in session.

SENATOR OGG: That's approximately \$20,000 a week then for us to be in session. As I understand it, the Judicial Qualifications Committee is a standing agency of the State and those officials are paid just on a per diem basis for their expenses and the fact they're here. Is that correct?

THE PRESIDENT: I'm not advised, Senator.

SENATOR OGG: It is a standing agency though and there's no extra cost to that. They're a functioning body that's here all the time.

THE PRESIDENT: Senator, the Qualifications Commission, which is a constitutional agency, has a staff, its members are judges, lawyers, lay citizens nominated by the Governor -- as I recall, the Governor, the Chief Justice, the Presiding Judge. And I would suppose they are compensated on a per diem basis.

SENATOR OGG: Thank you.

THE PRESIDENT: Question on the motion of the Senator from Smith, that the Senate stand adjourned until 10:00 a.m., Monday, January 5th and that in the interim the Senate waive any compensation that might otherwise be due as a result of the sitting as a Court of Impeachment. Question on the motion to adjourn, those in favor say "Aye" those opposed "Nay".

Secretary call the roll.

Yeas: Aikin, Braecklein, Doggett, Farabee, Gammage, Harris, Kothmann, Lombardino, Longoria, McKnight, Ogg, Patman, Santiesteban, Schwartz, Snelson and Williams.

Nays: Adams, Brooks, Clower, Creighton, Hance, Harrington, Jones, McKinnon, Sherman and Traeger.

Absent-excused: Mauzy, Meier, Mengden and Moore.

Absent: Andujar.

THE PRESIDENT: Senator from Lamar for an announcement.

SENATOR AIKIN: Mr. President, before that vote is announced I would like to call a caucus of the Senate immediately on adjournment in the Lieutenant Governor's Committee Room.

THE PRESIDENT: Caucus in the Lieutenant Governor's Meeting Room immediately on adjournment.

There being 16 "Ayes" and 10 "Nays" the Senate stands adjourned.

Accordingly, the Senate, sitting as a Court of Impeachment, at 10:28 o'clock a.m. adjourned until 10:00 o'clock a.m. Monday, January 5, 1976.

ELEVENTH DAY (Monday, January 5, 1976)

The Senate, sitting as a Court of Impeachment, met at 10:00 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger, and Williams.

A quorum was announced present.

The Reverend Laurens A. Hall, St. David's Episcopal Church, Austin, Texas, offered the invocation as follows:

Almighty God, our heavenly Father, we ask Thy blessing upon this assembly of the Senate of the State of Texas and the work it is here to accomplish. We know that much of the estrangement that exists in the relationships of men is due to misunderstandings, deficiency of knowledge, lack of concern and self-righteous attitudes. To be fair to ourselves, to our colleagues and to those people whom we serve, remove all obstacles that in any wise might hinder the success of our endeavors. Grant to us an attentive mind, sound reasoning and thoughtful verbal contributions and above all may Thy Holy Spirit dwell within each of us and reveal itself in the decisions we will make. In Thy name we pray. Amen.

COMMUNICATION FROM PARLIAMENTARIAN

The President laid before the Court the following Communication:

January 5, 1976

Honorable William P. Hobby, Jr.
President of the Texas Senate
State Capitol
Austin, Texas 78711

Dear Lieutenant Governor Hobby:

With regret, I submit my resignation from the office of parliamentarian of the Texas Senate, 64th Legislature, effective January 1, 1976.

The members of the Senate bestowed a great honor by electing me to serve as parliamentarian. The past year has been a memorable one for me. I will always be grateful.

Sincerely,

Steve Bickerstaff

The Communication was read and filed with the Secretary/Clerk.

APPEARANCES

Judge O. P. Carrillo, Respondent; Honorable Arthur Mitchell, Attorney for Respondent.

Board of House Managers; Honorable Terry Doyle, Counsel; Honorable John L. Hill, Attorney General of Texas; Honorable Liz Levatino and Honorable John Odam, Assistant Attorneys General of Texas on behalf of the Board of Managers.

THE PRESIDENT: Mr. Doyle, will you and Mr. Mitchell come to the rostrum, please, sir?

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: Mr. President and Members of the Senate I would like to move that the Court go into Executive Session.

THE PRESIDENT: The Senator from Jasper moves that the Senate resolve itself into Executive Session. Before putting that question the Chair would like to advise the Members of the Court that the discussion taking place here at the rostrum has revolved around a proposal with which you are all familiar; that the record of the hearing before Judge Meyers in Corpus Christi be in some way used in this trial, hopefully to shorten these proceedings. If the Senate goes into Executive Session the Chair will direct Special Counsel, Colonel Jaworski; Counsel for the Prosecution, the Attorney General; Counsel for the Defense; the Board of Managers; and Judge Carrillo, to retire to the Lt. Governor's office to continue their discussion of this.

MR. MITCHELL: Governor Hobby, I have been informed by the Attorney General that he wouldn't be willing to talk to me unless I waived Rule 28. I'm not going to waive Rule 28, it's mandatory now, that's the way the statute is and consequently if that's a condition for my visiting with him or his staff I refuse to visit with them.

MR. HILL: May it please the Court.

THE PRESIDENT: The Attorney General.

MR. HILL: I speak assisting Special Prosecutor and speak only to this particular motion, because I believe that I am more familiar with it perhaps than he would be. And I want to be very frank and candid with the Senate with regard to it.

Rule 28 is taken from the Legislative Reorganization Act, that's why it's in your rules. I do not offer any criticism of that, but I point this out to the Senate now, that should we proceed under the suggestion that the record made in the Judicial Qualifications Commission's hearing be utilized here in this impeachment proceeding, which at least in my mind has some merit, I would like to consider it. I don't have a final judgment on it yet. I think the Special Prosecutor and the Board of Managers would like to consider it, give serious consideration to it within the next hour. But we're not willing and I don't believe the Special Prosecutor should be even asked to consider that offer with a mandatory immunity rule facing these proceedings. The better immunity rule would be a discretionary rule. That is the same rule that applies in the Judicial Qualifications Commission procedure. There's nothing sacrosanct about the Legislative Reorganization Act. There's nothing that mandates this Senate sitting as an impeachment body, not a pure legislative proceeding, but a higher proceeding, a quasi-judicial, if not a judicial proceeding. There's nothing that mandates you, in my judgment, to follow that same strict immunity rule.

Let me make it clear what I'm talking about. In the present Rule 28 if the Prosecution were to call a witness -- we're not talking about the Defendant -- if the Prosecution were to call a witness and that witness took the Fifth Amendment and then that witness were required by the Court to answer that question which tended to incriminate him or in fact did incriminate him you would be obliged to grant full immunity to that witness for any criminal activity in which that witness had engaged. Also, should the Defendant's Counsel call a witness, not the Defendant, but call a witness against who perhaps some other charges of wrongdoing were then pending of which you would not be aware and which were not before you. And if that witness were asked a question by Defense Counsel and that witness took the Fifth Amendment under your Rule 28 you would be required to oblige that witness to answer and you would be required to grant full immunity to that witness for any wrongdoing to which he testified, even though it be his own wrongdoing.

The better rule would be to say that immunity would be granted, first if the evidence were relevant to this impeachment trial. So that you don't pull yourself up by your own bootstraps, to be sure that the evidence itself is truly relevant to the matters of impeachment before this Court. And secondly, that even if it's relevant that the Court may require the witness to answer. So that the discretion lies with the body where it should lie and that's this body. Where you can judge it when it comes up and you can do the right thing at that time for all concerned, rather than be in a straitjacket where you cannot move.

We would hope that some Senator would amend Rule 28, to put the words "relevant evidence" and "relevant documents" in the rule and change "shall" to "may". And if that's done we will move on from that position. I do not say that the Board of Managers would, even in that juncture agree to the proposal, but the Board of Managers is not willing to even consider it until that's done.

SENATOR SCHWARTZ: Mr. President.

THE PRESIDENT: Senator from Galveston.

SENATOR SCHWARTZ: Is that motion in order at this time?

THE PRESIDENT: The motion to go into Executive Session?

SENATOR SCHWARTZ: The motion that's suggested by the Attorney General to change -- to add the word "relevant" in two places in Rule 28 and change the "shall" to "may".

THE PRESIDENT: Senator, let me suggest that if the Senate adopts the motion of the Senator from Jasper to go into Executive Session the Chair will direct the parties and their Counsels and Special Counsel to the Senate to retire to try at least to narrow the areas of disagreement. It would be hoped that they could come back to the Senate, hopefully with an agreed position, if not a fully agreed position at least one where the issues to be considered would be narrowed.

MR. MITCHELL: Mr. President, may I make one statement in reply to the Attorney General's remarks?

THE PRESIDENT: Mr. Mitchell, I would rather that these arguments take place after you have had your conference.

MR. MITCHELL: Well, he's left the impression that the matter of Rule 28 is discretionary matters, as I understand it's a statute, the Legislative Reorganization Act language was tracked by this body in adopting these rules.

SENATOR ADAMS: Mr. President, I have made a motion and it is a privileged motion and I insist on it.

THE PRESIDENT: Senator from Jasper moves that the Senate resolve itself into Executive Session. Is there objection to the adoption of that motion? The Chair hears none, the motion is adopted.

EXECUTIVE SESSION

Accordingly, the President at 10:22 o'clock a.m. directed all those not entitled to attend the Executive Session of the Court to retire from the Senate Chamber and instructed the Bailiff to close all doors leading from the Chamber.

IN SESSION

At the conclusion of the Executive Session, the President called the Court to order at 12:27 o'clock p.m.

SENATOR FARABEE: Mr. President.

THE PRESIDENT: Senator from Wichita.

SENATOR FARABEE: I move to recess until 2:00 o'clock this afternoon.

THE COURT: Senator from Wichita moves the Senate stand in recess until 2:00 o'clock this afternoon.
Secretary, call the roll.

Yeas: Adams, Brooks, Doggett, Farabee, Gammage, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, Meier, Ogg, Santiesteban, Schwartz, Sherman, Traeger and Williams.

Nays: Aikin, Andujar, Braecklein, Clower, Creighton, Hance, McKinnon, McKnight, Mengden, Moore, Patman and Snelson.

THE PRESIDENT: There being 19 "Yeas" and 12 "Nays" the Senate stands recessed until 2:00 o'clock this afternoon.

Accordingly, the Senate, sitting as a Court of Impeachment, at 12:30 o'clock p.m. took recess until 2:00 o'clock p.m. today.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 2:00 o'clock p.m. today.

During an interlude in the Court of Impeachment, the Senate at 2:16 o'clock p.m. conducted the following business:

THE PRESIDENT: The Senate will come to order. The following resolution:

SENATE RESOLUTION 4A

Senator Meier offered the following resolution:

WHEREAS, Section 2.01 of the Texas Penal Code provides that: "All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that he has been arrested, confined, or indicted for, or otherwise charged with, the offense gives rise to no inference of guilt at his trial."; now, therefore, be it

RESOLVED, (1) It is the sense of the Senate that the summary suspension of the Secretary of the Senate would unduly prejudice his rights as well as his opportunity for a fair trial on the charges against him. In our American Judicial Process, an indictment is neither evidence or proof of guilt, and under our Constitution and laws a person is innocent unless proven guilty beyond a reasonable doubt. The Senate urges that all charges be promptly resolved by a trial at the earliest date consistent with due process so that the State, the Secretary of the Senate and the Senate may all satisfy their duties and responsibilities and that Justice may be done.

(2) All records of the Senate shall continue to be open for full and complete examination by the District Attorney and all Senate employees are instructed to continue to cooperate fully with the District Attorney and the Travis County Grand Jury under penalty of discharge for failure to cooperate.

(3) Because of the desire of the Senate to abide by proper judicial processes and permit the completion of all investigations of the charges pending and being considered without any impediment to that process, no Senate employee shall be hired nor dismissed nor expenditure of public monies made by the Senate without the signature of the Chairman of the Administration Committee, at the direction of the Committee, and the Caucus Report, S.R. 735, is so amended.

(4) The Administration Committee shall examine all existing procedures and report back to the Senate in open session regarding any changes in procedure necessary to ensure proper administration of public funds and responsibilities of the Senate.

The Resolution was read.

THE PRESIDENT: Senator from Tarrant.

SENATOR MEIER: Mr. President and Members of the Senate, I have copies of this resolution, and I would like to ask if it could be distributed to the Senate at this time.

Mr. President, if I might explain this -- I thought it was going to be a substitute, but I see now it's the original resolution. Essentially, what I have done is I have prepared a statement in resolution form that sets out in the first paragraph what is the statutory law of the State of Texas. In Article 2.01 of the Penal Code of the State is quoted verbatim which is the law that sets out the time honored tried and true tradition of jurisprudence of this state and this country of presuming a man innocent of the charges filed against him until he's proven guilty beyond a reasonable doubt in a court of law.

With that addition, the remaining four paragraphs, numbers one through four, are those items in which the Senate is asked to set out a response in the manner that was discussed, that Senator Doggett had discussed earlier, and that's a part of the resolution that is the same as Senator Doggett's resolution. And I would urge you that this is the proper way to approach the matter that's before us, and I urge its adoption.

THE PRESIDENT: Senator from Lubbock.

SENATOR HANCE: Mr. President, I have a substitute.

THE PRESIDENT: Following substitute resolution:

Senator Hance offered the following substitute for the resolution:

Be it resolved that Charles Schnabel, the Secretary of the Senate, be granted a leave of absence, without compensation, from his duties of office until cleared of all charges brought against him and reinstated by the Senate.

The substitute for the resolution was read.

THE PRESIDENT: Senator from Lubbock.

SENATOR HANCE: Mr. President and Members of the Senate, I think it distresses me and everyone here to have to go through this. As to what Senator Meier said, I think that the thing that we've got to consider is that this resolution and my substitute resolution don't have anything to do with guilt or innocence.

What we've got to consider are the obligations and duties of the highest employee that we have, and for him to be able to fulfill those duties and obligations and to operate the Senate, Senate employees, hundreds of thousands of dollars that are in his custody every month, I feel that he cannot continue in office while the situation is at the present status. Therefore, I think he should be granted a leave of absence until this matter is cleared up. That's the only choice we have.

SENATOR MEIER: Mr. President, I move to table the Hance substitute resolution.

SENATOR ADAMS: Mr. President, parliamentary inquiry.

THE PRESIDENT: State your inquiry.

SENATOR ADAMS: Are there any other resolutions?

THE PRESIDENT: There are no other resolutions on the rostrum. Do you care to close on your motion, Senator?

SENATOR HANCE: I have made myself very clear, and I think this is important to all of us. I think you've got to consider we're not prejudging somebody. You're not saying anything else. You are just talking about the obligations and duties of your highest paid employee. And I know it does distress every one of you, and it's tough, but I would ask you to vote against -- I ask you to vote against the motion to table.

THE PRESIDENT: Senator from Tarrant.

SENATOR ANDUJAR: May I speak against the motion to table?

THE PRESIDENT: It's not a debatable motion, Senator.

Second reading of the Hance resolution has been called for, Secretary read the resolution.

(Whereupon, the resolution was read a second time.)

THE PRESIDENT: Senator from Harris.

SENATOR MENGDEN: I would like to ask the Senator from Tarrant to withdraw his motion to table, because this is such an important matter, not only facing the Senate but government itself, that we just had a straight up and down vote on this. And I would just like to ask the Senator from Tarrant if he would withdraw his motion to table.

SENATOR MEIER: Mr. President, I insist on a motion to call for a vote.

THE PRESIDENT: Senator from Tarrant, Senator Meier sends up a resolution and Senator from Lubbock sends up a substitute resolution. Senator Meier moves to table the substitute. The question is on the motion to table the Hance substitute resolution.

The motion prevailed by the following vote: Yeas 19, Nays 12.

Yeas: Aikin, Clower, Doggett, Farabee, Gammage, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, Meier, Ogg, Santiesteban, Schwartz, Sherman, Traeger and Williams.

Nays: Adams, Andujar, Braecklein, Brooks, Creighton, Hance, McKinnon, McKnight, Mengden, Moore, Patman and Snelson.

THE PRESIDENT: There being 19 "Yeas" and 12 "Nays", the motion to table prevails. The question now recurs on the resolution sent up by the Senator from Tarrant, Senator Meier. The Secretary will call the roll.

SENATOR HANCE: Can we have another reading of that resolution?

THE PRESIDENT: It's a long resolution, Senator.
Senator from Guadalupe.

SENATOR TRAEGER: Mr. President, it's a one-page resolution, is it not, Senator Meier? Do you object to it being read?

SENATOR MEIER: No, I don't mind.

SENATOR TRAEGER: I think we should read it.

THE PRESIDENT: A second reading is called for. Secretary, read the resolution.

(Whereupon, the resolution was read a second time.)

SENATOR MEIER: Mr. President, in Paragraph 3, that last part there should read, "without the signature of the Chairman of the Administration Committee at the direction of the Committee." "At the direction of the committee." Mr. President, I move adoption of this resolution.

SENATOR PATMAN: Mr. President, would the Senator yield for a question?

THE PRESIDENT: The Senator yields.

SENATOR PATMAN: I was told the Attorney General was starting an investigation into this matter. You don't intend to limit the cooperation to the District Attorney and Travis County Grand Jury, do you?

SENATOR MEIER: No, Senator, the Attorney General is an elected public official who has charged himself with the open records responsibilities, and I am certain the Secretary of the Senate, and the Senate, and all the people of the State of Texas want to cooperate with him.

SENATOR PATMAN: All right, it says here that all Senate employees are instructed to cooperate fully with the District Attorney and Travis County Grand Jury. Do you not intend also to cooperate with any other law for --

SENATOR MEIER: Senator, to my knowledge, everybody has been cooperated with as fully as they can be cooperated with, and I am certain they will be in the future.

SENATOR HANCE: Does the Senator yield for a question?

THE PRESIDENT: The Senator yields.

SENATOR HANCE: Senator, what is there in this resolution that isn't already being done or hasn't already been done in the past?

SENATOR MEIER: There are changes, Senator, in Paragraph 3 that talk about the dismissals, hiring, expenditure of public monies without the signature of the Chairman of the Administration Committee at the direction of the Committee. There is some changing of procedures there, and that is essentially the major difference, and that is essentially all that is called for in the way of change in the Resolution.

SENATOR HANCE: Okay. But, at the present time, the Chairman of the Administration Committee still has the right of signature on any checks or any money or any vouchers, isn't that correct?

SENATOR MEIER: He signs vouchers.

SENATOR ADAMS: The Chairman of the Administration Committee doesn't sign any checks. He signs vouchers.

SENATOR MEIER: He signs vouchers that are requests for state warrants. There are not any checks involved.

Mr. President, if there are no other questions --

THE PRESIDENT: Senator from Tarrant, Senator Andujar.

SENATOR ANDUJAR: May I ask the Senator to clarify the meaning of the vote that we're about to take. As I understand it, in Sections 2, 3 and 4, these are administrative procedures which I would assume have been implemented under the administration, which is careful of expenditure of the public's funds, and, therefore, we are really discussing Section 1 which has to do with the Secretary of the Senate. Does this mean that if we vote for this resolution, then, we are voting to keep the Secretary of the Senate on the payroll at full salary and in the functions of his office with the exceptions set forth? In other words, having defeated the previous resolution, then, if we vote for the present resolution, we are simply removing certain controls from the Secretary of the Senate.

But, he is still our employee, we have hired him, we are responsible for his conduct in office and for the salary that he receives in the interim, and regardless of what we think of the indictments or the evidence against him, we are responsible for his employment, is that correct, the essence of this resolution, is we're keeping the Secretary of the Senate on full salary?

SENATOR MEIER: Senator, the essence of this resolution is we're going to honor what we talk about in these Halls all of the time, and that is, we're going to let our system of jurisprudence and justice carry itself through without presuming anybody guilty of anything because he's been charged of something. That's the essence of this resolution.

SENATOR ANDUJAR: But isn't the sense of the resolution that while he has been charged, we will still keep him on the payroll?

SENATOR MEIER: Among other things, Senator, that's part of it.

SENATOR ANDUJAR: Thank you.

SENATOR MEIER: Mr. President, if I might, I would like to add the language there that Senator Patman suggested, in order that we make certain the Attorney General understands we want to include him to being entitled to our records so we won't be put through the embarrassment of having to rule on an open records request that he has to rule on himself.

SENATOR PATMAN: Will you not want to add also there "the Attorney General and any other lawfully constituted investigatory body"? Or do you want to restrict it to the Attorney General --

SENATOR MEIER: Senator, I think the little Hoover Commission is busy enough.

SENATOR PATMAN: That's cute, Senator, but you want to restrict it to those three, or do you want to broaden it out to any other body that investigates this matter?

SENATOR MEIER: Senator, that's the law right now. Anybody that thinks they want any of our records --

SENATOR PATMAN: In other words, what you've said in this resolution on that subject is superfluous, right? Is unnecessary?

SENATOR MEIER: The resolution doesn't change the law. That's right. It's the same, Bill.

SENATOR PATMAN: So, you don't intend to restrict it to anyone, is that right?

SENATOR MEIER: Mr. President, I move adoption of the resolution.

SENATOR HANCE: Mr. President, I would like to be heard against it.

THE PRESIDENT: We ask the Secretary of the Senate to read the proposed amendment to the resolution.

Senator Meier offered the following amendment to the resolution:

Amend Senate Resolution by striking the second resolving clause and substituting in lieu thereof the following:

"(2) All records of the Senate shall continue to be open for full and complete examination by the District Attorney or the Attorney General and all Senate employees are instructed to continue to cooperate fully with such lawfully constituted authority and the Travis County Grand Jury under penalty of discharge for failure to cooperate."

The amendment was read and was adopted.

THE PRESIDENT: Senator from Lubbock will be heard against the resolution.

SENATOR HANCE: I think the key in this is not what you're talking about with guilt or innocence or anything like this, Senator Meier. The key comes back to duties and obligations of your top employee, and I think the key would have been a heads-up vote awhile ago of which I think it should be quite evident that on voting to table it, it wasn't a heads-up vote. But I would ask that the members of the Senate vote "no" on this. I felt like that the thing to do was what I presented in that resolution. And I don't know what the people in your district, my district or any other place, you go up and you start explaining something like this to them, I don't know what their feelings are going to be about that. So, I would request that you vote "no" on this.

THE PRESIDENT: Senator from Dallas.

SENATOR HARRIS: I would like to be heard for the same reason I stated in the Executive Session this morning but the law is the law, and we don't need it to be

stated in a Resolution. The balance of that Resolution in my judgment is equivalent to a press release. I strongly favor the idea of leaving things as they are because a man is innocent until proven guilty. And evidence of the type of indictment is not evidence against an individual in a criminal trial. I think it's the only consistent position for the Senate to take. I'm going to vote against this Resolution for an entirely different reason than Senator Hance. I think it's the position we ought to leave it as is and continue until the law and judicial process takes its course. For that reason, I vote "no".

THE PRESIDENT: Senator from Harris.

SENATOR OGG: In response to what Senator Hance said, two or three things, Senator. I think number one there is no allegation that anybody has heard, and I underline the word, "allegation". There has been none that I have heard or read or anyone else has mentioned except in two areas. Senator Meier's Resolution does touch those two areas. It doesn't remove any duties. It doesn't do anything to cast any dispersion on a man under indictment. What it does is let someone else give an overview, and it lets us put a check and balance on that.

And, Senator, all I have to say is if people in your district are not, and the people may not be, sophisticated enough to understand it, but you went through law school and you know the difference between presumption of guilt and innocence, and we didn't exactly hire out up here to stand for popular causes. And we need to do what's right. And we can tell the people we have looked at it, we have an overview of it, we are investigating it, we are looking at it pending the outcome of this trial. If there is any wrongdoing, it will come out. This is the only fair way we can treat people of Texas, the Texas Senate, and, as you say, our highest paid employee.

SENATOR HANCE: Senator, in answer to that, I've always felt the people of my district may have been sophisticated and had a lot of wisdom when they sent me down here, but they put trust in me to do what I felt was right. And my Resolution awhile ago was something I felt was right. And you may disagree with me on that, but I felt like the highest employee that we have -- that under the circumstances, the duties and obligations of the office come first. And that under those circumstances, we should have someone else operating in that capacity until this matter is cleared up.

SENATOR OGG: Senator, I don't question what you think is right, and I didn't mean to say that, but I do think that we do know the difference between a presumption of guilt and innocence. And whether our people understand it or not, I think we just have to -- we just have to look at it -- we have to do what's right.

SENATOR PATMAN: Mr. President, may I speak against the resolution?

THE PRESIDENT: Senator from Jackson.

SENATOR PATMAN: I hadn't planned on saying anything about this, but I'm concerned about the interpretation that people may place upon the votes we are taking here today. Certainly I have the highest personal confidence in the Secretary of the Senate. And nothing that he has ever done has shown me that he would be guilty of any sort of misconduct. And I just wish I could be content with letting him stay in his present position, doing the same thing he's doing and has done for twenty years, and drawing the same pay. But we are in a serious crisis in this government and in this Nation, on the crisis of confidence in government. And with all due respect, I just believe that it is -- it would be more appropriate for us to ask him to step aside and to step aside without pay until these charges are withdrawn. And I'm afraid that if we

adopt something of this type, that we will be more or less putting something in permanent form, that we will be condoning what's going on or will be giving him a ratification and a vote of confidence that we really are not in a position to do at this time based on the information that we have. I personally hope and I trust and I believe that he will be exonerated of the charges that have been brought against him. But I don't believe he should continue in his present office, and I don't believe he should receive pay for doing so. Thank you.

SENATOR DOGGETT: Mr. President.

THE PRESIDENT: Senator from Travis.

SENATOR DOGGETT: I would like to be heard in support of the Meier Resolution. I think that it attempts to resolve what may well be an irreconcilable conflict that's presented to us. On the one hand we have numerous allegations in the press rightfully investigating these matters, the investigation of the Travis County District Attorney and a group of grand jurors, who have indicted an employee of this Senate on three charges. Having those charges to consider and all the allegations of wrongdoing, it would certainly be a breach of our responsibility if we were to in any way condone any acts of wrongdoing that might have occurred. The Meier Resolution attempts to address that specifically. Not only the allegations that have thus far come out in indictment form, but some of those that have been rumored and discussed in the press, specifically with regard to some of the allegations on football players. It instructs our Senate Administration Committee to study all the procedures of the Senate and see if any of them need to be tightened up to try to get at these problems. It removes the Secretary of the Senate from taking any action on expenditure of public funds or on the hiring or firing of employees without the specific authorization of the Senate Administration Committee. It reaffirms what I think has thus far been the fact here in this entire investigation, but makes it very clearly the policy of the Senate that all of our employees are to cooperate fully. We have nothing to hide in the Senate. We are telling our employees to cooperate to the point if they don't cooperate we ask that they be discharged. And we are saying that all the records of the Senate are open for the Grand Jury, the District Attorney, or anyone else who wants to take a look at them. But at the same time we recognize there is a conflicting interest, that of an individual, an individual who has been in this Senate for a lot longer than I have, who for twenty years has served this Senate. And that individual, like any other citizen in this State, has the right to be presumed innocent unless someone establishes before a jury in this county beyond a reasonable doubt that he is guilty of the charges that have been made against him.

It would be wrong for us today to assume to exonerate him on these charges. We have not heard any testimony regarding whether he's guilty or innocent. We're not trying to exonerate him, but nor should we be that jury. We cannot substitute the thirty-one ladies and gentlemen of this Senate for a District Court jury here in Travis County. We are not charged with the responsibility of convicting this man. We are charged with fulfilling our public responsibilities to assure the public trust is fulfilled, and that this Senate is run in the best way possible and I think we do that through this resolution, while at the same time acting consistently with one of the basic principles of this Republic that someone is innocent until they are proven guilty.

SENATOR McKNIGHT: Mr. President.

THE PRESIDENT: Senator from Smith.

SENATOR McKNIGHT: I would like to speak against the resolution. I think that I may be the first person that's risen here on either side of this question that's not an attorney, most of the people of Texas are not attorneys, they may not understand all of this legalistic language. As far as I can see, by looking at the Meier Resolution it leaves us in a status quo, makes some remarks and reaffirms things that we as Americans and people interested in good government adhere to and in the realm of justice believe in, but in essence what it says to the people of Texas is we're changing nothing, we're removing no one that's under suspicion.

I don't think it's the purpose of this Senate to try Charles Schnabel. It pains me deeply to rise and speak in opposition to this Resolution or do anything that might be to the detriment of the cause of Charlie Schnabel. But I do say to you, lady and gentlemen of this Senate, that I believe the people of Texas are looking at us today to see if we are going to try to protect our own, whether or not that may be the case, whether we're going in effect to justify what has happened, leave things as they are until other people take action or whether as responsible Members of the Senate of Texas, and each one of us were elected by some 400,000 people, face up to the responsibilities of looking into our own house and trying to put it in order.

I think if we take this action and certainly I hope and trust, as I have said publicly before, that there is no foundation to these charges -- I certainly hope that to be true, but I honestly believe for the benefit of Charles Schnabel, for the benefit of this Senate and for the benefit of the people of this great State that we vote "no" on this Resolution, that we do insist that some changes be made until these charges can be cleared up.

Thank you.

THE PRESIDENT: Does the Senator from Tarrant desire to close on this resolution?

SENATOR MEIER: Just briefly, Mr. President.

Mr. President and Members, I have been in the Senate for three years now, just almost to the day, at a time when the thing that was most concerning the people of the State of Texas was the confidence in the government. In the three years I've been in the Senate our country has been torn asunder by events of a national magnitude that have continued to erode confidence in government. And we've come down, to as elected public officials and as people who are supposed to have some judgment in calling the shots the way that they should be. What's in each of our own hearts and in our own minds on the basic question of what is right, what's right. Now, everyone here has got their own heart and mind to look into and has the privilege, and not only the privilege, but the prerogative and duty of doing what's right. My judgment of what's right is to vote for this Resolution. It reaffirms the basic precept of our Jurisprudence System and it says that we're not going to have trial by the press, we're not going to have trial by allegation of a District Attorney, for whatever reason. And we're not going to be intimidated into trying to take some action that's not consistent with the time honored judicial precept of the presumption of innocence.

Mr. President, I move the adoption of the resolution.

THE PRESIDENT: Question on adoption of the Resolution.
The Secretary will call the roll.

The Resolution as amended was then adopted by the following vote: Yeas, 18; Nays 13.

Yeas: Brooks, Clower, Doggett, Farabee, Gammage, Harrington, Jones, Kothmann, Lombardino, Longoria, Mauzy, Meier, Ogg, Santiesteban, Schwartz,

Sherman, Traeger and Williams.

Nays: Adams, Aikin, Andujar, Braecklein, Creighton, Hance, Harris, McKinnon, McKnight, Mengden, Moore, Patman and Snelson.

THE PRESIDENT: Senator from Smith.

SENATOR McKNIGHT: Mr. President, I would like to request the Senate convene in Executive Session at this time.

THE PRESIDENT: Senator from Smith moves that the Court of Impeachment move into Executive Session at this time. Is there objection? The Chair hears none, the motion prevails. All those not entitled to attend the Executive Session will withdraw from the floor and the gallery.

Accordingly, the Senate at 2:50 o'clock p.m. resolved itself into an Executive Session.

EXECUTIVE SESSION

Accordingly, the President at 2:50 o'clock p.m. directed all those not entitled to attend the Executive Session of the Court to retire from the Senate Chamber and instructed the Bailiff to close all doors leading from the Chamber.

IN SESSION

At the conclusion of the Executive Session, the President called the Senate, sitting as a Court of Impeachment, to order at 3:37 o'clock p.m.

THE PRESIDENT: Senate will come to order.
Senator from Smith.

SENATOR McKNIGHT: Mr. President, I would like at this time to move to suspend Court of Impeachment for a period of forty-five days until such time -- let us adjourn for forty-five days to such time which would give this Senate time to receive the Court of Judicial Qualifications record. I understand it's some twenty-nine volumes of testimony that we might use in our deliberation. I further would like to request the Chair to ask the Attorney General or someone on his staff to explain the waiting period -- the reason I have used this forty-five day period under the rules of the Judicial Qualifications Commission that they report to the Commission -- the Master reports to the Commission and the Commission reports to the Supreme Court.

THE PRESIDENT: The Chair at this time -- Mr. Doyle.

MR. DOYLE: Mr. Odam is probably more familiar with that statute than anyone here.

THE PRESIDENT: The Chair recognizes Assistant Attorney General John Odam to explain to the Senate the workings of this statute.

SENATOR PATMAN: May we have Mr. Doyle repeat his statement?

THE PRESIDENT: Mr. Doyle just simply said that Mr. Odam was the best qualified person to discuss this statute.

MR. ODAM: The time table on Judicial Qualifications will be something like this. First of all, the Master is in the process of preparing his report, after having heard twenty-nine days of testimony. Judge Meyers informed me this morning that he thought his report -- a preliminary report for the examiners, as well as Mr. Mitchell to take a look at -- would be probably Wednesday of this week. He would anticipate that after that is received by the examiners and by Mr. Mitchell that we would have an opportunity to review it and then a time for a hearing back before the Master if we had any objections to that report. That hearing -- I haven't discussed this with Mr. Mitchell and of course we don't know what objections, if any, there would be, probably a hearing before the Master on that report next week.

After that's done then the report would go into the Judicial Qualifications Commission. The rules provide -- the rules promulgated by the Texas Supreme Court -- that after the report is received by Judge Carrillo, by his Counsel, that they have fifteen days in which to make objections to the Master's report. These objections will be filed with the Judicial Qualifications Commission. So there I have set forth two time frames right there. I would say the Master's report may be being finalized next week. Thereafter, if the examiners or Mr. Mitchell had objection to it and filed -- had fifteen days to review it and file objections with the Judicial Qualifications a second period of time of fifteen days. After those objections are filed then you go to your third time period and that is a ten-day period, if either side requests a hearing before the Judicial Qualifications Commission.

So, then is your third step. There's twenty-five days at least, plus another, maybe, ten days -- thirty-five days.

The rules also provide that the Judicial Qualifications Commission could hear additional evidence if requested to do so and if they chose to do so. After the hearing, after consideration of the objections to the report, etc., and they make their determination, they may or may not make a recommendation to the Texas Supreme Court with respect to removal.

If they make a recommendation to the Texas Supreme Court then the record does become public as the Constitution provides. It will be available to the public upon the filing. As the rules provide if they made no recommendation presumably that record, absent other circumstances, would not be made public. I would say an estimate of the total period of time until such time as the record became public would be at least -- I would say at the least two months. And possibly could, depending on what happened in the Judicial Qualifications proceeding, be longer than that before it would be filed with the Texas Supreme Court. At least two months from today, possibly shorter. But I have outlined time for the Master to finish up the fifteen-day period, the ten-day period -- that's about forty-five days, approximately two months.

SENATOR McKNIGHT: Mr. President.

THE PRESIDENT: Senator from Smith.

SENATOR McKNIGHT: Forty-five days would be on a Thursday, which would be the 19th. I would like to amend my motion to Monday, February the 23rd.

SENATOR MOORE: Mr. President, will the Senator yield?

SENATOR McKNIGHT: I will yield.

SENATOR MOORE: Senator, would you accept an amendment to your motion to make it the 19th of June and everybody bring a watermelon?

THE PRESIDENT: The Chair does not recognize the Senator from Brazos for that purpose.

Senator from Jackson.

SENATOR PATMAN: Mr. President.

THE PRESIDENT: You have the floor, Senator.

SENATOR PATMAN: Mr. Odam, at the end of this two-month period would the full transcript of the Judicial Qualifications Commission be available to the Senate?

MR. ODAM: Yes, sir, if -- assuming that a recommendation by the Judicial Qualifications Commission were made to the Texas Supreme Court it would be, that's correct.

SENATOR PATMAN: It's a matter of public information. Is that right?

MR. ODAM: Yes, sir.

SENATOR PATMAN: At this time is that information confidential by statute?

MR. ODAM: It is confidential by the Texas Constitution.

SENATOR PATMAN: Well, tell me, in your opinion is a great deal of the -- I have conceded to the confidentiality of the matter, but if you can, please answer. In your opinion is there quite a bit of overlapping of the testimony that would likely be entered before this Impeachment Court and what has already been entered in the record of the Judicial Qualifications Commission?

MR. ODAM: I would follow the suggestion of the Senator and not answer that. Senator Patman, I would prefer not to answer that for fear of breach of the constitutional provision at this time.

SENATOR PATMAN: As a matter of fact the same charges, roughly, have been brought against the Defendant in that case as in this case. Is that true?

MR. ODAM: The Texas Constitution provides that the record, the pleadings, the testimony is confidential and shall remain privileged until such time as the record is filed in the Texas Supreme Court.

SENATOR PATMAN: What charges have been brought against the Defendant in the Judicial Qualifications Commission?

MR. ODAM: I understand the question and my answer is: The Texas Constitution provides it is confidential and therefore I would not want to possibly breach that by speaking as to what those allegations are there.

SENATOR PATMAN: You mean even the charges are confidential?

MR. ODAM: Yes, sir, that would be a part of the pleadings in the case.

SENATOR PATMAN: I see.

MR. ODAM: It would also be confidential as well as the testimony under the Constitution.

SENATOR PATMAN: Then you can't tell us whether the transcript will do us any good or not. Is that right?

MR. ODAM: Sir?

SENATOR PATMAN: You can't tell us whether the transcript will do us any good or not?

MR. ODAM: I cannot comment on that. That's correct.

SENATOR SCHWARTZ: Mr. President.

THE PRESIDENT: Senator from Galveston.

SENATOR SCHWARTZ: Mr. President, my question to Mr. Odam is: Mr. Odam, the constitutional provision of secrecy is designed for the protection of the accused in the Judicial Qualifications Commission's hearing. If it is the accused or his counsel before that Commission who files publicly a copy of the proceedings which he has obtained, who has suffered a consequence and what penalty, if any, is there?

First of all, let me ask you what penalty, if any, is there for a participant, an accused, a respondent, whatever his name may be, before the Commission, if he takes his record of those proceedings and places them in a public depository such as the record of the Texas Senate in this Impeachment Court.

MR. ODAM: Well, the constitutional provision does not speak specifically to that question. However, probably you would run into the question of whether or not the Defendant be held in contempt of court by the Master before whom the proceedings are being tried or possibly the Judicial Qualifications Commission or the Texas Supreme Court. Contempt of court for violating the constitutional provision. That's an unanswered question which is certainly debatable at this time.

SENATOR SCHWARTZ: And does the Judicial Qualifications Commission hearing judge have all the same powers as the judge in the trial of a District Court case?

MR. ODAM: Yes, sir.

SENATOR SCHWARTZ: From the contempt standpoint?

MR. ODAM: Yes, sir.

SENATOR SCHWARTZ: But absent any desire on the part of anyone and any penalty that someone might seek to impose that is a -- that provision for secrecy is obviously designed for the protection of the accused, is it not?

MR. ODAM: Well, that is a debatable question as to whether or not it's designed totally for the benefit of the accused judge or whether or not there's a broader purpose in the constitutional provision; i.e., for broader public policy provision, protection of the Judiciary, something along those lines. Broader than simply the protection of the Judge in question.

SENATOR SCHWARTZ: If you talk about the protection of the Judiciary then you're talking about having these hearings in secret so that vicious, malicious, unfounded charges against a Judge, a member of the Judiciary would not become public as such without the consent of the accused and those charges against the entire Judiciary would not be published abroad in the land. My point is that somebody would still have to complain. And it is the accused in that hearing who suffers the threat or the penalty of contempt. It is not the Attorney General's office. Is it?

MR. ODAM: We have not -- the Attorney General's office have not discussed the extent of disclosure of the record with the Judicial Qualifications Commission and what their position would be as to whether or not the record should or should not be made public. I have discussed it with Judge Phil Peden who is the Chairman of the Commission very briefly this morning and reached no official position or conclusion on it. The reason I go into that, possibly the Judicial Qualifications Commission who is holding the proceedings might have standing to complain about the disclosure of the record. That would be a possibility. Possibly as I have said before the Master might have objection, I have not discussed it with him. Of course, both of these things could be accomplished in discussing it with the Master and with the Judicial Qualifications Commission.

SENATOR SCHWARTZ: But my question is that if the record is disclosed by the accused or Counsel for the accused with his consent then no penalty could follow for the Attorney General who participated in the Judicial Qualifications Commission hearing or for any of us who might read it after it's been tendered to us or who might consider it. And I'm correcting that, am I not? I mean, we're not in contempt, are we?

MR. ODAM: The only possibility would be as I see it right now, the possibility that if Judge Carrillo or his Counsel agreed or made public the record to the Senate or to the Board of Managers, the possibility might exist that the Master for the Judicial Qualifications Commission would hold the Defendant in contempt for violation of the constitutional provision. That would be a legal possibility.

SENATOR SCHWARTZ: Only the Defendant.

MR. ODAM: I'm sorry, that's the one I thought you said made the report public.

SENATOR SCHWARTZ: Yes. I'm simply making the point that I'm willing to rest on the basis of what the Defendant in that proceeding and Counsel for the Defendant arrive at as a judgment about what they do. I just don't want anybody to go away from here thinking that if we accept such a tender offer that we in any way jeopardize the Attorney General or any member of the Senate or the presiding officer of this Impeachment Court. And as long as that's clear I think we're still back where we were before. A record is offered to us and we then have to determine whether to accept that record or not. And, of course, Judge Carrillo and his Counsel have to determine in light of what's been discussed here whether the tender offer is still good, but under any circumstances, you know, we can quit worrying about, you know, whether the Attorney General's office will be criticized by the Judicial Qualifications Commission or whether any Member of the Senate will be criticized or the House Managers will be criticized or the Court will be criticized. So, I think we ought to get on with the idea of determining whether or not we have a record that we can accept. And if the accused wants to accept that responsibility for disclosing the record publicly then I think it's the Senate's prerogative to decide whether to accept it or not at this time. Maybe we ought to cross that bridge before we cross the bridge, Senator, as to

the vote you asked for.

THE PRESIDENT: Senator from Harris, Senator Ogg.

SENATOR OGG: My question is essentially what Senator Schwartz had asked about this being a constitutional right basically of the Defendant, like other constitutional rights. I think I got my answer.

THE PRESIDENT: Senator from Travis, do you seek recognition?

SENATOR DOGGETT: Mr. Odam, it is your position that despite the waiver by the Defendant or the tender of the waiver we could not get this record for two months?

MR. ODAM: Despite the waiver?

SENATOR DOGGETT: That's right. The earliest time you thought that we could get the record to consider, either in lieu of testimony or for impeachment or for any purpose that we might want it would be two months.

MR. ODAM: Well, I think the next question there is: Assuming -- well, by the motion that Judge Carrillo has made that he waives the confidentiality of it. The next step it seems to me that you reach the proceedings would be from the Board of Managers' position the extent of relying on or making a position on what that record is. In other words, whether to rely on it or not. Obviously neither the Board of Managers nor Mr. Doyle know what's in that record at the present time.

That does not directly answer your question. But what I'm saying is: Once they simply waive the confidentiality, I think you have reached the next point and that is the position of the Board of Managers with respect to that record. And the position of Judge Carrillo as to when to make it available, if at all, to the Board of Managers.

SENATOR DOGGETT: Given the waiver offered by Judge Carrillo, does the Attorney General oppose our consideration of this record today or receiving it?

MR. ODAM: Well, the parties here -- Mr. Doyle will have to speak for the Board of Managers, and I'm sure can, as to what their position would be on the record. You direct my question -- and we are simply here to assist the Board of Managers. And Mr. Doyle can speak to whether or not -- or what his position is with respect to whether or not the Senate should proceed on that record that they have not seen.

SENATOR DOGGETT: Does the record contain twenty-eight or twenty-nine volumes?

MR. ODAM: Yes, sir.

SENATOR DOGGETT: I would like to hear from Mr. Doyle on that.

SENATOR SCHWARTZ: Mr. President, I would now ask the Senator whether he can withdraw the motion to postpone and let Senator Traeger make his motion with regard to the record itself, because it's important at least to me and maybe others as to whether I vote against postponement to determine whether we're going to have a record upon which we might proceed that might expedite the proceedings. And I understand the difficulties in relying upon the record to accomplish all the purposes that were suggested in Judge Carrillo's motion. But I do know the acceptance of this record

at least has the potential of expediting the conclusion of this hearing by substantial time. And I would hope that the record indeed is tendered and that we can accept the record the only objection being to the person offering it and that we would go ahead and dismiss with that and then make a judgment about voting on your motion, Senator.

SENATOR McKNIGHT: Mr. President, in view of these facts I would like to temporarily withdraw my motion.

THE PRESIDENT: The motion to postpone is temporarily withdrawn.

SENATOR SCHWARTZ: Mr. President, I might be one step ahead of myself. I do have a rule to send up, which might affect the tender of the record, also.

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: I would like to ask the President -- I suppose it will be carried as a parliamentary inquiry of Mr. Odam of the Attorney General's office the line of questioning that's been carried on before. Sir, is it your contention that release of this testimony is prohibited -- the confidential nature of it is prohibited -- the release of it is prohibited by the Constitution on the part of either party? Is that correct?

MR. ODAM: Let me explain it this way. That the parties you're talking about would be in that particular proceeding the Judicial Qualifications Commission or Judge Carrillo. You would have two legal interpretations, possible interpretations, of that constitution. Number one, that just as you stated that it is up to parties, Judge Carrillo and/or the Judicial Qualifications Commission. The second interpretation of the Constitution might be that Judge Carrillo nor the Judicial Qualifications Commission can waive the constitutionality that goes broader than just -- with respect to that particular judgment of question.

SENATOR TRAEGER: Well, Mr. Odam, you said might be. Is that a positive statement?

MR. ODAM: Well, as I said there are two interpretations.

SENATOR TRAEGER: Now, let me ask you this question then, as Senator Schwartz brought out and someone else. The confidentiality of the proceedings as we set up in being here -- and knowing legislative intent to set up the Judicial Qualifications Committee are to protect an innocent Judge who might have some false charges brought against him and those charges being bantered around in the papers and being convicted on charges that are totally erroneous after investigation. Is that correct? I will say it's correct, because I was here when the bill was passed.

Now, then, following that out, the normal procedure -- if the Judicial Qualifications Committee finds after these findings of twenty-nine days of hearings that Judge Carrillo is innocent of the charges brought against him then for all practical-for practical purposes -- that proceeding is confidential from then on, is it not? It's forever locked unless he should release it.

MR. ODAM: That's correct.

SENATOR TRAEGER: So that if he were found that we are -- that a question of no decision had been rendered, so we have no finding of guilt or innocence, but if he's found guilty then the proceeding becomes public record. Is that correct?

MR. ODAM: Correct.

SENATOR TRAEGER: So, the possibility exists if they found him innocent we would never have access to that record. Is that correct?

MR. ODAM: Correct.

SENATOR TRAEGER: Now, then, if that -- that makes it to me very obvious, that the -- and my remembrance when that legislation was passed the intent of the confidentiality is the protection of the Defendant and if the Defendant wants to waive that I feel as Senator Schwartz does that if he's willing to take those reservations and ramifications that go with it and wants to make that waiver then the Senate consider -- should consider primarily whether the use of this record will facilitate this hearing and will accelerate what we're doing to save us the time of calling Joe Sanchez from the grocery store down here and asking him the same questions that are documented in that testimony.

And I think before we vote on this issue that we should hear from the Defense, the Defense Counsel, Mr. President -- give them an opportunity to say why they want to present these proceedings and whether they make this waiver. And then I will make a motion. I think they should have an opportunity --

THE PRESIDENT: Senator from Dallas, Senator Clower.

SENATOR CLOWER: Did Senator Traeger move to accept any records or anything?

SENATOR TRAEGER: I think the Defense should have an opportunity to state why they waive the possible ramifications of it and why they think it would be worthwhile accelerating these proceedings if they do offer it. I think he should be given this opportunity. I request that they do so.

MR. MITCHELL: Mr. President, I disagree somewhat with what Counsel characterized as the statutes on this, but the Senate knows I, in behalf of my client, filed this motion. I prepared it at the instructions of my client for one reason and one reason alone, and that was hopefully to save the Senate the same time and effort that's going to be required that we have just expended in Corpus Christi for the last two months.

My client has authorized me to file the motion. And with that authority to waive insofar as it is possible all of the confidentiality, but to waive only as to the Senate and to make the record available immediately to the Senate. And, again, there's no sinister motive involved, there's no subterfuge involved. The motion is designed to avoid another five weeks of trial listening to the very same testimony that we have heard before. I tried the case there in behalf of my client. And one of the Senators asked the question about the coincidences of the Articles of the Impeachment as regards the specifications. I don't think that the secrecy precluded me before this Body to say that they are coincident to a certain degree, although the Articles of Specifications in the Judicial Qualifications far exceed, go beyond the ones here in the impeachment. It is for this reason that my client authorized me -- and of course, while we do not desire to be in contempt of the Commission or the Master or the Supreme Court and, Lord knows, whoever else, we do this solely and only to expedite the consideration of this matter.

Judge Carrillo has been under this cloud now since -- well, May of this year. And, that's all.

SENATOR CLOWER: Mr. President.

THE PRESIDENT: Senator from Dallas, Senator Clower.

SENATOR CLOWER: What motion is on the floor at this time?

THE PRESIDENT: There is no motion before the Senate at this time, Senator.

SENATOR CLOWER: The motion for continuance or to postpone has been withdrawn?

THE PRESIDENT: The motion to postpone has been withdrawn.

SENATOR OGG: Mr. President.

THE PRESIDENT: Senator from Harris, Senator Ogg.

SENATOR OGG: Mr. Mitchell, again, without going into the merits of it, what were the actual -- to the best of your knowledge, what were the actual number of days that the testimony in Corpus Christi took, the total testimony before the Master?

MR. MITCHELL: Senator, I think the figure twenty-nine is correct. Twenty-nine days, full days of testimony.

SENATOR OGG: Were those days full, complete days?

MR. MITCHELL: Yes. Well, the Judge -- the Master worked from 8:30 to 1:00 on daily copy and we've determined that you can get really more testimony induced in that morning session than you could from 9:00 to 5:00. So, we actually worked more than you would in a normal court day. We worked full schedule for twenty-nine days.

SENATOR OGG: How many witnesses testified there, then, to the best of your knowledge?

MR. MITCHELL: Well, there were -- John, would you hazard an estimate? We had exhibits -- our exhibits were in excess of 100 -- I imagine about 500 to probably over 1,000 exhibits. John, do you have an estimate that you could give the Senator, please, on the number of witnesses?

MR. ODAM: I would say, in light of Mr. Mitchell's comments about the record thus far, I would feel it all right to go ahead and say how many witnesses there were. I would say probably thirty-five witnesses, and as far as documentation -- I don't know if that was part of the question or not -- there were several hundred exhibits -- several thousand pieces of paper. There were multiple parts of documents.

SENATOR OGG: Both sides, as I understand it, are under the Rules of Civil Procedure, so both sides have there again the right of examination?

MR. MITCHELL: Yes. That's true. The testimony came in under the sanction of the oath, direct and cross-examination rules with a Master passing on the objections.

SENATOR OGG: All right, sir. Again, without going into the merits or the demerits of what took place there, how much of that testimony do you think would not be involved -- because since both of you know what the charges were there and what they are here, how much of that was beyond the scope of what we're doing here?

MR. MITCHELL: I would estimate between forty-five and fifty percent beyond the scope of the impeachment inquiry.

MR. ODAM: I would say that approximately one hundred percent of what was in the Judicial Qualifications would be relevant, in my judgment, to the Articles of Impeachment. And I would differ slightly with Mr. Mitchell as to which is more expansive. I think, in my judgment, the Articles of Impeachment are broader than the Judicial Qualifications Specifications.

SENATOR OGG: And a final question to Mr. Mitchell.

Mr. Mitchell, would you and your client, if we did not necessarily limit ourselves to the motion that you have tendered, but if we took the record that was compiled there for any purpose that the Senate so chose, neither to limit itself nor to expand itself beyond that, would you still make such an offer or can you answer that now, or do you need to confer?

MR. MITCHELL: No. I can answer that, Senator. Yes, the tender of my client -- and again, I have discussed this with my client -- would be with no holds barred. The record is tendered completely and absolutely and unconditionally.

SENATOR OGG: Well, what I had heard you publicly say, and what your motion says -- your motion is much more limiting than what you have publicly stated.

MR. MITCHELL: That's true. If it bears on the subjective judgment of this Body in voting, I would not want to hamstring the judgment of the Senate passing in a vote on such a -- a very technical and arbitrary grounds. I would say, and my client has authorized me to say this, of course -- he's the man I work for -- that it would be with no holds barred and that the record is made unconditionally available to the Senate.

SENATOR OGG: And that would be with the right to call witnesses that we might not be able to reflect their credibility in the transcript, that we might want to call and see what their answers would be in person.

MR. MITCHELL: That's right. That would be with that understanding, yes, sir.

MR. ODAM: If I might, Senator Ogg, on the same point. And I don't mean to go into a new area at all. But, it occurs to me, as I said to Senator Doggett, that the parties in this proceeding are the Board of Managers who have not seen that record and do not know other than now, what has been stated here -- they didn't even know that until I made the statements just then, the extent to which they overlap. It seems to me, what should be considered, which Mr. Doyle can speak to is the extent to which the Board of Managers -- what their position is with respect of the tender of that document and use thereof.

MR. MITCHELL: May I make this statement, sir?

SENATOR OGG: May I ask the Attorney General a question along that line first, please, sir?

Along that line, I think, we have fairly well established that with possible exception to maybe some reprisals from either the Master or the Commission, that is a constitutional right of the Defendant, if he so chose to waive it, much like anything else. It's not your position that the Senate -- that we couldn't do that without you agreeing to it, or without the Board of Managers agreeing to it, that we cannot accept that record, is it? For the purpose we chose to accept it for?

MR. ODAM: Well, in my judgment, that is -- does not come as close to a matter of legality as much as it does a matter of how to conduct an impeachment proceeding. By that I mean, the House of Representatives have preferred Articles of Impeachment, this Committee has brought them over, now we're talking about the Senate bringing into evidence and using a document in the trial of that case and it's somewhat -- in my personal opinion, somehow we forget who the parties are in the case. And, that's why I think the comment on this subject right now would be more appropriate by Mr. Doyle, for the Board of Managers. I make that more in terms of public policy as to how to conduct an impeachment proceeding than a legal question.

SENATOR OGG: I understand. But, you're not saying that we would ask both sides without the Board of Managers having seen that and stipulate to all the evidence, that this is the evidence and go home and read it and come back and make a decision. We're saying if there is a motion to accept that, to assist us in any manner, and to be used in any manner that we wish to use it for our benefit would not be your position -- and I guess we will have to ask Mr. Doyle -- or his position be that the Defendant. He stated that he will do that without qualification. It would not be your position that --

MR. ODAM: Mr. Mitchell did not make that statement without qualification. Mr. Mitchell stated that he would present it to the Senate, he's not yet stated -- perhaps he will do so now, that he would tender it first to the Board of Managers for them to examine it and take a position on it before it is tendered to the Senate.

MR. MITCHELL: No, I would not make that agreement. I would tender it to the Senate.

THE PRESIDENT: Perhaps I can clarify a point here by reading a proposed agreement or draft agreement to determine whether both sides would agree to this. It's been drafted by Colonel Jaworski, Special Counsel.

MR. DOYLE: We can't hear what you're saying, Mr. President.

THE PRESIDENT: This is a proposed agreement that may not answer all the questions here. Let me read this agreement and then ask comment from opposing counsel.

"It is agreed by Counsel for Judge Carrillo and Counsel for the House Board of Managers that the transcript of proceedings before the Qualifications Commission will be made available to the Senate for the information of the Senate and for such use as the Senate decides to make of its contents, without being bound by any part thereof. The parties to this proceeding may make their objections to any part of the contents of the transcript at the time an offer is made to admit in evidence such transcript or any part thereof. Judge Carrillo agrees that no immunity is claimed by virtue of the use of such transcript or any part thereof."

Mr. Mitchell, would your client agree to --

MR. MITCHELL: May I confer with him, Mr. President?

THE PRESIDENT: Yes, sir.

SENATOR PATMAN: Mr. President.

THE PRESIDENT: Senator from Jackson.

SENATOR PATMAN: I would like to ask if the agreement is acceptable to the parties, if the testimony before the Judicial Qualifications Commission will then become public testimony, or if we are in effect, accepting secret testimony to be kept secret.

THE PRESIDENT: Senator, the Chair is advised by the Special Counsel that questions broader than the rights of the Defendant are involved. The Chair is advised that there would be an impropriety in using that information before it was filed with the Supreme Court, because there is a flat constitutional prohibition against disclosure. And that -- it's not stated as a right of the Defendant that the Defendant may waive.

SENATOR PATMAN: In other words, as I understand the Chair, there's nothing for us to consider because it's illegal.

THE PRESIDENT: Until it's filed with the Supreme Court.

SENATOR TRAEGER: Well, that makes any argument for my motion -- it becomes moot and can't be submitted.

Mr. Chairman -- I mean, Mr. President, may I ask the Defendant a question in relation to this?

THE PRESIDENT: Yes. I would like counsel from both sides to respond to this.

SENATOR TRAEGER: All right, sir.

THE PRESIDENT: Mr. Mitchell --

MR. MITCHELL: Mr. President, on the question of whether or not the confidentiality can be waived or not waived, of course, Counsel -- it is the Assistant Attorney General's observation as regards to the involvement or perhaps -- public policy considerations above and beyond, are appropriate. However, I believe the main thrust of consideration would be in behalf of my client, Judge Carrillo, certainly in tandem with that would be this Court. And to the extent that I don't desire to be in contempt with the Supreme Court or with the Commission or the Master, who as I understand under the statutes doesn't have the authority to find me in contempt anyway -- we are willing to waive any rights, whatever claim we have to it to expedite the impeachment procedure. If that's -- and I'm willing to do that and have been authorized by my client to sign the agreement that has been read by the President if that will assist. I don't know of anybody that I would rather go before than this body to make that proposal, in that it pretty well makes the law of the State of Texas.

SENATOR SCHWARTZ: Mr. President.

THE PRESIDENT: Senator, let me hear from --

MR. MITCHELL: May I say one more thing, Mr. President? First of all, the Members of the Senate that are trial lawyers will tell you that I'm in an extremely advantageous position, I have already heard all of the testimony once. And it's really of no consequence to me whether we try it from here till next Christmas again. I'm in excellent shape, I have the sworn testimony, I have the testimony again -- I don't want the Senate to misunderstand me, actually I never thought I would give up an opportunity of the type that I have had afforded me, where the witness takes the stand and he's testified completely and absolutely, I keep him honest, because I have got a sworn record. But because of the desire to avoid the involvement, the material waste, if you permit me, the involvement of the taxpayers' money my client has ordered me to make that proposal. And I want the Senate to understand that is the only and sole reason.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Thank you, Mr. President. Mr. President and Members of the Senate, the Board of Managers has no idea what is contained in the allegations or the evidence as presented to the Judicial Qualifications Commission beyond what you've heard here this afternoon. The Board of Managers would not wish to be a party, I don't think, to any attempt to make public the transcript, which would appear at this time to be in direct contravention of the Constitution of the State of Texas. If Mr. Mitchell and his client see fit to do that, I see nothing wrong with them doing that unilaterally, if they wish to do it, but it appears to me as the Special Counsel pointed out to the Senate just a moment ago, that the Constitution is quite explicit in what it says with respect to these proceedings. Prior to the time the House Board of Managers could agree on anything with respect to this record we would have to know what's in the record, we would have to know something about it. And, frankly, I don't know how we can do that without first a waiver by the accused here; second, some indication by the Judicial Qualifications Commission that it's okay with them and third, some indication by the Master in Chancery that it's okay with him. Because if we take it upon ourselves to investigate that record, to look at that record, to make a determination as to whether or not we can agree to use it for some purpose in this proceeding we certainly wouldn't want to do that in violation of the Constitution of Texas.

Now, with respect to what Mr. Mitchell and the accused here do, I think the Board of Managers can't control that. If they see fit to introduce something and the Senate as a Court sees fit to accept that, for whatever purpose, I don't see that we have any -- we really don't have any appeal, that's up to you and Mr. Carrillo -- or Judge Carrillo and Mr. Mitchell.

SENATOR LONGORIA: Mr. President, may I ask a question?

THE PRESIDENT: Senator from Hidalgo.

SENATOR LONGORIA: We have heard that there were about thirty-five witnesses before the Judicial Qualifications Commission. My question to you is how many witnesses do you anticipate that you're going to have to be calling for this hearing -- or subpoenaed, approximately?

MR. DOYLE: How many witnesses would I anticipate?

SENATOR LONGORIA: Yes, sir.

MR. DOYLE: Approximately.

SENATOR LONGORIA: So, I can know the difference between how many testified over there and how many may testify here.

MR. DOYLE: I would say twenty-five to fifty.

SENATOR LONGORIA: Do you know how many have been subpoenaed by the Defense or --

MR. DOYLE: By the Defense?

SENATOR LONGORIA: Yes, sir.

MR. DOYLE: No, sir, I have it somewhere, but I don't have it here.

SENATOR LONGORIA: Mr. Mitchell, can you tell me how many witnesses you have subpoenaed for this?

MR. MITCHELL: I don't know the exact number, but I think about thirty.

SENATOR LONGORIA: About thirty.

THE PRESIDENT: Senator from Galveston.

SENATOR SCHWARTZ: Mr. Doyle, we're back in this position. You are presenting the evidence, the Attorney General is sitting on your warm right side and the Attorney General of this state has testified that there has been a Judicial Qualifications Commission here -- I mean we have admitted that, so we don't have to worry about that any more. That's not a secret. I suppose that we all agree there has been a hearing. The Attorney General is assisting you in the presentation of evidence in this matter. We are all fairly reasonable people, although sometimes questionable as to sanity. There is no reasonable -- well, there's no possibility that reasonable minds could differ in this Impeachment Court that the charges in the Judicial Qualifications Commission hearings at least parallel the charges that the House Managers have brought to the Court of Impeachment. The pleading that's been filed by Mr. Mitchell on behalf of Judge Carrillo in this case in fact states that proposition within the pleading and the tender offer that's been made. Now, I try lawsuits, other members here try lawsuits, we know that the offer of this record that's being made here -- and it may or may not be against public policy and if it is then it's against public policy and I'm willing to do something that's against public policy. I'm not willing to do much that's against the law, but I'm willing to do something that's against public policy if it's going to save a half million dollars and five weeks of thirty-one Members' time and the House Managers and the Attorney General and everybody else concerned, to say nothing of the rights of the Defendant.

Now, when that's offered by Mr. Mitchell it occurs to me that you as the presenter of the evidence in this case still have not been bound to do anything. And those of us who are lawyers understand that. All that we would do when we accept the offer that's been made is to have before this Impeachment Court the testimony of thirty-five witnesses and then I, for one, as a lawyer would expect you to examine that evidence and when the witness who you expect to call has testified before the Judicial Qualifications Commission to make a determination that that testimony that he has given as adduced by the Attorney General and cross examined by Mr. Mitchell satisfies the burden of proof that you think you have as an attorney in presenting the evidence of

that witness. And when you have satisfied yourself to that, so far as I know then you would simply offer that testimony and say to the Court that we would offer the testimony at this time that's been tendered by Mr. Mitchell and we would stipulate that if the witness was here that he would testify to the same facts in this proceeding that he testified to in the Qualifications Commission proceeding. And Mr. Mitchell would enter into the same stipulation. And if the Court were satisfied, then we would not call that witness and ask any more questions. And I don't know if that's not a proper procedure. If that's not the way it would proceed I want somebody to tell me, but if that's the way it would proceed then I don't think that's against public policy and I, for one, would like to take it and go forward. You know, we're just sitting here massaging each other's minds when there's a very simple way to get on with the business we came here to do now without any further delay. And if it requires delay, well, I can sure vote for delay again, Senator, but I think as a lawyer that we have within our grasp the ability to go forward intelligently and reasonably and if it's against public policy then there is a remedy for that, if indeed, the Qualifications Commission or Judge Meyers or anyone else believes that they must seek that remedy against the accused or his Counsel. And they have already asserted that they're willing to accept that responsibility in order to facilitate this hearing.

I, for one, cannot imagine a proceeding in contempt upon the accused because he has tendered the evidence against him in one process constitutionally protected or not, it is of his own volition in order to expedite another process. You know, this is the first impeachment trial we have had in thirty-two years and I don't know of any reason why we don't proceed as lawyers on both sides and as members of the Court who are lawyers to try to do it as intelligently as has been proposed. There's no great secret or no great mixture that has to be boiled and bubbled and frothed over and magic words said to get on with the business now. We have got the best offer to expedite this matter that's ever been made in a trial. And if you and I were trying a lawsuit and somebody came in and said we tender this evidence from another lawsuit by the same witnesses and the same parties involved and the only party who is not involved is one of the presenters of the evidence, as in this case, Mr. Doyle, then I don't know anybody in the courtroom that wouldn't welcome the opportunity to move forward on that basis.

Mr. Doyle, do you object to that kind of a proposition?

MR. DOYLE: Senator, I would think -- I have listened very carefully to what you have said and I don't think you have said anything that is substantially different than what I have just got through saying.

SENATOR SCHWARTZ: Except that you sort of implied that the Board of Managers of the House and you don't know what's in that hearing record. Now, I know and you know that you don't know exactly what's in that hearing record, but that the thirty-one minds of this Senate, and any of them who are lawyers, that reasonable minds cannot differ on what's in that record. That's the test in the jury box on many, many things. And you would get an instructed verdict on that basis. Reasonable minds cannot differ on the question of whether or not you and the House Board of Managers knows that the evidence in that hearing is the same as the evidence that you might induce in this Impeachment Court.

MR. DOYLE: Well, Senator, I couldn't agree with you more. Mr. Mitchell has told us that in his opinion some fifty to fifty-five percent of the testimony that was elicited in the Judicial Qualifications Commission hearing would be relevant here. Mr. Odam indicated that in his opinion it was even higher than that. I can assure you that as an attorney I would welcome an opportunity to have that record to assist me in the trial of this case. And I don't disagree with anything else you have said, I think if it would help expedite the trial, obviously we would be most interested in seeing that

that's done. The only thing I said -- and if you misunderstood this I will restate it and apologize to you. The Board of Managers cannot agree to be bound, to be legally bound, by some agreement in the nature, which this motion would be in the nature of, if this motion were granted.

SENATOR SCHWARTZ: Let's stop right there. The only thing that's been presented to the Board of Managers and to you at this time for agreement is that which was withdrawn by Colonel Jaworski and to which Mr. Mitchell has answered that he and his client are willing to be bound. And that is that no one will be bound by the testimony offered, that objections may be made at the time of offering and that indeed the Defendant waives any rights that he may have to immunity as a result. So, therefore --

MR. DOYLE: Well, Senator, my only problem with that is, that if the transcript is made available to the Senate and the Senate has that, then if I object or the other side objects to the tender of some portion of it, what difference does it make if the judge and jury has already heard the evidence? But, be that point as it may, if the Senate sees fit to accept a tender of evidence, document, whatever you want to call it, on the part of O. P. Carrillo, we have no way to complain if we chose to complain. It makes no difference if they tender it and you accept it the Constitution, public policy -- you know, it really makes no difference. So, if that's the position that the Defense takes then that's fine, that's up to the Defense and the Senate. But with the -- the only reservation that I have in behalf of the Board of Managers is that the Board would not feel it should be bound by any agreement on its behalf that would limit its ability to try its lawsuit on the allegations which were sent over by the House of Representatives.

SENATOR SCHWARTZ: Well, I know of no motion that we're going to vote on that I would vote to grant, for instance, that would do what you fear might be done.

MR. DOYLE: Well, I had -- I said when I started, in response to your remarks, I don't think you have said anything any different than I have said.

SENATOR SCHWARTZ: And I don't know whether or not you feel obligated -- and I don't really know that it makes any difference and I would ask Colonel Jaworski, perhaps, to give us his opinion on this as to whether you did or did not agree to the writing which he proposed and to which Mr. Mitchell has already agreed. Apparently, you have indicated --

MR. DOYLE: No, sir. We have not agreed to anything. I have not even discussed that with the Board, as a matter of fact, up to this point, but that's -- if the writing, as I understood it and as you repeated it, it sounded like it would be all right, as long as the Board is not limited, as long as we're not bound by anything in that transcript. Whatever you gentlemen decide to do, and lady, with respect to Exhibits tendered by the other side, we can't do anything about it anyway.

SENATOR SCHWARTZ: Well, that was only the second time I have heard it read and I would ask for a second reading here for the record of the proposed agreement to be signed, because I think we have a general agreement that the House Managers or Mr. Doyle, as well as Mr. Mitchell, have no conflict about entering into that agreement, because it is simply a representation of acceptance.

SENATOR TRAEGER: Will the Senator yield?

SENATOR SCHWARTZ: Yes, sir.

THE PRESIDENT: The Senator yields.

SENATOR TRAEGER: In conferring with Mr. Jaworski and the President, the only motion I plan to make now, in lieu of the agreement made is the motion recommended that both parties agree to and the legal officer recommends we accept. We will then have, as a resource material, as an additional tool to accelerate this entire case. On that basis, then I would ask for a reading and so move, if both parties agree.

THE PRESIDENT: All right. A copy of this proposed agreement is being circulated, a copy laid on every member's desk.

I would ask the Secretary for a second reading.

SECRETARY/CLERK: "It is agreed by counsel for Judge Carrillo and by counsel for the House Managers that the transcript of proceedings before the Judicial Qualifications Commission will be made available to the Senate for the information of the Senate and for such use as the Senate decides to make of its contents without being bound by any part thereof. The parties to this proceeding may make their objections to any part of the contents of the transcript at the time an offer is made to admit in evidence such transcript or any part thereof. Judge Carrillo agrees that no immunity is claimed by virtue of the use of such transcript or any part thereof."

MR. MITCHELL: May I make a statement, Mr. President.

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: I, again, am treading on thin ice, but I say this, my client chose to take the stand at the Judicial Qualifications Commission hearing and stayed on the stand for some seven days. Thereby -- my remarks in connection with the last statement is that Judge Carrillo agrees that no immunity is claimed. He waived whatever immunity by taking the stand. And for that reason, that's already signed, sealed and delivered.

THE PRESIDENT: All right. Mr. Mitchell, while you're there, may I ask you this question? As you may know, Senator Schwartz has laid on the rostrum a proposed amendment to Rule 28.

MR. MITCHELL: Yes.

THE PRESIDENT: If that amendment were adopted by the Senate, would that affect your attitude on this matter?

MR. MITCHELL: May I comment on the proposed adoption of Rule 28? I have no objection to the inclusion of the expression "relevant", because I feel that the relevant -- that is, when one is called to testify at a trial and he refuses to do so on the grounds that the answers might tend to incriminate him, and he's thereby granted immunity, of course, implicit in the rule of a grant of immunity is relevant. Consequently, I think that simply states the Rule.

I have a quarrel with the use of the change of the mandatory "shall" to the permissive "may". And the reason for that is this -- and again, I want the Senate to be informed on this point.

The immunity that's been previously given in this case has been contractual immunity given by the Attorney General to Rudolfo Couling who was a primary

witness in the Judicial Qualifications case. So, he has no other immunity that he wants to give; he's already given it all and he's used it completely, contractual immunity. You need to be informed on that, gentlemen.

Now, we have witnesses that we have tendered in the Judicial Qualifications Commission trial and the Judicial Qualifications Rule says "may". The Attorney General objected to our tender of witnesses, because -- and because of the use of the word "may", we were precluded from offering testimony. Now, that's the same thing that's being used here. He has no -- that's the same gentleman trying it over there now. He has no witnesses that he is going to offer that he has not already clothed with immunity. He has given absolute contractual immunity to the sole and only man that he's ever going to give it to.

Now, we have witnesses that we're going to call and we want to have a tender of immunity made. Consequently, we object to the use of the word "may" instead of "shall" and we will promise the Senate and the President that the offer, if the Senate calls on additional testimony, will be of witnesses who have relevant testimony to offer, within the relevancy rule. And if they are required to answer the questions, then we expect to have the immunity offered, because unfortunately, this tender of immunity is usually a one-way street. We want to keep it bilateral and fair. We're talking about the rule of evidence, we're talking about the Constitution, we're talking about the right of privilege. So, I would object to the use of the word "may" instead of "shall", for that reason. He doesn't have anybody he's going to clothe with immunity, he has already clothed everybody he wants to, and he did it contractually, which I can't do in behalf of my client.

Now, if I get the right to clothe somebody with immunity by contract, then you all can put "may" in there, and I will do it. But, unfortunately, I can't do it.

So, for that reason, Mr. President, I would object to the substitution of the word "shall" -- I mean, "may" for "shall", because, first of all, the statute says "shall". Rule 28, as adopted, says "shall". And I would, however, have no objection to the inclusion of the word "relevant".

THE PRESIDENT: Mr. Mitchell, suppose the word "shall" was changed to "may" and the word "relevant" inserted?

MR. MITCHELL: Well, if the Senate adopted it, Mr. President, I would certainly be bound by it.

THE PRESIDENT: I understand that, Mr. Mitchell, but would that affect your attitude towards this proposed agreement?

MR. MITCHELL: No. I certainly wouldn't be -- I certainly am not going to play cat-and-mouse with this Body, if that's what the Body wants, but I want them to be informed of the facts. They haven't been informed of the facts. The facts were that the Attorney General -- these very gentlemen sitting over here have already clothed their people with immunity and done so by contract. So, they're not going to be up here offering immunity to anybody. We were precluded, because of the use of the word "may" in the Judicial Qualifications trial. We don't want that to happen here, when we offer a witness, we want the mandatory "shall". If this Body says that testimony's relevant, and we want to hear from him, we think we're entitled to immunity in the same spirit, in the same context and the Judicial Qualifications Commission -- the Attorney General at the Judicial Qualifications Commission trial.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President and Members of the Senate, this is the same point that General Hill spoke to this morning, so I will not speak long, but I would appreciate your attention for just a moment.

The question is one of "may" or "shall" and immunity. Now, the statute that Mr. Mitchell mentioned that this Rule --

THE PRESIDENT: Mr. Doyle, excuse me. I thought you were going to speak as to whether or not the Board of Managers would accept the proposed agreement.

MR. DOYLE: Oh, excuse me. I was assuming I was recognized to respond to Mr. Mitchell's comments on the proposed change of the rules.

THE PRESIDENT: No. My question to him was: Would the adoption of this amendment, if adopted, affect his adherence to this agreement. I ask you the same question.

MR. DOYLE: Well, the adoption of the rule change, it would seem to me, would be imperative before the Board could even consider any agreement to consider the transcript, because we don't know what took place with respect to the question of immunity in the trial before the Master in Chancery. You see, the Judicial Qualifications Commission hearing has the right -- the law gives those folks the right to grant immunity. And as the Board sits here today, we don't know how and what took place with respect to that in that hearing. So, it would certainly seem imperative before we could even think along those lines that we would have to put ourselves in a position of at least having this Court, at the time such questions come up, have the ability to make those determinations.

And as the rule could be interpreted at the present time, it would be an automatic thing with the defense able to clothe with immunity any number of people it saw fit to bring up here.

THE PRESIDENT: All right. The Chair will lay out at this time Senate Resolution 5, amending Rule 28.
Senator from Galveston.

SENATOR SCHWARTZ: Members of the Senate, I understand full well Mr. Mitchell's problem with the removal of the word "shall" and the substitution of the word "may". There's only one assurance that I can give Mr. Mitchell in his concern, if this rule is adopted, and that is that I presume that immunity in the case of a witness which he might call in this proceeding would be granted discretionarily upon a motion in this Body, in the Court of Impeachment.

THE PRESIDENT: Senator, would you yield to the Chair? It always gives the Chair great pleasure to be able to correct the Senator from Galveston on the point of rules. Does the Senator from Galveston care to suspend Rule 27 in order to take up and consider at this time an amendment to Rule 28.

SENATOR SCHWARTZ: I move, Mr. President, Rule 27 be suspended in order that we might take up to consider this Senate Resolution 5.

THE PRESIDENT: Suspension of Rule 27 requires a two-thirds vote. Is there objection? The Chair hears none, and the Chair lays out Senate Resolution 5 amending Rule 28.

SENATE RESOLUTION 5

Senator Schwartz offered the following resolution:

Be it Resolved by the Senate of the State of Texas sitting as a Court of Impeachment that Rule 28 be amended to read as follows:

Rule 28. Witness Immunity. No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined in the court of impeachment, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous. Any person called upon to testify or to give testimony or to produce papers upon any relevant matter under inquiry before the court of impeachment, who refuses to testify, give testimony or produce papers upon any relevant matter under inquiry upon the ground that his testimony or production of papers would incriminate him, or tend to incriminate him, may[shall] nevertheless be required to testify and to produce papers but when so required, over his objections for the reasons above set forth, such person shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he truthfully testified or produces evidence, documentary or otherwise. Any person testifying before the court of impeachment shall have the right to counsel.

The resolution was read.

SENATOR SCHWARTZ: I hope that -- You know, that Mr. Mitchell would recognize that a majority vote of this Senate with regard to the granting of immunity of a witness under those circumstances on relevant testimony might be a better protection perhaps than a judgment call in the Judicial Qualifications Commission or in some other proceeding. I don't know what I would do or any other member of this Body would do when faced with that responsibility, except I believe that this Body would fairly make that determination. Now, one of the things that Mr. Mitchell said is correct to a point, incorrect in another respect. The present statute, the Legislative Reorganization Statute has got a mandatory immunity provision in it, because it deals with what the Legislature does when it calls witnesses before the Legislature or Committee or that kind of process. But the Court rules on immunity are discretionary. And the statutes dealing with impeachment processes are discretionary. Now, there is a difference. There is a statute which is mandatory, but it is not the statute that deals with impeachment matters itself. That statute does not permit discretion. That statute -- pardon me -- the impeachment statute permits discretion. The Legislative Reorganization Statute has the word "shall" in it. These rules were copied and we adopted these rules following the pattern of that Legislative Reorganization Statute and not the specific Impeachment Statute or the Rules of Procedure of this State. By changing this at this time we simply give ourselves that latitude to go forward on this immunity question as the issue is presented to us. And I think if there is a witness who has testimony that is relevant to present, that the Senate is going to be fair in the granting of immunity of that witness, so that witness does not incriminate himself in such a manner as to bring on his own charges against him for violation of some law of this State of whatever.

I yield to question, yes, sir?

SENATOR CLOWER: Mr. President and Senator Schwartz, if the Defense were to call a witness, and place him on the stand and he would be asked a question by either the Prosecution or Defense and then the witness at that time raises his defense saying....

SENATOR SCHWARTZ: He would plead the Fifth Amendment.

SENATOR CLOWER: Plead the Fifth, say that he was immune. What would happen at that point? Could we then assess the relevancy of his testimony and determine whether or not we wanted to hear it and grant him immunity.

SENATOR SCHWARTZ: I think at that time we would have the ability to make a determination as to whether or not his testimony was relevant, and whether indeed we wanted to grant him immunity in order to compel him to give that testimony. You see, we don't have to compel him to give that testimony.

SENATOR CLOWER: But if we compelled him to give the testimony he would be immune.

SENATOR SCHWARTZ: Then we would have granted him immunity.

SENATOR CLOWER: Under every circumstance.

SENATOR SCHWARTZ: That's correct.

SENATOR CLOWER: And what would be the immediate effects of "shall", as opposed to "may"?

SENATOR SCHWARTZ: Now, the "shall" -- we would not vote on whether or not to grant him immunity.

SENATOR CLOWER: It's just when he took the stand he would have immunity from whatever he says.

SENATOR SCHWARTZ: He would have immunity if he started talking about a relevant thing.

SENATOR CLOWER: In other words, if he went up there on the stand and we were questioning him about some matter of alleged corruption in Duval County he could fully admit to a murder in an adjoining county and have immunity on it?

SENATOR SCHWARTZ: No, I think he would have to at least refuse to answer the specific question or begin his testimony, really, before the relevancy -- in order to determine what it was that he was expected to testify about. But -- if the tender of his testimony was on a matter that was relevant under the present rule -- and I think it would be mandatory to give him immunity. And even to let him testify under those circumstances if he's called by the Defendant.

SENATOR CLOWER: In other words, he would have the positive right to testify.

SENATOR SCHWARTZ: That's right. And I think if we in turn refuse -- if we had an option to vote to grant immunity or not to grant immunity, then I think under those circumstances that the Defendant or his attorney can withdraw the tender of the witness if he's not granted immunity.

SENATOR CLOWER: So, it's sort of like us making the decision in the dark now or waiting until the time to determine the relevancy and the magnitude of the testimony and making the decision then.

SENATOR SCHWARTZ: Well, I put it on that basis, yes, I would rather -- particularly since we're talking about a record which has been made in one part -- I would particularly rather have an opportunity when a witness is offered. If other witnesses are offered in the future that we have an opportunity to judge whether we want to give that witness immunity to hear that additional testimony.

SENATOR CLOWER: If we make this amendment now what happens to those witnesses that have testified here previously under the old rule?

SENATOR SCHWARTZ: Well, none of them --

SENATOR CLOWER: No defenses were raised --

SENATOR SCHWARTZ: Apparently none of those have raised any question of not being willing to testify or having any desire for immunity.

SENATOR CLOWER: Thank you.

SENATOR OGG: Mr. President, will the gentleman yield?

SENATOR SCHWARTZ: Yes, sir, I yield.

THE PRESIDENT: The Senator yields.

SENATOR OGG: The only thing I don't understand what's been stated -- Will Counsel for the Defense when he tenders witnesses X, Y, Z state, "I tender witnesses X, Y, Z, who has relevant testimony about the following," etc., etc.? Will he sum up the general area or -- again, isn't --

SENATOR SCHWARTZ: I think the question is better asked of Mr. Mitchell, but he can reply in case I have stated it incorrectly. If I were to tender a witness who I expected to desire immunity, I think I would tender the witness and state that the witness is going to testify about relevant issues and ask him the first question and then let him assert his position, but I ask Mr. Mitchell to reply.

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: That's the problem. I call witness A to the stand, I don't know what he's going to testify to, he's represented by lawyer Z. I say, now, Mr. A, did you enter into a conspiracy with Judge Carrillo -- we're going to refuse to answer on the grounds that the answer might tend to incriminate me under the Fifth Amendment under Article I of the appropriate section of the Texas Constitution. I have no further control, unless my question first is relevant because it's directly in the teeth of the Article of Impeachment; two, I have no further control if the provision is made, but if it's mandatory then he can be ordered to answer. Don't you see? If it's "may" I'm deprived of his testimony, that's my problem. All he's got to do is invoke the privilege, a judgment be made that we're not going to require him to testify, because we're not going to want to give him immunity.

SENATOR OGG: Well, but you have answered my question. That still leaves us that judgment and that's what I was trying to get to.

MR. MITCHELL: Right.

SENATOR OGG: It leaves it for us, rather than for you.

MR. MITCHELL: Right.

SENATOR OGG: In effect.

MR. MITCHELL: Well, yes. The Statute says "shall," of course as it's written. It means that where I ask him a question, put him on the stand and ask him a question which is relevant and he claims the Fifth Amendment, then he's mandated to answer with the corresponding right of immunity, which I know I'm going to be given that testimony and I'm not going to be denied that testimony. That's the difference. That's the problem we found in the Judicial Qualifications. I would say I was deprived of some fifteen witnesses' testimony because they pled the Fifth, I petitioned the judge to order them to be granted immunity. He refused, and consequently, my client, Judge Carrillo, was denied and deprived of that testimony.

SENATOR LONGORIA: By the same token under the law as it is now without the change he proposes, could you conceivably cite somebody, subpoena somebody over here and protect him from any crime that he may have committed or might commit in Duval County?

MR. MITCHELL: The statute and rule, as written now, Senator, if the question I put to him, as I understand the rule, relates to an act which is relevant to the Articles of Impeachment, he would be mandatorily given immunity if required to answer.

SENATOR LONGORIA: Yes, but relevant only if it's changed the way he wants to change it. I don't think he has it now, and the way it is now if he comes over here and you cite it before here, you subpoena him, and the first thing he says is he refuses to answer the question on the basis it might incriminate him, he's immune from then on, is that right?

MR. MITCHELL: Yes, sir, the inclusion of the word "relevant" would preclude that from being relevant to the Articles of Impeachment.

MR. ODAM: If I might respond to one comment made by Mr. Mitchell, and I feel bound to do so to clarify the Judicial Qualifications Commission. I do not think Mr. Mitchell was deprived of the testimony of fifteen witnesses who took the Fifth Amendment.

MR. MITCHELL: How many were there, Mr. Odam? Seven? Eight? I was deprived of a substantial number. I don't know the exact number. I filed a petition to require them to answer, and the use of the word "may" in that Judicial Qualifications Statute used by the very gentleman addressing this body now to preclude the above, and they deprive me of the testimony. That's the provision for the move to change the "shall" to "may." It is an old road. I've been deprived the testimony of several witnesses -- several, eight, ten, twelve.

MR. ODAM: That is exactly correct that I did object at that time, and the testimony was not granted because it wasn't permissive with the Master, and I did then and on that basis it is now -- with what Senator Schwartz says. I would suggest the question be put to this Court as it was to the Master whether or not immunity should be granted. We have the argument there before the Master whether or not it was mandatory or not. The judge decided not to require the testimony. It was his

discretion and it should be in our judgment the discretion of this body. You can't just put a witness on the stand, and he takes the Fifth Amendment, and because he took the Fifth Amendment he's clothed in immunity.

MR. MITCHELL: They've been doing it for two hundred years.

MR. ODAM: The prosecution has been doing it for two hundred years. In no case has the Defendant called a witness to the stand, in no reported case has the Defendant called a witness to the stand, no reported case has the Defendant called a witness to the stand in any situation where the Defendant has operated under the law where his witness that he called got immunity.

SENATOR SCHWARTZ: Mr. President, I would urge you to vote for the amendment simply on the basis again that the Rule ought to be the same in this Impeachment Court as it is in impeachment statutes. I, for one, trust the Senate as the Court of Impeachment to be fair with the Defendant, the accused, with the witnesses. On the other hand, I think it would be difficult at best, and it would be an imposition on the Court to simply have the right of an accused in this kind of a proceeding to call any witness who testifies about relevant matters and have a guaranteed immunity with that witness under those circumstances. I just -- I think that we would -- we would probably overindulge the record with immunity to a lot of unnecessary witnesses, because I can see a lot of folks who would be willing to volunteer to testify to relevant matters if their testimony guaranteed them an immunity which they did not heretofore have. And, you know, it's a two-edged sword. But, I think that as long as the impeachment statutes are discretionary, as long as the rules of the Civil Courts are discretionary, then I know no reason for this rule exists as it does.

SENATOR ADAMS: Senator, why don't you let us vote on it?

SENATOR SCHWARTZ: I'm ready.

THE PRESIDENT: Question is on adoption of the resolution. The Secretary will call the roll.

Yeas: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

THE PRESIDENT: There being 31 "Yeas" and no "Nays" the resolution is adopted.

SENATOR TRAEGER: Mr. President, would it be appropriate now to offer the motion that the Senate adopt the agreement that was outlined by the legal officer and read by the Lt. Governor?

THE PRESIDENT: It is a matter really for the Counsel to formally agree to rather than the Senate.

SENATOR TRAEGER: All right. In other words, the Senate need take no action on it to accept those records into its records?

THE PRESIDENT: Mr. Doyle, on behalf of the Board of Managers, did have one objection, which the amendment satisfies, and I will ask Mr. Doyle to speak to that

change that he requests.

MR. DOYLE: Mr. President and Members of the Senate, in conversation with Mr. Jaworski during the debate, he pointed out to me that when he drafted what Senator Traeger just presented to you, he was assuming that the presentation of that record to the Senate was at a time after the record had been submitted to the Supreme Court of Texas. Now, as the Senate debated that, and as Mr. Mitchell, myself, and Mr. Odam discussed it, I was under the impression that was not the case, that what he was talking about was that the Senate would have that record made available to them sometime in the very near future. And I think, if I'm incorrect, Senator Traeger, please correct me.

SENATOR TRAEGER: That's my impression also.

MR. DOYLE: Now, Mr. Jaworski just informed me a moment ago that at the time he typed that up, or had it typed up, he was assuming that we were all discussing that at a time after the record was in the Supreme Court. If the Senate wishes to adopt your suggestion as Mr. Jaworski intended for it to be, that's fine with us. Once it's, you know, in the Supreme Court, though, we don't -- you know, it's a matter of public record, then, and it's open to the newspapers or whoever. The Board of Managers' position is that prior -- the language that the Board finds particularly troublesome is where the language that you have, Senator Traeger, says, "It is agreed by Counsel for Judge Carrillo and Counsel for the House Managers that the proceedings be made available to the Senate." And it appears on the face of it that what the Board of Managers is then becoming a party to is in direct contravention of the Constitution of Texas. And they just don't want to do that. And, as counsel for them, I don't want to do that. Now, if Mr. -- Judge Carrillo and Mr. Mitchell wish to tender that to the Senate and the Senate wishes to accept it for whatever purpose, that's something that we have no control over, but the Board of Managers is not going to be a party to what appears to be an act in direct contravention of the Constitution of Texas.

MR. MITCHELL: May I respond, Mr. President? The tender by Judge Carrillo, and I've been authorized to make this statement, is an absolute unconditional unfettered immediate tender. Now -- period. Now, if the agreement as stated -- and I think this needs to be pointed out -- if the agreement is only after the filing with the Supreme Court of Texas, this is like saying we are going to give you a fair trial and then we're going to sentence you, because it will not go to the Supreme Court, gentlemen, and ladies, unless it's adverse. Now, if it's a favorable finding, it will never be made public. It won't go before the Supreme Court. So, this agreement is really not -- would not be effective if the finding of the Commission is in my favor. So, there ain't no way in the world I'm going to win if that thing goes, because it will not be made public if, as Senator Traeger clearly amplified earlier, if there is no adverse conclusion drawn by the Commission from the Master's finding, the matter is dead and the record is sealed, period. So, my client wants it abundantly clear that his offer -- we know that rule. I can stand back here and sandbag forever, and if it didn't come out of there and you all can go ahead and try us for another two or three months, what would be their gain in making that kind of deal with this body? I'm not going to do that with you all.

I'm saying we're willing now because of how we know it one way or the other, based on the evidence, my client's instruction to me is to make an unconditional absolute offer now. I'm aware of the provision in the Constitution and the problem of the special counsel. But, I say this Body right here is as good as any. If I'm going to go to hell, I would like to go with you all than anybody else.

SENATOR OGG: Mr. President, would Counsel for the Defendant yield?

THE PRESIDENT: Counsel yields.

SENATOR OGG: Mr. Mitchell, in effect, what you're saying, and apparently where we are, you're making that unfettered offer to us now, there is no agreement necessary, it's just up to us whether we want to accept this for our own personal use and benefit of this trial when that's final?

MR. MITCHELL: Right. And as included in my motion, I would like to have the procedures made a part of the House Journal so it would be a part of the record. That's exactly right, Senator. The Senate, I'm sorry. I'm saying we're making that record, and here it is. We'd like to make it a part of this record for whatever use. And, if you want to discard it, that's your business.

SENATOR OGG: Question. Do you want to make that offer to be a part of the Senate Journal immediately when it's final?

MR. MITCHELL: That's the content of the motion, yes, sir.

SENATOR OGG: Okay. Well, then, in effect, it becomes a public record?

MR. MITCHELL: That's right.

SENATOR OGG: Okay.

SENATOR TRAEGER: Mr. President.

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: As I understand what has happened thus far, and I certainly stand to be corrected, the House Managers have taken the position that we would transgress on the Constitution to admit this as evidence in this impeachment procedure. Mr. Mitchell has offered this as a tool available now to expedite these procedures. Would the -- since Mr. Mitchell, neither he nor the House Managers can make a motion on the floor of the Senate and since the Senate in its wisdom, I would assume has the right to make this determination, whether we want to take advantage of the testimony which would be available to us or whether we're afraid to jeopardize or afraid to transgress upon a constitutional provision, then I would make the motion that we accept the transcript of the Judicial Qualifications Committee hearing on Judge Carrillo, and the Senate then can debate and determine and vote on whether we want to accept that or not when it's filed. No, no, not when it is filed. As of now.

THE PRESIDENT: Senator, would you restate your motion?

SENATOR TRAEGER: Again, Mr. President, the fact that no motion can be made from the -- I would make the motion that the official transcript of the Judicial Qualifications Committee as submitted to us by the Judicial Qualifications Committee be accepted by this Senate and used for whatever means it can be used to accelerate and expedite these proceedings and printed in the Senate Journal.

THE PRESIDENT: Senator from Pötter.

SENATOR SHERMAN: Mr. President, will the Gentleman yield? This may be a question for Mr. Odam. But, as I recall the explanation that he gave us earlier that there are still several days before the Magistrate is able to take any action regarding the transcript, so it seems to me there is nothing to tender at this time, is that correct?

MR. MITCHELL: I'm sorry. I didn't explain to the Senate that this record was taken on what we call a daily copy, Senator, and it was available to the Judicial Qualifications Commission within a period of hours after we took the testimony. Our record is complete, and it was completed within hours after the last day of testimony, so it's available.

SENATOR SHERMAN: So, what is being tendered is being made before any action was taken by the Masters?

MR. MITCHELL: That's correct.

MR. ODAM: And, also, in light of what Senator Traeger said about the way the motion will be drafted, it would be my suggestion to be sure we don't run into any problems about the waiver of confidentiality is that the volumes, the twenty-nine volumes that Mr. Mitchell has under the Rules of the Texas Supreme Court, that those volumes be made available. The problem is, I think a concern on the part of the Judicial Qualifications Commission, to tender what they have for fear of the breach of confidentiality. It would seem like it would be cleaner if it were the volumes that are in the physical possession of Mr. Mitchell. I don't want that to be a major hang-up.

SENATOR TRAEGER: What you're saying is a mechanical thing that would be gotten from the defendant rather than the Judicial Qualifications Commission, so that's the source of it.

MR. MITCHELL: I would be pleased that that would be part of the motion, and I would be ordered to deliver my copy up.

SENATOR TRAEGER: Mr. Mitchell, may I --
Mr. Chairman, may I ask Mr. Mitchell a question?

Mr. Mitchell, these transcripts that you have, are they complete within themselves and in the final -- the last transcript of the last day's proceedings? Is this a wind-down of something that would say is this all the evidence of the Defense, all evidence of the Prosecution, and a final standing?

MR. MITCHELL: Yes.

SENATOR TRAEGER: So, if they are -- unless there is later submitted additional things, these are complete proceedings within itself, and those hearings as of now are not going on, is that correct?

MR. MITCHELL: That's right. And, Senator, the transcripts, I envision, could go into the Senate Journal as has been the rule up till now, and the Exhibits attached as they relate, and would flow just as the transcript is flowing now --

SENATOR TRAEGER: You could deliver to this body the physical facts which could be reproduced by this --

MR. MITCHELL: Except I cannot deliver the Exhibits. The Exhibits would be in the technical custody of the Master. Other than that, I could deliver --

SENATOR TRAEGER: Is it necessary to have the Exhibits with the transcript?

MR. MITCHELL: It should go hand-in-hand. I think if this Body called for them, they would be delivered.

SENATOR TRAEGER: In other words, you assume they would be on an on-call available basis?

MR. MITCHELL: Yes.

THE PRESIDENT: Mr. Odam, the suggestion that you made a moment ago that the actual physical copy we're talking about be the copy in the possession of the respondent, does that in your judgment solve the constitutional problem, their Section 10 of the Judicial Qualifications Commission Section of the Judicial Article?

SENATOR LONGORIA: Mr. President, I can't hear. What was the question?

THE PRESIDENT: Senator, everybody else apparently can hear.

SENATOR LONGORIA: They don't pay any attention, Mr. President. I do, and I want to know what's going on.

THE PRESIDENT: Well, Senator, if you pay attention to the rules of the Senate, you'll find that you are required to rise in place and address the Chair.

SENATOR LONGORIA: I'm sorry.

THE PRESIDENT: Mr. Odam.

MR. ODAM: The order of the Senate, would that get around the confidentiality --

THE PRESIDENT: What's under discussion here is whether or not the disclosure of these transcripts violates the provision of the Constitution. I'll ask the Secretary of the Senate to read right now.

SECRETARY/CLERK: CONSTITUTION OF TEXAS, Article 5, Section 1-a, Subsection (10) ... "All papers filed with and proceedings before the Commission or a Master shall be confidential, and the filing of papers with, and the giving of testimony before, the Commission, Master or the Supreme Court shall be privileged; provided that upon being filed in the Supreme Court the record loses its confidential character."

MR. ODAM: Do you want me to speak to that?

THE PRESIDENT: Yes.

MR. ODAM: Probably the only time Mr. Mitchell and I have been in any agreement on anything -- and I have the utmost and the greatest respect for Colonel Jaworski, and the opinion that I state is not that of the Board of Managers. I don't speak for them but respond to Governor Hobby's question to me, and that is, in our opinion, and I believe -- and I say it, if Attorney General Hill were here, and we've discussed the matter, that we would come closer to agreeing with what Mr. Mitchell

stated, and that is, as Senator Schwartz said earlier, that it appears in that Constitutional provision that it would be a provision for protection of the Defendant. It says that it is privileged information until such time as made public. Again, that is our opinion. Colonel Jaworski, who I have greatest admiration and respect for differs. But it is our opinion that, as Mr. Mitchell says, if he's going to waive the confidentiality that the Constitutional provision is for his protection as suggested by Senator Schwartz and he is the one in the best position to gain benefit from that. I emphatically state that it's the position of the Attorney General's office and not necessarily the position of the Board of Managers or any Member thereof, or Mr. Doyle. It is just a legal interpretation.

MR. MITCHELL: Mr. President, may I make a statement in that connection? If the Senate refuses to accept or act upon the motion, I would have no alternative as an attorney but to evoke that privilege to preclude the introduction into evidence at this trial of the thousands of pieces of evidence that were introduced before the Judicial Qualifications Commission on the very same provision of the Constitution.

THE PRESIDENT: Senator from Jackson.

SENATOR PATMAN: Mr. President, may I ask Mr. Odam, with respect to the privilege involved as set forth in the Constitution, do you think that privilege extends to the witnesses?

MR. ODAM: I'm sorry could you repeat that?

SENATOR PATMAN: The privileged nature of the record, do you think that extends to the -- do you think the witnesses have that privilege to exclude that testimony, that is, they should waive it?

MR. ODAM: That is a very legitimate question. And, again, it's -you asked for my opinion. And my opinion is that the privileged aspect of it is for the protection of the Judge who is in question. That is my opinion of it. It might be, as you state, that it is for the protection of the witnesses who testified, but I don't know what the basis for that would be. It might be. But, in my opinion, the protection -- the privilege is for the benefit of the Defendant Judge, whoever that Judge might be.

THE PRESIDENT: Senator from Dallas, Senator Clower.

SENATOR CLOWER: Mr. President, this appears to be a very -- possibly a crucial point that we might be proceeding on some way and make some mistake here at -- after 5:00 o'clock in the afternoon. It's not something that has to be acted on at this particular time. I submit to you that we can look at the law ourselves, talk with our advisors and make a decision, and maybe tomorrow or the next day, I would ask unanimous consent we take this -- this motion -- this tender under advisement.

SENATOR AIKIN: Mr. President, I have got a motion to take care of that.

THE PRESIDENT: Let's dispose of this motion, Senator.

SENATOR AIKIN: Do you want to get rid of it? Okay.

THE PRESIDENT: Your motion, Senator, is to -- that the Board of Impeachment take the Defendant's tender of transcripts under advisement.

SENATOR CLOWER: By unanimous consent.

THE PRESIDENT: Mr. Mitchell?

MR. MITCHELL: Certainly, whatever time is required, Mr. President, for the Senate to perform it's function correctly. We have no objection.

THE PRESIDENT: Mr. Doyle?

MR. DOYLE: I'm sorry. I couldn't understand, Mr. President.

THE PRESIDENT: He said he had no objection to the Court taking the matter under advisement.

MR. DOYLE: I've never found it made any difference whether you objected to that or not, Mr. President.

THE PRESIDENT: Now, you've heard the motion from the Senator from Dallas, Senator Clower. Is there objection? The Chair hears none. Senator from Lamar.

SENATOR AIKIN: I move the Senate stand adjourned until 9:30 o'clock tomorrow morning.

MR. DOYLE: Mr. President, I would appreciate it if you could give us some idea -- I have one witness who can be available in the morning. Should the Senate decide to start taking testimony the first thing, that witness may not take us through the noon hour. It probably would take us through the noon hour. Should I have the next one available tomorrow afternoon, or should I just kind of stand pat with what I have?

THE PRESIDENT: I would have witnesses available for a full day of testimony, Mr. Doyle.

MR. DOYLE: Mr. President, can I assume that we will resume whatever discussion the Court anticipates on this first thing in the morning?

THE PRESIDENT: I think we've laid this subject to rest for the moment.

MR. DOYLE: Okay. So we can anticipate testimony in the morning?

THE PRESIDENT: Senator from Lamar moves the Senate stand adjourned until 9:30 tomorrow morning. All in favor signify by saying "aye", those opposed "no". The "ayes" have it, the Senate stands adjourned.

Accordingly, the Senate, sitting as a Court of Impeachment, at 5:10 o'clock p.m. adjourned until 9:30 o'clock a.m. tomorrow.

TWELFTH DAY
(Tuesday, January 6, 1976)

The Senate, sitting as a Court of Impeachment, met at 9:30 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present:

Present: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Hance, Harrington, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: Gammage, Harris and Meier.

A quorum was announced present.

The Reverend Clinton W. Kersey, Deputy Executive Director and Supervising Chaplain, Texas Youth Council, offered the invocation.

LEAVES OF ABSENCE

Senator Gammage was granted leave of absence for today on account of important business on motion of Senator Ogg.

Senator Harris was granted leave of absence for today on account of important business on motion of Senator Clower.

Senator Meier was granted leave of absence for today on account of important business on motion of Senator Brooks.

OATH OF OFFICE ADMINISTERED

The President then administered the following oath of office to Court Reporter Jaye Thompson:

"You do solemnly swear or affirm that you will correctly transcribe and report all of the proceedings on the trial of O. P. Carrillo, on impeachment, so help you God."

MS. THOMPSON: I do.

THE PRESIDENT: Thank you.

APPEARANCES

Judge O. P. Carrillo, Respondent; Honorable Arthur Mitchell, Attorney for Respondent.

Board of House Managers; Honorable Terry Doyle, Counsel; Honorable John L. Hill, Attorney General of Texas; Honorable Liz Levatino, Honorable John Odam and Honorable Max Flusche, Assistant Attorneys General of Texas on behalf of the Board of Managers.

MR. DOYLE: Mr. President and members of the Court, I would appreciate an opportunity at this time to review quickly for you what has transpired with the other

witnesses on Article I up to this point. If you'll remember the first witness that testified was Walter Meek who was the Auditor --

SENATOR AIKIN: Mr. President.

THE PRESIDENT: Senator from Lamar.

SENATOR AIKIN: If we're going to hear this statement, I think we ought to have the attention of all of the Senators.

THE PRESIDENT: Strict enforcement is called for. Bailiff, see that members are in their seats.

MR. DOYLE: If you will remember, the first witness that testified back in October was Mr. Walter Meek who was County Auditor of Duval County and had been in that position for a number of years. And his testimony concerned the system of welfare payments that was used in Duval County. In his testimony, he described a system whereby a County Commissioner or the County Judge or some other person in authority would issue to a prospective welfare recipient a slip of paper which entitled them to go to some merchant in the community and receive goods.

MR. MITCHELL: Now, we're going to object to that if it please the President. He didn't testify to that. He testified to making out of the vouchers. He didn't know a thing in the world about those welfare slips. And I'm going to object to that. It's not in the record.

In fact, Mr. President, if I might be permitted, he testified unequivocally he had no personal knowledge about the input into those welfare claims. I have specifically in my notes, and his testimony since that time was at that time, "I have no way of knowing --"

SENATOR PATMAN: Could Defense Counsel speak into the microphone?

MR. MITCHELL: I'm sorry.

MR. DOYLE: Mr. President, we might assist the Court --

THE PRESIDENT: Mr. Doyle, the Court will recall the testimony as it was presented on the witness stand. Please proceed with presentation of your case.

MR. DOYLE: Our first witness will be Mr. Cleofas Gonzalez who would be the, I think, the last witness to testify on Article I.

THE PRESIDENT: Senator from Guadalupe?

SENATOR TRAEGER: Can I make an inquiry of the Defense Counsel at this time?

THE PRESIDENT: Yes.

SENATOR TRAEGER: Mr. Mitchell, have you heard the name of the gentleman that's going to be called to testify, choosing whether you care to do so or not, was this one of the witnesses you heard in the Judicial Qualifications hearing in the case of Judge Carrillo?

MR. MITCHELL: Yes. He was a witness before the Select Committee as well as in the Judicial Qualifications.

SENATOR TRAEGER: Was he cross-examined and thoroughly questioned by both sides in this case?

MR. MITCHELL: Yes, he was.

SENATOR TRAEGER: Mr. President, at this time, again, and I feel like we are -- this witness here, we don't have it now and obviously we're going to hear him, so this is the first of the beginning of a number of witnesses whom we have -- and Mr. Mitchell, is this the record of the Judicial proceedings?

MR. MITCHELL: It is, not including the Exhibits, Senator.

SENATOR TRAEGER: Where we have a complete record of the examination, cross-examination, etc., from the Judicial -- the Judicial Qualifications hearing which could be made available to this Senate to track the witnesses, what he says, what he's been asked, etc., which could in many cases probably prevent by reference the bringing up of minor witnesses which do not curtail or prevent anyone from examining or cross-examination of another witness if this material were available to us. I cannot help but believe that it would save this Senate, the people of Texas, the Defense, the Prosecution, everybody else, a great deal of time. Let's say it only saves a week, it would certainly be well worth the reward we get from it.

Now, I cannot see where it would prejudice the case to introduce for either side, introduce sworn testimony in which both sides participate which would be available to this Senate. I would like at this time to move that the records of the proceedings of the Judicial Qualifications Commission recently included in Corpus Christi against Judge Carrillo be made available to the Senate and entered as a part of the record of this case.

THE PRESIDENT: Mr. Doyle, do you care to state the position of the House Board of Managers?

MR. DOYLE: Mr. President, I think I made the House Board of Managers' position quite clear yesterday. This appeared to be a unilateral --

SENATOR TRAEGER: Terry, we can't hear you.

MR. DOYLE: Mr. President and Members of the Senate, I attempted to make the position of the House Board of Managers clear yesterday. If I understand Senator Traeger's motion correctly, he is asking that this Court accept the unilateral tender of certain items by the defense. I can't see that we have any position in that.

THE PRESIDENT: Before submitting the motion of the Senator from Guadalupe to a vote of the Senate, the Chair will take the liberty at this time of requesting that the Special Counsel address the Senate.

MR. JAWORSKI: Mr. President and members of the Senate, I am well aware of the problems that confront you. I know the pragmatism that one is inclined to follow in a situation of this kind, but I am also aware of my responsibility to advise the President and to advise you of what I believe the law to be. It doesn't mean that I am correct in my interpretation, but it does mean that I am giving you the benefit of the best advice that I can muster.

Now, in my view, I think it would ill-behoove this body to go squarely in the teeth of a constitutional provision, that as we lawyers so often use the term, is plainly and unadulteratedly written. It says that these proceedings are privileged, are confidential until such time as the record is filed in the Supreme Court. There are no exceptions of any kind written under this provision. It says that and it says it in an unconditional, unequivocal manner.

Now, we get down to the question of whether one can read into that provision that the Respondent has a right to waiver, and that is only for the benefit of the Respondent. Unfortunately, the provision doesn't say that. If you would read it again very carefully, you will see that just -- without the slightest equivocation and without any exceptions, it puts this record in a confidential and privileged category until it is filed with the Supreme Court.

Now, what the framers of that constitutional provision had in mind has not been interpreted by the Supreme Court, but it's certainly subject to the interpretation. I would personally interpret it as meaning that there are no exceptions to it, that for whatever reasons the framers had in mind, it is to be kept confidential until such time and privileged until such time as it is filed with the Supreme Court.

Now, Judge Carrillo and his counsel, on yesterday morning, filed a waiver of that particular privilege as far as it pertains to them, and that's fine. But, you will recall that when the Assistant Attorney General, yesterday, was questioned by Senator Patman after this waiver had been filed -- and I, too, have the highest regard for him and for his views, as I do for the Attorney General whose views I certainly respect, and respect very greatly -- but, you will recall, when he was questioned by Senator Patman, he invoked that particular provision of confidentiality and said he could not answer the question or the questions that were propounded to him. But, this was after the privilege had been waived by Judge Carrillo.

Now, I suggest that if that privilege existed at the time that Senator Patman's questions were propounded and the answers were given, it still exists today. All I can say to you is that I think it would be somewhat unfortunate if it were written into the records of this trial that this august body took the position that was contrary to a clear provision of the Constitution, and particularly at a time when that provision has not been construed by our Supreme Court.

So, I can't do other than advise you not to refer to this record, not to use this record until such time as it is filed in the Supreme Court just as the Constitution says.

MR. MITCHELL: May I make a statement, Mr. President, in that connection?

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: In view of Mr. Jaworski's position we withdraw the motion to tender the record and stand on the privilege as regards all of the documentary and particularly that which has now been alluded to by Counsel, beginning in the record at H-15, through and including 38, which incidentally was introduced before the Judicial Qualifications Commission, brought back in this record. And we're going to stand on the privilege on each and every item of documentary that was introduced in the Judicial Qualifications Commission trial, including the ones in support of Article I which were taken from the record of the Senate, taken down to Corpus Christi, introduced in that record and closed there for the constitutional privilege. That includes 1, 2, and 3 and by specific Mr. President's reference, H-15 to H-38.

THE PRESIDENT: Mr. Mitchell, a matter that is already in the record of the Senate trial, there is no privilege attached to that and there is no privilege for you to withdraw.

MR. MITCHELL: Mr. President, I might point out --

THE PRESIDENT: Mr. Doyle, proceed with your case.

SENATOR ADAMS: Mr. President.

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: I have tried many lawsuits and I have been sitting in the well of the courthouse with my client and I have had many judges -- and I feel in the position of a judge today. And I have had many judges tell me, "Counsel, proceed". And as a judge today I would like to say "Counsel, proceed". Thank you, Mr. President.

THE PRESIDENT: Proceed, Mr. Doyle.

SENATOR OGG: Mr. President.

THE PRESIDENT: Senator from Harris, Senator Ogg.

SENATOR OGG: Is this, then, where we are if there is any possibility, if time could be saved by having those volumes of records and by having that testimony available? Then the consensus is that the only way that we as a Court of Impeachment could legally do that and everyone comply with the Constitution would be to wait until and if this is filed with the Supreme Court, which would be, according to the best estimate of everyone here, at the outside about sixty days. Then to be able to have those volumes, we would have to wait that period of time or if we proceed with the trial now we're going to have to hear this testimony all over again and will not have the access to that. Is that --

THE PRESIDENT: Your question supposes, Senator, that the Judicial Qualifications Commission will make a finding adverse to Judge Carrillo and will deposit those documents to the Supreme Court.

SENATOR OGG: Yes, I said if they are to be filed it would be about two months. And of course, if they're not, if they do not make such a finding they would not be filed and we would never have access to them.

THE PRESIDENT: That was the testimony of the Assistant Attorney General, Mr. Odam, yesterday.

SENATOR OGG: Mr. President, along that line I would like to move that this Court of Impeachment stand recessed until Monday, March 8 at 11:00 a.m.

SENATOR TRAEGER: Mr. President, point of order.

THE PRESIDENT: State your point of order.

SENATOR TRAEGER: I still have a motion in front of the Senate. Has it been officially -- has the Chair ruled the motion out of order and killed it or is it still live?

THE PRESIDENT: Well, in view of the fact that Mr. Mitchell has withdrawn the order and indeed invalidly attempted to invoke a privilege on matters already in the

record of this trial the Chair would hold that your motion is moot.

MR. MITCHELL: Well, we offer that again for that motion, for that purpose of that, Mr. President, if we might be permitted to.

SENATOR TRAEGER: I'm sorry, I didn't understand you.

MR. MITCHELL: Well, in order to facilitate a vote, if need be, we will renew that motion to tender for vote if it is the pleasure of the Senate to vote on it.

THE PRESIDENT: Mr. Mitchell, do you withdraw the offer or do you not withdraw the offer?

MR. MITCHELL: In view of the pre-existing motion, Mr. President, I think it would be appropriate that the pre-existing motion would be a prior time -- would presuppose my offer was in existence and that offer would be in existence for the purpose of that motion and the vote of the body.

THE PRESIDENT: Mr. Mitchell, are you advising the Chair and the members of the Court that your tender offer has been renewed?

MR. MITCHELL: Yes, sir, Mr. President.

THE PRESIDENT: The question is then on the motion of the Senator from Guadalupe that the tender offer of the transcript of the Judicial Qualifications Commission hearing be accepted. Is there any further debate or discussion on that motion?

SENATOR TRAEGER: Mr. President, I would like to amplify for just a moment.

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: It's obvious that the only way the Senate would ever be made -- this would ever be made available to them is if Judge Carrillo -- those proceedings would go against him, if he's found guilty, other than that they would never go to the Supreme Court. Is that correct?

THE PRESIDENT: That's correct, Senator.

SENATOR TRAEGER: So, we're assuming then that we're waiting on the situation that he would be found guilty. And the Senate is making, then, an assumption as to the outcome of the case in order to ever have the record.

THE PRESIDENT: That's correct, Senator.

SENATOR TRAEGER: And I don't think it's fair for the Senate to do that. And that the Defense, obviously, as we argued yesterday when we passed the House -- the Texas Legislature and very obviously for the reason we just mentioned the privilege doctrine that prevails here is for the protection of the person charged on false charges, protect his reputation from charges that later are proved irrelevant and he's proved innocent. That's the sole reason for the privilege. He's willing to waive that, to pass that privilege, to waive that right, then I think we're doing the people of Texas, the Texas Senate and all parties involved an injustice to fail to make ourselves -- to fail to

make available the proceedings that we're referring to.

SENATOR SCHWARTZ: Mr. President.

SENATOR ADAMS: Mr. President.

THE PRESIDENT: Senator from Galveston.

SENATOR SCHWARTZ: Members of the Senate, I don't know how anybody intends to vote on this offering -- the state of condition we're in this morning, but I think it would be -- it would be a terrible thing for all of us as members of this Court if we did not accept the offer of that record. But I can conceive of people who might not want to vote for it that some guys -- that what they were doing might be against public policy. I, for one, don't think there's any violation of public policy in my reading something that's been tendered to me by Counsel for the accused before a Court of which I'm a Member. And I think that if we don't take this opportunity today I don't want to take the chance that we might not later have that opportunity. I think it's offered, it is something which we can read or not read. If in your wisdom you don't want to read it, because it would violate a public policy which you respect, then don't read it. You know, that's it insofar as your own conduct is concerned. But I think that record ought to be in this record. I have not seen it, I have not heard about it, I don't know what's in it, I have heard no more than you have heard here from the parties concerned at this microphone; but if we fail to accept this record then we have done an asinine thing, because we are the Members of the Court, it's been offered, it's evidence of witnesses who are about to be called to testify. It can be used affirmatively, it can be used for impeachment purposes, that is of the witnesses, it can be used to determine the credibility as to whether or not they have ever made any prior inconsistent statements. It can be used for a variety of circumstances and to refuse that offer I think would in fact be in derogation of our duty and our responsibility as members of the Court. And I only make these remarks because I think there are non-lawyers in this body and at least from one lawyer's standpoint as a trial lawyer and somebody who has never been a judge, doesn't want to be a judge and doesn't care about it, you know, any of the public policy involved except my duties in this case I, for one, am going to vote to accept this record.

SENATOR MENGDEN: Mr. President.

THE PRESIDENT: Senator from Harris, Senator Mengden.

SENATOR MENGDEN: Mr. President, fellow judges, I would like to point out that it is my understanding that the only way that these proceedings can be appealed to a Federal Court is if a constitutional question is involved. And we have cases now where an accused will demand his constitutional right to defend himself in trial. And the judges have held, "No, because of the case we would rather appoint competent counsel." And the accused stands on his constitutional right and says, "No, I want to defend myself." And under that reason the Judge had to let the accused defend himself. And, of course, he lost the case and on appeal to the Supreme Court the Supreme Court held naturally in a case of this sort an individual who has no training in law was not adequately represented by Counsel, so it is reversed and sent back.

I think that we find ourselves here perhaps in the same position. And we have heard testimony or the Counsel say that the Defendant, the accused has authorized me to make this constitutional -- or to make this tender of a constitutional prohibition. Well, now, we don't know if the accused on his own volition as a matter of strategy and

tactics for further appeal approached his attorney or whether it was the attorney who approached the accused and said this is the plan and do you assent to it. So, I think that what we're doing here is getting ourselves into that same sort of situation. We have voted to be advised by a high legal counsel and scholar. He tells us here is a constitutional problem that faces us and I feel that the House has passed a Resolution of Impeachment, the Constitution says the Senate is to try that accused. We do not know if the House Manager or if Counsel for the House Managers appeared at the Judicial Qualifications Committee, we don't know if he asked any questions, we don't know what the cross-examination was. We are constitutionally mandated to try these Articles of Impeachment. We don't need any records from a federal court, we don't need any records from a Judicial Qualifications and I think it is a serious mistake if we accept any of these tender of records, because we're going to get ourselves into a constitutional question that is going to assure an appeal in the event of an adverse decision. And I think that we should hear what the Prosecutor for the House Board says and let's get on with this trial after all of these months. And in the words of the Judge from Jasper let's proceed with what the people elected us to office to do.

SENATOR ADAMS: Mr. President.

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: Mr. President, and Members of the Court, I'm going to be very brief, because Senator Schwartz very eloquently stated my position. I would like to say this in answer to Senator Mengden's statements, that it has been found that there is no appeal from a Court of Impeachment, but obviously there might be an appeal on a federal question, Senator Mengden. And the last time I read that portion in regards to the Judicial Qualifications Commission it was in the State Constitution and not the United States Constitution, that if there is an appeal made it will be an appeal made on the violation of the equal protection of the laws of the due process clause of the United States Constitution and not the Texas Constitution. And, again, Members, very simply, and in fact what has been said time and again there certainly is a Doctrine of Waiver in this State and in these United States. The provision was written to protect the reputation and the sanctity of the judiciary that sits in judgment and is meting out justice to the people. It was to protect that sanctity. That's why the provision is in the Constitution. And if the very person it seeks to protect wants to waive that provision I certainly think he has the right to do it and we have the obligation to the people of this state to accept that waiver to accept this testimony.

Thank you, Mr. President and members of the Court.

SENATOR OGG: Mr. President.

THE PRESIDENT: Senator from Harris, Senator Ogg.

SENATOR OGG: Along that same line I would like to ask General Counsel a question that was discussed yesterday in Executive Session and it may not have been answered where everyone heard it. He spoke directly to Senator Mengden's question. I asked Mr. Jaworski if he could conceive, irrespective of the question of public policy -- if he could conceive of any situation wherein Counsel for the Defendant could ask for this waiver and then later claim that there was a violation of the due process clause on appeal in a federal question. And Mr. Jaworski told me that answer, but I would like to, in case the rest of the Senate didn't hear it -- maybe he would like to state that again.

THE PRESIDENT: The Chair will recognize Colonel Jaworski for the purpose of responding to that question.

MR. JAWORSKI: Senator Ogg, I must say to you that the Federal Courts, as I'm sure Senator Adams realizes, are in position to take up any question and exercise almost unlimited, in fact unlimited authority with respect to what they want to recognize, what they want to go into, and if they should decide to determine that due process was not followed, they'll go ahead and say so, because they've done so in many instances where I thought due process was not even involved. But, they decided that fairness dictated in their judgment that a certain attack be made or a certain objection be upheld, and they went ahead and did it. That's just how the Federal system operates.

The great concern that I have is that this language is so very clear, and I would certainly advise that the language be taken word by word and looked at very closely before any type of action is taken contrary to these clear provisions. When it says that all papers filed with the proceedings before the Commission or a Master shall be confidential, it means just that. And when it says, "In the filing of papers with and the giving of testimony before the Commission or Master or the Supreme Court shall be privileged," it means just that. Provided that upon being filed in Supreme Court, the record loses its confidential character. It means just that. And it's the only way that I can answer the question.

Now, if somebody wants to engraft on their own an exception into that and say, "Except that it can be waived by the Respondent," then, of course, it's your privilege to do so. But, I say that it goes squarely in the teeth of the constitutional provision.

SENATOR OGG: Yes sir, I was speaking more to the fact that after we discussed that, yesterday, to the fact, I asked you if you could conceive of any situation purely under the waiver itself, not with respect to the Constitution, but if there was any situation that you could conceive where the defendant had waived this where he could later come back and claim just on the basis of that, claim some type of appeal.

MR. JAWORSKI: I think he's in the position to make a waiver if he decides to do so, yes. But, I think that's only part of the question that's involved here.

SENATOR OGG: Yes, sir:

MR. JAWORSKI: I think that even though he waives as far as he himself is concerned, it may still become a question for determining as to whether the proceeding was proper and if the Federal Court should decide to entertain.

SENATOR HANCE: Point of inquiry.

THE PRESIDENT: State your inquiry, Senator.

SENATOR HANCE: Before us right now would be Senator Traeger's motion on accepting this.

THE PRESIDENT: Correct, Senator.

SENATOR HANCE: Would Senator Traeger yield for a question?

SENATOR TRAEGER: Certainly.

SENATOR HANCE: As to accepting this, the estimate of approximately sixty days would be the most before we could get the testimony, but only then if the Judicial Qualifications Committee found against Judge Carrillo, is that correct?

SENATOR TRAEGER: That's correct.

SENATOR HANCE: So, then, if Judicial Qualifications doesn't find against him, we never get the testimony, and we would be right back where we started.

SENATOR TRAEGER: That's true.

SENATOR HANCE: As a result, there would be a good chance or might be some type of chance that we would just be back in the sixty days and start hearing the testimony?

I plan to vote against it. I think it's a bad situation to get ourselves into. Because we'll be back and back and back. I would like to go ahead and get it over with.

SENATOR TRAEGER: Mr. President, on that, I think it should be a part of the record, and I am going to ask a direct question of the Counsel for the Defense.

Now, Mr. Mitchell, I would like your attention, because I think it's important to the case, to the acceptance of these records. And my only motive in asking this be incorporated, the reason we previously outlined, and I don't want to be repetitious, in fact, I think we are passing up a tool and a record, and can save all of us a great deal of time, money and effort. But, I want it clearly answered by the Defense and in the official record of these proceedings that the introduction of these, by the introduction of this transcript, you are waiving any privilege and any right to appeal on -- for the use of anything that's in these proceedings, and you would not plan and not in any way plan to use this as a basis of appeal, the fact these proceedings are being entered are being used here?

MR. MITCHELL: Senator, I represent to this Body I would waive, and with the leave of the Court, I would like to ask my client to make that waiver personally if I might be permitted to, Mr. President.

Judge Carrillo, you are a judge, are you not?

JUDGE CARRILLO: Yes, I am.

I have considered this thing thoroughly, and I believe the Senate would save a lot of time, save the State a lot of money, and save all of us a lot of time here in Austin, and I have considered this privilege that I do have, and I waive and I hereby tender this record to the Senate for its consideration wholly and totally, and I do not expect and I will not use this as a vehicle for an appeal in any way, shape or form.

MR. MITCHELL: And you will not claim -- you will not claim error for a breach of that privilege, Judge Carrillo, and you hereby waive any complaints, constitutional or otherwise, if the Senate chooses in its wisdom by motion to accept this record in lieu of that testimony being repeated here?

JUDGE CARRILLO: I do so.

SENATOR TRAEGER: You totally waive the right of appeal?

JUDGE CARRILLO: Totally waive right of appeal insofar as this record is concerned to the Senate.

THE PRESIDENT: Mr. Doyle?

MR. DOYLE: Mr. President and Members of the Court, in view of Mr. Mitchell's question of his client, I would request that the Court determine that Judge Carrillo will not attempt to use this tender in some effort to upset the work or appeal from the decision of the Judicial Qualifications Commission as a result of this tender. I think that should be made quite clear.

JUDGE CARRILLO: Yes, sir. I understand your question, and I agree to that wholeheartedly.

THE PRESIDENT: The Court understands, Judge Carrillo, that you waive the use of this transcript in this proceeding, you waive that as an appeal or protest of any sort against any proceeding of the Judicial Qualifications Commission and the Supreme Court of Texas?

JUDGE CARRILLO: I waive it completely, and I will not use it as a vehicle for an appeal from any decision the Senate reaches, any decision the Judicial Qualifications reaches or any decision the Supreme Court of the State of Texas reaches.

MR. DOYLE: One further thing, Mr. President. I want to make certain that we understand that this tender and acceptance by the Senate is not done in lieu of any testimony or other evidence that might be produced by the Board of Managers.

MR. MITCHELL: Yes, that's understood, Mr. President. We certainly do not bind or intend to bind any Member of the Court. And I understand -- I want the record to reflect that, and I would like to have my client make that affirmation behind me if permitted.

JUDGE CARRILLO: Certainly, I understand the use of this record will be for the use of the benefit of the Senators in reaching their conclusions in this trial. Certainly, if there are any questions that arise out of this use of this transcript by the Board of Managers, the Attorney General and of course ourselves, we would continue to ask questions of any witness that is brought forward personally if it's felt that he should be brought forward.

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: Judge, you are saying, and it's my understanding and my feeling in making this motion that this in no way would curtail, prevent or preclude any of these witnesses being called, any supplementary question being asked or any way curtail any proceedings except where all parties are in agreement it would be worthwhile to use it?

JUDGE CARRILLO: That is my understanding completely, Senator, and I agree with it wholeheartedly.

SENATOR TRAEGER: That's my understanding in making the motion.

SENATOR HANCE: Would Senator Traeger yield for a question?

THE PRESIDENT: Senator yields.

SENATOR HANCE: As accepting this offer, if the transcript is not going to be available until and unless Judicial Qualifications Committee finds against him, why do we have to act on accepting this offer at this time?

SENATOR TRAEGER: How are we going to use it --

SENATOR HANCE: Okay, we can accept it at the time. We can't use it is my understanding, until there is a finding by the Supreme Court.

SENATOR TRAEGER: As soon as we can get it reproduced and made available to us. That's the essence of the motion.

THE PRESIDENT: Question is on the motion of the Senator from Guadalupe that the tender of the transcript of the Judicial Qualifications Commission hearing be accepted subject to all the waivers of privilege and right of appeal that you heard from the Respondent and his client.

SENATOR McKNIGHT: Mr. President.

THE PRESIDENT: Senator from Smith.

SENATOR McKNIGHT: I want to ask one question, and I want to be sure I have this straight before I vote on this motion.

Now was it Mr. Jaworski, our Counsel's advice that this constitutional right could not be waived, and this provision in the Constitution states confidentiality of the record until such time as the Supreme Court acts, and the way I understood Mr. Jaworski was that this motion could have actually no force and effect in view of that constitutional provision. Am I correct in assuming that was General Counsel's statement?

THE PRESIDENT: The Chair recognizes the Special Counsel.

MR. JAWORSKI: You are correct, Senator. I think that as far as the waiver that you've heard today goes, and Judge Carrillo has made a statement and Mr. Mitchell has, that takes care of anything that this matter relates to that involves them. It's my construction that it goes further than that.

THE PRESIDENT: Question is on the motion from the Senator from Guadalupe. Secretary, call the roll.

Yeas: Adams, Braecklein, Clower, Doggett, Farabee, Harrington, Kothmann, Mauzy, Patman, Santiesteban, Schwartz, Traeger and Williams.

Nays: Aikin, Andujar, Brooks, Creighton, Hance, Jones, Lombardino, Longoria, McKinnon, McKnight, Mengden, Moore, Ogg, Sherman and Snelson.

Absent-excused: Gammage, Harris and Meier.

THE PRESIDENT: There being 13 "Yeas" and 15 "Nays", the motion is lost. Senator from Brazos.

SENATOR MOORE: Mr. President, I don't think I had the vote, but I want to get on the record that I object to this proceeding at this time. The Judicial Qualifications Commission was set up by the Constitution to take care of matters like

this and the matter is pending, so I'm going to move that the Senate stand recessed until the 10th of June, and that should give everybody plenty of time. I've amended my 19th and go back to the 10th.

THE PRESIDENT: Senator from Travis.

SENATOR DOGGETT: If we have got until June 10th, we've got twenty-nine volumes of testimony here we won't be able to -- we have got the work of the Attorney General, a District Judge, all of the taxpayers' expense, all in vain, and will be meeting at \$20,000.00 a week or so on top of all that.

SENATOR MOORE: Senator, I didn't follow you. Are you supporting my position?

SENATOR DOGGETT: You bet.

SENATOR MOORE: Thank you.

I think in the interest of the Constitution, I don't want to increase taxes. The Judge told us we are not going to have any new taxes. Let's save what we've got.

THE PRESIDENT: Senator from Harris.

SENATOR OGG: Mr. President, because of the time involved and because we cannot now see that record, because it will be some forty-five to sixty days until that record is available and because that would shorten time and it would save money as stated, I would like to move that we stand in recess until March 8th at 11:00 A.M. I believe that's on Monday.

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: May I ask the Defense a question at this time?

THE PRESIDENT: Yes, sir.

SENATOR TRAEGER: Mr. Mitchell, is the Defense totally ready to go ahead and proceed with these proceedings now even though we have waived this record? Are you prepared, now, to go ahead with your defense and would you like to preserve the right of speedy trial?

MR. MITCHELL: I am ready to go, and we insist on a speedy public trial.

SENATOR TRAEGER: Thank you, sir. One more question, Mr. President.

THE PRESIDENT: The Senator from Guadalupe.

SENATOR TRAEGER: Counsel for the Board of Managers, are you prepared to go ahead with this trial and to proceed at the present time?

MR. DOYLE: The Board of Managers is prepared to go forward at this time.

SENATOR TRAEGER: Thank you, Mr. President.

SENATOR MOORE: Mr. President.

THE PRESIDENT: Senator from Brazos.

SENATOR MOORE: I want to amend my motion to the 14th because the 10th falls on a Thursday.

THE PRESIDENT: Two motions to postpone further consideration of this matter are before the Senate.

SENATOR TRAEGER: Is this a debatable motion, Mr. President?

THE PRESIDENT: Yes, it is.

SENATOR CLOWER: Mr. President.

THE PRESIDENT: Senator from Dallas, Senator Clower.

SENATOR CLOWER: Mr. President and fellow judges, I wish to speak against these motions to recess. We came here in September and there was, in my opinion, a valid judgment -- a valid reason for us to continue the case, and we did. We came back in October, and we came back in November -- I think those months are correct -- and I think -- it was my opinion in November that there was no longer a valid reason for us to recess. And, I submit to you now that there is absolutely no reason, because regardless of what's in that record, we are going to have to develop the same record here before this Senate.

The prosecution has the right to put on their case. As judges, we cannot reach up on a shelf and get something that is not in evidence, and consider that evidence. That's what those records would be if we had accepted them.

Still, the evidence must be placed in -- before this Court before we can consider it.

And, about that record, those transcripts were not developed before this Court. Those transcripts cannot talk; we cannot cross-examine those transcripts. They can be used only for impeachment purposes unless the witness would come here and personally verify that actually was his testimony -- was his testimony at that time.

Yesterday, a motion was filed requesting a speedy trial for this defendant. A short while thereafter, we passed a resolution directing that a speedy trial occur to clear up the problems that were occurring in this Senate. I submit to you, we'd look crazy if we continued this case any more. We have asked others to go to trial in a speedy manner. I think we should do that now for Judge Carrillo.

SENATOR TRAEGER: Mr. President.

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: I would like to accede to Senator Clower. In September we delayed; in October we delayed, and I was for the delay at that time since Counsel and the Defendant were both tied up in Federal Court. The last time we met in October, I suppose it was, I voted to continue these proceedings then. At that time, however, the Judicial Qualifications Committee was meeting, but I think that we have now reached a point where the defense has said, "We are ready to go to trial." The prosecution has said, "We are ready to go to trial."

We have already -- the Senate, in its wisdom, has decided not to use that record, so for the same reason that Senator Clower says, it won't be of any help to us whenever we postpone too. I think, just as we did yesterday, we have the right, and the defense has the constitutional right to ask for a speedy trial. It's strung out now for months

and months and months.

I urge this Senate to proceed and go on with our proceedings.

SENATOR DOGGETT: Mr. President.

THE PRESIDENT: Senator from Travis, Senator Doggett.

SENATOR DOGGETT: Mr. President and Members, in no way can the Senate be said to have delayed justice in this case. I think, if anything, the mistake that we made was not to let the Judicial Qualifications Commission begin work the very first day we met up here in September. The reasons that were valid for delay in November continue to be valid today, even though an election may be approaching.

We have entrusted to the Judicial Qualifications Commission this matter. A very honorable and respected judge from Travis County, Jim Meyers, has heard testimony diligently in that case. The taxpayers have paid for the Attorney General and his staff to present testimony and cross-examine witnesses in that proceeding. There are twenty-nine volumes of testimony sitting up there behind Mr. Mitchell that the taxpayers of this state have paid for, and which now this Court cannot consider at all.

I think it would be a serious mistake of justice and a serious waste of the taxpayers' money for us to proceed before we can consider that record, and expense at the rate of \$20,000.00 a week, which is not justified, and I certainly support another one of Senator Moore's promising economy measures.

SENATOR MENGDEN: Mr. President.

THE PRESIDENT: Senator from Harris, Senator Mengden.

SENATOR MENGDEN: I would just like to remind the Judges here that the Legislature entrusted the Judicial Counsel to determine the qualifications of the Judges of the State of Texas. It did not change the Constitution and entrust to the Judicial Counsel impeachment proceedings. We are here on impeachment proceedings, not the judicial qualifications of a judge. We are a High Court of a Trial of Impeachment, and therefore, we should proceed.

THE PRESIDENT: Senator from Harris, Senator Ogg.

SENATOR OGG: Mr. President and members, I think we -- I think Senator Doggett kind of hinted at it, and we might as well lay everything out on the table.

I think that, in many instances, when we voted in September and October and November, many of us talked about the reasons for delaying. Some people hoped that the Judge would resign. Some people hoped that the Judicial Qualifications Commission would do something to move on so we would have something else to go on that would shorten this. And, I submit that the same reason, just as Senator Doggett said, that existed then exists now. The Judge -- obviously, he is still here. He is not going to resign. We are going to have to try this. It becomes a question of not when it's most convenient for us, but what is really best for the taxpayers, and the best thing for the taxpayers, particularly, Senator Mengden, when you have -- if you have not read the Judicial Qualifications Act -- when you have matters that are very closely aligned and that very closely overlap into what has been done, the best thing that the taxpayers can do is have the minimum of one bureaucratic body working on a matter at a time. We've got, in some instances, three and four doing the same thing.

Now, Senator, I know how you feel about bureaucrats, and I know how you resent that, and if you are really for saving the taxpayers of this State some money,

then let's don't get this over with, as we've all hinted around, and do it before our filing deadlines, before we get into a campaign. If the best time to do it is right before the campaign, then let's do it then. And, the best time to do it is the quickest time to do it, Senator Mengden; the cheapest time to do it, Senator Mengden; and the best time for the taxpayers.

And, these records -- if the Judicial Qualifications Commission does submit this to the Supreme Court, and if there are findings, then they would be submitted to us. If there are not, we will be no longer -- I do not yield, Senator -- we will be no longer in March than we would be now hearing this testimony. But, if that does happen, it would considerably shorten the time and it would save the tax dollars, Senator, that I know you are concerned about, and it would do it at a time when it is best for the people, not when it's most convenient or when it's most politically advantageous to this body and to us individually.

Senator, I am up for election this time just like you are.

SENATOR MENGDEN: Mr. President:

THE PRESIDENT: Senator from Harris, Senator Mengden.

SENATOR MENDGEN: The most advantageous time to proceed in an impeachment trial is when the Senate is sitting here convened, the prosecution has announced ready, the defense has announced ready, the President is in his chair, the press is assembled, and now we need to proceed, Mr. President. Everybody is ready.

THE PRESIDENT: Let's vote, Senator.
Senator from Guadalupe.

SENATOR TRAEGER: Senator Ogg made the statement -- and you correct me -- that there was hope that the Judge would resign? A possibility?

SENATOR OGG: I said that individually there was -- there was hope among individuals, or the thought that he might resign. And, in spite of that, that would not go --

SENATOR TRAEGER: That's the point I want to make.

SENATOR OGG: It's not going to go away. That's right; that's correct. And we are going to try it, Senator.

SENATOR TRAEGER: Not even guilt by the Judicial Qualifications Commission would not stop these proceedings.

SENATOR OGG: That's right. We are going to have to try this case.

SENATOR TRAEGER: Senator, what Body is now acting? The hearings are concluded in the Judicial Qualifications Committee. There is no time as to when they will convene.

SENATOR OGG: The way I look at this vote, if you want to try it at the time that it would take the longest length of time, then I think we can do it now. There is possibly a time when it would take shorter time, and that would save the taxpayers money, and that's what my motion for two months would attempt to do.

If that does not occur, Senator, the taxpayers have not lost any more money than they would lose now. If it does occur, they have saved money. And, that is what I

am going to vote for, Senator. And, you vote the way you feel.

SENATOR MOORE: Mr. President, why are we talking about March? Has he amended my motion?

THE PRESIDENT: He has offered a substitute motion, Senator. The question comes first on the longest time.

Two motions to postpone before the Senate, one to postpone -- motion to adjourn until 10:00 a.m., June 14; one for 10:00 a.m., March 8th. The vote comes first on the longest time.

The question comes on the motion from the Senator from Brazos to adjourn until 10:00 a.m., June 14th.

Secretary, call the roll.

Yeas: Braecklein, Doggett, McKnight, Moore, Ogg, Patman and Santiesteban.

Nays: Adams, Aikin, Andujar, Brooks, Clower, Creighton, Farabee, Hance, Harrington, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, Mengden, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: Gammage, Harris and Meier.

THE PRESIDENT: There being 7 "Yeas" and 21 "Nays", the motion is lost. Senator, do you still want to vote on yours?

SENATOR OGG: Yes, sir. We will vote on it. I don't care to say anything further on it. I think it has been said.

THE PRESIDENT: The question is on the motion to postpone until 10:00 a.m., March 8th.

Secretary, call the roll.

Yeas: Braecklein, Doggett, McKnight, Moore, Ogg, Patman and Santiesteban.

Nays: Adams, Aikin, Andujar, Brooks, Clower, Creighton, Farabee, Hance, Harrington, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, Mengden, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: Gammage, Harris and Meier.

THE PRESIDENT: There being 7 "Yeas" and 21 "Nays", the motion is lost. Now, does anybody else want to waste any more of the Court's time suggesting that it shirk its constitutional duty before we proceed with the trial?

SENATOR PATMAN: Mr. President, have the proceedings of the House Select Committee on Impeachment been entered into the record?

THE PRESIDENT: No, they have not, Senator.

SENATOR PATMAN: Sir?

THE PRESIDENT: No, sir.

SENATOR PATMAN: May we inquire of the Counsel for the Defendant and Counsel for the Attorney General, or the Attorney General himself and Counsel for the Board of Managers if there is any objection to entering those into the record?

THE PRESIDENT: Well, why do you want to incur that extra expense, Senator? The proceedings are available.

SENATOR PATMAN: May I inquire if the forthcoming witness has testified before the House Select Committee on Impeachment?

THE PRESIDENT: Mr. Doyle, has Mr. Gonzalez --

MR. DOYLE: Yes.

THE PRESIDENT: Yes, he was a witness before the --

SENATOR PATMAN: Will his testimony be substantially similar today, in your opinion?

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Well, there will be some similarities, but there will be considerable additional information -- a considerable amount of additional information to what is contained in the House transcripts.

SENATOR PATMAN: Would it expedite the proceedings of the Court of Impeachment if we consider the proceedings before the House Select Committee?

MR. DOYLE: In my opinion, no.

SENATOR McKNIGHT: Mr. President.

THE PRESIDENT: Senator from Smith.

SENATOR McKNIGHT: I'm sorry. I didn't hear -- I wish, if you would, repeat your statement that you made just prior to recognizing Senator Patman. I'm afraid I didn't understand you.

THE PRESIDENT: I asked if any other Members of the Court wanted to waste the Court's time suggesting that it further shirk its constitutional duty.

SENATOR McKNIGHT: I would like to speak to that statement, Mr. President.

I don't want to take up the time of this Court, but let me say that motions had been made here, and they have been made in good faith. They have been made by me in the past. And, they haven't been done for the purpose of shirking the duty of the office of the Members of this Texas Senate or the Members of this Court of Impeachment.

I think -- I hope that you made the statement in jest, Mr. President. If not, I think you owe this Body an apology because I think that everybody here has a right to speak their mind, to say what they believe, and not to do it to shirk the responsibility of the office of a Texas Senator. And, I think, sir, that you've cast aspersions, and that you have tried to damage by inference the reputation of the people who are moving well intentioned in this Body.

THE PRESIDENT: Every Senator has that right, Senator, and so does the Lieutenant Governor.

Mr. Gonzalez.

Cleofas Gonzalez, would you stand and raise your right hand?

“You do solemnly swear or affirm that the evidence you give upon this hearing by the State of Texas of impeachment charges against O. P. Carrillo shall be the truth, the whole truth, and nothing but the truth, so help you God.”

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Ready.

CLEOFAS GONZALEZ, was called as a witness by the State of Texas, and having been previously duly sworn, testified as follows, to wit:

DIRECT EXAMINATION

(By Ms. Levatino:)

Q Please state your name for the record, please, sir?

A My name is Cleofas Gonzalez.

Q Where do you live, Mr. Gonzalez?

A Benavides, Texas.

Q How long have you lived there?

A All my life.

Q Are you employed?

MR. MITCHELL: Mr. President, may I interrupt the proceedings.

I have a Motion to Disqualify Counsel for the Attorney General that presided and participated in the Judicial Qualifications Commission trial, Ms. Levatino, Mr. John Odam, Mr. Max Flusche who are sitting with Special Counsel, on the grounds of the privilege, that is that they presided -- they conducted the trial for the Judicial Qualifications Commission and they are now conducting the trial here. And there's no way in the world that they can conduct that trial without violating the privilege which I'm now going to assert and I withdraw my waiver and stand on the privilege that I hereby object. And I have placed this in motion form, which is the alternative motion request to the use of the records -- the alternative is to disqualify the Attorney General on these grounds.

THE PRESIDENT: Mr. Mitchell, you withdraw what?

MR. MITCHELL: If it please the President of the Court, my motion is made in tandem to my motion previously filed request to the use of the record. It is the second motion page -- Roman Two (II), Page 2 of Motion to Disqualify the Attorney General.

THE PRESIDENT: Mr. Mitchell, the Chair understood you to say that you withdrew some waiver.

MR. MITCHELL: Well, yes, in view of the Senate's action on the motion as regards the record and my waiver in reference to that use of the record I now withdraw the request to use the record before the Judicial Qualifications Commission and place the Court on notice that I stand on my privilege and I withdraw the waiver completely. And as part of that withdrawal I now assert the Motion to Disqualify the Attorney General on the ground that he conducted the proceeding before the Judicial Qualifications Commission, that is Ms. Levatino, John Odam and Max Flusche. And to permit them to conduct the proceedings here is to violate my privilege, my constitutional privilege and I object.

SENATOR SCHWARTZ: Mr. President.

THE PRESIDENT: Senator from Galveston.

SENATOR SCHWARTZ: Can I be heard on that motion?

THE PRESIDENT: Yes.

SENATOR SCHWARTZ: This is a classic example of why Shakespeare said the law is an ass. See, what we have gotten ourselves into here now. We are so wrapped up in whether it's a privilege or not a privilege that now the Attorney General's office, no one in the Attorney General's office in my opinion can take an oath that they would not use, would not try to recall, would not consider the testimony which they heard and adduced and prepared before the Judicial Qualifications Commission in order to impeach a witness before this body who might make a prior inconsistent statement. So, the privilege is going to be violated in fact, in purpose and in truth anyhow. The privilege is only good as it is as to who heard any testimony and who has the right to use that testimony. Both sides, not just the Attorney General's office -- both sides are going to use it. You know, Mr. Mitchell was sitting there, too, Judge Carrillo was sitting there, I don't know whether the investigator was sitting there, but there ain't no such thing as a secret proceeding in which everybody proceeds. And there's no such thing as a privilege against the use of that material or divulging that material that's going to be used either covertly, overtly, surreptitiously, because the intelligent being can't strike from their mind what they have heard and what they have used. All the records that were used by the Attorney General's office are in the Attorney General's possession. And all the records that Mr. Mitchell used are in his possession.

And I really wonder if we haven't -- you know, the whole thing about not accepting the record, or the Senate not accepting the record is ridiculous. And I still say that's where we ought to be, we ought to accept it if we have to unravel -- we ought to accept that record and get over this hump about this privilege, get over this problem about whether to disqualify people who participated, because they are indeed violating some privilege by the time they get through when they participate and just get back on track to try the case if that's what we're going to do. But the idea of debating over this record because there may be some privilege or may be some public policy now has the Senators trapped where indeed that privilege may disqualify some of the members of this presentation committee on the part of the Attorney General from participating in the trial. That's how absurd the law is and that's how absurd -- that's the position --

SENATOR ADAMS: How absurd our action was.

SENATOR SCHWARTZ: Yeah, how absurd our action was.

And at least it raises the very valid question now of procedural due process that wasn't in evidence before.

THE PRESIDENT: Senator from Harris, Senator Brooks.

SENATOR BROOKS: Did you yield for question?

SENATOR SCHWARTZ: Yes, I'm sorry.

SENATOR BROOKS: It's hard for me, being a non-lawyer to follow all of that legal logic that you put in that argument just then. Are you for or against barring the Attorney General from further participation in this trial?

SENATOR SCHWARTZ: I haven't even decided how I'm going to vote. I think that they're in --

SENATOR BROOKS: I wanted to understand where you were going.

SENATOR SCHWARTZ: I'm addressing myself back to the idea of accepting that record, Senator, because when the record is accepted then that kind of an objection to their participation is waived. We do have a very serious question, only the lawyers -- you know, this is that one place it wouldn't make any difference, if you're not a lawyer it ain't going to worry you, because you don't have to worry about it, but it is a very serious question under the circumstances that we now find ourselves faced with, where the Senate has refused a waiver of the privilege on the part of the Defense Counsel and now Defense Counsel has a right to raise a very difficult issue about the right of someone else who is going to violate that privilege. Every time a witness takes the stand and testifies, particularly if that witness testifies in a matter that's inconsistent with the testimony that that witness states before the Judicial Qualifications Commission, you see, because if a witness changes his testimony under any circumstance and that testimony was presented by lawyers in that secret hearing. And that lawyer who is presenting that testimony says, "uh-huh, he's changed his testimony, now we're going to get to him and we're going to talk to him about that." Then that's a violation of the privilege itself.

Now, I don't know how that would apply, but it's very difficult and at best it presents a problem to us that we wouldn't have if we had accepted the waiver of privilege on the part of Mr. Mitchell and Counsel and the accused in the first place. And I'm just pointing out how absurd it was to do that.

SENATOR LONGORIA: Mr. President.

THE PRESIDENT: Senator from Hidalgo.

SENATOR LONGORIA: Senator Schwartz, I mean, Judge Schwartz.

SENATOR SCHWARTZ: Yes, sir.

SENATOR LONGORIA: Couldn't you solve this problem very easily by -- in the first place the prosecutor for the Board of Managers was not present in the Judicial Qualifications Commission, so he can't violate the provision of the Constitution. You can always substitute somebody else in the Attorney General's office that was not there to comply with it. So, what are we worried about?

SENATOR SCHWARTZ: I want the Attorney General to participate.

SENATOR LONGORIA: I do too, but we can get some Assistant of the Attorney General who is not present during the Judicial Qualifications Commission.

SENATOR SCHWARTZ: I want this process to have the benefit of the Attorney General's records, I want them to have the benefit of the Attorney General's intelligence, the intelligence of his staff, the preparation which they have involved themselves in, the records of their proceedings, the way they presented the testimony, every single bit of legalese that they possess ought to be available to this Court of Impeachment.

MR. DOYLE: Mr. President, might I be heard against the motion.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President, and Members of the Senate, I rise to speak in opposition to the motion to disqualify the Attorney General. First, I think perhaps the best corollary to the position we're in now is that virtually every District and County Attorney in the State, when he goes into the Grand Jury to present a case to the Grand Jury for indictment -- Grand Jury proceedings are privileged and confidential, yet when that indictment comes down that same District Attorney goes to trial in the District Court and no one questions his right to try that lawsuit.

I would further point out to you that although the two lawyers seated with me at the Counsel table were participants in the Judicial Qualifications Commission hearing I was not. Mr. Mitchell was a participant in the Judicial Qualifications hearing. And if the true question -- if the true question before the Senate is the confidentiality of those proceedings and that the lawyers participating in this trial are in danger of violating that confidence, then I would submit to you that Mr. Mitchell stands in the same position as the attorneys seated here with me, the representatives of the Attorney General's office. Now, you have considered the question previously, whether or not the Attorney General should participate in the impeachment process. I think Senator Schwartz summarized the position of the Senate when it voted previously. I think the logic he used was perfectly suited in that what he was essentially saying was that it would be very foolish of the Senate not to take advantage of the expertise and the attorneys and the investigators and the rest of the staff of the AG that the taxpayers are already paying for and to expand the cost of this prosecution by requiring that work be done by outside personnel.

Now, remember where you are. You have previously determined that the Attorney General is a proper party advocate in this proceeding. The only question presented by the defense motion is one of confidentiality. I would submit to you that Mr. Mitchell is in no different position nor is his investigator if he indeed participated than the attorneys that are seated with me. The fact that they are on one side or other of the lawsuit makes no difference whatsoever. Up to this point in time I can assure you that I have not been revealed anything nor has any member of the Board of Managers about what took place in the Judicial Qualifications Commission. All I know about it is what I have learned of it on the floor of this Senate while you were all present. And I can assure you that will be the situation when we complete this trial. We are honorable lawyers and I assure you -- and I assume that Mr. Mitchell is likewise an honorable lawyer and will not violate the confidentiality imposed by the Constitution. I can see no problem with the Attorney General participating in this trial just as a District Attorney when he comes out of the Grand Jury goes into the District Court and conducts a lawsuit upon which he has heard evidence in the Grand Jury under confidential situations.

Thank you.

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: Mr. President, may I comment? I was impressed by the earlier logic of the Special Counsel in this body by the monolithic nature of the privilege. If the privilege is so monolithic then I'm going to stand on that characterization and say fine, then we are going to stand on the privilege in regards to participation by Counsel for the Attorney General, who incidentally, on this first witness has procured records from this body, took them down there and introduced them. We say that the privilege is violated. We say that the privilege is going to be violated when they start using the documents that were introduced before the Judicial Qualifications Commission. And we're going to object on that grounds. And if my presence here, Mr. President, seems to offend that spirit then I hereby withdraw as a Counsel and request an opportunity for Judge Carrillo to employ substitute Counsel who is not tainted with the same monolithic spirit and the privilege that are results by reason of my participation in the Judicial Qualifications hearing.

THE PRESIDENT: Senator Traeger, in order to get the motion to disqualify the Attorney General properly before the Senate, for the record, do you want to make the motion?

SENATOR TRAEGER: Yes, I think it's printed.

THE PRESIDENT: Yes, it is.

SENATOR TRAEGER: It is not necessary to read it. I will so move.

THE PRESIDENT: The motion by Senator Traeger will be inserted in the record.

MOTION IN WRITING

Senator Traeger submitted the following Motion in Writing:

Alternative Motion To Disqualify Attorney General

Judge O. P. Carrillo, the Respondent herein, has for the past two months been engaged in a proceeding before the Judicial Qualifications Commission, being Inquiry Concerning a Judge No. 5. The Judicial Qualifications Commission as advocate was represented by the Attorney General of the State of Texas, specifically, the Honorable John Odam, the Honorable Liz Levatino, and the Honorable Max Flusche. There were adduced thousands of pages of testimony before the Special Master in the Judicial Qualifications Commission proceeding and hundreds upon hundreds of documents. The statute makes the hearing before the Special Master secret and specifically provides that the same shall not be divulged.

The House Managers here are represented by the Attorney General of the State of Texas, including Honorable John Odam, Honorable Liz Levatino, and Honorable Max Flusche, and to allow them to proceed before the Senate on this impeachment proceeding would be to violate the special secrecy provision of the statute that attends the Judicial Qualifications Commission hearing. O. P. Carrillo therefore requests that the Attorney General disqualify himself in the present case so as to avoid a violation of the specific secrecy provision and that in addition all of the evidence adduced in the Judicial Qualifications Commission trial be suppressed insofar as the same is to be used or sought to be used in this proceeding; to do otherwise would be to violate the secrecy providing the attendance in the Judicial Qualifications Commission.

THE PRESIDENT: Is there further debate or discussion on Senator Traeger's motion?

SENATOR MAUZY: Mr. President, I have a question to address to Counsel for the State.

THE PRESIDENT: Senator from Dallas, Senator Mauzy.

SENATOR MAUZY: Mr. Odam, Ms. Levatino, as I understand it you did participate in the Judicial Qualifications Commission's hearing?

MS. LEVATINO: That is correct.

SENATOR MAUZY: Will each of you as Officers of this Court tell this Court unequivocally that you have not violated that confidentiality and that you will not during the course of this impeachment trial.

MS. LEVATINO: I can state to this Court unequivocally that I have not violated the confidential nature of the Judicial Qualifications proceedings and will not during the course of this impeachment trial.

MR. ODAM: I will state that I have not breached the confidentiality in asking questions of the witnesses that we might propound questions to these witnesses, in so doing I will not breach the confidentiality of the proceedings to indicate whether or not that witness testified at the Judicial Qualifications or whether or not that -- by asking the question whether or not that question was asked at the Judicial Qualifications proceedings.

SENATOR SHERMAN: Mr. President.

THE PRESIDENT: Senator from Potter.

SENATOR SHERMAN: The Special Counsel advised the Senate in regard to what aspect this is privileged. If it would be appropriate I would like to ask if the Chair would ask Mr. Jaworski to give us the benefit of his thinking in regard to these other aspects of the same question.

THE PRESIDENT: The Chair recognizes Special Counsel for that purpose.

MR. JAWORSKI: I see no reason why you cannot proceed with the Attorney General serving here under the statements that have been made, the record being clear that there will be no part of the record itself introduced in evidence, either as original evidence or for purposes of impeachment. And I think as long as that is abided by I think that you can proceed and do not have any problems.

THE PRESIDENT: The question is on the motion of the Senator from Guadalupe to disqualify the Attorney General.
Secretary, call the roll.

Yeas: Mengden.

Nays: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Hance, Harrington, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Ogg, Patman, Santiesteban, Schwartz, Sherman,

Snelson, Traeger and Williams.

Absent-excused: Gammage, Harris and Meier.

Absent: Moore.

THE PRESIDENT: There being one "Yea" and 26 "Nays", the motion is lost.
Ms. Levatino.

Q Mr. Gonzalez, where are you employed?

A I'm self-employed.

Q Where is that, sir?

A Ma'am?

Q Where is that?

A In Benavides, Texas.

Q What kind of self-employment do you have, Mr. Gonzalez?

A I have a business as merchant.

Q What is the name of that business?

A Benavides Implement & Hardware Company.

Q What was your prior employment?

A Duval County.

Q How long were you employed by Duval County?

A For about twelve years.

Q And what years were those, sir?

A I didn't hear, ma'am.

Q What years were you employed?

A Oh, from the latter part of 1962 until '74.

Q What were your duties during those years as a Duval County employee?

A I was a warehouseman.

Q For what period of time? The entire 1962 to 1974 period?

A Yes, ma'am.

Q And where was your office at that time?

A Right there at the Farm and Ranch Supply.

Q Is that a store in Benavides?

A Yes, ma'am.

Q During this time period, did any of your duties as a county employee include duties relating to the Duval County Welfare System?

A Yes, ma'am.

Q And could you tell the Court what your responsibilities were in this regard?

A Well, I -- Whenever somebody came that needed some help, like to see a doctor or buy groceries or had to go to a hospital, any -- Commissioner Carrillo was not there, Ramiro Carrillo was not there, I made a note of it, and whenever he came in, I asked him or I told him that somebody had come in and needed some assistance, help, and he okayed it, he will sign an order, county order, welfare order so I could either give it to the person that had come in or call him and tell him that his order was ready.

Q And how many people normally came in during the course of a month for assistance such as you described?

MR. MITCHELL: We object unless there is a time frame put on that question, what year and month.

Q During the years in which you had these responsibilities which were from 1962 through 1974 which you have just testified, how many people on an average would come into the Farm and Ranch Store, where your office was, to ask this kind of assistance?

MR. MITCHELL: Mr. President, we are going to object to any question put to any witness during this procedure which relates to a prior term. Judge Carrillo's Certificate of Election calling for his election as of January 1975, the procedure of impeachment testing the qualifications of a judge to perform his official duties, any inquiry preceding January 1st, 1975 would be irrelevant and immaterial under the prior term doctrine. We therefore object to any question put to this witness or any other witness as regards any transaction involving the third parties or Judge Carrillo as do not relate to the discharge of his official duties from January 1st, 1975 which is a date of the commencement of his present term of office.

THE PRESIDENT: Ms. Levatino.

MS. LEVATINO: Your Honor, Mr. Mitchell had raised his point in his pretrial motions which had been voted on by the Senate and were overruled at that time.

THE PRESIDENT: Objection overruled.

MR. MITCHELL: May I, without any continued interruption, have a continuing objection to all testimony that relates to any act as to Judge Carrillo that predates the present term of Judge Carrillo, Mr. President, so to facilitate the

movement of the testimony in view of the fact that the impeachment procedure seeks to remove him for misconduct in office, and we are willing to concede that any and all these acts occurred prior to January 1st, 1975, so they are irrelevant and immaterial.

THE PRESIDENT: The record will reflect your running objection, Mr. Mitchell.

MR. MITCHELL: Thank you.

THE PRESIDENT: Ms. Levatino, is this testimony laying predicate for testimony relating to activity during the current term?

MS. LEVATINO: Your Honor, the testimony of this witness with regard to the allegations in Article I of the impeachment would go through the period of May, 1974, at which time this particular witness on this particular Article terminated his employment. The purpose of this testimony is supposed to begin to show a course of conduct which continued throughout this entire period. Furthermore, since the -- this Court has overruled the objections of Mr. Mitchell as to activities engaged -- allegedly engaged by Judge Carrillo during his prior terms, activities which are a basis for impeachment as the Articles of the House has sent over here, it's our opinion that his testimony insofar as these actual charges are concerned is relevant for the period from which Judge Carrillo took the Bench in 1971.

MR. MITCHELL: Pardon me, Mr. President. We would like to add to our continuing objection that the conduct here not only is irrelevant and immaterial that relates to non-judicial conduct here, that his conduct does not have any relationship to Judge Carrillo's discharge of his duties as a Judge of the 229th District Court, and we would like to have the understanding that objection would be continued along with the hearsay objection as regards to the transaction between this witness and Ramiro Carrillo and third parties as it relates to my client. Thank you.

THE PRESIDENT: Both objections respectfully overruled, Mr. Mitchell.

MR. MITCHELL: Note our exception.

THE PRESIDENT: Proceed.

Q Mr. Gonzalez, would you tell the Court again when your responsibilities with regard to the welfare system began, what year?

A I think in January of 1968.

Q And did these responsibilities continue through May of 1974 when you said you terminated this employment?

A Well, I worked for -- under Ramiro Carrillo until May of 1974, but I kept on working until May of '75 in separate job, I would say, welfare, I gave out welfare orders myself, but that was after -- that was from June of -- May of '74 to May of 1975.

MR. MITCHELL: Pardon me, Mr. President. May I have the witness on voir dire to put to him a question for the purpose of passing further the objection in view of his follow-up testimony?

THE PRESIDENT: Proceed, Mr. Mitchell.

VOIR DIRE EXAMINATION

By Mr. Mitchell:

Q When you left the employment of Farm and Ranch, that was May of '74, is that correct?

A Yes sir.

Q And you -- after May of '74 you had no connection with Farm and Ranch?

A That's correct.

Q No connection with Ramiro Carrillo?

A That's correct, sir.

Q And, as a matter of fact, for two years prior to May of '74, no connection with Judge Carrillo?

A I didn't get that right, sir.

Q Well, you hadn't even talked to Judge Carrillo for two years prior to May of '74, so I say you had no connection with Judge Carrillo for two years prior to May of '74, is that correct?

A I have some connections with Judge Carrillo.

Q From May of '74, my question is, that you had no connection with Ramiro or O. P. Carrillo after May of '74?

A That's correct.

Q And your welfare job today had no connection at all with Judge O. P. or Ramiro, it's a different job?

A I don't work any more for the County.

MR. MITCHELL: We renew our objection.

THE PRESIDENT: Ms. Levatino.

Q Mr. Gonzalez, during the period of 1968 through 1974 when you had responsibilities for the County welfare -- within the County welfare system which you have just described to the Court, renewing my question of awhile ago, how many people in an average month during this time would actually come in to you seeking welfare assistance from 1968 to 1974?

A About an average of about eight or ten a month.

Q Of these people, how many came in seeking the County to purchase groceries for them under the welfare system?

Q About five, six.

MR. MITCHELL: We're going to object to the witness speculating, and we would like to ask Counsel to put the question in a time frame so I can intelligently form an objection to it, if it please the President.

MS. LEVATINO: I believe my time frame continued through to this question, Mr. Mitchell, but for your purpose --

Q During the period of 1968 through 1974, how many people came in, in an average month, seeking groceries to be paid for by the Duval County Welfare System?

A About eight or ten.

Q Mr. Gonzalez, you described a procedure of forms that you filled out. I would like to hand you the set of forms and see if you can identify those.

MR. MITCHELL: We are going to object to those. Those were made part of the record in the Judicial Qualifications Commission, and we claim our privilege, if it please the Court, without waiving -- we want to do it at this early stage, but we don't consider to be waiving it.

THE PRESIDENT: Ms. Levatino.

MS. LEVATINO: Certainly, I do not want to breach the confidentiality of the Judicial Qualifications proceeding. I would disagree with Counsel that these particular items were made part of the record. They were introduced into the record in the Judicial Qualifications proceedings, and, further, I had no intentions and have not, up until I was required to respond to Counsel, made any comment on their prior use.

There is nothing on these items that indicate use in any other proceeding other than the House Select Committee on Impeachment.

MR. MITCHELL: May I see them for the purpose of making specific identification?

THE PRESIDENT: Yes. Please hand the forms to Mr. Mitchell.

SENATOR CLOWER: Point of inquiry, Mr. President.

THE PRESIDENT: State your inquiry.

SENATOR CLOWER: Does this Court rule up to this point any matters of documentary evidence or witnesses that appear before the Judicial Qualifications Commission cannot now independently be introduced in evidence in this Court?

THE PRESIDENT: No, Senator, no such ruling has been made.

MR. MITCHELL: If it please the Court, my recollection is that these precise items were used in the Judicial Qualifications Commission, and we're going to object to it being used here, because they violate our privilege.

THE PRESIDENT: Let me see the forms, please. Mr. Mitchell, there is nothing on these forms nor any information available to the Senate, save your own statement.

MR. MITCHELL: Yes.

THE PRESIDENT: But, these were used in the Judicial Qualifications Commission proceeding.

The Chair is going to respectfully overrule your objection and hold that the mere fact of use of this evidence, or any other documentary evidence, does not preclude its use here.

MR. MITCHELL: Fine. That's true Mr. President, of course, all we have is Counsel's corollary statement that she didn't use them, and I would respectfully disagree with her. We did have those before the Judicial Qualifications Commission.

MS. LEVATINO: Mr. Mitchell, my statement was that they were not introduced as Exhibits into evidence.

MR. MITCHELL: That's right. But, they were employed. That was my point, and I noted she cleverly cut that, Mr. President. They were not introduced, but they were used. They were used for cross-examination purposes. I distinctly remember them.

THE PRESIDENT: Proceed.

Q Mr. Gonzalez, can you identify the slips which I have just handed to you?

A Yes, ma'am. These are slips that were given out by O. P. Carrillo to people that needed groceries.

MR. MITCHELL: Object. It would be hearsay.

THE PRESIDENT: Overruled.

Q Mr. Gonzalez, when did -- have you ever seen these slips previously?

A Yes, ma'am.

Q And when did you see these slips?

A Over in Corpus.

Q In Corpus -- go ahead?

A On that Judicial Qualifications trial.

Q Did you ever see these slips, or slips similar to these in Benavides, Texas?

A Yes, ma'am.

Q And how did you come to see these slips in Benavides?

A Well, these slips were taken to me by the grocery owner so I could make out a welfare order for him.

Q And who is the grocery owner, sir?

A Right now, it is Lauro Yzaguirre.

Q And was it Lauro Yzaguirre who would bring you these slips?

A Yes, ma'am.

Q Pardon me. Or slips similar to these?

A Yes, ma'am.

Q And do you recognize the signature on those slips?

A That's O. P. Carrillo's signature.

Q And would you read to the Court, just for an example, the top slip, what it says on that slip, please?

"Consuelo Hinojosa: Give Consuelo Hinojosa \$20.00 groceries. O. P. Carrillo."

Q And would you look through those slips and tell the Court how many there are and if there are any dates on those slips?

A There are fifteen, and no dates on them.

Q Mr. Gonzalez, when you testified before the House Select Committee on Impeachment, did you offer or bring to that committee slips -- bring these slips to that committee?

A To that impeachment committee here in Austin?

Q Yes, sir.

A Yes, ma'am.

Q Okay.

MS. LEVATINO: At this time, we would like to offer into evidence the -- this exhibit. I believe it would be House Exhibit 6 with Sub-Parts 1 through 15.

MR. MITCHELL: We would object on the grounds of improper authentication, would be hearsay and violate the privilege, as the witness clearly identified them as being presented to him in the Judicial Qualifications Commission Hearing in Corpus Christi. And, as that they relate to non-Judicial conduct, prior term doctrine would be applicable in that they are clearly beyond the current term, if it please the President.

THE PRESIDENT: Overruled.

(Whereupon, House Exhibit 4 with Sub-Part 1 through 15 was admitted.)

Q Mr. Gonzalez, I am now handing you what has been introduced into evidence as House Exhibit 1-(2). Would you please take the contents of that Exhibit out of the claim jacket?

MR. MITCHELL: I also want to object to this line of testimony and documentary because these were also introduced in the Judicial Qualifications Commission Hearing as Exhibit 55 by the very same counsel that's seeking to introduce them here.

MS. LEVATINO: For the benefit of the Court this particular exhibit appears at Page 353 of the Senate Journal.

THE PRESIDENT: Overruled.

MR. MITCHELL: Are you contesting my statement that it's Exhibit 55 before the Judicial Qualifications Commission and that you introduce them in this very same form, Counsel?

MS. LEVATINO: I am not going to comment on that.

SENATOR MAUZY: Mr. President.

THE PRESIDENT: Senator from Dallas, Senator Mauzy.

SENATOR MAUZY: In fact, is this Exhibit 55 in the Judicial Qualifications Commission Hearing?

THE PRESIDENT: The Chair is not advised, Senator.

SENATOR MAUZY: May I inquire of Counsel?

THE PRESIDENT: Yes, sir.

MS. LEVATINO: On the request of the Senator, Exhibit 55 -- this is a part of Exhibit 55 introduced in the Judicial Qualifications Commission.

SENATOR MAUZY: Mr. President, under Subsection 10 of the constitutional amendment creating the Judicial Qualifications Commission, I think these matters are clearly inadmissible. The language is, "All papers filed with and proceedings before the Commission or Master shall be confidential."

This is a paper. It has been filed before the Judicial Qualifications Commission. I think it is clearly inadmissible under a prior ruling of this Court.

THE PRESIDENT: Ms. Levatino.

MS. LEVATINO: I would like to say to the Senator's objection, the actual claim jackets were introduced in this particular proceeding. Those claim jackets were not introduced in the Judicial Qualifications proceedings. Exhibit 55, which we are discussing, were pages from the Senate Journal. They were not the original claim jackets.

These claim jackets were introduced in this proceeding prior to the beginning of the Judicial Qualifications, and the originals were not used except for certain purposes and the originals were not introduced in the Judicial Qualifications proceedings.

SENATOR MAUZY: Is the language on the paper the same, whether it be a piece of the Senate Journal or the Exhibit in its original form?

MS. LEVATINO: I assume that these, Senator, were an accurate reproduction of the original copies.

SENATOR MAUZY: I renew my motion, Mr. President.

THE PRESIDENT: All right. Senator, would you state your motion?

SENATOR MAUZY: My motion is to exclude from evidence what has been identified as House Exhibit 1 (2), the same being Exhibit 55 as it appeared before the Judicial Qualifications Commission, for the reasons set out in Article 5, Section 1-A, Subsection 10 of the Constitution of Texas.

THE PRESIDENT: Mr. Mitchell, do you desire to be heard?

MR. MITCHELL: Yes. The comment, Mr. President, in connection with the objection in the action of the President -- the ruling on it was that the Body understand what happened, that Counsel came up here and got the original as well as the Senate Journal and introduced this Journal, 55, in the record down there, and took the original and compared it. It's definitely in the evidence before the Judicial Qualifications. Counsel's statement was, and is subject to misunderstanding, that these very same Exhibits plus the originals were taken as a matter of comparison so that they could be brought back up here.

We renew our objection.

THE PRESIDENT: The Senator from Dallas, Senator Mauzy, moves to exclude -- what is the Exhibit number?

SENATOR MAUZY: I believe it is House Exhibit H-1(2), is it not, Counsel?

MS. LEVATINO: Yes.

THE PRESIDENT: Senator Mauzy moves to exclude from evidence House Exhibit H-1 (2). Is there further discussion or debate of that motion? If not the Secretary will call the roll.

Yeas: Andujar, Braecklein, Hance, Harrington, Kothmann, Lombardino, Mauzy, McKnight, Ogg, Santiesteban, Sherman, Traeger and Williams.

Nays: Adams, Aikin, Brooks, Clower, Creighton, Doggett, Farabee, Jones, Longoria, McKinnon, Mengden, Moore, Patman, Schwartz and Snelson.

Absent-excused: Gammage, Harris and Meier.

THE PRESIDENT: There being 13 "Yeas" and 15 "Nays", the motion is lost. Ms. Levatino.

Q Mr. Gonzalez, in H-1(2), there are some what has been referred to in this proceeding, long slips. Would you take those out, please, sir?

A What number was that, Ms. Levatino?

Q H-2(2).

A This one?

Q Yes. And would you read what is on those particular slips, sir? Just one of them for an example.

A (Reading) "Cash Store, please give"-- I think that says, "Elvira Rodriguez \$20.00 in groceries." And O. P. Carrillo's signature at the bottom.

Q When you received these particular kinds of slips from Lauro Yzaguirre, would you identify which documents, if any, contained in H-1(2) you filled out?

A Yes, ma'am. This one here?

Q And would you read the date on that, sir?

A (Reading:) "7/15/70."

Q And that is a printed Duval County Welfare form?

A Yes, ma'am.

Q What would you do with this form after you filled it out?

A Well, I -- after I filled it out, I had to give it to Ramiro Carrillo, the County Commissioner, to be signed, which is the County Welfare Officer.

Q And did you receive the form back from Ramiro Carrillo after you filled it out?

A No, ma'am. Sometimes, when he didn't take it back to the store because he usually take it back to the store or -- if he didn't have time, I would call Mrs. Lauro Yzaguirre and they would come and pick them up from Ramiro Carrillo's office.

Q Would you look at the slip dated 7/15/70 and see if there are -- these long-handwritten slips which correspond to the names on that slip?

I will read off the names for you, if you will tell the Court if there are long slips corresponding to it. A slip to Elvira Rodriguez for \$20.00.

A Yes, ma'am.

Q To Mr. Hinojosa, or Mrs. Hinojosa for \$20.00?

A Yes, ma'am.

Q A Mr. or Mrs. Gutierrez I believe for \$20.00.

A Yes, ma'am.

Q Mrs. Jose or Mr. Jose Sendejar for \$20.00?

A Yes, ma'am.

Q To Mike Ruiz for \$20.00?

A Yes, ma'am.

Q Tete Chapa for \$20.00.

A Yes, ma'am.

Q Mr. Canales for \$20.00?

A Yes, ma'am.

Q For a total of \$160.00 as reflected on that slip. Are there also slips on that particular, that you still have, for Mr. Contreras for \$20.00?

A I don't see one in that bunch, Ms. Levatino.

Q Okay. Is there one for Rosa Chapa?

A No, ma'am, not in this here.

Q Is there another set of slips in that envelope, sir, that you haven't taken out?

A There's one Rosa Chapa here, yes, ma'am.

Q For \$20.00?

A Yes, ma'am.

Q For Mrs. Hinojosa?

A Yes, ma'am.

Q Maria Garcia?

A Mrs. Garcia, yes, ma'am.

Q Eva Garza?

A Yes, ma'am.

Q Mr. Saenz?

A Yes, ma'am.

Q Pancho Carrillo?

A Yes, ma'am.

Q And do these correspond to the Duval County Welfare Department's slip dated 7/8/70?

A Yes, ma'am.

Q And did you write out that slip, Mr. Gonzalez?

A This county?

Q Yes, sir.

A Yes, ma'am.

Q And this was for a total of \$140.00?

A That's right, ma'am.

Q You may replace those back in that claim jacket at this time. I would like you to take a look at claim jacket labeled H-1(23) at this time.

MR. MITCHELL: We, of course, are going to object, Mr. President, to all of this documentary on the grounds that it all violates our privilege, having been introduced at the Judicial Qualifications Commission Page 1213 of the official transcript to Page 1318, by the very same Counsel interrogating Mr. Meek and this witness.

THE PRESIDENT: Ms. Levatino.

Ms. Levatino: I believe that my response to Mr. Mitchell's objections and to Senator Mauzy earlier still stand. That is that the reproduction of this Exhibit was, in fact introduced in the Judicial Qualifications Hearing as part of Examiner's Exhibit 55.

MR. MITCHELL: Then we claim the privilege.

MS. LEVATINO: But I also, again, point out that this fact has been brought forward by the Defendant. I believe in the manner of questioning this witness there was no indication that these Exhibits were -- he was questioned about these Exhibits during the Judicial Qualifications proceeding.

THE PRESIDENT: This Exhibit has been reproduced in the Senate Journal.

MS. LEVATINO: Yes, sir.

THE PRESIDENT: And it is the same as the one on which the vote was taken earlier.

MS. LEVATINO: Yes, sir.

THE PRESIDENT: State your inquiry

SENATOR HANCE: You're introducing this as a document, but not as a part of the record. Is that your position?

MS. LEVATINO: Senator, this Exhibit already has been introduced in this proceeding. It was introduced in October. I'm not introducing it -- I'm questioning a subsequent witness on a previously admitted Exhibit in this particular proceeding.

SENATOR HANCE: I'm asking you are you -- you're using this as a document, but not as a part of the record of the Judicial Qualifications Commission.

MS. LEVATINO: No sir, as a part of this proceeding only.

MR. MITCHELL: But our objection is that it is a document filed with the Judicial Qualifications Commission within that provision of the Constitution so as to be privileged. It was filed with the Judicial Qualifications Commission as an Exhibit.

SENATOR MAUZY: I desire to make the same motion as to this Exhibit, House Exhibit 2 for the same reasons.

THE PRESIDENT: Since this is the same issue the Senate voted on a few minutes ago the Chair proposes to overrule unless any member of the Senate desires to vote.

Objection is overruled.

Ms. Levatino.

Q Mr. Gonzalez, would you take out of H-1(23) the Duval County Welfare Department form dated August 10th, 1972. For the purpose of the Court this appears on Page 406 of the Senate Journal.

On the lower left-hand corner of that form there appear the letters "O.P.". Do you know who put those on that form?

A I did, ma'am.

Q And could you tell us why you put those two letters on there?

A So I would know which -- that O. P. had given them out, because O. P. gives out orders and Ramiro gives out orders and that way I can know which were O. P.'s orders.

Q Did Judge Carrillo tell you these were his orders on this slip?

A Yes, ma'am, one time he did, yes, ma'am.

MR. MITCHELL: That's not responsive.

The question was "Specifically this order."

Your Honor, we're going to object, this witness has no personal knowledge.

Q Did Judge Carrillo tell you that the eight names on the slip dated August 10th, 1972 were orders which he had given out?

A Not O. P. Carrillo.

MR. MITCHELL: So, we move to strike the testimony. Then it is definitely speculation and conjecture not based on personal knowledge. And likewise, being dated '72 beyond the present term of this Judge, which is 1975, Your Honor.

THE PRESIDENT: Ms. Levatino.

MS. LEVATINO: I believe -- was that your running objection, Counsel?

MR. MITCHELL: Yes.

THE PRESIDENT: Objection overruled.

MR. MITCHELL: But in addition that this witness has no personal knowledge, which he admits. And we move to strike his testimony on the grounds that it would be speculation or conjecture.

MS. LEVATINO: You Honor, I had asked this witness why he put these two letters on here. And he was saying because he knew they were O. P.'s orders and I was attempting to establish how he knew they were O. P.'s orders.

MR. MITCHELL: And as I understand the question is -- it was a key question, he was not told by O. P. and that's the lack of knowledge that we objected to, if it please the Court.

MS. LEVATINO: Counsel, the fact that Judge Carrillo did not tell him does not prevent me from pursuing the line of why he did put "O. P." on this particular item -- as to his state of mind to put this writing on .

MR. MITCHELL: If Judge O. P. Carrillo, we submit, did not authorize placing the signature, his initial and this witness gratuitously put the initial there, Mr. President, it would be hearsay as to Judge Carrillo, likewise. And there would be no personal knowledge. He quite candidly testified he had no personal knowledge and Mr. Carrillo told him to do it.

THE PRESIDENT: Ms. Levatino, are you going to connect -- do you propose by this line of questioning to tie these slips directly to Judge Carrillo?

MS. LEVATINO: Your Honor, Article I under which we are operating now in the Articles of Impeachment alleges a conspiracy between Judge Carrillo and others to obtain welfare groceries or groceries which were paid for by the welfare system to his own use and benefit. Obviously, this will involve more than one person. It is the purpose of this particular witness to show the scheme by which this conspiracy was conducted during the period of time alleged in the Articles of Impeachment -- in the Article I of Impeachment.

This will include the conversations with persons alleged to be co-conspirators in this particular scheme.

THE PRESIDENT: You are representing then and you can tie this testimony correctly to Judge Carrillo or to a co-conspirator.

MS. LEVATINO: Yes, sir.

THE PRESIDENT: Objection overruled.

MR. MITCHELL: I want that answer of Counsel reproduced, if it might please the Court. She's represented to the Court she's going to tie this into Judge Carrillo --

MS. LEVATINO: Or a co-conspirator, was the question from the Chair.

MR. MITCHELL: If it please the Court, I want Counsel's representation reproduced to remind her of that promise.

THE PRESIDENT: Ms. Levatino.

Q Mr. Gonzalez, I believe I asked you this question, but to refresh the Court's memory, how did you know -- strike that. Why did you place the letters "O. P." at the

bottom of the form in H-1(23) dated August 10th, 1972?

A Okay, ma'am. Let me go now over this procedure. You see, when this -- on every first week of every month the County Commissioner collects all the tickets for merchandise that creditors have given to the county so they could get paid during that Commissioners Court. So, this comes one week before the Commissioners Court. The Commissioners Court is on every second Monday of the month. And these bills or whatever they are called are collected one week before the Commissioners Court so they could be processed by the County Auditor.

So, during that week, the first week of the month, Mr. Lauro Yzaguirre would come into the office of the Commissioners and tell me that these orders were given out by O. P. Carrillo to needy people and that he needed this county welfare order so he could get paid.

So, when he went to me I told him, "O.K., Lauro, I can't do anything about it right now, because Commissioner Carrillo is not here, but just leave them here and whenever he gets here I will ask him and if he wants me to I will write up the order, have him sign it, either have him take it back to you or I will call you so you can come back for it." So, that's what I did. When Commissioner went to his office I told him about what Lauro had brought in, they were orders given out by George or O. P. Carrillo and he said, "Yeah, go ahead and make them." So, I write them out, after I had written them out -- these welfare county orders, I take them to his desk, he will sign them and either say, "I will take them back to the store", or "Call Lauro and he will come and pick them up." Because Lauro had to keep one of these -- I give them two of these here, a white and a yellow and he keeps one for his records and he sends the other into the Commissioners Court.

Q Is that -- could you briefly just answer my question, why did you put the "O.P." on that particular form?

A So I would know that they were O. P.'s orders. I didn't have to do it, but to be sure or something I wrote it down.

Q Are there two forms -- we have looked at one dated August 10th, 1972, is there another form in that claim jacket with the same designation on it, sir?

A Yes, there are two in there that have it, yes, ma'am -- that O. P. signature -- I mean, that I wrote here?

Q Uh-huh.

A Yes, ma'am.

Q And what is the date of the other form?

A The date on that other form is 8/10/72.

Q And what is the total amount of the two forms that have the designation of "O. P." on them?

A One is for \$160.00 and the other is for \$140.00, that makes a total of \$300.00.

Q Mr. Gonzalez, there are a number of other claim jackets which have been introduced into evidence in this proceeding, which I would like for you to look at at this time and take out of them any forms which have the "O. P." designation on them,

being sure to keep the forms separate.

A You want me to --

Q These are for Counsel's sake House Exhibits H-1(5), H-1(9), H-1(17), H-1(20), H-1(24), H-1(26)A and H-1(27).

MR. MITCHELL: Same ones that were used before the Judicial Qualifications Commission.

MS. LEVATINO: Yes, sir.

MR. MITCHELL: We renew our objection on the grounds that those documents are privileged, the substance of extensive testimony before the Judicial Qualifications. We do not intend to waive our privilege as being documents filed with the Judicial Qualifications Commission.

THE PRESIDENT: Overruled.

MS. LEVATINO: For the benefit of the Court these Exhibits appear on Pages 365, 375, 394, 399, 408, 412 and 416 of the Senate Journal.

A There's some that have the signature at the bottom and there's some -- I mean, that I wrote that "O. P." and some don't.

Q Are there some in each one of those claim jackets that you wrote the "O.P." on?

A You want me to --

Q Yes, taking claim jacket H-1(5), would you identify for the Court the date on the Duval County Welfare Department form on which you placed the initials "O.P."?

A No, ma'am, I didn't write the "O.P." on this -- on H-1(28).

Q H-1(5)?

A Oh, H-1(5). Yes, ma'am, I have it here. No, ma'am, I didn't write anything on it.

Q Look at the top. Okay. Turning to the next one --

A Which one is that, ma'am?

Q H-1(9). To facilitate the time of the Court, would you look at the Duval County Welfare Department dated May 6, 1971?

A Which date is that, ma'am?

Q In H-1(9).

A May 6 of what?

Q 1971.

A Yes, ma'am.

Q Did you write the letters, "O.P." at the bottom of that particular form?

A Yes, ma'am.

Q And did you write those letters for the same reasons that you have previously testified to this Court?

A Yes, ma'am.

Q Would you look at one dated May, I believe it's 6, 1971, for \$160.00? There was one for \$140.00 --

A Yes, ma'am.

Q Did you place the signature -- the letters "O.P." on that form?

A Yes, ma'am.

Q For the same reason?

A Yes, ma'am.

Q Okay. Turning to the next one, H-1(17). Look at the slip dated 1/31/72.

A Yes, ma'am.

Q Did you write the name, "O. P. Carrillo" at the bottom of that slip?

A That's right, yes.

Q And what was the total amount on that slip, sir?

A One was for \$200.00, and the other one for \$100.00.

Q And what was the date of the other one you referred to?

A 1/31/72.

Q And you wrote "O. P. Carrillo" at the bottom of 1/31/72 slip also?

A Yes, ma'am.

Q Turning to H-1(20), if you will look at a slip dated May 4th, 1972.

A Yes, ma'am.

Q Did you place the letters, "O. P. Carrillo" on the bottom of the Duval County Welfare Department form dated May 4th, 1972?

A Yes, ma'am.

Q Okay. Would you turn now to H-1(24)?

A Okay.

Q Would you look at the slip dated 9/14/72.

A Okay.

Q Did you place the letters "O. P. Carrillo" at the bottom of the September 14th, 1972 slip for the same reasons which you have previously testified?

A I did, yes.

Q Would you turn now to H-1(26)A and look at a slip dated November 16, 1972?

A Okay.

Q Did you place the letters "O. P. Carrillo" on the bottom of the slip dated November 16th, 1972 for the same reasons you have previously testified?

A I did, yes.

Q Finally, would you look at H-1(27) to a slip dated December 6 of 1972?

A Yes, ma'am.

Q Did you put the letters "O. P. Carrillo" on the slip dated December 6, 1972 for the reasons you have previously stated?

A I did, ma'am.

Q Mr. Gonzalez, we looked previously at some handwritten forms that had O. P.'s signature on them that you identified as O. P. Carrillo's. In what has been introduced as a series of claim jackets, H-1, some of these claim jackets have the long forms attached to them, some of them we just looked at. Some of them do not. What did you do with those white slips when you received them from Mr. Yzaguirre and after you had written out the Duval County Welfare Claim form?

A Well, I put in there a couple on Ramiro's desk, and sometimes he picked them up and took them with him, and sometimes he just left them there, so I just threw them away and kept some.

Q Mr. Gonzalez, do you know a man named Mike Ruiz?

A Yes, ma'am.

Q Does Mr. Ruiz live in Benavides?

A Well, he lived there for -- he was a young boy about twelve years old.

Q And at what time or how long ago was that when Mr. Ruiz was about twelve years old?

A I worked with his daddy about 1960 or '61, and I guess that's when they left Benavides.

Q In many of these forms we have just looked at, Mr. Gonzalez, the name, "Mike Ruiz," appeared over and over again at least nineteen times throughout Exhibit H-1. And you have testified you wrote his name on that Duval County Welfare form. If you knew what you have just testified that Mr. Ruiz did not live in Benavides, why did you write his name down as Exhibit H-31 shows at least nineteen times over the course of these years?

A Well, that's why when Mr. Yzaguirre came over with these paper slips, I told him that I couldn't do it until I asked Ramiro, and he was the one that was -- I had to obey instructions, and that's how come I asked him, and he said, "Yes," I did it.

Q Did you know any other Mike Ruiz in Benavides?

A No. No, ma'am.

Q Did you know any other Mike Ruiz in Duval County?

A No, ma'am.

Q You have testified that after May of 1974, you terminated your -- the job with Mr. Carrillo and began taking county welfare forms under another employer. Did Mike Ruiz ever come to you and ask for groceries during the period of time at the end of 1974 until you terminated that job?

A No, ma'am.

MS. LEVATINO: Your Honor, at this point, we have concluded the testimony of Mr. Gonzalez with regard to Article I. We would, since we have the witness on the stand, we would like to proceed to another Article based -- Sub-part of Article III of the Articles of Impeachment, and for the Court's information, I felt that it was necessary to show that we were moving to another Article at this particular time.

MR. MITCHELL: I wonder if I could have the right of cross-examination prior to the time we move to another specification to prevent an impairment unnecessarily of the right of cross-examination while this testimony is fresh, Mr. President.

THE PRESIDENT: Proceed, Mr. Mitchell, with cross-examination relating to Article I.

CROSS-EXAMINATION

(Questions by Mr. Mitchell:)

Q Mr. Gonzalez, you have now testified in proceedings involved with Judge Carrillo, let me see if I can get them, one, two, three, this is the fourth time, am I right, Cleo?

A That's right.

Q And I believe this is the fourth time that I have had the privilege of cross-examining you, am I correct?

Mr. Haynes, I believe, cross-examined you once before. I cross-examined you before the House Select Committee, and before the Federal Court, and of course today. Am I correct?

A Yes, sir.

Q All right. And with that background, I would like to move through your testimony as rapidly as possible.

Now, Mr. Gonzalez, you have not had a conversation with Judge O. P. Carrillo for a period of two years at least prior to May of 1973, am I correct, because of a quarrel that you two folks had in the Farm and Ranch Store, I believe that's what your testimony has previously shown.

A I talked to him.

Q Well, didn't you previously testify that you and he had had a quarrel at which time you quit the Farm and Ranch Store, went to work in Corpus Christi and from that period to the present day have never had a conversation with him?

A You've been after me about this about me having a quarrel with O. P. I didn't have a quarrel with O. P. We just had like any other people have with somebody else, I mean, but, when I get mad at somebody, I'll fight or something else, but that quarrel, I mean, it's just a conversation we had.

Q I'm not asking you to fight anybody. I'm asking you whether or not it's a fact that you have not had a conversation with Judge Carrillo for a period of about two years prior to '73. That is the last time you talked with him was in '70 or '71, yes or no?

A I talked to him after that, yes, sir, I did.

Q Isn't it your prior testimony under oath, I believe in the Federal trial as well as in the Judicial Qualifications trial on Page 1013 that you had not previously talked to Judge Carrillo after you all had your argument? I mean, had you not talked to Judge Carrillo after you had your argument?

MS. LEVATINO: Your Honor, I believe that when the discussion was previously being held in the -- before the Senate on prior motions, I believe Mr. Mitchell is now using the transcript from the Judicial Qualifications Proceedings to impeach a witness. And I believe he is -- was under The Rule of confidentiality.

THE PRESIDENT: Sustained.

MR. MITCHELL: Am I to understand, Mr. President, that I am now precluded from using the sworn testimony of this witness in the Judicial Qualifications Commission of testing the credibility of this witness on cross-examination? If so, I'm going to claim to make note that I am now deprived of the constitutional right of cross-examination, the right of confrontation of this witness and the right to test his veracity, his credibility, and that due process has thus been violated, if I am precluded from testing his credibility by prior sworn testimony, if it please the Court.

And I might add it's my opinion that the confidentiality does not preclude me from using that sworn testimony as regards testing this witness' credibility.

THE PRESIDENT: The Chair will rule, Mr. Mitchell, that you may ask the question about previous sworn testimony without identifying the proceeding.

MR. MITCHELL: All right. Thank you, Mr. President.

Q Maybe I can get at it this way: Mr. Gonzalez when did O. P. come to the Farm and Ranch and have a discussion with you? Can you tell us the year? Let's get at it that way.

A I don't remember the date, sir.

Q Well, was it 1968, '69, '70, '71, '72, '73?

A It could have been between '71 and '74, but I can't tell you the exact date.

Q You can't tell this group under oath whether you had a conversation with Judge Carrillo at any time more specifically between 1971 and 1974?

A That's correct, sir. That's the best I can do.

Q Your best recollection is that in the period of over three and a half years, is that correct?

A That's correct, sir.

Q All right. When you had that conversation with Judge Carrillo, where were you?

A At the Farm and Ranch Supply.

Q And you quit the Farm and Ranch Supply as a result of that conversation, didn't you?

A I was not working for the Farm and Ranch Supply, sir.

Q I mean, you walked off the premises, didn't you?

A Yes, sir, I did.

Q And you went to Corpus Christi and got a job?

A Yes, sir, I did.

Q And from that time to this time, you had no discussion or conversation with Judge Carrillo other than to testify anywhere that you were called on to testify where his interests are involved, is that correct?

A I did talk to him some. That's

Q I am talking about the welfare business. I'm talking about the welfare business.

A I don't recall, sir.

Q All right. You have, however, previously testified before the House under oath as well as other proceedings that you have not had any conversation about the welfare business for a period of at least two years prior to May of 1974, which would take us way back into '72 sometime. Has that been your testimony?

A I don't remember, sir.

Q You don't remember whether you have testified previously under oath that you had no conversation with Judge O. P. Carrillo for a period in excess of two years?

A I don't remember, really, sir.

Q All right. You are presently the owner of Benavides Implement and Hardware?

A That's correct, sir.

Q By reason of Rudolfo Couling sometime in 1974, is that correct?

MS. LEVATINO: Your Honor, I would object to this question as not being relevant to Article I. I understand Mr. Mitchell said he was going to cross-examine this witness at this time with regard to Article I.

MR. MITCHELL: I distinctly remember Counsel putting the question to the witness, "What are you doing?" He says, "Merchant" and he has the Benavides Hardware store. I think the Body knows he bought it from Rudolfo Couling, another witness in this case, and the circumstances, and when the purchase was made, tests his credibility. I represent to the President I will tie it in and relate this man's credibility.

THE PRESIDENT: Overruled.

Q All right. And you purchased the store from Mr. Couling when, Mr. Gonzalez?

A I took over in June of 1975.

Q All right. And Mr. Couling has likewise been a witness against Judge Carrillo in the federal trial, and other proceedings including the Judicial Qualifications -- including the House Select Hearing here last year. Isn't that correct?

A He has testified, yes.

Q And, I believe, in May of 1974, that you terminated your employment with the Farm & Ranch and your association with Judge Carrillo and Ramiro Carrillo as you have testified. Is that correct?

A I didn't get your question.

Q Well, I thought you testified that your last date that you worked in connection with the welfare program and Ramiro Carrillo was in May of '74?

A That's correct, sir.

Q All right. And that was the date I believe, that you approached Archie Parr after the Carrillos and the Parrs had split, and got a job from Mr. Archie Parr. Isn't that correct?

A I didn't know if they had split or not, sir. But I just went and thank him for how many years he had given me work and he said what was the reason that I was quitting, and I told him that I just didn't want to work for Ramiro Carrillo under Ramiro Carrillo's supervision, and he said, "Well, could -- you don't have to quit for that." He said, "Why don't you just stay off a week or so, take a vacation, and I will talk to you later on."

Q And he did talk with you and put you to work and raised your salary to \$700.00 or \$800.00 a month. Isn't that correct?

A No, sir. He gave me a job, but he gave me \$500.00 a month's salary; that's correct.

Q How much?

A \$500.00.

Q And your previous salary was \$250.00. Isn't that correct?

A No, sir. It was \$400.00.

Q At any rate, you did go to Mr. Archie Parr in May of 1974, and he thereafter employed you at your present employment. Is that correct?

A At my present --

Q Well, what did he employ you as?

A Well, I kept working -- from May of 1974 to May of 1975, and then I was laid off by Ramiro Carrillo.

Q Was that the same time, Mr. Gonzalez, that is, in May of '74, when the Carrillos and the Parrs had their split -- that the Parr and Carrillo families split down there?

A I don't know, sir. They probably did, but I don't know --

Q Oh, you know as a matter of fact that's when they split.

A Yes, everybody knows about it, but --

Q And you jumped the fence and went over there to the Parr faction, didn't you?

A No, sir.

Q You didn't?

A No, sir.

Q But you went by to thank him and he hired you, didn't he?

A Well, that's not my fault. If he tells me -- he told me to keep the job, that's not my fault. I needed a job. I had a family to support, so I kept on working for the county as long as they gave me --

Q Right. And then you went over there to Benavides Implement and Hardware. That's where you headquarter now, isn't it -- or, you did, rather, in May of '74?

A Well, he told me to be at a place where people could get in touch with me and for me to let the people know that -- where I was in case they needed help.

Q Sure.

A For me to rent an office, and I told him, "I don't need an office. I can be out in the street and people just come up to me and tell me they need some help."

He said, "Well, just do anything you want to." So, one day I went -- we were talking, and he offered me that I could use his store, his office there, for me to be there if I wanted to. So, I was there for awhile, then he gave me -- he had some merchandise there that could be sold and he told me that if I wanted to, I could sell some of the merchandise and he would give me a percent on whatever I sold for him because he said he owed for the merchandise and he had to pay for it.

Q That's right. And then you began to sell the merchandise at the Benavides Implement and Hardware. Isn't that right, Cleofas?

A I didn't get your question.

Q I said, then you commenced selling the merchandise there for the Benavides Implement and Hardware.

A I did, sir; I did.

Q All right. And then, thereafter, you ended up buying -- after Mr. Couling had his problems with the IRS, and one thing and another, you ended up buying the Benavides Implement and Hardware, as you have previously testified. Isn't that correct?

A Well, sir, since I was laid off from the county, I couldn't make it with the percent Rudolfo was paying me for the merchandise I was selling for him, so I told him that I had to quit, that I didn't have a county check any more and that I couldn't live on those percent that he was giving me. He said, "Well, I'm sorry. I can't give you more because I still owe on that merchandise, but I will do a verbal agreement with you, if you want to. Why don't you take all the merchandise that I have in this store and you can have it, but -- as long as you pay what I owe. That way, you can just keep whatever you want, just pay monthly, whatever you can. They are not going to force you to pay it all at one time. If you can give \$25.00 a month, that's fine. They will charge you interest on it, but you will probably do better until you can get you another job."

So, that's what I did, sir.

Q All right. Let me ask you about your participation in the welfare business. From May of '74 until the time that you purchased the Benavides Implement and Hardware, you did --

THE PRESIDENT: Mr. Mitchell, are you at a logical breaking point?

MR. MITCHELL: Yes, sir. I can move now to the specifics, Mr. President.

SENATOR PATMAN: Mr. President.

THE PRESIDENT: The Senator from Jackson.

SENATOR PATMAN: Mr. President, I move we recess until 1:30.

THE PRESIDENT: Senator from Jackson moves that the Senate be in recess until 1:30 this afternoon.

All in favor say "Aye".

We will stand in recess until 1:30 this afternoon.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 1:30 o'clock p.m.

SENATOR TRAEGER: Mr. President, during this impeachment proceedings, are we governed by any type of quorum thing, or what exactly are the ground rules we are operating on? In other words, are we leaving ourselves open for reversible error where there are witnesses up here giving evidence, and half the jury not present or only a third of them or what, and also I believe we've got twelve House Managers, and I see we are missing \$330.00 worth of House Managers too. I was just curious where we stand on this.

THE PRESIDENT: Senator, the trial rules, of course, if you recall, it specifically stated that the trial rules are accumulative of the normal Senate rules. The Senate rules prevail. There is a quorum just barely, twenty-one members present. The Chair thinks it's highly desirable that everybody be present in the Chamber as many times as physically possible, that these sessions begin timely.

SENATOR TRAEGER: In the most serious vein, Mr. President, is the fact that we do have available to all members a written transcript of all testimony, etc., an extenuating circumstance of the fact that the Member is not going to be hearing it eyeball to eyeball. Legally, is that an extenuating circumstance which is taken into consideration?

THE PRESIDENT: I believe it is.

SENATOR TRAEGER: Certainly with a jury trial, and had the jury is gone, he would have a right to plead error. I am concerned as to where we stand on that rule.

THE PRESIDENT: It certainly is, Senator, from just the reasons that you have recited, it is highly desirable for everybody to be present at all times. However, the requirements of the rules are simply the normal quorum requirements.

SENATOR TRAEGER: Thank you, sir.

THE PRESIDENT: Ms. Levatino.

MS. LEVATINO: I believe Mr. Mitchell had Mr. Gonzalez.

MR. MITCHELL: I believe I still had him on cross, Mr. President, on Article I. May I continue?

Q Mr. Gonzalez, during noon break, I had an opportunity to refresh my memory as to some of your prior testimony as to when you quit talking to Judge Carrillo. I'm going to ask you some questions, and, as I do, if I'll be permitted to approach the witness, I would like to ask you to look over my shoulder at some of your prior testimony. I'll ask you if I'm reading this correctly. "Now, I think we established you had an argument -- you had an argument with O. P. Carrillo. Would you please tell us the date you quit the Farm and Ranch?" Your answer then as it was earlier to this Court, "I can't recall the date, sir." "Question: The month perhaps and the year?" And your answer then was, "And probably it was sometime in '72." Is that correct?

A Well, sometime probably in '72, yes.

Q But you answered that under oath at a prior occasion did you not?

A That's correct, sir.

Q Your prior testimony here was you could not refresh your recollection or couldn't remember whether it was between 1971 and I believe in 1974. Now, is it your testimony it was probably in 1972?

A That's correct, sir.

Q All right. I'll put the question to you further, and see if I am reading it to you correctly. "All right, '72, would it be in --" and your answer was, and see if I am reading it correctly, "Probably in the middle of the year."

A That's what it says, "Probably in the middle of the year."

Q "Question: Would it be about May?" Am I reading this correctly, now? "Would it be about May?"

A Yes, sir.

Q And your answer was "Yes, I think it was May. Yes, sir, it was May because I worked all month in June in Corpus." Is that correct?

A I didn't say what year.

Q Well, you don't think it was some other year besides 1972?

A It could have been.

Q All right.

SENATOR TRAEGER: Mr. President.

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: Would it be all right to ask the Defense Counsel to what he is referring so that we in suit might follow what he is referring to?

MR. MITCHELL: Procedure of the Judicial Qualifications Commission had within the last sixty days, Senator.

SENATOR TRAEGER: That's not available to us?

MR. MITCHELL: No, sir, it isn't.

MS. LEVATINO: Mr. President.

THE PRESIDENT: Ms. Levatino.

MS. LEVATINO: I would object to using any further of this particular volume since it has been identified as that which has already been classified as confidential and not being able to be used in this particular proceeding.

MR. MITCHELL: Of course, I had the agreement I would not identify the volume, and the first thing we did, wanted to know what page, and I had to tell him that. The Court asked me from the floor, and I had to tell him that or go into contempt of the Court. I'm in a classical situation, Mr. President. I'll be damned if I do and damned if I don't three times over. That's correct. I did make the statement at the outset that I would not identify it. I wasn't going to identify it.

THE PRESIDENT: Your point is well taken, Ms. Levatino, but the Chair has to agree with Mr. Mitchell's contention that he's been put into this situation not of his own choosing and not of his own doing, so the Chair will respectfully overrule.

MR. MITCHELL: Thank you, Mr. President.

Q Well, we do agree that in some time in May of 1972 that you did quit the Farm and Ranch and went to work for Page in June of 1972 in Corpus, correct, Mr. Gonzalez?

A That is correct, sir.

Q All right. Now, does it -- and the reason I brought that up is I want to serve your recollection as to, as a matter of fact, in May of 1972 when you quit and went to work for Page in Corpus, you did not have any conversation with Judge Carrillo to speak of thereafter, isn't that what your testimony was then, and isn't that the fact? Sir?

A Probably, I did. I did have some conversations after that, sir.

Q I'm talking about the subject matter of the inquiry here, that is, the welfare program.

A On the welfare matters, no, sir.

Q All right. So that when you testified under oath as regards H-1(27) which is dated 12/6/72, and I hand it to you, which you've identified as putting O. P.'s signature on it, it was a period of time of some six months after your testimony was you never had any more conversations with Judge Carrillo, am I correct, Mr. Gonzalez? Isn't that the 12th of December of 1972? Am I correct?

A Yes, sir.

Q All right. Let me --

MR. MITCHELL: That's H-1 -- Counsel, H-1(27).

Q And, in addition, of course, looking now to --

MR. MITCHELL: And, Counsel, I'm referring to H-1 (26)-A.

Q Oh, that signature or that initial, "O. P.", was put on a Duval County Welfare Department official form November 16, 1972, some five months after you quit talking to O. P., correct?

A That's correct, sir.

Q And, looking now to H-1(26)-A at the bottom of the page 3 -- 412 of the recording -- record of proceedings of the House Impeachment, that one, now, Cleofas, is 11/16/72, am I correct?

A Yes, sir.

Q Five months after you quit talking to him, am I correct?

A About --

Q Yes.

A -- this Welfare business?

Q Correct.

A Correct, sir.

Q So, is it a fair statement to say that as of those Exhibits, that is, H-1(26)-A, that's the two, one dated November 16 of the year '72 and the other dated November 16, 1972, and the Exhibit that has been introduced, H-1(27) on December 6 of the year '72, of course, you did not and could not have any conversation with my client, Judge O. P. Carrillo, correct, because they were after June of 1972, correct?

A That's correct, sir.

Q All right. Now, let me talk about the other Exhibits that we've had so that we can have some further understanding. May of the year 1974, you went to work -- you quit the Farm and Ranch, now we are talking about May of the year '74, two years later than the May, of course, of the year '72 that I just got through asking. Are you with me, Mr. Gonzalez?

A Yes, sir.

Q All right. That time, you went to Mr. Archie Parr, and Mr. Parr said something to you about when things straighten out, you could go back to your work with your Precinct 3 like you used to have, and, in the meantime you would go to work for him, get a raise in pay, and you went to work in a welfare capacity in May of the year '74, did you not?

A That's correct, sir.

Q All right. In May of the year '74 what was your function as -- you were a welfare officer, were you not?

A That is correct, sir.

Q So, the Court clearly understands what we're talking about. The welfare matter and the welfare procedure in Duval County has been administered pretty well the same for all these years, hasn't it, Cleofas? Folks wanted medical services, groceries or any kind of help would go to people designated by the Commissioners Court and present their requests, isn't that correct?

A That's correct, sir.

Q And it could be my client, the Judge, it could be the Sheriff, it could be the Deputy Sheriff, could be Archie Parr, it could be you, as a matter of fact, am I correct?

A I know I could. I don't know about the rest.

Q As a matter of fact, you were the welfare man exclusively since May of 1974 to date until you quit and went into business for yourself this last year?

A Well, they stopped me giving out orders right before the election of 1975, so it would probably be in April.

Q So, for about May of the year 1974 to April of the year '75, though you were a welfare worker yourself and you handled welfare procedures?

A That's correct, sir.

Q So that the Court understands it further, if someone, well, being a needy person in the county had a desire for groceries or for services, they would go to you or would go to Mr. Parr or would go to any person designated by the Commissioners Court, make their wish known, is that correct?

A I don't know, sir. But, if they were from Benavides, they would go to me or Ramiro Carrillo.

Q All right. And those little chits that we're talking about is evidence to show that someone authorized by the Court was passing on that this man is okay, he's needy or she's needy, give her some help.

A I don't know. I had to ask Ramiro Carrillo about it. Lauro give it to me.

Q Since May of the year '74, how have you been doing it?

A Like I was supposed to. If the people went to me and I knew that they really needed the assistance, I gave it to them like it was supposed to be done. I had to fill out one of these forms right then when they were with me and they had to sign it, and I would give it out to them.

Q Right. As a matter of fact, Mr. Gonzalez, I'm not implying anything that's uncustomary or wrong. The whole procedure set out in this -- in the record of the proceeding, it shows where someone wanted something, had a need for groceries, that the procedure would be started by the chits, as you've testified --

A That is correct.

Q All right. And then you -- a form, official form, such as appears in example H-1(26)-A would be filled out on the official Duval County Welfare form, am I correct?

A That's correct.

Q And that form would be signed by an official authorized by the Commissioners Court in the lower left-hand corner?

A That's correct.

Q And that official could be Ramiro Carrillo or could be Mrs. Elvira de Leon, the welfare officer?

A That's correct, sir.

Q And there was nothing wrong about that procedure in any of these Exhibits, is there, Mr. --

A I don't think there was. Because they accepted them then.

Q And then that welfare form reflected the chit or the need, wouldn't it, so if it were groceries, for example, that welfare recipient would go to the grocery store here, looking at some of these Exhibits, H-1(26)-A, dated in the year of '72, that would be the Cash Store. The Cash Store would give those goods, set those goods out, the value of them in the names and they would correspond to the official order from the proper welfare official, correct?

A If they were approved I guess they were all right -- Ramiro, yes, sir.

Q Wait a minute. You keep wanting to jump over to Ramiro. We are not talking about Ramiro yet. We are talking about when the recipient goes to the Cash Store and presents the welfare form to Mr. or Mrs. Yzaguirre. They fill out the sales slip, don't they, Cleofas?

A Yes, sir.

Q And on that sales slip is the amount of money and name of the person, correct?

A That's correct, sir.

Q And that amount of money and that name correspond in that official form, correct? Do you want to look at one of them?

A Yes, but what I am trying to tell you, Mr. Mitchell, is that --

Q Just a minute. You and I have had this problem before. Is it yes or no? This goes directly -- ties in directly with the official form, doesn't it, Mr. Gonzalez? See what I am talking about? H-1(26)-A.

Page 412, Counsel, as reflects the official form, form right above it?

A Yes, it does.

Q They still ain't got the money, because that's got to go before the Commissioners Court, am I correct?

A That's correct, sir.

Q And, the procedure there is that the claim, the official form plus the -- the Cash Store receipt, or it could be for medical supplies or dental or anything else, Mr. Meeks takes them and sorts them out, he or Mr. Hinojosa, his assistant, for presentment to the Commissioners Court, am I correct?

A Yes, sir.

Q All right. Mr. Meek has testified about three or four months ago about that procedure. I'm sure you weren't here, but he testified, and you -- that those claims would then be sorted by him and taken every month to the Commissioners Court. That's correct, isn't it?

A Yes, sir.

All right. And the Commissioners Court would then -- and that's presided over by the County Judge and four Commissioners, right?

A Yes.

Q Ramiro Carrillo being one of them, right?

A That's correct.

Q And who are the other ones? Juan Leal one of them?

A Yes.

Q Who else? Who were they back in, say, 1973 or '74?

A Felipe Vallero and Juan Leal.

Q And the County Judge was who?

A Archie Parr.

Q And those matters would be considered by the Court, would they not, and an allowance or disallowance made of those claims, correct, Cleofas?

A That's correct, sir.

Q And the Commissioners Court would order them paid, and that order would be entered in a public minute or public document, correct? The minutes of the Commissioners Court, as far as you know?

A As far as I know, I think -- that has to be the procedure, yes, sir.

Q All right. But, -- and anyone, that is a person working in the field, such as Ms. de Leon -- and if I ask you questions about people that you don't know, you ask me because there are references in the record. And de Leon was the official County Welfare Officer whose name is printed on all these welfare chits. Am I correct?

A You're right, sir. Yeah, yes.

Q All right. But when Archie Parr and you -- you discussed the matter with Archie Parr, you actually weren't put into that procedure. You were made a Welfare Officer outside of the county welfare procedures, were you not, and authorized to approve and dispense of welfare directly without going through the procedure that I've outlined. Am I correct?

A No, sir. I -- Mrs. Elvira de Leon gave me all the material. The first time I started working, doing this I was sent to Elvira de Leon, and she gave me all the books and everything that I was supposed to have, and she told me how much was going to be my budget for a month.

Q Each official is assigned a budget by the Commissioners Court?

A That's correct, sir.

Q Judge Carrillo's budget was, as far as you know, back there when you had the last -- or any connection with him \$300.00 a month.

A I don't know, sir.

Q All right. What was your budget May of '74?

A It was \$800.00 but I could go up to \$1,000.00.

Q All right. And the Commissioners Court authorized you to approve up to \$800.00 -- up to \$1000.00 a month, correct?

A That's correct, sir.

Q And, Mr. Gonzalez, that's the same thing they did with anybody. It wasn't just you. I mean, anybody that had the authority to approve of recipients had that authority to go up to a certain amount, be it \$300.00 or \$500.00 or \$800.00 or \$1,000.00. Am I correct?

A I don't know, sir. I wasn't there long enough. I didn't ever -- I couldn't tell you, sir.

Q All right. Now, at any rate, all these chits that we're talking about that Counsel has asked you, these little chits, and we get -- Counsel, may I have them -- the one that's been designated in this procedure as 6, I believe.

While they're looking for it, let me ask you some questions about it.

As a matter of fact, those chits, as a normal rule, are destroyed by you, are they not?

A No, sir, they were supposed to be taken back with those orders I guess kept, being kept, I guess, for the record by Mrs. Yzaguirre, but evidently there were some left there at the Commissioners desk, and I just put them up there with the one that I have to keep for his records. There were three copies. I kept the pink one for his records, and I kept them there. Whenever he left them behind, I couldn't do anything about it.

Q Yes, I understand that. My question is, though, as a matter of the way the procedure worked, though, they didn't have no business coming back to you. None of these had any business coming back to you. They were part of the claims docket with the Commissioners Court when the Commissioners Court passed on it, weren't they, Cleofas?

A No, sir. There were three copies. The Commissioners Court had theirs, and the store had theirs, and Ramiro -- or they stayed there at the Farm and Ranch Supply.

Q All right. Well, the question I asked you is related to an answer you gave this morning. I thought I understood you, but apparently I didn't, that these chits were normally destroyed.

A I don't remember saying that, sir. I'm sorry.

Q Well, you don't have any, and you can't produce any for any month beginning with January of 1971 for the twelve months of '71, twelve months of '72, twelve months of '73, '74, or '75, can you?

A No, sir.

Q And I believe you've been interrogated and investigated about as well as anybody, beginning back in May of this year -- March of this year -- May of this year, when you come up to Austin and testified? Sir?

A I had those with me. I brought them.

Q Yeah. I mean, if you had any more, you'd have had all them Rangers and all them other folks helping you offshore, you could have dug up some besides what you dug up, couldn't you?

A Well, if I had -- If I'd been -- If I could go to Ramiro's office, there's probably some laying around there in his office.

Q Yeah, I know, and as a matter of fact, you went over there searching for some to bring it up here to condemn these people with, didn't you?

A I didn't understand your question, sir. I'm sorry, sir.

Q I said as a matter of fact you went over searching to get some of that evidence to where you could condemn my client, Judge Carrillo, didn't you?

A No, sir, I just kept them because I thought I was -- I just kept them for --

Q And, Mr. Gonzalez, in the same period you reported him time and again for hauling grain -- to the Department of Public Safety and to the Sheriff or to anybody that would listen to you -- in June of 1974 after you all had your split, didn't you?

A I haven't had no split with nobody.

Q You don't deny reporting to the DPS the fact that the Judge's trucks were being -- or the County trucks were being used to haul grain.

A Well, they were, that's right. The County trucks were hauling grain, yes.

Q And you reported it time and again, did you not, to the DPS?

A I guess I did, yes, sir.

Q And you and Mr. Ruben Chapa, I believe, called around all over the county in June of 1974 after you all -- after the Carrillo split up with Parr and you folks hopped over on the Parr side of the docket, didn't you?

A Well, no, it wasn't fair for the County Judge -- or, I mean, District Judge hauling grain with county equipment, and --

Q As a matter of fact, you now know that he didn't raise any grain that year and hadn't raised any grain for four or five years, don't you, Cleofas?

A I guess he has, yes.

Q Uh-huh. All right.

A He has.

Q All right. Now, I'm going to ask you some other questions keeping in mind -- hopefully we can keep in mind what we have already established, that is, the fact that in May of 1972 you had no further discussion with my client. Let me ask you this. Prior to May of 1972 did you ever talk to O. P. Carrillo about anything?

A Yes, sir.

Q All right. Let's start out in the months, let's say, of '72, and I'm going to limit this specifically to the welfare system in Duval County. Did you ever talk in the months of January, February, March, or April, or May of 1972 with Judge O. P. Carrillo?

A I don't remember, sir.

Q All right. Let's go back a year. Let's go to 1971, and let's start in June of '71 -- strike that fragmentary. Let me ask you, you would have, of course, -- you would have remembered so that you could reproduce that testimony had you had any conversation at all with him in the first part of 1972, couldn't you, Cleofas? You think you could have, but you don't recall any conversations with O. P. Carrillo?

A Well, I had some conversations, but I can't tell -- I don't remember that we would talk about that --

Q I'm not trying to be unfair with you, but Article I alleges a conspiracy between my client and some unknown persons to have Duval County pay grocers, and I'm just wondering if you might have been one of those conspirators or if you might have been present when one of them talked to him. That's what I want to know. You don't know anything about that, do you, Cleofas?

A About somebody going over to him --

Q Yes.

A No, sir.

Q That's right. At any rate, how about in 1971? Did you have any conversation with O. P. Carrillo about the welfare matter?

A I don't remember, sir.

Q About specifically any groceries?

A Any what?

Q Groceries. Eat 'Ems, Groceries.

A No, sir.

Q All right. How about in 1970? Did you have any conversations with O. P. Carrillo about any groceries?

A I don't remember, sir. No, sir.

Q All right. And would that be your testimony if I asked from the beginning of time to 1970, you don't remember any conversation with Judge O. P. Carrillo about any groceries in Duval County, do you?

A Well, if I did, I don't remember. Probably did, but I don't remember.

Q I understand.

MR. MITCHELL: All right. May I see the other Exhibits, please, that were introduced through this witness?

Q While he's getting those, I believe you quite candidly and frankly identified -- and this is for the purpose of the record -- those chits that I showed you a minute ago, that you had seen them in the hearing down in Corpus, hadn't you, Cleofas?

A Well, when you asked me -- or she asked me that question, I thought she meant that if I had seen something similar to them, and I said yes. But this weren't really the ones I had seen. There were photostatics or copies of it in a book of --

Q And we're talking about now H-4(1). Is that what you're talking about?

A That's correct, sir.

MR. MITCHELL: Are there any other Exhibits that were introduced --

MR. MITCHELL: Yes. By this witness.

Q The reason I'm asking you, Mr. Gonzalez, I don't intend to take the Court's time, but I thought you testified this morning that those chits were brought by you from your home to Austin at the time you testified upstairs before the House Subcommittee. Or did I just hear you incorrectly?

A That if I had brought this here?

Q From your house?

A Let me see them again. Yes, sir, these were some of the things I brought.

Q Now, so the record reflects it, those are chits that are on mimeograph that is, they have been -- It appears to be one of those mimeograph machines, doesn't it, Cleofas?

A That's correct, sir.

Q And you recognize that that was printed on the duplicating machine at the school there in Benavides? You remember that?

A I don't know, sir, where they came from.

Q As a matter of fact, if you look at the record, there are some of those chits on yellow sheets, some on plain white sheets, some on lined white sheets, but here we're really talking about a chit that is -- that has been printed on a -- what would you call that? It says -- looks like it's been mimeographed, don't it?

A Yes, sir.

Q All right. As a matter of fact, if you will, think with me, the last time that mimeographed chit was used was in about 1968 or '69, wasn't it, Cleofas?

A I can't tell, sir. I never --

Q You don't remember when they were printing these up at the school and they quit it?

A I didn't have to do nothing with school never. I have --

Q But you're not telling this Court that these were used within the past -- well, you can't tell when they were used, as a matter of fact, can you?

A They were used around the '70's, but I can't tell you when.

Q All right. That's close enough, if I can get you to commit it to '70. And that's Exhibit H-4(1) through (11) or (12).

Q And those you just kept and took home with you in 1970?

A I didn't say I had them at home. I kept them somewhere, not at my house.

Q All right. But at any rate you did bring them forth.

A I did, sir.

Q All right. Where was that kept, if you don't mind telling us.

A Sir?

Q Where were they kept?

A I don't have to tell you. Or, do I have to? If I have to, just tell me...

Q If you don't care to tell, tell me, if it would embarrass you, I --

A No.

Q Certainly the Court -- If there's some secret place that they kept it that it would embarrass you to tell where they were kept --

A I kept them in a truck that belonged to the Farm and Ranch Supply, that I still have.

Q Oh, you have got a what?

A I have a truck, 1968 pickup that belongs to the Farm and Ranch Supply, that's where I kept them, in that truck.

Q And you have got that truck now with you?

A Yes, sir, I still do.

Q Yes, as a matter of --

A It just belonged to -- It's not under Farm and Ranch Supply, it's still under the name of the owner, the original owner.

Q But it's not your truck?

A It's not my truck, that's right.

Q Do you want this Court to give you some immunity in regards to possible theft indictment over that truck, Mr. Gonzalez?

A They can go and pick it up whenever they want to.

Q You would have them go and pick it up?

A I didn't turn it in, because it was junk, it was junk when I left the employment.

Q All right. Now, Cleofas, there was a terrible political split down there in that county, wasn't there, in about May of 1974? You remember that?

A Yes, I didn't know it was that date, but --

Q Well, it's common knowledge, it's been in the papers and everybody talks about it that the Carrillos split with the Parrs. Am I right?

A That's right, sir.

Q And you were prior to that split -- Could we say that you -- Well, there was no two-party, all the Parr party, am I correct of which the Carrillo family and the Parr people were one and the same?

A I guess so, yes.

Q And when there was that split, for whatever reason there then became the Carrillo faction and the Parr faction, am I correct? With a lot of legal action on one part and a lot of vote contest and what not -- a lot of strife that resulted from that split, correct?

A That's what the paper Corpus Christi Caller said, yes.

Q Of course, you moved from one -- would you say you have moved from one facet of that split, that is the Carrillo over to the Parr?

A I did not, sir. I think I told you, it's in the records there, why I quit working for the Carrillos only, but I didn't split no parties.

Q I understand, but you did, the record reflects and the Court can make its conclusion, you did go over and talk to Archie Parr about a job and were given a job and given a raise?

A I just went and thanked him for how many years he had helped me. I had to, he was the County Judge. County Judge is the head of the County to me, I don't know.

Q And you ended up holding forth from Mr. Couling's Benavides Implement and Hardware Store there in Benavides?

A I didn't get that.

Q The headquarters after that was the Benavides Implement and Hardware.

A Headquarters for what, sir?

Q Well, that's where you worked out of while you were working on the welfare, prior to the time you bought it?

A That's correct, sir.

Q And I believe Ruben Chapa ran against the Carrillo candidate for the school board and won that race as a Parr candidate, didn't he? Chapa?

A He did run, yes, sir.

Q And he kind of holds forth from Benavides Implement and Hardware Store in that area, don't he?

A He works for the Water District and the Water District has its collection office in -- in the back of Benavides Implement, sir.

Q So, he's working back there in the back.

A That's correct, sir.

Q All right. As a matter of fact, Cleofas, you have been election judge, I believe, ever since that split on every election since May of 1974 down there, haven't you? You have played an active part?

A I started working in elections when I first started voting, sir.

Q Yes. And have continued right on up, have you not?

A That is correct, sir, the past two years they just didn't hire me any more.

Q That's right.

MS. LEVATINO: Mr. President, I object.

I really don't see the relevancy of this particular line of questioning to Cash Store or any other matter which we have gone into at this time.

MR. MITCHELL: May I answer that -- Speak to that, please, Mr. President?

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: A question touches a man's credibility and as I have pled in the interest of Judge Carrillo that this is a political fight and a political battle between these two factions after the split of May '74. It would then behoove us to establish the fact that he will go anywhere, anytime under any circumstance to destroy his political opponent, who happens to be my client, O. P. Carrillo.

THE PRESIDENT: Objection is respectfully overruled.

MR. MITCHELL: Thank you, Mr. President.

Q At any rate, in addition to you and Ruben Chapa, who was previously -- who previously testified here, there was, I believe also Mr. Couling, Rudolfo who we would say was a Parr man, am I correct? Wouldn't you say he's a Parr man?

A I don't know, sir. He's a different person.

Q How about Mr. Oscar Sanchez?

A I don't know either, sir.

Q How about Rudolfo Chapa?

A I don't know, sir.

Q How about Vincente Ruiz -- Vincente Chapa?

A I don't know, sir.

Q All right. You don't know, as a matter of fact, that they all are Parr people and are lined against the Carrillo people and have been since May of 1974 when the split occurred, Cleofas?

A I don't know, sir.

Q They are, of course, all working together there at the location of the Benavides Implement and Hardware, are they not?

A That's where they have to work, that's where they have their office in the yard, they have got to be there. It's not my or anybody else's -- they have got to be there, because that's where they have to report to work, sir.

Q Right. And they're all on the water district payroll, aren't they?

A I don't know, I can't tell you, sir.

Q And they were all hired by Archie Parr?

A I can't hear you, sir?

Q I say they were all hired by Archie Parr to work on the water district?

A I don't know about that, sir.

Q And they have all testified either in -- previously here several of them have testified. And they have testified before the House subcommittee, have they not?

A They have, yes, sir.

Q And they have testified -- most of them testified down in the federal trial in Corpus Christi, have they not?

A I think they have, yes, sir.

Q And most of them testified at the Judicial Qualifications Commission trial in Corpus Christi, have they not?

A I think they have, sir, yes.

Q Do you know whether or not Mr. Terry Canales represented Archie Parr at the time he sponsored the resolution before the House, Mr. Gonzalez, that is the basis of which we are proceeding here today?

A I don't know, sir.

MR. MITCHELL: Your witness.

REDIRECT EXAMINATION

(Questions by Ms. Levatino:)

Q Mr. Gonzalez, in response to some questions put to you by Mr. Mitchell with regard to a conversation you had with Judge Carrillo on welfare groceries, do you -- you have said you didn't have this conversation in 1970 or 1971. You began -- you have testified you began with your welfare responsibilities in 1968. Could you tell us what the nature of this conversation was?

A Well, the very first time I started making out these welfare orders -- one morning Mr. Carrillo, O. P. Carrillo and Ramiro Carrillo were there at the office and that's the first time I made those orders that Lauro had bring in for O. P. Carrillo. And he said -- they were there and they said yes, go ahead and make them. But anyway, I asked Ramiro every time they brought them in. I asked -- I thought they were just going to be that day, I mean that month, but they kept on every month, but every month I asked Ramiro if it was okay for me to keep on going and he would tell me yes.

Q So, this conversation -- I remember that, yes -- I remember that -- excuse me, I interrupted --

A But I remember that clearly, because it was the very first time that I started doing it and I know they were together.

Q So, this conversation with Judge Carrillo regarding the welfare groceries occurred when you began your welfare duties around 1968. Is that correct?

A Around 1968, yes, ma'am.

Q Mr. Gonzalez, after May of 1974 when you had changed jobs and at that point where a welfare -- or you had authorization to authorize welfare for the county and you had -- you filled out the forms, let me show you -- and you have seen already a series of Exhibits labeled H-1 -- this is a copy of it. And the ones we were looking at this morning, for example, H-1(27) -- Counsel -- on which you identified as December 6, 1972, which you wrote out and which you put the letters "OP" on it. That Exhibit has a list of names, I believe. There are eight names on there showing \$20.00 each. When you became -- or when you started your new job as a welfare officer did you ever submit a slip with a list of names on it, such as this?

A No, ma'am, I just made it to one single person.

Q When you filled out that slip originally did you give that slip to -- did you give that slip to that person?

A I did. I gave them the yellow and the white one and they were supposed to take it to wherever they were going to get the groceries, to the grocery -- to get medicines, to the druggist or to the doctor -- they had to give those to the doctor or whoever.

Q When you were, again -- and this is the time period from 1974 through 1975, when you were working for the County as a Welfare Agent and you had these -- filled out these individual slips. How many times would you say in an average month --

MR. MITCHELL: Pardon me, Counsel, I hate to interrupt you.

Your Honor, in view of the fact that the witness has testified that he had nothing more to do with Judge Carrillo from May of 1972 forward I now am going to object to anything, any testimony about what he did with -- or anybody for that matter, it would be totally hearsay, as to Judge Carrillo. And certainly after the political split in May of '74 anything he would do with regard to Judge Carrillo would certainly be irrelevant, immaterial and beyond the scope of this inquiry. Absolutely hearsay.

MS. LEVATINO: Your Honor, we have been attempting to show a course of conduct with regard to the submission of claims for County -- reimbursement by the County for groceries that this man participated in that system from 1968 through 1975, changing jobs at some point. We have been showing or have been attempting to show that from the period from 1971 through 1974 one type of slip was filled out in one way. After that time when this man was no more doing the work for Ramiro Carrillo a different way was used, which we have alleged is the legitimate way. And we are showing the contrast between these two particular types of systems.

THE PRESIDENT: Respectfully overrule. Try to keep the detail down as much as you can, Ms. Levatino.

Q Mr. Gonzalez, at the time in which you were a -- from 1974 to 1975, approximately, how many people would come to you a week for grocery assistance?

MR. MITCHELL: Excuse me, Your Honor, I understand that this is not being offered in any way in connection with Article I, but only to show what the so-called "legitimate" way of business is. As long as I understand the testimony is not offered in connection with Article I, I have no objection. I will admit it's legitimate, although I want to ask him how he and Archie Parr worked it. But as long as it's not to where Judge Carrillo had anything to do with it, I just want to be sure, otherwise it's hearsay. If that's what it's being offered for I will take your word for it and sit down and shut up.

MS. LEVATINO: Your Honor, this is, of course, being offered in connection with Article I, but we are not alleging that Judge Carrillo had anything to do with this particular question that I'm asking him.

MR. MITCHELL: Then it's irrelevant and immaterial to Article I.

MS. LEVATINO: I, also, Your Honor, believe this is the same objection he had to my previous question, which I was just restating, I believe you had ruled on it.

THE PRESIDENT: How much more of this line of questioning, Ms. Levatino, do you have?

MS. LEVATINO: That will be my last question.

THE PRESIDENT: Overruled.

Q Would you answer this question now. And I will ask you one more time. How many people, generally, in an average month came to you between 1974 and 1975, during those months asking for welfare and groceries?

A Well, about -- just about the same, about eight or ten.

Q About eight or ten people. Thank you.

Mr. Gonzalez, this morning you examined four Exhibits, House Exhibits which were claim jackets that had chits, what we have been talking about as chits attached to them. Some of them were blank checks, things written on the back of blank checks, some were yellow slips, some were white slips. To the best of your recollection, from the time you began working in 1968 through the time you quit your job in 1974 with Ramiro Carrillo how long did you see these chits come through your office every month?

A To the best of my knowledge I think I did it up to the months prior that I quit working.

Q So, is it your testimony, then, that each month you received some of these slips from Mr. Yzaguirre with a certain -- to give so and so a certain amount of money with O. P.'s signature. You wrote out the Duval County Welfare form from those chits, and when you wrote that, you knew some of the people whose names that you were writing didn't even live in Benavides County, but Commissioner Ramiro Carrillo told you to fill them out and you did that from 1968 to 1974? Is that your testimony?

MR. MITCHELL: We're going to object to that. Pardon me. Not only is it leading, Mr. President, but it assumes the fact it is not established in evidence: to wit, that persons do not live within the given County or within the given area. And that is presumptive. It's misleading, and it assumes a fact that's not in evidence.

THE PRESIDENT: Please refrain from leading.

MS. LEVATINO: Pass the witness.

RE-CROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q I want to ask you one final question or two, Mr. Gonzalez. I want to really focus in if I can on what your function was in this welfare procedure. As I understand it -- now, I'm going to ask -- the first question I want to ask you, from 1968 to 1970, May of the year 1972. As I understand, what you did was make out the official form, is that right?

A For this welfare business?

Q Yes.

A Yes, sir.

Q All right. So that we know now, the record is clear, when I say, "official form" and you answer that, we are talking about like one here that's H-1(1) right here?

A Yes, sir.

Q All right. So that the Court can keep up with it, it's H -- this would be Page 351 of the 7th day of the proceedings of the Record of Proceedings of the House, right? It would be H-1(1), correct?

A Let me see the writing.

Q Is that what you -- I'm trying to find out what you did in all this procedure. Did you fill out that form or a form like that?

A I filled out this one here.

Q All right. Now, so that in of the year 1968 -- from the year 1968 to 19 -- May of the year 1972, you would fill out that official form, right, Cleofas?

A If Ramiro would tell me to do so, yes.

Q Oh, I mean regardless -- that's what you did. I want to find out what you did in the procedure.

A Yes, sir.

Q Where did you get your information to put on that form?

A From those paper slips or whatever were behind the blank checks, the pieces of yellow pages like a tablet.

Q Is that the total -- is that all you had to do with the procedure from 1968 to May of 1972? I mean, you didn't --

A Well, if somebody went over to the -- if a person went over to the -- to Ramiro Carrillo's office and wanted an order to see a doctor or an order to get groceries, and Ramiro was -- see, they used to go in mornings and wait for Ramiro and see if he would show up so they would get it from him, and a lot of times Ramiro didn't go, so I told him, "Well, if you want to -- if you want to, let me -- when Ramiro comes in, I'll ask him, and if he wants to help you, I'll have him sign one of those things, and I'll either call you or something, or you come back later on."

Q All right. So that we could say, Mr. Gonzalez, from 1968 to May of 1972, most of those applicants were for welfare whether it's drug or groceries or medical services, you saw or talked to, didn't you?

A They went to the -- they went to Ramiro's office, yes, sir.

Q And, just as real as the Senators sitting here in this room, aren't they, folks that had needs?

A Yes, sir.

Q They were just as real as the folks sitting in here in this room, weren't they?

A That is correct, sir.

Q Senator Moore, for example. Now, let me ask my next question from May of the year 1972, and the reason I used that, I think your testimony previously about when things changed about you communicating with Judge Carrillo, from May of the year 1972 to May of the year 1974, is it your testimony that's about the same way that the thing was handled, the welfare procedure was handled? Was any change made that you knew of?

A As long as what I had to do was the same thing, yes.

Q And you're not telling this Court under oath that you ever approved a false claim for anybody during the years of 1968 to May of 1974, are you, Cleofas? Anytime you approved one, you felt it was a real claim, didn't you?

A I just told you, sir, that I had to ask Ramiro. I don't know if they were true or not. I mean --

Q I'm talking about the ones you personally had contact with.

A That's what I mean. I don't know whether they were true or not. That's how come I asked Ramiro if I could do it or not. And if he went ahead and okayed it, I did it, yes, sir.

Q Well, I'm talking about -- I see where we're having a problem of it. Ramiro would assure you that you had the authority. But, I'm talking about the people. The people were real, standing before you. You didn't have to ask Ramiro whether the man was real or not, did you? The man was real, in front of you, had a need, wasn't he?

A Ramiro had to give the okay.

Q I understand, Mr. Gonzalez. But you never went to Ramiro and asked him to help somebody that wasn't real and standing in front of you that you could eyeball?

A That's correct, sir.

Q All right. Now, what is the change that occurred since -strike that. Ms. Levatino asked you about where these folks lived. Now, these folks, as I assume, were folks in need, weren't they, Cleofas? These folks were folks that needed you all's help, work in the welfare system of Duval County, weren't they?

A I didn't know, sir.

Q You didn't know that there were people that had to have money and were in need of medicine and groceries and food and yet you participated in seeing that they got medicine and food and groceries from the County Welfare System?

A I don't know which -- what list -- are you talking about O. P.'s list or anybody?

Q Did you ever participate in the --

A I did, sir. I told you a while ago I did, yes.

Q All right. So you're telling this Senate, this Court that you participated in a false and fraudulent claim against Duval County?

A I'm not saying that I participated. No, I didn't, because they were brought to me. They had already gotten the groceries, so as long as I know the owner of the store brought me the slip, that they had already gotten the groceries, that's how come I had to ask Ramiro if it was okay for me to make out an order for them or not.

Q Okay. Let's see if I can --

A I can't say they did or they didn't. I know that some people don't live there, and I know some people don't get the groceries. Because I asked them if they had or not and they told me they didn't. I'm a little bit nosy, you know.

Q Did you report these instances to the proper authorities?

A Who would I go to to report to?

Q Well, you reported hauling that grain in the county truck to the DPS. Try that on for size. Did you call them?

A Mr. Mitchell, I had been trying to report a lot of things, and many, many years back, and nobody has ever paid attention to us. I mean, Senator, Representatives, and we have called a lot of places and nobody has paid any attention to our County.

Q And particularly since May of 1974, you've called a lot of people and tried to stir up a lot. I think that's what --

A Of course, we had to. We were trying to do something for the people. There was something -- there were a lot of things going wrong, and we wanted to straighten everything out. I was not doing it because of -- we wanted to impeach O. P. Carrillo. We wanted it because he was doing a lot of wrongdoings there trying to get people that we had elected by the people by -- in office -- they were -- they could have been out from the procedure a different way, not the way he was doing it, just picking him up and throwing him out and get somebody else in, and then if he didn't like it, throw him out again, bring someone back. Is that fair? Is that right doing?

Q Mr. Gonzalez, I'm wondering how come that all those wrongdoings opened up like a spigot when you all had the falling out with the Carrillos and you jumped the fence and were hired by Archie Parr? Did it all just start at that time?

A Let me tell you, Mr. Mitchell --

Q Well, I'm asking you. Yes or no?

A We never had any parties or -- we weren't with the Carrillos and we weren't with the Parrs and we started by our ourselves. And O. P. Carrillo knows it good and well right now. He knows it.

Q My question is you never did ever approve a claim on a non-existent person, and I believe you said you never did.

A To my knowledge, I never did, sir.

Q All right. And that's from 1968 to May of 1974, is that correct?

A Well, it's just like I said. I don't know, sir.

Q How has your way of doing business changed now as a Welfare Officer from May of 1974 to the time that you quit the business of welfare and went into the Benavides Implement and Hardware? Did you handle your business the same way?

A I did it the way it was supposed to be done. Somebody had to go to my office or wherever I was staying, or they had to go to the drug store, and a lot of times, people went to the drug store and asked the druggist that they need some medicines, and the druggist -- they owed too much money to the druggist, and the druggist said, "Hey, why don't you go and talk to Cleofas? He might help you out. You owe me too much." So, they went over to me, and they told me the situation. And sometimes I helped them -- if they owed too much money and knew they were real sick, I helped them with more than what that prescription was. But a lot of times, I just gave them what the prescription said. If they were \$8.00 or \$12.00, I just helped them with \$8.00 or \$12.00. But if I knew they were really sick people that had to have medicine, like there are a lot of poor people that have got to have medicine everyday and don't have a way to get it, I will help them out on their accounts. I help them up to \$50.00 on their account.

Q All right. In other words, now, they come to you, you make a judgment on the need, and then you authorize the payment of the money, and the money is paid to them on the basis of that need?

A All I did was what Mrs. de Leon told me that I could help people out. And I gave out to the druggist and then the druggist sent in the bill. And the bills were accepted over there in the Commissioners -- they did accept them. If they had wanted to, they could have gone back to me and --

Q Right.

A They didn't ever tell me anything. They accepted all the ones that I helped.

Q Precisely. The Commissioners Court was looking over your shoulder, and if they didn't approve the claim, they didn't have to authorize it to be paid and didn't have to vote it be paid?

A That is correct, sir.

Q Sure. And I believe Mrs. de Leon, the record reflects, is the official welfare -- Duval County Welfare Officer and was and has been I guess since, what, the time immemorial, 1968, 1967, to date?

A I don't know, sir. I can't tell you.

Q The Exhibits here, one -- the series 1(11) shows her signature or her name as far back as 1970. As far as you know, she was the County Welfare Officer in 1970 and up to date, correct?

A That's correct.

Q And, to the extent that the Commissioners Court passed on what you had been doing and what you did up until the time that you bought the hardware store, the Commissioners Court did the same thing back in 1968, '69, '70, '71, '72, '73 and of the year '74, isn't that right, Cleofas?

A I guess they did. I don't know.

Q There has been no change as suggested by Counsel in the question put to you on the method the Commissioners Court has control of the welfare program in Duval

County for all these years, isn't that correct? They had the life control, the life control of the program, life and death and the authority of the program, didn't they, Cleofas?

A I don't know if it -- if it changed now that after they told me to stop or not.

Q Well, I am certainly not asking you an unfair question about what has occurred since you left. But, I mean as far as you have personal knowledge in the years that you had connection with it. There was no change in the supervision of the Commissioners Court over the program, was there?

A Yeah, I guess they followed the same procedures.

Q All right.

MR. MITCHELL: Your witness.

REDIRECT EXAMINATION

(Questions by Ms. Levatino:)

Q Mr. Gonzalez, in response to a question by Mr. Mitchell, you stated that most applicants during the period of 1968 to 1974 will come to you at the Farm and Ranch Store and you would have personal contact with them, is that correct?

A Yes, they were -- yes, ma'am, they went there to the office, to Ramiro's office.

Q Did you -- how many of the applicants whose names were then reflected as receiving welfare groceries did personally come to you that we've looked at today in the exhibits?

A From this exhibit you just showed me?

Q Yes, sir.

A Probably one or two or -- out of that list.

Q Okay. Very quickly, did Patricio Garza ever come to you for welfare groceries?

A No, ma'am.

Q Did Mike Ruiz?

A No, ma'am.

Q Tete or Rudolfo Chapa?

A No, ma'am.

Q Consuelo Hinojosa?

A No, ma'am.

Q Rosa Chapa?

A No, ma'am.

Q Rosa Garza?

A No, ma'am.

Q Jose Sendejar?

A Wait just a minute. Rosa Garza wanted some medical assistance, yes.

Q What about food?

A No.

Q Jose Sandejar?

A No.

Q So, these people whose names appear on those slips, you didn't have personal contact with?

A No, I --

Q -- for getting groceries?

A Out of that list, no, ma'am.

Q Okay. But you did fill out the forms with their names on it to allow the store to get paid?

A If they went to the office, yes, I did, yes.

MS. LEVATINO: Pass the witness.

RECROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q And, of course, you know Patricio Garza, don't you --

A Yes, sir, I've known him since I was a little boy.

Q Sure. Great big hulking fellow?

A Yes, sir, that's correct.

Q And you know Tete Chapa. That's the little fellow that testified here before. He's a real person, isn't he?

A Yes, he's my good friend. He's my good buddy.

Q Sure he's your good buddy. You were all over there working at Benavides Implement Hardware together.

A That's correct.

Q On the Parr side of the fence, aren't you?

A Yes, sir. That's right.

Q And you also know Jose Sendejar, don't you, Cleofas?

A Who's that?

Q Didn't Ms. Levatino ask you about --

MS. LEVATINO: Jose Sendejar.

Q Oh, I'm sorry.

A Yes, sir.

Q He is real. I mean, you can walk up and shake his hand, can't you?

A No, he can't walk. He's in a wheelchair.

Q Well, I'm sorry to hear that.

MR. MITCHELL: Your witness.

MS. LEVATINO: Pass the witness.

THE PRESIDENT: Mr. Gonzalez, at this point, I will ask you several questions that have been sent out by members of the Court to be asked to witnesses after the lawyers, counsel for the parties, have asked their questions.

This is a question sent up by Senator Lombardino. "Mr. Gonzalez, are you related to Archie Parr, George Parr, O. P. Carrillo or Terry Canales?"

THE WITNESS: No, sir.

THE PRESIDENT: This is a series of questions sent up by Senator Mauzy. "Do you know of your own personal knowledge that Judge O. P. Carrillo conspired with others to have Duval County pay for groceries to which he was not entitled for his personal use and benefit?"

THE WITNESS: Yes, sir.

THE PRESIDENT: "Please tell me the name or names of the person or persons with whom he conspired?"

THE WITNESS: I didn't get that. I?

THE PRESIDENT: Yes. "Please tell the Court the names of the persons with whom you have just stated you know Judge Carrillo conspired to have Duval County pay for his groceries?"

THE WITNESS: Well, that list, all those names on the list that they just presented here for evidence.

THE PRESIDENT: All right. The list of about ten names that Ms. Levatino --

THE WITNESS: Yes.

THE PRESIDENT: Those are people whom you say Judge Carrillo conspired with to have Duval County pay for groceries to which he was not entitled?

THE WITNESS: That's correct, sir.

THE PRESIDENT: Was this conspiracy oral or in writing?

THE WITNESS: In writing, I guess. Writing, sir.

THE PRESIDENT: It was written down on a piece of paper somewhere, the plan by which they would do this?

THE WITNESS: That's right, sir.

THE PRESIDENT: All right. When did this conspiracy occur?

THE WITNESS: I can't tell you exact date, sir, but it started right along year '68 or the later part of year '67 or year '68, until about the year '74.

THE PRESIDENT: Can you tell me the value of the groceries which Judge Carrillo received for his personal use and benefit?

THE WITNESS: Well, I can't tell you exactly, just that those -- it always amounted to the same, \$160.00, \$140.00, about \$300.00 a month.

THE PRESIDENT: When did he receive these groceries, and where did he receive them, and what did he do with them?

THE WITNESS: I can't tell you that, sir. I never did see him get them.

THE PRESIDENT: The other Members of the Court have questions to be asked of this witness?

SENATOR MAUZY: Mr. President.

THE PRESIDENT: Senator from Dallas.

SENATOR MAUZY: So that the record may be clear, do I understand that the witness' answer to the second question is the name of the individuals who appeared on the list of the last exhibit that he was testifying from are the people who conspired with Judge Carrillo?

THE PRESIDENT: He was referring to the list of names that Ms. Levatino read. I am not advised that those are identical with the last exhibit.

MS. LEVATINO: They were not connected with the last Exhibit, Senator. I believe he was referring to the names which appear on House Exhibit 1, various places

that he's discussed earlier today. Some of those names appear on different Exhibits.

SENATOR MAUZY: But it is House Exhibit 1, the individuals that he testified to that he did not personally interview and give authority to get groceries?

MS. LEVATINO: That's correct. That's what he testified to, Senator.

SENATOR PATMAN: Mr. President.

THE PRESIDENT: Senator from Jackson.

SENATOR PATMAN: Can the witness tell us where the evidence is of the instrument in writing that tells us that?

THE PRESIDENT: Mr. Gonzalez, you testified a moment ago that this conspiracy was in written form; it was written down. Can you tell us where that piece of paper is, where that document is?

THE WITNESS: They got those paper slips. That's what I meant -- I meant by -

THE PRESIDENT: All right. When you said the conspiracy was in written form, you were referring to those?

THE WITNESS: I was referring to those paper slips, yes.

THE PRESIDENT: The welfare forms?

THE WITNESS: Yes, they were either those white, or they were written behind blank checks or on pieces of yellow paper like tablets, those kinds of tablets.

THE PRESIDENT: Now, this is a question from Senator Clower. Were all the chits approved by O. P. Carrillo in the amount of \$160.00 or in the amount of \$140.00?

THE WITNESS: They were approved by -- Ramiro Carrillo was the one that had to say if I could make the orders out or not.

Q All right. But, were the -- the specific question is were the chits approved by Judge O. P. Carrillo for \$160.00 or for \$140.00?

A Yes, each piece of paper had O. P. Carrillo's signature in it.

Q All right. And did those chits that he signed, were they all for amounts of \$160.00 or \$140.00?

A They were for -- excuse me, sir.

THE PRESIDENT: Or were they for different amounts, or were they for those specific amounts?

A They were all made for the same amounts, \$20.00 apiece. I mean, each paper slip.

THE PRESIDENT: Each slip was for \$20.00?

THE WITNESS: That's correct, sir.

THE PRESIDENT: You don't remember any that were \$160.00 or \$140.00?

THE WITNESS: Well, no, just when I made them out in those county -- that's what the amount -- you know, I put as many as I could in one of those, yeah.

THE PRESIDENT: Does Counsel for either side anticipate recalling this witness?

MS. LEVATINO: Yes, your Honor.

MR. MITCHELL: In view of the testimony of the witness, Mr. President, I would like -- I'm going to have some extensive cross-examination because I would like to question this as to some of the matters he's answered questions put to him by the Senate. I wonder if it would be appropriate before I start to take the afternoon break.

THE PRESIDENT: It's just a few minutes before 3:00 o'clock. A number of the Members of the Court and Counsel have expressed a desire to take a 10 minute break at this time. Is there objection to that? If not, the Court stands in recess until 3:10 o'clock.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 3:20 o'clock p.m.

THE PRESIDENT: Senate will come to order.
Mr. Mitchell.

MR. MITCHELL: Mr. Gonzalez, in answer to the question put to you -

MS. LEVATINO: Mr. President, I believe we were to begin on redirect of this witness.

MR. MITCHELL: I'm sorry, I didn't know you had questions.

MS. LEVATINO: Yes, sir.

REDIRECT EXAMINATION

(Questions by Ms. Levatino:)

Q Mr. Gonzalez, what does the word conspiracy mean to you?

A Well, to me conspiracy means when people get together to do something, like to steal or do something.

Q Okay. It means when people get together to do something. Is that your--

A Yes, ma'am.

Q You testified that the conspiracy that you were aware of with regard to Article I of the Impeachment Articles was engaged in by Judge Carrillo and a number of people whose names I read to you as appearing throughout Exhibit H-1. These people's names appeared on what we have been referring to as chits, in other words these long slips written out in hand.

Is it your testimony that for example in H-1(2) a chit is written out to Rosa Chapa, that Rosa Chapa conspired with Judge Carrillo?

A No, ma'am, I didn't mean it that way. I meant that Ramiro Carrillo and O. P. got together and used these chits to -- they were the ones that conspired to -- to disengage -- I didn't mean that -- the persons that names were there -- I mean that O. P. and Ramiro got together. I thought -- that's what I tried to say -- they're the ones -- I mean they were the conspirators, I mean.

Q Well, the writing that you referred and the people's names on that writing in answer to the questions put to you by the President, were those chits. And is your testimony that those chits were evidence of the conspiracy?

A Yes.

MR. MITCHELL: Your Honor, that's -- I haven't objected, but she's dragging the witness down and, of course, that's a very complex question of law. Your Honor, we're going to object on the ground it's leading and it's a question of law to which I don't think Mr. Gonzalez has shown himself qualified to answer.

THE PRESIDENT: Objection sustained on the grounds that the question is a leading question.

MS. LEVATINO: I will pass the witness.

RE CROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q Prior to our afternoon break you were asked several questions by the President using the word conspiracy. You recall those series of questions, don't you, Mr. Gonzalez?

A Yes, sir.

Q And during the course of the break who did you talk to about the meaning of the word conspiracy?

A Nobody.

Q You understand you're under oath?

A Yes, sir.

Q And you are telling this Court under oath that you did not discuss the question of what the word conspiracy meant with anybody, either during the break today or at any other time prior to taking the stand?

A Well, I just went through there and told them that I had made a mistake by what I said. But I just told them that and I went on and I was talking to a man, a reporter from Laredo, Texas and I was walking around, but I didn't say stay much in that room.

Q Yes, because prior to the time that you took your break you had testified that there was a conspiracy between my client, Judge O. P. Carrillo and some ten persons, Pat Garza, Mike Ruiz, Tete Chapa, Rosa Garza, Jose Sendejar and right on down the line. You have now changed that though. Is that correct? There's no conspiracy?

A I haven't changed it, but that's what I meant when I said that there was a conspiracy, yes. I didn't mean that these people had conspired with O. P. Carrillo, that they had gotten together with O. P. Carrillo. I don't mean that, I mean --

Q I understand that. Well, I don't really understand it. I really want to know what are you testifying to. That O. P. Carrillo had a conspiracy with the persons named on these chits, that O. P. -- or Ramiro Carrillo had one? I mean, you have testified that, yeah, there was a conspiracy and it's in writing and here is the evidence of it. Is that what your testimony is?

A I really don't know who really had the conspiracy. I mean, there was Ramiro and Lauro and O. P., because --

Q Are you for that matter, right? You participated in the procedure, didn't you, Cleofas?

A That's what I asked you that every time these things -Ramiro came -- I can't prove that these people didn't get any groceries.

Q Right.

A I was not there at the time they got the groceries.

Q Right. Well, what are you testifying to under oath and pointing the finger at my client unequivocally and saying that this Judge entered into a fraudulent conspiracy when as a matter of fact you don't know, do you, Cleofas?

A I do know, sir, that people -- most of these people that the slips are for didn't get any groceries, I know that for a matter of fact.

Q So, that if the Commissioners Court passed on these claims they would have to be a part of the conspiracy too. Is that right, Cleofas?

A Well, it's just like I had to do something with it too, that's right, sir.

Q So that -- Excuse me, were you finished?

A They just don't know as much as I do.

Q That's right. The Commissioners Court of Duval County that passed on each and every one of these claims had to be a party to that conspiracy, wouldn't they?

MS. LEVATINO: Mr. President, I would object to that question. It calls for a conclusion from the witness. The witness has already testified to who to his knowledge

was a part of this conspiracy.

MR. MITCHELL: May I ask it this way? I withdraw that, Mr. President.

Q Were the Commissioners Court of Duval County from 1968 to 1974 a party to the conspiracy you have told us about?

A I don't know, sir.

Q Now, is it your testimony or is it not your testimony that the fellow in the wheelchair, Mr. Sendejar, entered a conspiracy with O. P. Carrillo to rip off some payments from the County?

MS. LEVATINO: Your Honor, I again would object to this question, I believe the witness --

THE PRESIDENT: Sustained.

Q Now, is there any other evidence of the conspiracy that you know of, other than these chits that you have told us about? Any conversations, any other writing or any other thing you want to tell the Court about, other than what you have told us?

A Well, just that time when we first started that O. P. was there and Ramiro was there and they both told me to go ahead and make those county orders.

Q Okay. That's back in 1968, wasn't it?

A I can't give you the exact dates, sir, '68, '69, '70, but it was when we first started. I can't tell you the exact date.

Q Well, was it '67, '68, '69, or '70?

A I don't know, sir.

Q Yet you are telling this Court under oath that there was a meeting between you -- or which you attended -- and O. P. and Ramiro as regards the welfare -- the administering of the welfare program, is that what you're telling us?

A Well, they were there when Mr. Yzaguirre came in with these paper slips and gave them to Ramiro and Ramiro said, "They're O. P.'s -- they're lists, they're orders that O. P. had given, go ahead and make them out." So, I did what he told me to and this came --

Q Where did all of this happen, Cleo? This conversation? Where did this conversation happen that you're telling us about? You can't remember whether it was '68, '69 or '70, right?

A I don't know, I just know that it was something about that, because it was the very first thing they told me to do there. I don't know what the exact words are, I can't remember just that.

Q Well, other than that fragmentary recollection that you have of a conversation that you don't know when it happened and other than the written chits that we have talked -- or you have been asked about by Counsel, is there anything else

you can point to that deals with a conspiracy that you want to tell us about now? Yes, or no, if you please?

A No, sir.

Q Were you a party to a conspiracy?

A I just told you, sir, that I --

Q Yes or no.

A No, sir.

Q That you filled out each and every one of those official forms is in the record, beginning with H-1 going to H-1(38) that says Duval County across the top -- "Duval County Welfare Department", didn't you, Cleo?

A I did, sir, yes.

MS. LEVATINO: Your Honor, Mr. Mitchell seems to be asking questions over and over again that this witness has testified to. I would object on the ground of repetition.

MR. MITCHELL: I will try not to be repetitive, Mr. President.

THE PRESIDENT: Thank you, Mr. Mitchell.

Q You're not telling -- Strike that.

MR. MITCHELL: No further questions.
Thank you, Mr. President.

MS. LEVATINO: No further questions.

Your Honor, at this time the Board of Managers would like to move to Article VII of the Articles of Impeachment and this witness is our first witness on that particular Article. Since he is here today we would like to begin on a new Article.

THE PRESIDENT: Would you state for the benefit of the Court what that Article is, Ms. Levatino?

MR. MITCHELL: Did you say VII, Counselor?

MS. LEVATINO: Yes. Article VII reads as follows: "While holding office as District Judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to charge and collect money from governmental entities for rentals of equipment that did not exist and for rental of equipment that the governmental entities did not use." In that regard, Mr. President, with the leave of the Court I'm going to -- Mr. John Odam will be doing the questioning on this particular article.

THE PRESIDENT: Mr. Odam.

MR. ODAM: Your Honor, for the benefit of the Court I wonder if we might have the permission to make a brief opening remark as to what we think the evidence might prove with respect to this paragraph.

THE PRESIDENT: Proceed.

MR. ODAM: Your Honor, as Ms. Levatino just stated, this paragraph deals with the allegation that Judge O. P. Carrillo conspired with other individuals to obtain money dealing with fraudulent rental of equipment to governmental entities. We believe that the evidence will show to this witness, Mr. Cleofas Gonzalez and particularly through the testimony of our next witness who is available and will testify right after Mr. Gonzalez, that a scheme was set up through Judge O. P. Carrillo and Ramiro Carrillo whereby money was taken from Duval County by way of checks, by way of submission of false and fraudulent claims to Duval County, that the county issued checks to a store by the name of Benavides Implement and Hardware and that once those checks were issued that immediately thereafter checks were issued to Judge O. P. Carrillo in almost identical amounts. As Mr. Cleofas Gonzalez and Mr. Couling will testify we submit the evidence will show that there was no rental of equipment, that in fact Benavides Implement and Hardware had no equipment to rent.

MR. MITCHELL: Excuse me, I don't know what he's doing and I'm going to object. Is he making an impassioned closing argument? If he's making an opening statement I'm going to object to it, because he's making qualitative judgment on what the evidence is going to show, Mr. President. Now, if we're going to start arguing these things then I'm going to request that I be given the same right prior to cross-examination of making an impassioned plea on what the evidence on cross-examination will show.

MR. ODAM: Well, I'm sorry Mr. Mitchell does not understand what I'm doing. I asked for the leave of Court I asked to summarize what we think the evidence will show and that's exactly what I was intending to do, Mr. Mitchell.

MR. MITCHELL: I object to it, it's not a summary it's an argument prior to the time -

MR. ODAM: I'm ready to proceed, Your Honor, I'm through.

DIRECT EXAMINATION

(Questions by Mr. Odam:)

Q Mr. Gonzalez, you previously testified that you were employed by Duval County?

A Yes, sir.

Q And what period of time was it that you were employed by Duval County?

A Since the latter part of '62 to '74, May of '74.

Q Now, during that period of time, I believe you previously testified under questions by Ms. Levatino that your work was split into two parts, Mr. Mitchell asked you about when you went to Archer Parr and you changed your duties somewhat. Now, let's direct the attention to the first portion of your work, when you first went to work for Duval County where did you actually physically work?

A Well, I worked -- We called it the County Yard and the Farm and Ranch Supply.

Q The County Yard and the Farm and Ranch Supply?

A And the County Commissioners office is all together -- they're in the same building.

Q Now, the County Commissioners office -- who is the County Commissioner you're referring to?

A Ramiro Carrillo.

Q Ramiro Carrillo. And what county precinct is that?

A Precinct No. 3.

Q It's your testimony that this office is located at the same location as what other entities did you say?

A Farm and Ranch Supply.

Q Same location as Farm and Ranch Supply. Is that a portion of the County? Is that a county entity?

A No, sir, I don't know who's the owners, but I think O. P. Carrillo is the owner.

MR. MITCHELL: Excuse me, Your Honor, we're going to object. It will be speculation. He says he doesn't know, that would be a guess and a conjecture and the best evidence rule would be violated.

MR. ODAM: Let me restate the question, Your Honor.

THE PRESIDENT: Please, sir.

Q You were employed by Duval County?

A That is correct, sir.

Q You were paid by Duval County?

A That is correct, sir.

Q And what was your job title at that time when you were paid by Duval County?

A I was County Warehouseman and the Commissioners office clerk or something like that.

Q And the Commissioners -- the County Commissioners office, Ramiro Carrillo's office, was at the same location as this place called the Farm and Ranch Supply?

A That's correct, sir.

Q Did you work for the Farm and Ranch Supply? Did you do work for them?

A I did work for them, yes.

Q What type of responsibilities did you have for the Farm and Ranch Supply?

A Well, I did all the selling and the buying and everything there.

Q Who -- When you worked for the Farm and Ranch Supply who actually paid you when you did that work for the Farm and Ranch Supply?

A The County.

Q The County?

A Yes, sir.

Q Did you get a check from Farm and Ranch Supply for the work you did for them?

A No, sir.

Q Mr. Gonzalez, I will show you what our Court Reporter here has marked already in evidence as Exhibits -- Let me first show you a piece of paper which has been marked as H-11(2). And I will show you what has been marked as H-11(3).

A Well, this --

Q Well, let me ask you a question first of all. With respect to those two items, can you identify what H-11(2) and H-11(3) are?

A H-11(3) is the invoice that I make out to the Duval County Precinct No. 2.

Q Now, you have to realize the Court here does not know exactly what you have in your hand, so, I will be a little more detailed about it. This piece of paper you have in your hand. Is that a Farm and Ranch Supply invoice?

A No, it's a Benavides Implement and Hardware Company.

MR. MITCHELL: Excuse me, Mr. Odam. We're going to object, Your Honor, that's Exhibit E-60 to the Judicial Qualifications Commission. It is privileged, it was filed with the Judicial Qualifications Commission and entered into evidence as E-60. We're going to object to it being used here. We do not wish to waive our privilege.

MR. ODAM: Your Honor, the -- I have no comment unless the Court desires.

MR. MITCHELL: Excuse me. May I ask also Counsel be instructed, in view of the representation made in the question put to him by the Court earlier, that he has stood before this body and said he would not knowingly use any of those documents from the Judicial Qualifications Commission, that he would be required from now on to 'fess up to this body that these documents are each and everyone part of the record of the Judicial Qualifications Commission. But for the fact that the Lord gave me a good memory, I would have slipped up, and my client probably might have been hurt.

MR. ODAM: I appreciate that very much, Mr. Mitchell, and I would be very happy to have the Court Reporter read back what I stated to Senator Mauzy, and I very carefully said that when evidence was indicated in this record or admitted in this record, that I would not indicate whether or not that was evidence in the Judicial Qualifications proceedings. That is what I stated, and I did not indicate until you raised it whether or not that was so indicated.

MR. MITCHELL: I understood you and I understood Special Counsel also to make a statement in the record before this Court that as long as the documents were not filed, they would not impinge the privilege. And I might -- that's why I ask the reporter to please reproduce it for me at the time it was done, because I knew the time was going to come this would happen, and it was going to happen again and again and again. Because all this testimony is the testimony that was introduced in the Judicial Qualifications Commission trial. I now invoke the privilege on E-60.

THE PRESIDENT: Mr. Mitchell, would you come to the rostrum?
Mr. Doyle.

MR. MITCHELL: Mr. President, may I be permitted to enlarge my objections, then I'll sit down and shut up? I'm going to object to series E-60, 1, 2, 3 and 4 and 5 as being the precise original Exhibits as appeared before the Judicial Qualifications Commission in Corpus Christi, and I would like to have Counsel state to this Court how he got them out of that confidential record.

THE PRESIDENT: Mr. Mitchell, since you have raised the issue prior to the issue before the Qualifications Commission, I think Counsel is entitled to explain that, and your objection will be respectfully overruled.

MR. ODAM: Now that the issue has been raised with respect to H-11(2) and (3), I would like to make this statement, that these are not being intended to be introduced here as introducing the transcript or the record in the Judicial Qualifications procedure. I do not deny now that it has come up, and I admit it, that these pieces of paper were pieces of paper that were in the record in the Judicial Qualifications proceeding. But I did not when I made the question of Mr. Gonzalez, ask him about his testimony there. I did not ask him anything about any indication on there, nor did I intend to, nor do I intend to in the future violate the confidentiality of that record. But I -- that's a disclosure that I will make with respect to those two items there.

MR. MITCHELL: Well, the question, Mr. President, I would like the answer, if they are confidential records, what are they doing up here in his hand? Not only confidential, but secret by the constitution of our State. I was so informed in no uncertain words this morning and yesterday about that. I tried to invoke the right to waive it, told how monolithic that concept was and how we would be running afoul of that very verbiage. I think first he owes us the duty to tell us how he got it, and if they are secret -- under what rationalization is he doing with it.

MR. ODAM: First of all, as to obtaining it from the record, my recollection of our discussion at the time of the Judicial Qualifications proceeding, as it is, as you attorneys would know here in all cases is an agreement to remove originals and substitute Xerox copies. That is somewhat of a technicality, but all right, pursuant to that, I removed these. I think that the Court, the Senate, has already spoken by the vote the extent to which these papers can be used independently of that record. I think it's been ruled upon, and I think I've satisfactorily explained it, that I got it from the record and substituted a Xerox therefor. And these are being admitted into evidence

independently from the record from the Judicial Qualifications proceedings.

MR. MITCHELL: Mr. President, I move to suppress it on the grounds it was illegally obtained, and inadmissible in this case.

THE PRESIDENT: You may proceed, Mr. Odam.

Q Mr. Gonzalez, I show you what's been marked as H-11(2) and H-11(3). I was asking you questions about H-11(3). Can you identify for the benefit of the Court what H-11(3) is?

A Well, this is an invoice from the Benavides Implement and Hardware Company for -- written down for some contract work, contract on fencing County roads and hauling caliche, charged to Duval County Precinct Number 2.

Q Now, was this H-11(3) -- is that in your own handwriting?

A It is, sir.

Q And what is the description of what was being charged there to Duval County?

A It's a contract on fencing county roads and hauling.

MR. MITCHELL: Excuse me, Mr. President.

Do I understand the ruling that my objection on privileges, and the motion is overruled -- the objection is overruled, and I'm going to object in addition on H-11 that it's not the original evidence, and it is -- the best evidence rule would be violated by it. I don't want to continue to interrupt, but I just want to be sure my record is complete. Are all of my objections overruled?

THE PRESIDENT: Respectfully so, sir.

MR. MITCHELL: All right. Thank you.

Q Again, back to the description is for what?

A For contract and fencing County roads and hauling.

Q And how much was charged to Duval County pursuant to this invoice?

A \$1,008.00.

Q And you made this out in your own handwriting?

A Yes, sir.

Q And I'll show you H-11 (2), and what is this item?

A Well, this is statement that I used to send to the Benavides -- to the county so Benavides Implement could get paid.

Q Now, these -- the statement does not have on the top of it what company that is. As a matter of fact, it appears -- is this cut off at the top above where it says

Benavides --

A It is cut off, sir.

Q And do you know what was on the piece of paper that was removed from the top?

A Farm and Ranch Supply.

Q So this used to say Farm and Ranch Supply?

A That's correct, sir.

Q Is this intended to be a statement for Benavides Implement and Hardware?

A It -- it -- well, it was a statement from Farm and Ranch Supply to Benavides Implement so Benavides Implements could pay Farm and Ranch Supply.

Q Okay. Now, Benavides Implement and Hardware is something different from Farm and Ranch Supply?

A Yes, sir.

Q And where is Benavides Implement and Hardware located?

A Right in the middle of the town on the south side of the railroad -- I mean, north side of the railroad tracks.

Q In Benavides, Texas?

A That's correct, sir.

Q Duval County?

A That's right, sir.

Q How far is Benavides Implement and Hardware building located from Farm and Ranch Supply?

A About three or four blocks.

Q Now, you were working for -- you're paid by Duval County?

A That's correct, sir.

Q You're working here at this building of the Farm and Ranch Supply?

A That is right, sir.

Q Now, could you explain to the Court why it would be that you would fill out an invoice to Duval County for Benavides Implement and Hardware?

MR. MITCHELL: And we'd object. Of course, it would be hearsay as to O. P. Carrillo on why.

MR. ODAM: The question was why the witness filled out the invoice for Benavides Implement and Hardware. I don't think it calls for hearsay. But I won't comment unless required to by the Court.

THE PRESIDENT: Mr. Mitchell, the witness is being asked about his own motivation and reasoning.

MR. MITCHELL: Yes, sir. He has been asked, of course, to explain why he would take a Farm and Ranch Supply invoice and take the top off of it and fill out a work order on Benavides Implement and Hardware, a business which he presently owns, as relates to a conspiracy charge of Count Number VIII of O. P. Carrillo, and I say it's hearsay on why he did it.

THE PRESIDENT: Overruled.

Q You understand the question. Why did you fill it out for Benavides Implement and Hardware, these two items?

A Well, because that's what I was instructed to do by Ramiro Carrillo and O. P. Carrillo, that I couldn't bill the County direct from the Farm and Ranch on account that they were County officials and that they couldn't sell to the County.

Q Now, you say you were instructed -- now, let's be specific about who instructed you to bill out the ticket, this particular ticket here. Who instructed you to fill out this particular ticket?

A Well, O. P. Carrillo and Ramiro Carrillo were the ones that told me to do this here.

Q How much is the amount of money on there?

A \$1,008.00.

Q What would you do with those tickets once you had filled them out?

A I just left them there, and same procedures as the welfare orders. Every first week of every month I had to do this, and Mr. Ramiro Carrillo would take them to San Diego so they could get paid.

Q Ramiro Carrillo would come by and pick those up?

A That is correct, sir.

Q Now, to your own personal knowledge did Benavides Implement and Hardware ever rent any equipment to do any fencing for Duval County?

A No, sir.

MR. MITCHELL: That would be hearsay. 1971. It was a business owned by Rudolfo Couling. What this witness would testify as to what Benavides Implement and Hardware did as to fulfilling a work order which he executed on Farm and Ranch would be hearsay as to "O. P.", Mr. President.

MR. ODAM: Your Honor, in my judgment, it does not call for hearsay. I asked the witness if he had personal knowledge of whether or not Benavides Implement and Hardware had equipment to rent. It calls for this witness to express whether or not he has personal knowledge.

THE PRESIDENT: Overruled.

A They didn't have anything. I mean, they could have done nothing like this here. No contract work or no hauling. They didn't have no trucks.

MR. MITCHELL: Well, now, that would be hearsay, although he squeezed it in under ostensibly personal knowledge. Your Honor, it's hearsay on the ultimate issue of whether or not Benavides Implement and Hardware had any equipment and whether or not that invoice was for real as to Judge Carrillo.

MR. ODAM: Your Honor, Mr. Mitchell and I have a running difference of opinion as to what the hearsay rule is, and I would submit to you that that is not hearsay as to whether or not this witness knows that Benavides Implement and Hardware had trucks or not I don't see that hearsay is involved.

MR. MITCHELL: I'm not objecting, Mr. President, on whether he knew whether it had trucks or not. That's not the objection, if it please the Court. It's the ultimate issue of forcing the conclusion that the work was not done pursuant to that invoice, which he would have no way of knowing. I'm not -- if he says he doesn't know whether the Benavides Implement and Hardware had run a truck, I'll accept it because I know he didn't have nothing to do with it until year '74, and I know their tax return. Trucks on it from 19 -- there's Benavides Implement and Hardware from '68, '69, '70, and '71, and I can tell you when he bought them. So, I know when he bought his trucks, Benavides did. We'll get around to that. And I know he don't know anything about it because he didn't go to work for them until this last year. But that's not my objection, Mr. President. My objection is forcing the conclusion that this man was by some reason tied into a conspiracy with this invoice as relates to non-performance of some kind of work at Benavides Implement and Hardware.

THE PRESIDENT: Mr. Odam, let me suggest that you ask the witness in this line of questioning if he knows, and if he knows, how he knows.

Q Do you know whether or not Benavides Implement and Hardware had any trucks to do the contract and fencing as stated thereon? Do you know whether or not they did or did not?

A They did not have any.

Q Okay. And how do you know that Benavides Implement and Hardware didn't have any trucks?

A Can I explain how I did this? Or you just want me to answer your question? I don't want to volunteer, but I mean, so maybe we can untangle this here.

Q Let me ask another witness the question -- the witness another question. Why did you put contract for fencing on there?

A Because that's the way I was instructed by Ramiro Carrillo just to write anything -- I was supposed to do this just for O. P. Carrillo.

Q And why did you put \$1,008.00 on there?

A Because that's the amount they gave me to put in there.

Q Did he tell you to put \$1,008.00?

A No, sir, he always -- he tells me to write it either less or a little bit over \$1,000.00 but to make it -- not to make it even \$1,000.00.

Q Didn't want to get \$1,000.00 exact.

A That's correct, sir.

Q Right amount.

A That's correct, sir.

Q Well, I'll show you --

MR. MITCHELL: Pardon me, Counselor. Your Honor, but for the fact that he's trying to put the finger on Mr. Carrillo here, I'm going to ask him to be specific. They and them and we and us and they. Now, specifically, is it Ramiro? And I please ask the President to ask Counsel to put the question to him so we're not talking about it in the plural pronoun. Who is he talking about? And if he's talking about my client, I'd appreciate knowing it specifically.

MR. ODAM: I appreciate that. When you do state "they" don't use "they" say if it's Ramiro Carrillo. Say if it's O. P. Carrillo. And be specific. Or, if it's someone else --

MR. MITCHELL: Or if it ain't either one of them --

MR. ODAM: Or if it's someone else, please state. Do you understand?

THE WITNESS: Yes, sir.

Q Now, we've just been discussing H-11(2). I show you H-12, (2) and (3), and ask you if you can identify those items.

A That's just one of those other invoices I made out to -- from Benavides Implement and Hardware Company to do County -- care of Mr. Juan Leal, Jr., for rental equipment and contract hauling, caliche, County roads.

Q How much did --

MR. MITCHELL: Pardon me, Mr. Odam. We're going to object to the use of this Exhibit because it is also a corresponding Exhibit. It falls within the umbrella of privilege. That, and the tandem Exhibits are numbered E --

THE PRESIDENT: Overruled.

MR. MITCHELL: I haven't made the --

THE PRESIDENT: Your running objection is noted in the record.

MR. MITCHELL: Yes. Two and sixty-three, I am sorry.

Q Now, the items that you have in your hand now, H-12(3) and H-12(2), what is the amount of money being charged to the County there?

A \$1,018.65.

Q And how much -- what type of work was purportedly being done for the County?

A Rental equipment and contract hauling, caliche, County roads.

Q Okay. Let's take all of these together. H-14, Sub-Parts (2) and (3). Please identify those.

MR. MITCHELL. Same objection. Those Exhibits violate the privilege of the Judge under the Texas Constitution.

THE PRESIDENT: Overruled.

MR. MITCHELL: And, incidentally, they also violate the best evidence rule and would be hearsay.

Q Go ahead.

A This is another invoice number -- I mean, invoice from Benavides Implement and Hardware Company to Duval County, Precinct No. 2, care of Mr. Juan Leal, for rental equipment on County roads, hauling caliche.

Q How much was the County --

MR. MITCHELL: I'm going to object to any testimony between this witness and a Mr. Juan Leal. We don't even know who he is, except he's been identified, I believe, as a Commissioner.

MR. ODAM: I didn't ask him any questions about any discussions between Mr. Gonzalez and Juan Leal.

THE PRESIDENT: Overruled.

Q How much is the County being billed for there?

A \$995.00.

Q And this is all filled out in your handwriting?

A Yes, sir.

Q Let's take some more.

MR. ODAM: And, for the purpose of going around some objections, I will submit to you that these are new ones that did not appear and would not be subject to the privilege.

Q Could you please identify this item?

MR. MITCHELL: Yes, but they are of course, Xeroxed copies and are subject to the best evidence rule.

MR. ODAM: These are not Xeroxed copies. These are originals.

MR. MITCHELL: The check is.

MR. ODAM: I'm not going into the check now.

A This is Exhibit H-62. It's a statement that I sent to Duval County Precinct No. 3, in care of Mr. Juan Leal.

Q How much money?

A \$1,000.00.

Q And would you refer to the invoice, please, sir?

A It's 5471, Invoice No. 41.

Q And what kind of work was purportedly being done for this invoice to be made out?

A This is another invoice from Benavides Implement and Hardware Company to Duval County, Precinct No. 3, care of Mr. Juan Leal, and its rental equipment -- is tractor and trucks.

Q And you filled this out.

A Yes, sir.

MR. MITCHELL: Excuse me. Pardon me. Is Counsel -- I have a request. Is Counsel going to offer this, this documentary --

MR. ODAM: Your Honor, I do intend to --

MR. MITCHELL: Are you going to mount it up there until it gets to be a baleful and then dump it on me and then give me three and a half seconds to object?

MR. ODAM: I doubt if the Court will give you three and a half seconds.

MR. MITCHELL: I'd like to have an opportunity to object, your Honor, if the evidence is incompetent, before he asks the witness a whole series of questions about it.

MR. ODAM: May I respond to that, your Honor? My purpose in this procedure is, as the Court is aware, to have this witness identify these papers, which he filled out, after he has identified that they are in his handwriting, etc. I will then offer all of these as a series into evidence at that time.

THE PRESIDENT: That's the proper procedure, Mr. Odam. Mr. Mitchell, you will be given ample time to examine them --

MR. MITCHELL: Thank you, Mr. President.

Q I'll show you what has been marked as H-7, Sub-Part (3) and H-7, Sub-Part (2) and ask if you can identify these, please, sir?

A That's another statement that I sent to Duval County, Precinct No. 2, care of Mr. Juan Leal, Concepcion, Texas.

Q How much were you billing the County for there?

A That's \$1,000.00.

Q And this is in your handwriting?

A Yes, sir.

Q These are just like the rest, made out on the cut off statements?

A That is correct, sir.

Q And the invoices are all statements to Benavides Implement and Hardware?

A That is correct, sir.

Q Okay. I'll show you one which has been marked by the Court Reporter as H-7(2) and H-7(3), and ask if you can identify these, please sir?

A It's another statement from Benavides Implement and Hardware to Duval County, care of Mr. Juan Leal, for the amount of \$997.00.

Q And, what is purportedly on the Benavides Implement and Hardware ticket there -- what was purportedly the billing to the county?

A Rental trucks and tractor on county roads.

Q I ask you to identify -- or ask you to look at H-9, Sub-Part (2), and H-9, Sub-Part (3), and ask if you can identify these two items?

A This is another Duval County, Precinct No. 2, care of Juan Leal, for the amount of \$1,005.00.

Q And what is the reason that you're billing the county there?

A It's rental trucks hauling caliche on County roads.

Q And you filled this ticket out?

A Yes, sir.

Q I will show you what the Court Reporter has marked as H-10, Sub-Part (2) and H-10, Sub-Part (3) and ask you if you can identify these two items, please, sir?

A That's another statement sent to Duval County Precinct No. 2 in care of Mr. Juan Leal for the amount of \$1,006.00.

Q Now, the total number of invoices here -- and of course, the records speak for themselves as to whether they do or do not --

MR. MITCHELL: Excuse me, Mr. Odam, that's precisely, Mr. President, why I made my objection. He's going to go --

MR. ODAM: Strike the question. I will proceed.

MR. MITCHELL: I would like to have an opportunity to at least inventory, to see them and to level proper objections if I might have any.

MR. ODAM: I strike the question.

THE PRESIDENT: The question is struck.

Q You filled this out in your own handwriting?

A Which is that?

Q The H-10(2) and H-10(3)?

A Yes, sir, I did.

MR. ODAM: Your Honor, of course, I want to proceed with these, but at this time for Mr. Mitchell's benefit and Judge Carrillo's benefit I would offer into evidence the invoices and the statements which Mr. Gonzalez has testified to thus far. I offer those into evidence and tender them to Mr. Mitchell for any objection.

MR. MITCHELL: Well, as a matter of fact the record reflects I haven't been tendered anything, I don't have the physical possession of them, have never seen them, don't know what you're talking about, Mr. Odam.

MR. ODAM: I said I will tender them to you.

MR. MITCHELL: I would like to have them.

MR. ODAM: The ones that I offer into evidence, I believe, in the order in which they were testified to -- and I tender them to Mr. Mitchell at this time. It is H-12, Sub-Parts (2) and (3). I offer H-11, Sub-Parts (2) and (3). We offer H-13, Sub-Parts (2) and (3). We offer Sub-Parts (2) and (3) of H-14. We offer H-7, Sub-Parts (2) and (3). We offer H -- and the Court Reporter apparently made an error in marking this. This is also marked as H-7 and we will have to correct this. I see that the claim jacket, which we will get to later is marked H-8, (1), (2) and (3), so it was simply a mismarking on the statement of the invoice. So, I submit to Mr. Mitchell at this time H-8, Sub-Parts (2) and (3).

And while the Clerk is correcting that and tendering it to Mr. Mitchell we would offer into evidence at this time the invoice and statement prepared by Mr. Gonzalez in the amount of \$1,006.00, H-10, Sub-Parts (2) and (3).

And we offer the statement invoice to Duval County in the amount of \$1,005, H-9, Sub-Parts (2) and (3).

That's all the offer of documentary evidence we have at this time.

THE PRESIDENT: Is that all of your questions?

MR. ODAM: No, sir, I have some more questions.

MR. MITCHELL: I would like to object. I will call the Exhibit out for the purpose of the objection, if it please the President and the Court.

I would like to object to the offer, first of all, of H -- well, first of all, in some of these Exhibits there has been attached a check which is unmarked and which does not have an identification number on it and which is a Xerox. I would like to ask that be detached from the Exhibit that has been marked, obviously it has no relation. That would be the check on H-9(1), H-9 -- 8(1), H-10(1) and H-7(1), if it please the Court.

MR. ODAM: I will certainly detach all the items that are not marked. They don't intend to be offered into evidence with this.

MR. MITCHELL: Shall we do that?

MR. ODAM: Yes, sir.

MR. MITCHELL: We would like to object to the Exhibits H-7(1), H-7(2) and H-7(3), first of all they go beyond Article VII in that they relate to matters other than rental of equipment. Two, we would object on the grounds that the Exhibit is hearsay, all three of them, that is H-7(1), 7(2), and 7(3) as to Judge Carrillo.

We object as to H-7(2) and (3) on the grounds of the best evidence. We object on the grounds further they're outside of the scope of the present term of office. They're improperly authenticated and outside of the scope of Article VII.

We object, if it please the Court, to 8(1), (2), and (3) on the grounds that they likewise relate to matters outside of the scope of Article VII. They relate to a period of time unrelated to the Judge Carrillo's present term beginning January of 1974. They are hearsay as to Judge Carrillo. They violate Judge Carrillo's privilege, they're improperly authenticated.

I object to H-9(1), (2) and (3) on the grounds that they are beyond the scope of Article VII. They relate to matters, for example, if it please the President, to caliche. Article VII deals with rental of equipment. They are hearsay as to Judge Carrillo, they are not related to the present term of office which is held by Judge Carrillo and consequently outside of the scope of the present term rule and improperly authenticated and hearsay, as I have previously stated.

We object to H-10(1), (2) and (3), likewise on the grounds that they relate to matters outside of the scope of Article VII, relating as it does to caliche. We object on the grounds that they are hearsay. We object on the grounds that the date appearing thereon, that is 1972, is at a time considerably prior to the Judge's present term. And the same are hearsay and relates in non-official or judicial conduct.

We object, as we previously have to H-11(2) and (3) on the grounds of the privilege, best evidence rule, hearsay, prior to the present term and improperly authenticated.

We object to 62 and 63 -- I'm sorry. H-12(2) and H-12(3) on the grounds of privilege on the grounds that they relate to a matter outside the present term of office, they are hearsay as to Judge Carrillo and they are improperly authenticated.

We object to H-2 -- H-13(2) and H-13(3), likewise on the grounds of the privilege, that they go beyond Article VII, if it please the Court, they are hearsay as to Judge Carrillo and do not relate to his present term of office occurring as they do in 1971. They would be irrelevant and immaterial.

We object to H-14(2) and (3) on the grounds of the privilege violation, on the grounds that they relate to a period of time 1971, prior to the present term of office and therefore could have no bearing whatsoever on Judge Carrillo's ability to perform his office since 1975. They are hearsay, the privilege rule is violated and they're outside the

scope of Article VII, if it please the Court.

Thank you, Mr. President.

THE PRESIDENT: May I see the Exhibits, please.
Would you respond to Mr. Mitchell's objections?

MR. ODAM: Your Honor, a number of the objections he has previously made, such as the prior term doctrine, outside the scope of his judicial responsibilities. And as Ms. Levatino stated it would be my position, unless further comment is desired on that, I think that those objections have already been overruled with respect to the prior term doctrine and outside the scope of judicial responsibilities. So, I think the objections have been overruled, I don't think his objections are good at this time.

With respect to other matters that he raised, the best evidence -- the documents that have been tendered to Mr. Mitchell are all original copies -- Strike that, not original copies. They are originals of statements -- none of them are Xerox copies. I don't think the best evidence rule applies.

I don't see how the hearsay rule comes into play at all, since he filled them out and he testified they are in his own handwriting. So I don't think any of the objections are good and I think they all should be admitted.

MR. MITCHELL: Excuse me, may I ask him -- You're not telling this Court that that carbon copy is an original, are you?

MR. ODAM: No, I -- the ones that are carbon copies --

MR. MITCHELL: Carbon copies, excuse me, plural, there are several in there.

MR. ODAM: The carbon copies and pink slips -- no, I certainly would not testify that the pink slips are the originals of the set that was filled out at the same time. And we can by this witness testify as to the use of the invoice register. And I don't think just because they're written out and a carbon copy is made at the same time that the best evidence rule makes that inadmissible when they were filled at the same time.

THE PRESIDENT: All right. Have you developed where the originals of those Exhibits that are carbons are, Mr. Odam?

MR. ODAM: Let me ask the witness.

Q On the Benavides Implement and Hardware tickets, where you have -- like this pink one. And I will refer, for example, to H-11(3). Do these pink slips -- where were these when you filled them out?

A They were at the Farm and Ranch Supply.

Q And were these loose or were they in a machine or --

A We had a machine for them, a special machine.

Q A special machine. And when you fill one out, presumably you fill out a top copy?

A There are three copies, it's a white, yellow and pink.

Q For example, I show you H-14(3), that's the white copy, that's the top?

A That's the original, yes, sir.

Q When you pressed down with your ballpoint, I assume just like on any invoice register it will go through to get another copy?

A That's correct, sir.

Q And the same thing to the extent to which there might be any -- you say white, yellow and pink?

A Yes, sir.

Q Of any yellow copies that are here -- they are all three filled out at the same time?

A That is correct, sir.

MR. ODAM: Your Honor, again, I don't think the best evidence rule applies since the witness filled this sheet out at the very time that he pressed it down and the writing went through on it.

MR. MITCHELL: May I ask him a question on voir dire, Mr. President?

THE PRESIDENT: Mr. Mitchell.

VOIR DIRE EXAMINATION

(Questions by Mr. Mitchell:)

Q Mr. Gonzalez, at the time you filled out that Benavides Implement and Hardware invoice you weren't working for Benavides Implement and Hardware?

A No, sir.

Q You were working for the County?

A That is correct, sir.

Q At Farm and Ranch?

A That is correct, sir.

Q At a time when I believe -- I believe 1971 on it -- isn't that H-11(3) you all are looking at?

MR. ODAM: This particular one is H-14(3), this is October 29th, 1971.

MR. MITCHELL: There's another one or two, H-11(3), I believe.

Q You did not own Benavides Implement Hardware in 1971, did you, sir?

A I did not, sir.

Q And, sir, what we have is Benavides Implement and Hardware invoice that you're testifying under oath was filled out by you while you were working for the County at the Farm and Ranch Store?

A That is correct, sir.

MR. MITCHELL: I still object, Your Honor, on the grounds of the best evidence rule and hearsay.

THE PRESIDENT: Objection is overruled.

MR. ODAM: I take it the objection is overruled and these are admitted into evidence.

Q With respect to these items which have just been admitted into evidence and with respect to the question Mr. Mitchell asked you, a very valid question, you were not working for Benavides Implement and Hardware at the time at the time you filled these out, weren't working with Benavides Implement and Hardware when you filled out any of them?

A No, sir.

Q I believe you testified that you were physically at the Farm and Ranch Store when you filled them out?

A That's correct.

Q You filled them out on the invoice register at the Farm and Ranch Supply to crank out these Benavides Implement and Hardware. There is the obvious question -- one more question, and that is, why did you fill them out? Why did you fill them out if you weren't working for Benavides Implement and Hardware? Why did you fill them out at the Farm and Ranch Store?

A I already explained why, because O. P. Carrillo brought me this bunch of invoices from Benavides Implement because they could not sell to this governmental agency. And everything that I was supposed to sell to any governmental agency I had to bill it out from that Benavides Implement invoice register.

Q I believe you stated that Commissioner Ramiro Carrillo would come by and pick these up occasionally?

A That's correct, sir.

Q Now, Farm and Ranch Supply, I guess we should establish this. Although these were on Benavides Implement and Hardware, you worked at Farm and Ranch Supply?

A Yes, sir.

Q Do you know whether or not Farm and Ranch Supply rented any trucks or equipment?

A No, sir, they did not.

Q Well, now, you stated that since Judge Carrillo and Ramiro Carrillo couldn't do business directly with entities through the Farm and Ranch Supply, what kind of business was the Farm and Ranch Supply doing at all if they did not perform this work?

MR. MITCHELL: That would be speculative and conjecture.

A I just did what I was instructed to do, and that's all.

Q On all these invoices for Benavides Implement Hardware that you gave Ramiro Carrillo taken as a whole, all the rentals, everything admitted into evidence, did the Farm and Ranch Supply do any of that work?

A No, sir.

Q To the best of your knowledge, your own personal knowledge, did the Benavides Implement and Hardware do any of that work?

A No, sir.

Q You filled them out because Ramiro told you to?

A That is correct, sir.

Q Did he give you any reason as to why to fill them out --

MR. MITCHELL: Just a minute. That last one would be leading, and the prior one would be hearsay. We move to strike it. Whether or not Farm and Ranch did any work, he doesn't know, beyond his personal knowledge. And he is leading. In fact, he's dragging him in the last questions.

THE PRESIDENT: Objection sustained.
Please refrain from leading, Mr. Odam.

Q Mr. Gonzalez, have you ever heard of an entity called the Zertuche General Store?

A Yes, sir, for -- I was doing what I did for Benavides Implement. I did that previously.

Q Say again?

A What I was doing for Benavides Implement, I did it previously for Zertuche General Store.

Q You did it previously for Zertuche General Store?

A Before -- well, I was employed at the Zertuche General Store, and something happened, and they just stopped doing it at the Zertuche General Store, and they did it at Benavides Implement.

Q Well, I believe you've testified elsewhere, and I'm sure Mr. Mitchell will bring it up, about an entity called Zertuche General Store. Was Zertuche General Store located in Benavides, Texas?

A It was located right at Farm and Ranch Supply too.

Q Was it located in that invoice register?

A Yes, sir.

Q Was there an entity, Zertuche General Store, that actually made any rental of equipment to the county?

A No, sir.

Q It's your testimony that at one point in time, you were making these invoices out on the Zertuche General Store register?

A That's correct, sir.

Q What would you do with those invoices after they were made out?

MR. MITCHELL: Now, wait a minute. We're going to object if he's going into invoices to the Zertuche General Store. Certainly, the best evidence rule would apply to that. And, secondly, this is beyond the scope of Article VII and he's got to be talking in a period of time in 1968, '69 and '70, and I don't even know if my client was even born then, much less serving as the Judge. Beyond the term and beyond the scope.

MR. ODAM: Your Honor, may I respond to that?

THE PRESIDENT: Yes, Mr. Odam.

MR. ODAM: The purpose in asking the questions about the Zertuche General Store is to establish that the rental of fictitious equipment such as this witness has thus far testified to and as others would be, to establish the scheme of the fictitious rental of equipment to governmental entities. That's the purpose of the question.

MR. MITCHELL: Well, I'm going to object to his use of the word "fictitious." I know he's hoped he's done it, but he hasn't done it, and I'm going to object to that. If it plays the characterization of what this witness testified, he hasn't even convinced me that he had knowledge of whether the store had equipment or not. Wasn't even his store.

MR. ODAM: Which store are you talking about?

MR. MITCHELL: I'm talking about Benavides Implement and Hardware and Zertuche General Store and the Farm and Ranch.

MR. ODAM: I can certainly establish that.

THE PRESIDENT: I'm having a little difficulty seeing how the Zertuche Store relates to this Article, Mr. Odam.

MR. ODAM: Your Honor, the way the Zertuche General Store, we submit, relates to this Article is that what is alleged in the Article is that while holding office, he conspired with others to charge and collect money from governmental entities for rentals and equipment that did not exist, for rental of equipment that the governmental entity did not use. The purpose in asking the question is to establish -- and I will through further questions -- as to whether or not those types of payments were made to the Zertuche General Store while he was holding public office in 1971.

THE PRESIDENT: All right. Are you going to show the payments to the Zertuche Store also related to the equipment rental and the charges in this Article?

MR. ODAM: To this Article, yes, sir.

THE PRESIDENT: Proceed.

MR. ODAM: I do not submit that the Zertuche was an interchange of Benavides. What I submitted is that they started using Benavides Implement and Hardware when they picked up after they stopped using Zertuche General Store.

MR. MITCHELL: Well, now, you've got -- Counsel, you're doing the same thing as a witness. You mean "they"? My client wasn't on the premises and you know it.

MR. ODAM: The conspirators, O. P. Carrillo and Ramiro Carrillo.

MR. MITCHELL: Well, now, you haven't established that either, Counsel. I know you'd like to have established it, and you are making ex parte statements which I'm going to object to. But if you're going to prove the Zertuche General Store checks or what not, I'm going to object on the grounds of the best evidence rule to all the checks and all the invoices.

MR. ODAM: Well, we can only take one item at a time. We can only introduce one document at a time. And I submit to you that as far as checks go, we will get to those later on.

THE PRESIDENT: Do you have the original checks or documents, Mr. Odam?

MR. ODAM: Yes, sir. We can only get in so much testimony through one witness and have to pick with another. And I recognize Mr. Gonzalez can only testify to a certain part of it, and then I have to pick up with several other witnesses to the rest to establish the entire Article.

THE PRESIDENT: Well, on the basis of your statement, Mr. Odam, that you do have those checks and you will offer them perhaps through another witness at another time, on the basis of that representation, please proceed.

MR. ODAM: Thank you, sir.

Q Now, before we terminate asking questions and pass you, perhaps Mr. Mitchell might have a question or two to ask you, let me ask you to clarify one other time. With respect to the equipment rented, with these particular invoices, did the Farm and Ranch Store rent any equipment to Duval County pursuant to these invoices?

A No, sir.

Q You were -- you actually worked for the Farm and Ranch Store?

A Yes, sir.

Q It was your testimony that Ramiro Carrillo told you to fill them out on these Benavides Implement Hardware tickets, on the -- he instructed you to do that?

A Yes, sir. Just like I said, every first week of every month then I would gather everything from -- that I saw because Farm and Ranch sold to Benavides Implement some merchandise too.

Q It was your previous testimony that O. P. Carrillo brought the invoice register to you?

A That's right. That's correct, sir.

Q Now, do you know of your own personal knowledge whether or not Benavides Implement and Hardware rented any of this equipment to the County or the State?

A They did not, sir.

Q And how do you know that they didn't rent any equipment?

A Because I didn't get through awhile ago. On this week that Mr. Carrillo gathered all of this invoices and everything and I did all this work for him and getting all the invoices together, he -- he said, "Did you do everything you were supposed to do?"

I told him, "Yes."

"Did you make that invoice for \$1,000.00 for O. P.?" Sometimes I say, "Well, I haven't done it yet. I forgot to do it, but let me do it." And I did it real quick. And that's the way he -- what I write there, like the contract on trucks and hauling caliche, I did that myself because I asked him, "What do I write?" And he said, "Just write anything that comes to mind, building fences or hauling caliche or --"

Q He just told you to make up something?

A Yes, sir.

Q So you just made up what was on the ticket?

A That's correct, sir. That's why --

MR. MITCHELL: Counsel, that doesn't need to be dramatic. Who is he talking about?

Is he talking about Ramiro or O. P.? I can't tell.

MR. ODAM: He just said Ramiro Carrillo.

MR. MITCHELL: Well, we object on the grounds of hearsay as to O. P.

MR. ODAM: I asked him why he put it on the ticket. That is not hearsay, I submit.

MR. MITCHELL: Well, it would be hearsay. You haven't established any conspiracy between Ramiro and O. P., nor have you established a partnership or any other reason why that evidence would be admissible, I submit.

MR. ODAM: You give me time, and I'll get to it.

MR. MITCHELL: I move to strike that gratuitous remark. If you don't have any better luck than you had before, you're going to need between now and Christmas.

THE PRESIDENT: If that was stated in the form of an objection, Mr. Mitchell, it's overruled. Proceed, Mr. Odam.

Q You just made up what was on the tickets?

A Yes, just like I said, He -- Ramiro asked me, "Did you make that invoice for \$1,000.00 for O. P. Carrillo" and I told him -- sometimes I said, "Yes, sir." And sometimes I made it, because I remembered sometimes I told him, "No, I haven't done it, but I will do it real quick," so, I made it out and he took it with him.

Q Well, why would you happen to pick out rental of equipment to put on one?

A That's the first thing that came to -- that big amount, I didn't know what to write.

Q The same --

A I just wrote something that would do just like hauling caliche or building fences or something that would really amount to that amount. I couldn't write ten posts and write \$1,000.00. That wouldn't look right.

Q That sounds like something that would be worth \$1,000.00?

A Yes, sir.

Q Where would you pick a figure like \$982.00? Why would you pick \$982.00 --

A Well, he told me not to make it round thousand -- I mean -- yeah, \$1,000.00, for me to sometimes write over and sometimes less. So, I just got any number I came up with in my mind when I was writing that ticket.

Q Now, I'm not sure, maybe Mr. Mitchell or I missed it, but when Ramiro Carrillo gave you those instructions, did he specifically mention the name of O. P. Carrillo?

A He sure did, sir.

MR. MITCHELL: That would be leading and certainly would be hearsay. Walking O. P. in the back door with Ramiro -- of course, I know he would testify that I told him if you just keep after him. He's that pliable, Mr. Odam. Obviously.

THE PRESIDENT: Overruled.

Q Where would you get -- why did you put \$982.00 on one?

A Just like I said, whatever number came to my mind, I just wrote down just either to make it a little over or a little over or a little less. I didn't care.

Q Same thing with \$997.00 --

A If they got \$1,000.00, I didn't care. If they got \$992.00 I didn't care what they did. I just obeyed instructions for me to do that. That's all.

Q Same thing with the one for \$1,008.00?

A That's correct, sir.

Q The next one, we give him \$1,018.00?

A That's correct.

Q Another one for \$1,006.00?

A That's correct.

Q But, Ramiro Carrillo told you to not make them out for exactly \$1,000.00?

A That is correct.

Q Why couldn't you make them out -- or did he explain to you why not to make them out for exactly \$1,000.00? Or did he give you an explanation?

A Probably wouldn't look like right just for \$1,000.00. He didn't --

Q Just a thousand pay out --

A I don't know why, but that's what he told me.

Q If they are consecutive months, May of 1971, June of 1971, April of 1971, July of 1971 --

MR. MITCHELL: I'm not really familiar with this form of examination, your Honor. I don't know what to object -- maybe Mr. Odam ought to take the stand and question himself. Is he putting the question to the witness in a fashion that I can object? If so, I will object on the grounds he has no personal knowledge. His is a form of running commentary.

MR. ODAM: Pass the witness.

REXCROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q Now, Cleofas, you understand why I asked you this morning if you could tell this body under oath that you had no conversation with O. P. Carrillo past May of

1972, and your testimony was that you did not, am I correct?

A I said that I did, sir.

Q I said you -- I asked you under oath, and I've shown you on your own records at least five different times under oath that you testified you hadn't talked to O. P. since -- in May of 1972.

MR. ODAM: Your Honor, I believe the question put the witness was whether or not he discussed welfare matters with him. If I'm wrong --

THE WITNESS: That is correct.

MR. MITCHELL: I'll go back.

Q Page 1013, I ask you if I'm reading it correctly, "Now, I think we established you had an argument with O. P. Carrillo." Same one I read you this morning. "Would you please tell us the day you quit the Farm and Ranch?" "Answer: I don't recall the date, sir." You answered it that way, didn't you?

MR. ODAM: Your Honor, we would object, if Counsel is attempting to use the record of the proceeding that he is --

THE PRESIDENT: Overruled.

Q "The months and perhaps the year." And your answer was, "Well, probably it was sometime in 1972." That was your answer under oath?

A "Probably 1972," yes.

Q All right. "'72; would it be?"

"Answer: Probably in the middle of the year."

And I'm now on 1014. "Would it be in about May".

"Answer: Yes, I think it was May. Yes, sir, it was May because I worked all month in June in Corpus." Do you remember that?

A Yes.

Q Does that refresh your recollection?

A It sure does.

Q That you did not talk to my client after May of 1972?

MR. ODAM: Your Honor, may I pose an objection before the witnesses' answers?

These particular invoices, as I just started to say awhile ago before Mr. Mitchell interrupted me, were all in 1971.

MR. MITCHELL: Mr. Odam, I can read. I understand that. I guarantee I'll satisfy that before I'm through.

MR. ODAM: Okay.

Q Is it your testimony under oath that you did talk to Mr. O. P. Carrillo after June -- after May of 1972 or you did not?

A Yes, I did.

Q So that the testimony under oath on Page 1013 and 14 is incorrect?

A I said "Probably." I didn't say "No." especially that --

Q You want to hedge now? You want to say that you probably did talk to him?

A Just like I said I did, probably did, yes.

The answer is in the transcript right there. You just read it to me two times already this afternoon.

Q Mr. Gonzalez, that -- it happens to be your sworn testimony --

A That is correct, sir.

Q Now, look at 1034 with me.

"All right, Mr. Gonzalez, one of the reasons why you got so mad when you had your argument with O. P. Carrillo is that it was discussed at that time the fact that you had been stealing from the Farm and Ranch, is that correct? Do you remember that argument you had in May of 1972 with O. P.?"

A We discussed it this morning, yes, yes, sir.

MR. ODAM: I apologize, if Counsel is going to read the question, I would like him to also read the answer on these.

MR. MITCHELL: I'm not answering the question. He can answer it. "Did you have an argument in May of 1972 at which time theft of property belonging to Farm and Ranch came up?"

He knows the truth, Mr. Odam. He's your witness.

Q Did you or did you not? Did you have such a discussion, Mr. Gonzalez? Let's don't play with the truth --

A I did, sir. I said this morning I had -- I did --

Q You did, didn't you?

A Yes, sir.

Q And you haven't talked to this man since the middle of 1972, have you?

A I probably have, yes, I have.

Q Probably you have or you haven't.?

A I have, sir. I think I said "Probably" there too.

Q Well, when you say you probably did, did you probably talk to him about these Benavides Implement and Hardware invoices?

A Probably did, sir.

Q All right, sir. Let me get those out.

MR. MITCHELL: Could I have the exhibits marked H12(2) and (3), 11(2) and (3), 14(2) and (3), 8(2) and (3), 7(1) and (2), 10(1), (2) and (3), 8(1), (2) and (3), and 9(1), (2) and (3), please? It's all that group that Mr. -- yes, sir.

Q Now, so that the Court is aware, Mr. Gonzalez, of what we're going to talk about, let's talk about Farm and Ranch first. You were at Farm and Ranch, weren't you? That is, you took in the checks that came into Farm and Ranch, did you not? And you endorsed them for deposit only to Farm and Ranch? And you deposited them in the bank, am I right?

A That's correct, sir.

Q And you wrote the checks on Farm and Ranch, didn't you?

A I just filled them out, but Ramiro Carrillo signed them.

Q But you handled the writing of the checks, didn't you, of Farm and Ranch?

A If Ramiro instructed me to, yes, sir.

Q Let's go back again. You deposited every check as a matter of fact you testified two or three times under oath you wrote -- you deposited every check that came into Farm and Ranch for deposit only after you endorsed it to the bank, and you wrote every check for Farm and Ranch, is that correct?

A After Ramiro checked them, yes, sir, I did.

Q All right. And Zertuche General Store, '68, '69, and '70, you deposited every check into Zertuche General Store, did you not?

A That is correct, sir.

Q And you wrote --

A After Ramiro checked it, yes, sir.

Q And you wrote every check on the Zertuche General Store account, didn't you?

A Yes, sir, after Ramiro -- I was instructed to by Ramiro Carrillo, yes, sir.

Q So that Farm and Ranch Store from its very existence in '64 until the time you left and went over to Benavides Implement and Hardware, you deposited checks in the account, you wrote the checks, and the same with Zertuche General Store, '68, '69 and '70, isn't that correct?

A If I was instructed to do so by Ramiro Carrillo or O. P. Carrillo, yes, sir.

Q All right. Now, you keep saying instructed. As a matter of fact, there were literally thousands and thousands of checks into Farm and Ranch during that period of

'64 through and including '74, that 10 year period. Am I correct?

A That's correct, sir.

Q And you're telling this Court that every time you put one in the bank you got an instruction from Judge Carrillo?

A Judge Carrillo or Ramiro Carrillo, yes, sir.

Q I understand it's either Judge Carrillo, he was there to instruct you each and every time you got one and put it in the account or old Ramiro, right?

A He knew about it, yes, sir, he knew it was coming to him and everything.

Q And the fact that he's been on the bench since 1970, riding a five-county district and out of the county for a period of three months -- three weeks out of the month didn't keep him from instructing you. Isn't that correct?

A I didn't get that.

Q Mr. Gonzalez, you know he hasn't even been in the county for a period -- since 1972 until this year, over a week any month. Am I correct?

A He hasn't been in the county, who hasn't been in the county?

Q The Judge that rides that circuit, that Starr County, that circuit down there. You know he hasn't --

A I don't get your question, sir.

Q All right. Now, let me go a step further. In addition, your testimony is that you received an instruction from Judge O. P. Carrillo as to the deposit of Arturo Zertuche a check into the Zertuche Store account?

A Yes, sir, I was instructed, sir.

Q By Judge Carrillo?

A Yes, sir.

Q And that's '68, '69 and '70?

A Probably those years, I don't know.

Q Well, let's be honest with the record. Zertuche General Store went out of business December 31st of 1970, didn't it?

A Probably, I don't remember. I don't recall the date.

Q Well, you were at Zertuche General --

A I was there, but I don't recall the date, that's all.

Q If I reminded you that you had testified that it was in business '68, '69 and '70, went out of business December 31st, 1970 and has had no existence since then would you accept that?

A Probably, yes.

Q Would you?

A Yes.

Q All right. Now, he wasn't even Judge then, was he?

A I don't know when -- I don't recall exactly it.

Q Well, if I were to remind you that he took office January 1st of 1970 pursuant to a Certificate of Election in November of -- I mean, 1971, pursuant to a Certificate of Election in 1970 in November, would you believe that?

A Yes, sir.

Q All right. Now, while you were running Farm and Ranch and while you were running Zertuche General Store you were a busy little beaver with Benavides Implement and Hardware too, weren't you, according to these exhibits and your sworn testimony?

A They were -- yes, sir.

Q All right. Now, Benavides Implement and Hardware was Mr. Rudolfo Couling's store, wasn't it?

A Yes, sir.

Q As the records of the Comptroller of this State will reflect, he got a sales tax number in 1970 with the Benavides Implement and Hardware as a sole proprietorship.

A I don't know that, sir, I can't tell you.

Q You don't know that.

A No, sir.

Q But that's the business you bought, isn't it, this past year?

A Yes, sir.

Q Did you have any connection with Benavides Implement and Hardware, Mr. Gonzalez, prior to May of 1974?

A No, sir. Personally, me?

Q Yes.

A No, sir.

Q All right. At that time you left the Farm and Ranch location and you left the County employment and went to Archie Parr and Archie Parr hired you back and you went to work over there in the Benavides Implement and Hardware. That's your testimony, isn't it?

A That's correct, sir.

Q And since that time you have bought the Benavides Implement and Hardware?

A I took it over June of 1974.

Q Right. You are now the owner of Benavides Implement and Hardware?

A That is correct, sir.

MR. ODAM: I'm sorry, was the witness' answer he took over in June of what year, 1974?

THE WITNESS: '75, I'm sorry.

Q You went to work over there in May of '74, didn't you?

A Yes, sir; yes, sir.

Q And you didn't buy it until June of 1975. Is that correct?

A That's correct, sir.

Q And then when you bought it did you buy the equipment that the Benavides Implement and Hardware owned and carried on its tax return for the year 1973 and '74, Cleofas?

A I didn't get you that question, sir.

Q You know for a matter of fact that the Benavides Implement and Hardware had equipment -- now, you have testified under oath, I want to remind you that they had no equipment and could never have rented any, and that's been your testimony. But, when you bought it, didn't you buy equipment in 1975?

A I bought merchandise.

Q And equipment?

A No equipment.

Q Okay. What happened to the trucks that were owned by the Benavides Implement and Hardware and the other equipment?

A Well, they weren't in my deal and I don't think there were any. If there are some would you help me collect them? There are no vehicles, no equipment. I just bought merchandise in the store, that's all, no equipment.

Q Would you be surprised to know that the old man who sold you that store, Mr. Couling, bought from the Continental Oil Company a truck in 1971, the Benavides Implement and Hardware. Did you know about the truck?

A That belongs to me?

Q Yeah, it belongs to you. Are you surprised to know that you own some equipment?

MR. ODAM: Your Honor, I object to this question that calls -- it obviously is leading, it's not even leading on the basis of anything that's in evidence, as to whether or not Mr. Couling purchased a truck from Continental Oil or not, whether or not there were trucks in there or not. We can get that through another witness, but this witness has no knowledge and he's already stated.

MR. MITCHELL: Your Honor, I submit he testified he bought it. Now, he either knows whether he bought it or he didn't and I'm testing him as to his credibility.

Q Did you buy a truck or didn't you?

A I did not, sir. I just bought the merchandise that was there at the store. I got it in Victoria and I can show you the inventory, if you want to. I just bought merchandise.

Q All right. Now, that's not really my question. My question is that didn't you know as a matter of fact that it owned equipment, Cleofas?

A I really don't know that he owned equipment.

Q All right.

A I don't know, sir.

Q All right.

THE PRESIDENT: Mr. Mitchell, are you at, or near, a logical point --

MR. MITCHELL: Yes. I was going to commence now a specific examination of this witness, if it please the President, of these invoices.

THE PRESIDENT: Senator from Lamar.

SENATOR AIKIN: I move the Senate stand adjourned until 9:00 o'clock in the morning.

THE PRESIDENT: Senator from Lamar moves the Senate stand adjourned until 9:00 o'clock tomorrow morning.

All in favor say "Yea" those opposed "Nay." The "Yeas" have it, the Senate stands adjourned.

Accordingly, the Senate, sitting as a Court of Impeachment, at 5:00 o'clock p.m. stood adjourned until 9:00 o'clock a.m. tomorrow.

THIRTEENTH DAY
(Wednesday, January 7, 1976)

The Senate, sitting as a Court of Impeachment, met at 9:00 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present:

Present: Adams, Aikin, Andujar, Braecklein, Brooks, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKnight, Mengden, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: Clower, McKinnon, Meier and Moore.

A quorum was announced present.

The Reverend B. C. Schmidt, First United Methodist Church, Austin, Texas, offered the invocation as follows:

We thank Thee for this another day with its gift of life and our ability to do our work.

We acknowledge our need of Thy guidance as we begin the proceedings of the day. May we be sensitive to Thy leadership in whatever we do today and have the courage of our convictions. May these convictions be based on the truth as we understand it, knowing that in the process of things Thou wilt teach us if we are in error.

Help us as individuals and as people, working together, to strive for that which will serve the best interests of all our people.

Guide and direct, we pray, each member of our Senate, and may all people who are citizens of our beloved State of Texas recognize the responsibility they have to Thee, to our State, and to one another.

Bless our loved ones and our friends at home. Assure them and us of Thy loving presence. In Thy Holy Name we pray. Amen.

LEAVES OF ABSENCE

Senator Meier was granted leave of absence for today on account of important business on motion of Senator Brooks.

Senator Clower was granted leave of absence for today on account of important business on motion of Senator Mauzy.

Senator Moore was granted leave of absence for today on account of important business on motion of Senator McKnight.

Senator McKinnon was granted leave of absence for today on account of important business on motion of Senator Traeger.

APPEARANCES

Judge O. P. Carrillo, Respondent; Honorable Arthur Mitchell, Attorney for Respondent.

Board of House Managers; Terry Doyle, Counsel; John Odam and Max Flusche, Assistant Attorneys General of Texas on behalf of the Board of Managers.

THE PRESIDENT: Mr. Odam, would you bring your witness up?

(Whereupon, Cleofas Gonzalez resumes the stand.)

Mr. Gonzalez you recall the oath that you took yesterday and you are aware that that oath is still in effect? You are aware that you are still under oath?

MR. GONZALEZ: Yes, sir.

THE PRESIDENT: Would you reply affirmatively into the microphone, please?

Mr. Mitchell, I believe you were cross-examining the witness at the conclusion of the trial yesterday.

MR. MITCHELL: Yes, thank you, Mr. President. I would like to have, if I might the Exhibits H-7, 8, 9, 10, 11 and 12 and their sub-parts to continue the examination of this witness.

CROSS-EXAMINATION CONTINUED

(Questions by Mr. Mitchell:)

Q Mr. Gonzalez, now at our evening break I went back and read the testimony that you gave before the House Select Committee on Impeachment back in June. And I'm going to direct your attention -- again, I want to establish without any doubt in the Judge's and the Court's mind that the last conversation you had with my client, Judge Carrillo, occurred in 1972 in May. I'm looking at Volume 1209, line 24. And you and he, meaning Judge Carrillo, had a conversation in 1972 then and you have described it fully before the Committee. How many other conversations have you had with Judge Carrillo since that conversation in 1972?

Am I reading that correct, Cleofas?

A Yes, sir.

Q And your answer then was, "None, I never did talk back to him, never." Is that correct?

A Yes, sir.

Q That's what you testified to before the House Select Committee on Impeachment, Austin, Texas, Volume 12; correct?

A Correct, sir.

Q And that date was in June 11th, 1975. But you had no conversations about any subject matter since May, 1972. Am I correct?

A About that argument we had or what?

Q No, your testimony. Now, let's don't talk about -- let's just say what the testimony says. You had no conversations with Judge Carrillo after May of 1972?

A Let me read that question again, sir.

Q I refer you now, again, to the official transcript of the proceedings before the Texas State House of Representatives, House Select Committee on Impeachment, Austin, Texas, Volume 12, Page 9, question -- line 24 and it's from me -- you remember when I asked it to you, "Have you and he had a conversation in '72 then and you have described it fully for the committee. How many other conversations have you had with Judge Carrillo since that conversation in 1972?" And your answer was "None, I never did talk back to him, never."

In fact --

A Well --

Q Well, go on, how are you going to work around it now?

A About that conversation in 1972?

Q Uh-huh.

A That argument?

Q Yeah.

A Isn't that that argument?

Q Yeah.

A We didn't talk about that argument ever again, no.

Q Did you talk to him about anything?

A Yes, sir, I did.

Q What did you talk to him about since May of '72?

A I don't recall, sir.

Q Well, I'll ask you this. Did you talk to him about the welfare program since May of '72?

A Probably I did. I don't recall.

Q Well, can you recall anything that you might have talked to him about the welfare program since May of '72, anything at all?

A I can't recall the exact words or exact thing, but we talked about a lot of things, but I can't tell you what we talked about.

Q But you don't recall anything you talked about so that you can tell the Court under oath about the welfare program in May of '72?

A No, sir.

Q All right. Now, can I leave that there? And if somebody asks you during a break or at lunch or at night over tequila or tomorrow morning, will you stay hitched to that answer, no, you cannot recall any conversation about welfare since May of '72 that you had with my client, Judge O. P. Carrillo? Can I rest assured to sleep tonight that that's the way it's going to be tomorrow morning? Okay. And I'll move. Let me tell you why I asked you that, Mr. Gonzalez. Back in May, the very same question was put to you, and you testified unequivocally that you had no conversations with O. P. since May of '72. I asked you the same question in June of 1972, and you answered again there was no conversation. And I asked you before the Federal Court, and you testified you had no conversation since May of '72. I asked you at another proceeding in Corpus Christi did you have a conversation since May of '72, and you said no. And yesterday you got up here and you had fifteen or twenty of them. Now, that's the reason I'm a little upset with you. And you've been under oath each and every time, and all I'm trying to do is get to the truth so the Senate of the State of Texas can pass on your credibility. Did you have any conversations after May of '72 with O. P. Carrillo about the welfare business, and, if so, I want you to account when you had it and what the conversation was.

A I don't recall, sir.

Q All right. Now, can I sleep tonight as my client's lawyer knowing that tomorrow morning you can't recall, and can I put an end to that right now? I won't ask you about it any more.

A Well, if you pinpoint something -- probably -- or give me an idea of what we talked then --

Q I am not certainly going to be the one to give you any ideas. All right. Now, I'm going to move to another subject matter. Did you have any conversation with Judge O. P. Carrillo from May of '72 to date about the rental or purchase of any equipment for Farm and Ranch?

A I -- I think I did, sir, yes.

Q All right. I'll come back to that. How about with him about the operation of the Zertuche General Store from May of '72 to date?

A I think we did, yes, sir.

Q All right. Now, I'm going to stop there. When did you talk to him about the operation fo Zertuche General Store from May of '72 to date? What date? When?

A I can't give you exact date, sir. I'm sorry.

Q Now, Cleofas, it is established without any doubt that Zertuche General Store went out of business in December of 1970. What would you be talking to O. P. Carrillo about the business of Zertuche General Store in May of '72, and the business having been closed for right at a year and a half?

A That -- we're still talking about the year '72?

Q Yeah.

A Probably when they -- some of these investigators came over to the Farm and Ranch investigating about George Parr, or something like that, that we had to --

Q I'm not talking about the -- I know you talked to investigators. You've talked to a lot of investigators.

A I did, sir, yes.

Q I'm not talking about the investigators. My question was did you have any conversation about Zertuche General Store with O. P. Carrillo since May of '72?

A Well, if those investigators asked me something about Farm -about Zertuche, we had to talk -- I had to talk to him about it, yes.

Q No, no. Mr. Gonzalez, you're not understanding my question. I want to know if you had any conversation with O. P. Carrillo about Zertuche General Store since May of '72? Not the investigators.

A I guess I did, yes.

Q All right. You had some conversation with O. P. Carrillo about Zertuche General Store since May of '72. Your answer is, "I guess I did" my question to you is, when did you have any conversation?

A I can't give you exact date, sir.

Q How many did you have?

A I can't tell you, sir, either.

Q Where were the conversations had?

A At the Farm and Ranch Supply.

Q All right. And can you tell us the substance of any of those conversations with O. P. Carrillo about Zertuche General Store?

A Well, it's just like I said a while ago. Probably when this -some of these investigators went over and asked me some questions about it, then I had to let him know what was going on. I couldn't keep it to myself.

Q I'm not apparently -- we're not having much luck understanding each other. I'm not talking about what you told investigators, Mr. Gonzalez.

MR. ODAM: Your Honor, I don't think --

Q I want to know what you told O. P. or what O. P. told you from May to date about the Zertuche General Store, if anything.

A Okay.

MR. ODAM: Mr. Mitchell, I believe the witness is saying he talked to Judge Carrillo about the conversations he had with investigators.

Q Is that what you're telling me?

A Yes, sir.

MR. ODAM: He said that a few times.

Q All right. I want to know what conversation --

THE PRESIDENT: Isn't he entitled to lead the witness?

MR. ODAM: Yes, sir, I think -- I don't object that he's entitled to lead the witness. The witness has testified several times that he talked to Judge Carrillo about his conversations with the investigators. I understood him to say that, and I --

MR. MITCHELL: Of course, I understood him to testify unequivocally on about four occasions he never had any conversation with my client since May of 1972. Now he testifies that he had a conversation with O. P. Carrillo or Judge Carrillo since May of '72.

Q Is now what you're going to do, is that what you're testifying now?

A I can't say it was in '72, but probably later. I can't recall the dates. I don't have that good mind to recall exact dates. Probably wasn't '72. Probably was '73.

Q You had a good enough date and a good enough recall to put it on my client, about a conspiracy of 1968 when Ramiro Carrillo and he and you were standing there, and they told you about all these things they were going to do with these invoices, though.

A Sure, because that's when Ramiro took over. When he took over as County Commissioner. Mr. Atlee Parr passed away and Mr. Ramiro Carrillo became the County Commissioner, and that -- in '68 sometime late '67 or early '68, I can't give you the exact date, but that's how come this came to a -- to this --

Q Of course, the main problem that you have is that you've already testified under oath some conversation about these invoices that you could not have possibly had, am I right, Cleofas?

A I didn't get that.

Q And you know that's where I'm headed.

A I'm sorry, sir. You asked me questions, I have to answer them the way you ask me.

Q Now, going to these Exhibits that have been introduced, H-11 (2) and (3), I'm going to hand that to you. Now, let me see if I can't summarize what your testimony is. Your testimony is that while working for the county in 1971 -- is that correct?

A Yes, sir.

Q But performing duties for the Farm and Ranch, that you took a Farm and Ranch invoice -- I'm sorry, you took a Benavides Implement and Hardware invoice and

you created a -- or initiated a claim against the County for work done on a Benavides Implement and Hardware invoice, right?

A That's correct, sir.

Q And Benavides Implement and Hardware is a business and was a business at that time owned solely and only by Rudolfo Couling?

A I think so, sir.

Q And you would talk to Rudolfo Couling at the time that you would execute these Benavides Implement and Hardware invoices, wouldn't you?

A No, sir.

Q You mean, you would take Mr. Couling's invoices, and these, for the purpose of the Court, appear in the records of proceeding for the 12th day on Page 753, 754, 755, so that the members of the Court may follow some of the questions if they desire, the Benavides Implement and Hardware invoice, H-7 (3), H-8 (3), H-9 (3), H-10 (3), H-11 (3), that's Benavides Implement and Hardware was owned at the time that those were executed by your friend, Rudolfo Couling, right?

A Those invoices were taken to the Farm and Ranch by Mr. O. P. Carrillo.

Q That's not my question, please. That business was owned by Rudolfo Couling at that time, wasn't it?

A I don't know. I didn't have to do anything with Rudolfo Couling. I'm sorry.

Q You bought that business from Rudolfo Couling. Don't tell the Court under oath you don't know anything about that business. You bought that business.

A I bought it in '75.

Q And you went to work for him in '74 in May, didn't you?

A Yes, sir.

Q Can we establish that in May of 1974, Rudolfo Couling owned Benavides Implement and Hardware?

A That is correct. Yes, sir.

Q Would you take my word for it he has got a sworn application with the Comptroller of the State of Texas for a sales tax permit in 1970 that he owned that business?

A I think he owned that business.

Q Right. So what you're really telling us is that you and your friend, that is, the man -- incidentally, before I ask you -- did you pay him a dime when you bought that Benavides Implement and Hardware in 1975?

A I didn't get that question, sir.

Q Did you pay him a dime, any money?

A No, sir, he owed me some.

Q Just a minute. You didn't pay him a dime and yet you own it today, don't you?

A That is correct, sir.

Q All right. I submit to you, Mr. Gonzalez, that you had a rip-off scheme with Cleofas Gonzalez using the Benavides Implement and Hardware invoices to trigger payments out of Duval County for the purpose of getting the money for you and him so that you could end up buying the business and haven't paid him a dime for it? How do you like that?

A This invoice was written on 3/30/1971. I didn't buy the business in 1971.

Q Follow me. Just one minute. Isn't it a fact that the check that was issued on the basis of that Benavides Implement and Hardware voucher with the Benavides Implement and Hardware --

MR. MITCHELL: And I would like to have those checks, please, at this point, Mr. Odam.

MR. ODAM: You're talking about the checks to Judge Carrillo?

MR. MITCHELL: No, no. Benavides Implement and Hardware. We're going to talk about Judge Carrillo later on when I get to laboring over it.

I want the ones that go to Benavides Implement and Hardware reflecting a restrictive endorsement on those checks from Duval County, Benavides Implement and Hardware into the Benavides Implement and Hardware account, underlying that invoice.

MR. ODAM: Your Honor, it will take a moment to pull the checks, and we will do that at this time.

MR. MITCHELL: Yes, I would think the continuity for the Senate is important. I would like to have the one, for example, of \$1,008.00 going into Benavides Implement and Hardware. Might as well have the rest of them too, Mr. Odam, if you don't mind. A \$1,997.00, \$1,006.00, \$995.00, \$1,006.00, \$1,018.65.

SENATOR TRAEGER: Mr. President.

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: Mr. Mitchell, would you mind repeating the reference that you gave us so we can follow your proceedings?

MR. MITCHELL: Yes, sir. The Benavides Implement and Hardware invoices appear on Page 754 of the Record of Proceedings of the High Court of Impeachment, 12th day, Tuesday, January 6, Senator.

SENATOR TRAEGER: Thank you.

MR. MITCHELL: I am sorry. Begins 753, 754, 755, and the Court will notice that the checks are not in those Exhibits. Now, I'm calling for the checks to show that the checks, based on these Benavides Implement and Hardware invoices went to Benavides Implement and Hardware account and were deposited in that account under a restrictive endorsement. And, of course, the evidence is this gentleman purchased that business this last year, went to work for him in May of '74, Mr. Rudolfo Couling, being the next star witness of the Attorney General.

MR. ODAM: It is my understanding you intend to introduce these checks as --

MR. MITCHELL: I would like to have the originals, please, John, if I can.

MR. ODAM: To introduce as Exhibits?

MR. MITCHELL: Yes, please. Those are the ones that I believe went in tandem with these Exhibits at the Corpus Christi hearing.

MR. ODAM: For the benefit of the Court and Mr. Mitchell, I'll tender them in the order that they have been marked by the court reporter. I tender to the Court for examination, which I give to Mr. Mitchell, what has been marked as H-5, which is a bank photostatic copy of the Benavides check from Duval County to Benavides Implement and Hardware for \$1,000.00, reference claim B 1209, H-5.

MR. MITCHELL: Excuse me, Mr. Odom. Would you mind reading the endorsement on that check to Benavides Implement and Hardware, please?

MR. ODAM: Certainly. The endorsement on the back is a stamp on it that says, "Benavides Implement and Hardware," and the handwriting there is R. M. Couling. This is H-5.

I tender at this time what has not been marked into evidence, and if it's all right to keep the continuity with Mr. Mitchell, we will have these marked as House Exhibit, pick up there. This is not marked. This is with respect to a check from Duval County to Benavides Implement and Hardware in the amount of \$982.65. It's claim number B-1392. The date is June 17, 1971. And, pursuant to Mr. Mitchell's request, on the back of it, there is a stamp, "Benavides Implement and Hardware Company, Benavides, Texas." And there is no handwriting on the check. This would be marked by the court reporter at this time as the next House Exhibit.

MR. MITCHELL: And, would you comment, please, Mr. Odam, whether the stamp, whether it appears on H-5 appears to be the same stamp that appears on H-6?

MR. ODAM: It does.

MR. MITCHELL: Is it 6 that you're holding?

MR. ODAM: This would be H-16.

MR. MITCHELL: 16.

MR. ODAM: The stamp appears to be the same in my opinion.

MR. MITCHELL: And the only difference being that on H-5, there is written under the stamp restricted endorsement, or, that is, the endorsement of Benavides Implement and Hardware, Benavides, Texas, R. M. Couling on 5 but not on -- what did you call that one, John?

MR. ODAM: This is H-16. I would do that -- I think it would be best for this witness or Mr. Couling to do that rather than us start testifying, but it is the same Benavides Implement and Hardware stamp on here.

And, as we go through these, I would offer into evidence the bank photostatic copy of the check from Duval County to Benavides Implement and Hardware which is marked as H-5 as Mr. Mitchell has requested, and the House Board of Managers would offer that.

Any objection?

MR. MITCHELL: No. No. The fact of the matter is it might be appropriate, Mr. President, if they would offer all the checks, the jackets, the claim jackets, the forms, and then I would like to request that they go ahead and offer the full breakdown and analysis of the Benavides Implement and Hardware account being your prior Exhibit, and also I might request that we have my R-100 which is an analysis of that account. We're going to get to that. We might as well get it all in now, John, and I would defer, Mr. President, to facilitate the flow of the case if Mr. Odam wants to get it all in right now.

MR. ODAM: Well, on the checks, I will at this time offer all of the checks we were referring to, bank photostatic copies, and I will at this time offer all of the claim jackets. I will not offer into evidence the charts you were referring to, nor at this time would I offer into evidence the other Exhibit that you're referring to because I do not at this time think that they are relevant. I definitely agree with you that I think that the checks from Duval County which pertained to the invoices which have already gone into evidence are relevant, and I think that the claim jackets which pertain to the invoice and the statements are relevant; however, at this time, I do not think that the other items are relevant, and, at this time in the proceedings.

MR. MITCHELL: Well, may I approach the President? I have a request that we produce from the proceeding of the official record being Exhibit No. 91, 92, 93, which is an analysis of this account. We're going to have to get to it. And 192 -- E-192, if I'm not -- this one prepared by the Attorney General and introduced. And this was prepared by the Attorney General, and I introduced it, these three.

MR. MITCHELL: Do you have the Exhibits you have offered, Mr. Odam, so I can proceed with my questioning of this witness? I'll interrelate the Exhibits that I have reference to, if it please the President of the Court, and then offer them at that time.

THE PRESIDENT: That will be fine.

MR. MITCHELL: May I represent to the Court that they were prepared by the Attorney General and under the supervision of the Attorney General and the Task Force, these Exhibits were.

Could I have them, John, please, the checks?

MR. ODAM: What I was in the process of doing is showing to the President what had been marked, and then offering them one at a time just to keep the record straight.

I have tendered to the President H-5 and H-16, two Duval County checks which I understand there is no objection to.

THE PRESIDENT: Mr. Mitchell, do you have objection to the admission of H-5 and H-16?

MR. MITCHELL: No, I do not. And I waive my best evidence objection to them and waive the other in view of the offer -- let me say it this way, Mr. President. The technical aspects, I would have to object not to waive because they are in tandem to the prior Exhibits, H-7 (2) and those, and I would do that only for the formal purpose of keeping my record, but I do want them in.

THE PRESIDENT: The Exhibits will be admitted in evidence.

MR. ODAM: Mr. Mitchell has also requested the claim jackets that go along with these H-16 is a Duval County check in the amount of \$982.00. The State's only check, claim number B-1392, date is June 17, 1971. And I would offer into evidence at this time H-7 Sub-part 1, which is the claim jacket B-1392 in the amount of \$982.65 which corresponds with the check, claim jacket corresponding with the invoice of statement which goes there. And I would offer at this time H-7 Sub-part 1.

MR. MITCHELL: I reassert my objections only for the technical purposes of the cosmetics and housecleaning so to speak, Mr. President, of my record.

THE PRESIDENT: Exhibit H-7 will be admitted into evidence.

MR. ODAM: Pursuant to Mr. Mitchell's request that we would offer into evidence the bank photostatic copy of a check to Duval -- from Duval County to Benavides Implement and Hardware claim C-427. The check is in the amount of \$997.00. And I will have the court reporter mark it at this time with our next Exhibit number.

MR. MITCHELL: And the endorsement, please, Mr. Odam.

MR. ODAM: It appears to be just the stamp on the back of it, Benavides Implement and Hardware Company, no signature. The same stamp as on the other.

I would offer into evidence at this time that check which I have just referred to which is H-17, which is claim number C-427. I also offer into evidence at this time the claim jacket which corresponds to that, which is C-427 marked on it from Duval County. It is H-8 Sub-part 1. As the Court recalls Sub-parts 2 and 3 have already been admitted into evidence which came out of the jacket and which caused the check to be issued. I would offer H-17 and H-8 Sub-part 1.

THE PRESIDENT: Any objection, Mr. Mitchell?

MR. MITCHELL: Only for the technical purpose of the non-waiver, Mr. President.

THE PRESIDENT: Exhibits H-17 and H-8(1) will be admitted.

MR. ODAM: Now, I would ask the court reporter to mark Benavides -- a check from Duval County to Benavides Implement and Hardware, dated March 14th, 1972 in the amount of \$1,005.00. It's a bank photostatic copy, claim number is C-722. I would ask the court reporter to mark it with our next Exhibit Number H-18.

I would offer into evidence at this time H-18, the Duval County check. And I would offer into evidence at this time the H-9, Sub-part 1 which is the claim jacket which pertains to this check H-9, Sub-parts 2 and 3 with the invoice and statement which are already in evidence here and has been admitted.

THE PRESIDENT: Mr. Mitchell, do you have any objection?

MR. MITCHELL: Only for the technical purposes, Mr. President, otherwise I do not.

THE PRESIDENT: Exhibits H-9(1) and H-18 will be admitted into evidence.

MR. ODAM: I would ask the court reporter to mark bank photostatic copy of a check from Duval County, Benavides Implement and Hardware, dated April 10th, 1972, claim number C-1002. The court reporter has marked it as H-19.

SENATOR PATMAN: Point of inquiry?

THE PRESIDENT: State your inquiry.

SENATOR PATMAN: Why can't the lawyers on both sides get together on what they are going to introduce here and provide us with a schedule of it and go ahead and get it in before we ever start these proceedings? At least expedite it in some way. This is really taking up entirely too much time it seems like to me.

MR. MITCHELL: Yes. These are the records, Senator, that we have had in the prior trial. They're exactly the same records and we have probably 200, 300 more on both sides.

SENATOR PATMAN: Can't you agree on what's admissible and what will be proper?

MR. MITCHELL: I would like very much to do that.

SENATOR PATMAN: And go ahead and get it in?

MR. MITCHELL: Try to do that this morning, as a matter of fact.

SENATOR PATMAN: Provides us with a schedule of it, instead of going through this long detailed process of reading off H such and such and claim jackets and checks. It really seems to be very inefficient.

MR. MITCHELL: Well, we will tender them all again, under our tender of the whole record, and we do it again.

SENATOR PATMAN: And you still object to that, Mr. Odam? You still object to this tender of the offer of the Exhibits?

MR. ODAM: The Board of Managers -- I did not speak to that, Senator Patman, the Board of Managers, I don't think, ever did object to that, to the tender -- it was simply the vote of the Court that that not be done, but it was the objection of the Board of Managers.

MR. MITCHELL: As a --

MR. ODAM: I would say -- excuse me, Mr. Mitchell.

MR. MITCHELL: Yes, as a matter of fact -- excuse me -- I would like to request that E-1 through and including 192 and all the Sub-parts be admitted and R-1 through and including R-109, whatever my last number is be marked and included. I want them all in.

SENATOR ADAMS: Mr. President.

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: Mr. President, it occurs to me that the attorneys from both sides should get together and that have to do is get together one time, offer them and tender them into evidence with the agreement and stipulation that they could be proved up by whatever witness that they could be proved up by and at the same time Mr. Mitchell can impose his objections as to confidentiality and Mr. Odam can impose his objection to whatever it might be. Let them be introduced and then the question be whether or not the witness is called.

MR. MITCHELL: I submit if we do that it would be -- really a streamlined way to do it, just put the whole record in, because most of the record relates to the Exhibits. Same witnesses, same people, same cross-examination. And I'm having a good time showing off up here, but to be very truthful with you all it's all in the record, gentlemen.

SENATOR TRAEGER: Mr. President.

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: May I address the Defense Counsel -- ask a question of the defense?

THE PRESIDENT: Yes, sir.

SENATOR TRAEGER: Mr. Mitchell, is this not the question on which we hung up on yesterday that were the records, the records of the Judicial Qualifications Committee Hearing in Corpus Christi, allowed to be entered into these records then you could by reference use or by some other method use -- accomplish exactly what we're arguing about this morning.

MR. MITCHELL: I can represent to the Senate that the documentary which we have reference to coming in now, the witnesses are the same, they will be the same. Mr. Couling will come on next, he will be the same. He was on ten days. My client will go on, he was on another seven or eight days. It's the very same -- and we're built around this documentary, gentlemen. And all we're doing is taking the documentary and we're building the verbal testimony around it. It's coming in at any rate right now.

SENATOR TRAEGER: Mr. Mitchell, further, have you not in using -- in questioning this witness, by necessity used as reference, as we've brought out yesterday, the records of the Judicial Qualifications Committee Hearing?

MR. MITCHELL: Yes. And all the testimony, with very little exception is the same testimony.

SENATOR TRAEGER: And are not these Exhibits the same Exhibits used in that --

MR. MITCHELL: Yes.

SENATOR TRAEGER: Mr. President.

MR. MITCHELL: They are the same Exhibits, in fact I requested this morning that eleven of those Exhibits be delivered to me to be brought before the Senate. I want them all in.

SENATOR TRAEGER: Thank you, Mr. Mitchell. Mr. President.

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: Mr. President, I would like to make the motion again that I made yesterday, that the official transcript, the records of the hearing of the Judicial Qualifications Committee in Corpus Christi of the case of Judge Carrillo be admitted into the records of this Senate and used. And I would like my attorney Senator Schwartz to speak to how it can be used.

MR. DOYLE: Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President and Members of the Senate, it's only fair to advise you and Mr. Mitchell at this time that there will be additional exhibits to what was introduced at the Judicial Qualifications Commission Hearing.

MR. MITCHELL: And there will be additional testimony on our behalf, Counsel. I'm not suggesting that the Senate freeze itself to the record, if that we will get way on down the road on it, that's the point.

MR. DOYLE: I would suggest to the Court that the suggestion by Senator Adams that we stipulate and agree on the introduction of evidence is absolutely no problem for the Board of Managers, we will be happy to sit down and do that right now, if you would like for us to. And I think we could save a tremendous amount of time, perhaps a week of this trial, maybe more by just doing that. And we would certainly be interested in doing that and be happy to do it by whatever instructions the President gave us.

SENATOR ADAMS: Mr. President.

THE PRESIDENT: The Senator from Jasper.

SENATOR ADAMS: Would the Court ask Mr. Doyle how long it would take them to get in a position to make a wholesale introduction and stipulation to be able to prove up records?

THE PRESIDENT: Would you respond to Senator Adams' question, Mr. Doyle?

MR. DOYLE: I could be ready to do it -- I think I could have everything here and ready to introduce in the morning. We don't have them all here today, because we didn't anticipate using them all today, but I'm sure we could have them all here in the morning and ready to introduce on whatever basis you wanted us to.

SENATOR PATMAN: Mr. President.

THE PRESIDENT: Senator from Jackson.

SENATOR PATMAN: I would like to ask Mr. Doyle if it would be beneficial for us to take a recess or something of that nature after we vote on Senator Traeger's motion to facilitate your agreements with the other attorneys on the introduction of evidence in the Exhibits.

MR. DOYLE: The only problem I see, Senator, is that -- let's assume that the Traeger motion prevails. On those items that have not yet been introduced into evidence at any other hearing we're still not going to know whether the defense is going to object to the introduction of those materials. Now, the value in the Adams suggestion is that we get everything tomorrow morning -- and I can have it all here by tomorrow morning, we have got some left here today, not very much. We could have it all here by tomorrow morning. And I'm confident before the day is over tomorrow have all of it in evidence and depending on the speed of your printers have it on your desk or whatever method you decide to use, whether or not you print it up at one time or whether you print it up as it's used, I think that from a time-saving standpoint my judgment would be that the Adams' position would probably save more time than the position of Senator Traeger.

SENATOR ADAMS: Mr. President.

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: Mr. President, may I ask Mr. Doyle a question? Mr. Doyle, you say you could have it all here, could you have it all here in the morning with Mr. Mitchell having -- you and Mr. Mitchell having gotten together in the morning. At some given time you and Mr. Mitchell could walk to the front desk and say, you know, "Here are the Exhibits and we stipulate that they can be proved up." And Mr. Mitchell then makes whatever objection that he intends to interpose to every record other than the best evidence and other than the hearsay and whatever and you make your objections to his.

Can the two of you get together so that Mr. Mitchell isn't surprised in the morning --

MR. DOYLE: I'm confident that I could have all, almost all, if not all of the documentary evidence available in the morning. What position Mr. Mitchell will take on it I can't speak for that.

SENATOR ADAMS: I understand that, but I'm saying that by in the morning could you two have gotten together so that you would be in a position to make the tender?

MR. DOYLE: If Mr. Mitchell is willing I'm certainly available.

MR. MITCHELL: I have asked and begged and waived -- I want them all in and I hereby --

SENATOR ADAMS: You could be available right here.

MR. MITCHELL: Yes, sir. Senator, if I might be permitted to direct a statement to the Senator directly, I will agree that the objection that I have previously leveled of record can stand for this body also. There's no need to repeat all of that business. I have amply objected to the hundred and ninety-two -- the only thing I want understood is I want them all in. I mean, I want E-1 to E-192 and the hundreds of sub-parts, because I'm going to will him to turn that coin over and I want all mine to go in too.

SENATOR ADAMS: I would suspect that would be the situation.

MR. MITCHELL: Right.

SENATOR ADAMS: Right, Mr. Doyle?

MR. DOYLE: Yes, sir.

MR. MITCHELL: I don't want any screening of them when we get in the back room.

MR. DOYLE: See, Senator Adams, I haven't seen those yet. I have not seen that record yet, I know what evidence is available and what evidence I intend to use in the prosecution of this case. I do not know what was introduced --

SENATOR ADAMS: Mr. President, I think they have answered my question and I think they have said they can get together and be prepared in the morning to have a wholesale introduction of those documents.

MR. MITCHELL: Then why don't we go along -- if I might be permitted to make an observation -- it's just ridiculous to bring all that documentary in and not the testimony that goes with it. That would just take you way down the road, because half of it relates to that documentary, gentlemen.

SENATOR SCHWARTZ: Mr. President, I want to speak to that issue, if I can be recognized.

THE PRESIDENT: Senator from Galveston.

SENATOR SCHWARTZ: Members, if you look back on your desk Counsel Jaworski prepared a statement yesterday to be signed by both parties, the Counsel for the accused and Counsel presenting evidence for the Board House of Managers. It is a statement which binds nobody. The whole foolish trap that we find ourselves in is just exactly what was portrayed after the vote yesterday when we failed to accept the tender of the testimony and the Exhibits in the Judicial Qualifications Commission Hearing for whatever purposes they could be used for without anyone being bound, with a waiver of immunity, with all that good stuff just simply a tender of evidence to save time.

Now, what we're trying to do and what Senator Adams has so heartfully done and what Senator Patman has raised the question on is to teach lawyers how to use that same evidence that they have without violating a public policy, if there is one, about the use of that evidence, which we're already violating anyhow by the presence of the Attorney General and the very people who were involved in the proceedings, having all the knowledge about that and using it. And I don't know how they can avoid it and I

couldn't avoid it if I was in their situation. So, we are, you know -- we have come full-circle now. We see adequately enough that the Judicial Qualifications record -- that every exhibit in the Judicial Qualifications' record, that everything that comes in is going to border upon a revelation of that proceeding, the only difference is if we don't have the record and we don't have the waiver of the defendant and we don't have his lawyer's consent while we're doing it subject to an objection that may be good. And, you know, nobody in this room doesn't want to have it. Nobody in this room that's a lawyer has not figured out a way to use it to expedite this proceeding.

I know there must be a witness who is about to be called, because I'm a lawyer, and you can't have a thousand checks that somebody has testified to or how many hundreds there are -- you can't have those checks without bringing somebody up here and identifying every check as having been deposited by somebody and having a signature on the back of it. And there's a witness that did that somewhere before. All that witness has to do is to read something that's handed to him by Counsel for the House Board of Managers and say, "If you were called upon to testify in the proceedings before the Senate and you were asked every question that I've shown you on this typewritten sheet of paper, consisting of 500 pages what -- would you give the same answers to those questions that exist on those 500 pieces of paper? And would you go out and read it and come back and tell me, because I intend to call you next week and ask you those questions and see if we can elicit those answers." That man goes out, he reads those questions, he reads those answers and he comes back and says, "Yeah, I can do that." Then you just follow the simple process, for you nonlawyers, of offering that as a stipulation, that if John Smith were called upon to testify in this cause and ask those questions that he would give those answers. And both sides agreed to it and it is evidence. And then it's in the record properly and it's before the Court. And nobody has said whether it's Judicial Qualifications Commission testimony or whether it just happens to be the same testimony that he would give if you took his deposition.

SENATOR ADAMS: Will the Senator yield?

SENATOR SCHWARTZ: Yes, sir.

SENATOR ADAMS: You said something very pertinent in the beginning of your statement that I would like to ask you a question about. We're going through a facade up here right now of saying we are not violating that constitutional privilege that was voted so sacrosanct earlier on yesterday, when in truth and fact we're doing that very thing, are we not?

SENATOR SCHWARTZ: And we're doing it now over the objection of the Counsel for the accused.

SENATOR ADAMS: But the point is we're sitting out here playing like we're not violating that sacrosanct provision of the Constitution when in truth and fact we are.

SENATOR SCHWARTZ: There's no question I'm violating it. I mean, everytime I look at an Exhibit that I know is introduced and I know that the law or the Constitution says, "each paper filed." You know, I don't care whether somebody tells me that paper was filed. Is there anybody here that thinks we are stupid enough to not to know that those papers were filed in that proceeding? Of course not.

SENATOR ADAMS: Senator, I quit playing like -- I quit playing like I have a stick horse.

SENATOR SCHWARTZ: Well, you know, I still have a stick horse, Senator, and sometimes I play like it here. But I don't want to play like it here for the next six weeks. Senator, let me finish just this much, and I won't burden the Senate --

THE PRESIDENT: The Senator declines to yield at this time.

SENATOR SCHWARTZ: But my point is that we are doing something now over an objection that the accused, his counsel have every right to make because we're doing it, and we're violating that public policy, and we've got an opportunity to have the same evidence to save four weeks of our time. I understand one of these witnesses testified ten days. We just heard that. That's a secret. We've just been privileged to hear a secret. Somebody testified seven days. The Judge testified seven days, and somebody else testified ten, and that's a secret, just as sure as the papers that were introduced here yesterday are secrets. Senator from the Valley, I need your vote. I yield.

SENATOR LONGORIA: Mr. President.

THE PRESIDENT: The Senator from Galveston yields to the Senator from Hidalgo for a question.

SENATOR LONGORIA: Yes. Some of the Members of the Court here were not present. Will you start all over again?

SENATOR SCHWARTZ: Mr. President. Anyhow --

SENATOR ADAMS: I thought the Senator yielded the floor. I'm sorry.

THE PRESIDENT: Yielded for a question, Senator.

SENATOR SCHWARTZ: I do yield the floor, Mr. President. I just simply want to say that everybody has now agreed that just to have this record and to go out from this record and mark the Exhibits between now and tomorrow morning might save a couple of weeks. Everybody knows that, and I don't think they can even do that without violating the Judicial Qualifications Commission injunction. Thank you.

SENATOR ADAMS: Mr. President.

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: Has Senator Traeger made a motion just as he made the other day to accept the record of the Judicial Qualifications Commission --

THE PRESIDENT: Yes, Senator, he has.

SENATOR ADAMS: Is that the motion pending before the Senate?

THE PRESIDENT: That is the motion.

SENATOR ADAMS: Mr. President, I'd like to ask Mr. Mitchell at this time if his client would be willing to stand up and reaffirm not -- word for word the waiver that he made the other day and for Mr. Mitchell to affirm word for word the waiver that he made the other day in regard to those records.

MR. MITCHELL: May I proceed?

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: Yes, I have been authorized by my client to reaffirm the absolute and complete waiver of any objection which my client would have or that I would be authorized to make under the law as regards the introduction of the record taken before the Judicial Qualifications Commission. I will not hereafter make a claim of deprivation of any constitutionally protected right on that account, either before this body or any other body. And with the permission of the President, I would like to have my client personally, who, as the record reflects, is a Judge and is a lawyer and has been for many, many years. May I, Mr. President, have Judge Carrillo waive any complaint that he might have.

JUDGE CARRILLO: I again say to this Senate that I waive all rights, privileges, and immunities that I might have under the Constitution, and I again tender to the Senate all of the transcripts, all of the Exhibits, and everything that happened within that Judicial Qualifications Commission. And I will not use that as a vehicle for any sort of appeal in any form whatsoever within this country.

MR. MITCHELL: Or Mexico.

SENATOR ADAMS: Mr. President, may we vote? May we vote? Mr. President?

THE PRESIDENT: Senator from Harris. Senator Brooks.

SENATOR BROOKS: Is it permissible for me to ask our Special Counsel one brief question in this regard?

THE PRESIDENT: Yes, sir.

SENATOR BROOKS: I would like to know if there is some alternative way to the way that Senator Schwartz is proceeding by which we may accomplish what Senator Schwartz wants to accomplish in having access to established records without potentially violating that privilege.

MR. JAWORSKI: Yes, sir, I think there is. And I think what Senator Adams has proposed is the proper way to do it. There is no reason, absolutely no reason, why counsel on both sides can't stipulate that certain records are to be admitted without further proof, bring them in and admit them. You haven't introduced a record. You have not introduced a part of a transcript of the Qualifications Commission. The objection is that if you come in and say this is what was adduced as evidence before the Qualifications Commission, bring it in and offer it as such, then, obviously you've violated the plain provisions of the Constitution, in my judgment. Now, that doesn't mean that Senator Schwartz says that you can't go ahead and violate it if you want to. It may be if an individual did it would be considered contempt of Court, but I assume that nothing would come of it except I do believe there has been a violation of a plain provision of the Constitution. Now, the same -- exactly the same thing can be done, and this is what I had hoped would be done, and that is to follow the suggestion made by Senator Adams. And that is that counsel get together and stipulate and agree to offer into evidence then such matters as are material. And then you haven't taken it from the Qualifications Commission transcript of the record. It's independent evidence, and it's perfectly appropriate to do that. I think you'd accomplish as much

because I have the feeling you're going to want some of the witnesses called anyway. There's much to be gained from hearing a witness testify in judging his credibility which you can't do by looking at a transcript. So, answering your question, I think the same thing can be done, the same objective accomplished, and I don't think you'll run the danger of violating a constitutional provision.

SENATOR SCHWARTZ: May I ask a question of counsel?

THE PRESIDENT: Yes.

SENATOR SCHWARTZ: These Exhibits that were introduced in the Judicial Qualifications Commission hearing bear an identifying mark on them. I could tell that they were introduced in that hearing, couldn't I, counsel?

MR. JAWORSKI: Yes, you could, but you're not offering them as a part of the record of the transcript of the Qualifications Commission, and that's the big difference.

SENATOR SCHWARTZ: But, of course, what we're saying is that as long as nobody tells me that's the Judicial Qualifications Commission Exhibit, then I haven't violated anything. But if I've got enough sense to go look at it and see an Exhibit marked on it, why, then I can identify it, and I know it was introduced.

MR. JAWORSKI: No, Senator, if I may answer that. That isn't so. Because, you see, the predicate for it has to be laid, either by the witness testifying to it here or by stipulation. So when the proper predicate has been laid it is independently introduced and not as a part of the Qualifications Commission testimony.

SENATOR SCHWARTZ: It's not a part of the record, but it is a paper filed in that proceeding.

MR. JAWORSKI: There is no objection to that so long as you don't take the record itself as a Qualifications Commission record or transcript. This is, I would say, the very clear interpretation.

SENATOR SCHWARTZ: This says, "all papers filed with and proceedings before the Commission or Master shall be confidential."

MR. JAWORSKI: That's right.

SENATOR SCHWARTZ: And I can tell it was filed with the Judicial Qualifications -- that's my question --

MR. JAWORSKI: That's not part of the proof, Senator. If that were a part of the proof, then I'd agree with you, but that's not part of the proof. Now, Mr. Mitchell has stood up a time or two and has said -- which I very frankly -- and he will agree -- asked him not to do anymore. And that is referred to the fact that it was used before the Qualifications Commission. I don't think that's appropriate.

MR. MITCHELL: But, counsel, to pass on my objection of privilege, you're going to have to relate, for example, on Page 757 where it says E-79, you're going to have to relate that E-79 to something to get my privilege objection out of the way, and that privilege is going to take you right into the Constitution and that's going to take you right into that Judicial Qualifications. You can't pass on it, I submit, without

setting aside this charade that we don't all know that the E-76 refers to an Exhibit number in the Judicial Qualifications Commission in order to pass on my objection that it's privileged.

MR. JAWORSKI: Senator Schwartz, all I'm trying to do is give you my opinion. I realize that after all each Senator has to reach his own conclusion. I also realize you can make your own rules here as you wish. I do think that you have a question here as to a violation of a constitutional provision.

SENATOR SCHWARTZ: I just wanted the Senate to be clear, though, that there is an identification which an intelligent being or not so intelligent being can use to recognize any Exhibit that is introduced here as having previously been introduced in the Judicial Qualifications Commission hearing. And that is true, isn't it?

MR. JAWORSKI: Yes, but I think there is a distinction. I think if you bring the proof in independently and offer it that you are not in violation. I think whereas if you take the record as has been proposed here, all or any part of it, I think you are in violation.

SENATOR JONES: Mr. President.

THE PRESIDENT: Senator from Taylor.

SENATOR JONES: Sir, is it Mr. Jaworski's contention that the introduction of the record would preclude either side from recalling any of the witnesses?

MR. JAWORSKI: No, sir. You have the right to call as many witnesses as you wish, of course, in addition to the record, and I don't think anyone has contended that if the record were introduced that this would deny you the right to call a witness. No, sir, that isn't so. But if the record were used without calling the witnesses it may be that you would feel that you had not had the benefit of judging the credibility of the witness.

SENATOR JONES: But it would still be up to counsel on either side as to whether or not it would be desirable for us to hear that particular witness.

MR. JAWORSKI: That's correct, sir. And as to whether you wish to hear it.

SENATOR JONES: Yes.

THE PRESIDENT: Question is on the motion of the Senator from Guadalupe to accept the tender of Judicial Qualifications Commission transcript subject to the waivers that you have heard Judge Carrillo and his counsel make before this Senate.

As many as favor Senator Traeger's motion vote "Aye". Those opposed vote "No" as your name is called. Secretary, call the role.

Yeas: Adams, Andujar, Doggett, Farabee, Gammage, Harrington, Harris, Jones, Kothmann, Lombardino, Mauzy, Patman, Santiesteban, Schwartz, Traeger and Williams.

Nays: Aikin, Braecklein, Brooks, Creighton, Hance, Longoria, McKnight, Mengden, Ogg, Sherman and Snelson.

Absent-excused: Clower, McKinnon, Meier and Moore.

THE PRESIDENT: There being 16 "Yeas" and 11 "Nays", the motion prevails.

Proceedings of the State Judicial Qualifications Commission, pursuant to the above motion, appear in the Exhibit Volume for January 7, 1976.

SENATOR MAUZY: Mr. President.

THE PRESIDENT: Senator from Dallas.

SENATOR MAUZY: Mr. President, may I suggest that this would be an appropriate time to take a short recess for Counsel to confer to see just the form and substance of the stipulation that they can now reach.

THE PRESIDENT: Counsel advises, Senator, that a thirty minute recess for that purpose would be very beneficial.

SENATOR MAUZY: I move that the Senate stand in recess until 10:45.

THE PRESIDENT: Senator from Dallas, Senator Mauzy, moves the Senate stand in recess until 10:45. All in favor say "aye". Those opposed, "no". The "ayes" have it. The Senate stands recessed.

Accordingly, the Senate, sitting as a Court of Impeachment, at 10:15 o'clock a.m. took recess until 10:45 o'clock a.m.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 10:45 o'clock a.m.

THE PRESIDENT: The Senate will come to order. Members of the Court, during the recess, Counsel for the parties conferred about how this material might be presented, how it might be organized for the most efficient use of it before the Court.

The Chair would propose that the Senate now recess until 2:00 o'clock this afternoon so that between now and 2:00 o'clock, Counsel for the parties under the direction of the General Counsel, Colonel Jaworski, meet and hopefully arrive upon an agreed method for handling this material.

Secretary of the Senate advises that the material can be printed and prepared by next Monday. If a plan can be agreed upon and approved by this Court, it seems an appropriate use of time to adjourn until next Monday when the material can be available to the Members of the Court. That also gives the Counsel for the Board of Managers and Members of the Board of Managers time to acquaint themselves with this record.

Is there a motion to that effect?

SENATOR AIKIN: As hesitant as I am and disgusted as I am, I'm going to move we stand recessed until 2:00 o'clock.

THE PRESIDENT: Senator from Lamar moves the Senate stand recessed until 2:00 o'clock this afternoon.

All in favor say "aye". All opposed, "no". The "ayes" have it.

Accordingly, the Senate, sitting as a Court of Impeachment, at 10:20 o'clock a.m. took recess until 2:00 o'clock p.m.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 2:00 o'clock p.m.

SENATORS ANNOUNCED PRESENT

Senator McKinnon who had previously been recorded as "Absent-excused" was announced present.

Senator Moore who had previously been recorded as "Absent-excused" was announced present.

THE PRESIDENT: The Chair at this time will recognize Mr. Mitchell to state to the Court the agreements that have been reached and the steps that have been carried out during the recess. Mr. Mitchell.

MR. MITCHELL: Mr. President, Members of the Court, pursuant to the mandate from the motion adopted by the Court prior to 12:00 o'clock, the Counsel for Judge Carrillo, Counsel for the House Managers, Counsel for -- and the Attorney General's office met at the preliminary conference here, and Mr. Maurice Pipkin the Executive Secretary of the Judicial Qualifications Commission office, and I received the full record from the Judicial Qualifications Commission. I caused the same, that is, the S and F, that is the statement of facts, the testimony, and the Exhibits, I caused them to be delivered to Mr. Terry Doyle, Counsel for the House Managers who in turn redelivered them to me, and we made a joint delivery to the Secretary of the Senate. And I would like the record to reflect that all of those volumes representing the transcription of the testimony taken before the Judicial Qualifications Commission commencing November 3, through and including the final day of testimony were so delivered and have been delivered to the representative of the Senate for placement in the record pursuant to the mandate of the motion, Mr. President.

MR. DOYLE: That's correct, Mr. President.

THE PRESIDENT: Thank you very much, Mr. Mitchell.
Mr. Doyle.

MR. DOYLE: Mr. Mitchell has stated it correctly, Mr. President.

MR. MITCHELL: If there are any further questions of me, Mr. President, on the procedure that was followed, I would be glad to try and answer.

THE PRESIDENT: Does any Member of the Senate desire to question Mr. Mitchell or Mr. Doyle further about this matter?
Senator from Lamar.

SENATOR AIKIN: Mr. President, I move the Senate stand adjourned until 2:00 o'clock Monday afternoon.

THE PRESIDENT: The Senator from Lamar moves the Senate stand adjourned until 2:00 o'clock Monday afternoon. All in favor say "aye", all opposed "no". The "ayes" have it. The Senate stands adjourned.

Accordingly, the Senate, sitting as a Court of Impeachment, at 2:10 o'clock p.m. adjourned until 2:00 o'clock p.m. on Monday, January 12, 1976.

FOURTEENTH DAY (Monday, January 12, 1976)

The Senate, sitting as a Court of Impeachment, met at 2:00 o'clock p.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present:

Present: Adams, Aikin, Andujar, Braecklein, Brooks, Creighton, Doggett, Farabee, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Patman, Santiesteban, Schwartz, Traeger and Williams.

Absent-excused: Clower, Gammage, Ogg, Sherman and Snelson.

A quorum was announced present.

The Reverend Fred Bomar, St. Peter the Apostle Church, Austin, Texas, offered the invocation.

LEAVES OF ABSENCE

Senator Clower was granted leave of absence for today on account of important business on motion of Senator Mauzy.

Senator Gammage was granted leave of absence for today on account of important business on motion of Senator Farabee.

Senator Snelson was granted leave of absence for today on account of important business on motion of Senator Andujar.

Senator Sherman was granted leave of absence for today on account of important business on motion of Senator Farabee.

Senator Ogg was granted leave of absence for today on account of important business on motion of Senator Williams.

APPEARANCES

Judge O. P. Carrillo, Respondent; Honorable Arthur Mitchell, Attorney for Respondent.

Board of House Managers; Honorable Terry Doyle, Counsel; Honorable John Odam and Honorable Liz Levatino, Assistant Attorneys General on behalf of the Board of Managers.

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: Parliamentary inquiry.

THE PRESIDENT: State your inquiry.

SENATOR TRAEGER: It really should be a logistics inquiry, Mr. President, but this pile of paper we presently have in front of us is going to be -- for those of us who now reside in the Commodore Perry -- it's going to be a little difficult wagging all of it back and forth to our offices every day. And I'm wondering as to if we could not be assured of some sort of special security on the floor of the Senate during our off hours since we presently -- visitors are not allowed in here anyway, so that, for example, members who are not present today might not lose this material -- I'm sure the people would like to pick up some of it and carry it off. And, also, those of us commuting from the Commodore don't like to carry it back and forth everyday. I would like the wisdom of the Presiding Officer as to instructing the Sergeant-at-Arms, if it's possible, to give us some security so we can leave this material on our desk. I don't know if we can even get it in our desk.

THE PRESIDENT: If it is the desire of the Senate the Chair instructs the Sergeant-at-Arms to secure the Chamber at all times.

SENATOR TRAEGER: Thank you, sir.

THE PRESIDENT: Sergeant at Arms, will you take care of that?

SERGEANT-AT-ARMS: Yes, sir.

THE PRESIDENT: All right, Mr. Gonzalez, you are aware the oath you previously took is still in force.

MR. GONZALEZ: I do, sir.

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: Yes. May I have H-7 through 14, please?

SENATOR TRAEGER: Another parliamentary inquiry.

THE PRESIDENT: State your inquiry.

SENATOR TRAEGER: Sir, as these proceedings of the Judicial Qualifications Committee presently in front of us are, as I understand, for the background and use of the Members of the Senate for reference to what has been said by witnesses we will be hearing or witnesses that are not called. In our questions of the witnesses proposed from the floor, would it be permissible to, by reference refer to a question brought up by conflict of testimony by a witness as it appears against the Judicial Qualifications record? In other words, since it has been adopted as part of our official records, may we use it in questions we submit or inquiries we might have by reference to his testimony on Page 938, Judicial Qualifications Committee hearing in Corpus Christi?

Is that a viable tool that we can use in our proceedings?

THE PRESIDENT: Senator, under the terms of your motion, the record is before the Senate for whatever use any Member of the Court may choose to make of it.

SENATOR TRAEGER: In other words, the question -- an appropriate question would be to Counsel for the Defense or counsel for the Prosecution, "Was this witness questioned in Corpus Christi, and if so, where is it in the record that we may follow that testimony?" Would that be a relevant question?

THE PRESIDENT: Yes, Senator. In the opinion of the Chair, it would.

MR. DOYLE: Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President, in view of the Chair's ruling, I think we need to establish something for the record now.

As I understood the motion which carried in the Senate last week, the entire record is before the Senate as probative evidence, and I need to be sure that's accurate before I go further. My intent today was to kind of shortcut the testimony with witnesses who have testified previously down there and attempt -- instead of eliciting from them detailed evidence with respect to the documents that have been introduced and so forth, my intent was to kind of just highlight what those witnesses had testified to previously for the purpose of assisting the Senate, as it looks over that record, and to give the Senate an opportunity to judge the witnesses credibility as a live witness.

But, I do need to know that evidence which is before the Senate, on their desks now, is evidence which they can consider when they go to vote on whether or not to sustain the Articles of Impeachment as sent over by the House.

THE PRESIDENT: Mr. Doyle, the record has been admitted in evidence. Therefore, it may be used for that purpose.

MR. DOYLE: Thank you, Mr. President.

MR. MITCHELL: Mr. President, in that connection and in connection with the inquiry previously made, I do not intend to repeat the material contained in the record.

I had -- for example, on this witness, there were some questions, as the Court will recall, that were put to the witness just before closing time last week and I was going to ask him about several of those, but I do not intend to repeat the material contained in the record.

Certainly, all of our efforts would be of no avail, and I will abide by that rule. The witness had made certain statements that I wanted to ask him about that are not within the confines of the Judicial Qualifications Commission record.

THE PRESIDENT: Proceed, Mr. Mitchell.

RE CROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q Mr. Gonzalez, prior to our break last week you had testified in answer to a question put to you by Members of the Court about whether or not you knew of the

existence of a conspiracy. Do you recall that?

A I think I did, sir.

Q Yes, you testified that you did know there was a conspiracy, if I recall your testimony; did you not?

A I didn't get that question.

Q I say, you testified when, I believe, Senator Mauzy put the question to you whether or not you had personal knowledge of the existence of a conspiracy and your answer was under oath that you did. And then the followup question, if I recall the record correctly was, "Between whom or whom was the conspiracy with", and you mentioned, I believe those people that were called off, and that would be Pat Gonzalez, Mike Ruiz, Tete Chapa, Rosa Garza, Jose Sendejar. Do you recall that?

A That's not exactly what I meant to say, sir. I meant that they used their names.

Q Uh-huh.

A By using the chits. And the ones that committed this conspiracy, I think, were Ramiro Carrillo and O. P. Carrillo.

Q All right. That's what I thought you had testified to. As a matter of fact, you made out all of the official Duval County welfare forms yourself, didn't you?

A I made them after I asked Ramiro Carrillo --

Q Wait a minute, Cleofas. You are the one that made out the forms and those are the ones that are included in the record as H-1 through, I believe, 28, didn't you?

A Let me look at them, sir.

Q Well, you were quite certain that they were the ones that O. P. and Ramiro had talked to you about.

MR. MITCHELL: And for the purposes of the Court, I show you reference to page 351, being the 7th day of the trial, H -- specifically -- 1 (1).

Q Those Duval County Welfare Department forms are made out by you?

A Yes, sir, I made them out to instructions --

Q Well, now, just a minute. They were made out by you, weren't they?

A Yes, sir.

Q All of the official forms upon which the Commissioners Court acted in every welfare case that's in this record was made out by you, wasn't it, Cleofas?

A Yes, sir, after --

Q All right. So, if there was a conspiracy you were at the very core of it, weren't you, because your information was the information that went before the Commissioners Court on the official welfare form. Isn't that correct?

A That's what I meant, I had been instructed and I made them.

Q Just a minute. So, if there were a conspiracy involving Patricio Garza and Mike Ruiz, Tete Chapa, Rosa Garza, Jose Sendejar, by reason of the fact their name appeared on these official forms you put the names there, didn't you, Cleofas?

A I got them out of that list that was brought in by Mr. Lauro Yzaguirre, the store owner, sir.

Q Right. Mr. Yzaguirre was the gentleman who got the money from the county, wasn't he?

A That's correct, sir.

Q Sure. So, the checks went to Mr. Yzaguirre after he gave you the name, you put the names on the official forms and the Commissioners Court exercised its authority on those official forms. Didn't they, Cleofas?

A I put them after I got the instructions from Mr. Carrillo that it was okay to write the order out, yes, sir.

Q And you couldn't have got any kind of instructions from O. P. Carrillo, because you ain't talked to O. P. since May of '72?

A I did, I talked to him some times.

Q All right. Now, you were asked, I believe, by the same Senator whether or not that conspiracy was in writing and you said yes and you referred to these documents. I suppose you had reference to H-1, 2, 3 and 4. Is that what your testimony was? I just want to be sure we're not looking at something else other than what's in the record.

MR. MITCHELL: And that is, for the Court's purpose, Exhibit 55 before the Judicial Qualifications Commission, H-1(1) before the Senate and it appears on Page 300 --

A I meant that there were -- to compare what's on H-1(2) -- those paper slips?

Q All right. And they appear in this record at 353. Also in the Judicial Qualifications Commission trial as E-55.

You took the information on the little slips, transferred it to the official slips, didn't you, Cleofas?

A Sir?

Q I say, you took the information from the little slips and transferred it to the official Duval County welfare forms, didn't you?

A After I told Ramiro Carrillo if it was okay for me to do it and he said yes, I did it, yes, sir.

Q All right. So, that if there was a conspiracy in writing you were a part of that conspiracy?

A Well, I couldn't tell exactly those orders were not given to those people there.

Q Right.

A I mean, that's how come I asked Ramiro if it was okay for me to do it, because I told him, Mr. Lauro Yzaguirre, the storeowner, brought out these paper slips that O. P. had given out these groceries to these people and is it okay for me to write orders for them and he said yes, so I did it. I couldn't tell if they had gotten groceries or not, sir.

Q And actually, Cleofas, you didn't know whether or not they got the groceries, and you don't to this day, do you?

A That's correct, sir.

Q And you wouldn't have done nothing wrong if you had thought that there was something wrong about putting those folks' names down too, you wouldn't have done it, would you?

A If --

Q If you had thought there was anything wrong at the time you did it, you wouldn't have done it, would you? You wouldn't have become a part of a conspiracy, would you?

A I knew there was something going wrong -- if the County Commissioner gave me -- I mean, I asked him and he said for me to go ahead and do it, I had to take his orders, sir, because he's the county commissioner. And Mr. Lauro Yzaguirre had brought them in so I could make him a County order, sir.

Q Lauro Yzaguirre would come to you, give you the names, you would type them in there and those names would be put -- submitted to the Commissioners Court and the Commissioners Court would rule on them and issue a check to Lauro Yzaguirre of the Cash Store, right?

A Mr. Lauro Yzaguirre would bring in these paper slips with the names of the people that had gotten groceries and asked me that he needed a county order form. So, I told him, "Lauro, I can't do it until Ramiro Carrillo comes in, because he has to sign those county orders." And when Mr. Ramiro Carrillo came in I asked him and he said for me to do it, so I did it and he signed them and he took them back to the store. That's the way it happened.

MR. MITCHELL: And I'm referring, if it please the Court to page 440 H-2(1) - (12), and that's also E-56 in the Judicial Qualifications Commission. Each and every instance a check was issued by Duval County to the Cash Store as shown by H-2(1), (2), (3), (4), right on through to (12). Am I correct, Cleofas?

A Yes, sir.

Q The name on the check would be -- from the County would be the Cash Store, Benavides, Texas, correct?

A I didn't see any -- I didn't see it.

Q Well, you have seen them at least a dozen times that I can recall. Take a look at it.

A Yes, these checks were paid to Cash Store, Benavides, Texas.

Q All right. So that the information would be furnished to you, that is the name and the amounts by Lauro Yzaguirre, the owner of Cash Store, you would take that information and put it into the official form. The official form along with that information would be given to the Commissioners Court, the Commissioners Court would pass on it and a check was issued to Cash Store, Benavides, Texas, correct?

A I guess so, I don't know.

Q All right.

A All I did was make out these orders and they took them back to the store and I don't know anything about it from then on.

Q Well, there is no evidence in this record that a check was issued by the Treasurer of the County of Duval to anybody but the Cash Store connected with those grocery purchases, is there, Cleofas?

A I don't know, sir.

Q Well, now, I think I can represent accurately to you that this is the record that's put on by the attorney over there. And look at the record here. Again, we're looking at H- -- what is that? H-2(1) through and including (12). Look at all of those checks.

MR. MITCHELL: That's page -- for the Court's purposes -- 440 --

Q What is that, Cleofas?

A 440 and 441, 42 --

Q Each and every one of those checks is issued to the Cash Store, Benavides, Texas, am I correct?

A That is correct, sir.

Q All right. Now, I'm really referring to the question put to you by the Senator from Dallas. Is there any other evidence other than what we have gone over that was the basis for your answer that you knew there was a conspiracy, Cleofas? Is there anything else now we haven't touched on?

A Well, sir, just like I said, I just follow instructions, I did what I had to do.

Q I understand. You have made that quite clear. And following those instructions has got you from a \$225.00 a month Duval County employee to the owner of the Benavides Implement and Hardware with about a seventy-five to hundred thousand inventory. So, you haven't done too badly following instructions. But, that's not what I'm talking about.

MR. DOYLE: Mr. President, I object to that. There's no evidence in the record as to what the value of the inventory is.

MR. MITCHELL: That would be the tax return that Mr. --

MR. PRESIDENT: Objection sustained.

MR. MITCHELL: I'm sorry, Mr. President. For the record, that is the tax return, Mr. President, in the record. I will withdraw that.

Q Any other evidence now you can point to, Mr. Gonzalez, other than what you have told us?

A I just told you what I knew, sir, that's all.

MR. MITCHELL: It's your witness.

MR. DOYLE: With leave of Court, Mr. President, since Mr. Gonzalez is on the stand and since I'm going to attempt to -- attempt to highlight some of the stuff that's in this massive transcript -- Mr. Odam has been eliciting the testimony from this witness up to now and I would ask the Court's permission for me to proceed to do that and to switch to whichever lawyer is necessary on specific items of evidence, with respect to specific Articles.

MR. MITCHELL: Mr. President. May I ask a question, Mr. President. I understood -- as I understand now we're going to go back through this witness' testimony at the Judicial Qualifications. If that be the import of his statement to the Court I'm going to object to it being unduly repetitive. The record is already made and it speaks for itself.

THE PRESIDENT: Mr. Doyle, could you expand a little bit on the purpose of your cross-examination?

MR. DOYLE: Mr. President, the first thing I'm going to do is take the witness back on the subject matter just covered by Mr. Mitchell in his cross-examination. The next -- the thing I intended next to do was to attempt to hit the high spots of the testimony which is before the Senate by way of this evidence which was received this morning. And also attempt to elicit from this witness, since he's on the stand, whatever evidence he has to offer on Articles that he did not -- and on subject matter that he did not testify to in the Judicial Qualifications hearing.

THE PRESIDENT: That would be fine, Mr. Doyle, but please avoid needless repetition.

MR. DOYLE: Yes, sir. I'll make every effort to do that.

REDIRECT EXAMINATION

(Questions by Mr. Doyle)

Q Now, Mr. Gonzalez, in response to Mr. Mitchell's questions, you attempted to explain to the Court your function with respect to the \$300.00 a month that Judge O. P. Carrillo is alleged to have obtained in the Articles of Impeachment, do you understand that's what Mr. Mitchell has been asking you about?

A Yes, sir.

Q All right. Now, in that regard, I would like to ask you a few questions about, first, Cleofas Gonzalez. Now, you were born and raised down there, is that right, Mr. Gonzalez?

A That's correct.

Q Where do you live now?

A Benavides, Texas.

Q And do you have a family down there, Cleofas?

A Yes, sir.

Q Describe for the Court what you have by way of a family. Have you got any kids?

A Yes, sir.

Q How many?

A About three.

MR. MITCHELL: I'm going to object, Mr. President, if it please the Court. That's all been gone over about at least three times that I can count in the record. It's unduly repetitive.

MR. DOYLE: Mr. President, Mr. Mitchell has by his cross-examination attempted to indicate that this witness profited by virtue of the \$300.00 a month O. P. Carrillo got. I am attempting now to show what Cleofas Gonzalez has as compared to what O. P. Carrillo had.

THE PRESIDENT: Objection overruled.

MR. MITCHELL: I am going to also object to counsel's remarks about O. P. Carrillo. There is not one stitch of evidence, and I challenge to point to it, that O. P. Carrillo has gotten a dime out of them groceries. Those checks went to Cash Grocery. And there is no evidence, Your Honor. I object.

MR. DOYLE: Mr. President, with respect to counsel's last argument, I might say that I'm not attempting to show what O. P. Carrillo got by virtue of any illicit transactions. What I am attempting to show is what O. P. Carrillo has, what this record is replete with his assets as compared to the assets of this witness.

THE PRESIDENT: Proceed, Mr. Doyle.

Q You live with your family, your wife and three children, in Benavides, Texas?

A That's correct, sir.

Q Born and raised there?

A Yes, sir.

Q How much did you pay for your house?

A \$1,000.00.

Q And have you made improvements to that house --

A Yes, sir.

Q Did you hire somebody to come in and do that, Mr. Gonzalez?

A No, sir, I did most of the work myself.

Q Did county employees, while they were being paid by the county, come in and repair your house and make additions to it, that sort of thing?

A No, sir.

Q Did you use county equipment or county funds to improve your house?

A No, sir.

Q Now, do you own any real estate other than the home that you and your family live in?

A Yes, sir, I have got two pieces of land.

Q Describe those to the Court, Mr. Gonzalez.

A I've got a piece of land that I bought after my father passed away with the money he left me from his insurance. Those were 16 acres.

Q How much did you pay for those 16 acres?

A \$1,000.

Q Okay. What other land do you own, Mr. Gonzalez?

A I own another 27 acres that I've been buying from my uncles on my mother's side. I've been buying pieces, you know, one at a time.

Q Now, on this land that you own, Mr. Gonzalez, this 16 acres and this 27 acres, do you have some cattle on those?

A Yes, sir, I do.

Q Is that what that land is used for?

A Yes, sir.

Q Tell the Court how many head of cattle you own, Mr. Gonzalez.

A I own about 25 head in all, big and small calves.

Q That's counting calves, isn't it?

A Yes, sir.

Q Mr. Gonzalez, are you familiar that in addition to the land that O. P. Carrillo owns, the record is replete with evidence concerning land that he holds under lease agreements with Mr. Clinton Manges, are you familiar with this record in that regard? If you are not familiar with it, just say you are not?

A No, sir.

Q Then, are you familiar with the fact that Mr. Carrillo owns many thousands of acres in Duval County?

MR. MITCHELL: Now, Judge, I don't know what he's trying to do. If he's trying to prove by the negative response, affirmative facts would be hearsay, absolutely irrelevant and immaterial to the redirect examination of this witness. That's a kind of peculiar examination. I don't know quite how to confront it. I object to it on the grounds -

MR. DOYLE: Mr. President, on cross-examination, Mr. Mitchell attempted to show that Mr. Couling and Mr. Gonzalez were the ones that had reaped the benefits from all these elicited transactions. I am attempting to show what Mr. Gonzalez owns as evidence to rebut what he attempted to raise by showing that he didn't profit.

MR. MITCHELL: What's that got to do, counsel, with what Mr. Carrillo owned? And the record, if you read it, shows how he acquired it. He inherited it from his daddy.

MR. DOYLE: Mr. Mitchell, the record shows he also leased a large amount of acreage from Mr. Manges, and he also purchased a thousand acres next to the ranch he now owns.

MR. MITCHELL: That was 1970. It was a grazing lease, and it expired shortly after it commenced.

MR. DOYLE: And the purchase?

THE PRESIDENT: Mr. Doyle, how do you propose to connect up this showing Judge Carrillo's assets with these charges?

MR. DOYLE: Well, the testimony elicited on cross is an attempt obviously, an obvious attempt by Mr. Mitchell to show that of these many thousands of dollars that have been obtained from governmental entities have been obtained for the benefit of Cleofas Gonzalez and Rudolfo Couling. I'm attempting to show that the witness, Cleofas Gonzalez, lives in a \$1,000 house and is not a rich man as a result of all these thousands and hundreds of thousands of dollars that have been misappropriated.

MR. MITCHELL: Mr. President --

THE PRESIDENT: Mr. Doyle, you've already shown that.

MR. MITCHELL: May I stipulate too, Mr. President, if it will assist him, I am not charging Mr. Gonzalez with getting a dime. My reference on cross-examination was that the documentary evidence shows the checks went to Cash Store. He's not Cash Store. I haven't indicated that at that time.

MR. DOYLE: Mr. President -- if Mr. Mitchell is serious by stipulating that Mr. Gonzalez never got a dime --

MR. MITCHELL: Oh, I'm not going to do that. He will testify he stole from the Farm and Ranch for years. I'm not going to stipulate him into honesty.

MR. DOYLE: The offer of stipulation was concerning the thousands of dollars, and hundreds of thousands of dollars lost by the governmental entities, Mr. Mitchell.

MR. MITCHELL: I will stipulate he got none of the grocery money, Mr. President, as part of the record. The record reflects that the checks went to Cash Store. I am not intimating that he got any of that. Certainly if it will shorten it, I will -- the record reflects it went to Cash Store, and that's all I'm indicating. He said it went to O. P. Carrillo. And the reason for my question was that the record, the documentary said it went into Cash Store. I'm not saying Cleofas got it.

MR. DOYLE: I don't mean to argue with counsel. If he wants to stipulate it, I will be happy to reach stipulations the records show, according to the witnesses Yzaguirre and the witness Garza, and the witness Chapa that the groceries went to O. P. Carrillo. If he wants to stipulate that, I will be happy to enter a stipulation --

THE PRESIDENT: Is what you're trying to show here that -- compared to Judge Carrillo, Mr. Gonzales --

MR. DOYLE: Mr. Gonzalez didn't get any of the money, Mr. President. That's what I'm trying to show.

THE PRESIDENT: Is not a wealthy man?

MR. DOYLE: He is a poor man, who raises a family in a home he purchased for \$1,000.00, and I want the record to be clear on that point.

THE PRESIDENT: Would you agree to that statement, Mr. Mitchell?

MR. MITCHELL: Mr. President, I would agree, and certainly he can ask him, "Did you get any of the money?" That does not have anything to do with what -- the Judge has got, though. That's the only reason I'm objecting. Whether he's got a grazing lease from Joë Jones, that's got nothing to do with whether this man's got any money.

Just ask him. He's your witness. He'll tell you the truth, I'm sure.

Q Now, Mr. Gonzalez, just so the record will be absolutely clear, these lists that the -- let me back up and rephrase the question, Mr. Gonzalez. The county issued checks to the Cash Store, is that your understanding?

Q No, sir, I don't -- I didn't hear you.

Q All right. With respect to the welfare system of Duval County as it existed during this period of time, the County would issue a check in payment of the Cash

Store's bill, is that correct?

A Yes, sir.

Q All right. Now, what the County paid was a check for so many dollars, a hundred dollars, five hundred dollars, or a thousand dollars or whatever it might be, is that correct?

A That's correct, sir.

Q All right. Now, what caused the county to issue that check was a piece of paper you filled out, is that correct?

A That's correct, sir.

Q Now, any number of those have been introduced into evidence with a list of names on them and an amount beside those names?

A That's correct, sir.

Q Now, you would fill in those names and those amounts, is that correct?

A That's correct, sir.

Q Now, at whose instruction and direction did you fill in those pieces of paper with a list of names and the amounts of money beside the names?

A Well, it's just like I said, Mr. Lauro Yzaguirre would bring in those tickets, and tell me that they were groceries that O.P. had given out, and I would tell Mr. Lauro Yzaguirre, "Lauro, you are going to have to wait and let me ask Ramiro, because I don't have any orders signed, and I'm going to have to fill them out and have him sign them." And when Ramiro came in that morning, I asked him, "Ramiro, Lauro Yzaguirre -- He said, are those O.P.'s?" I told him, "Yes." He said, "Go ahead and make them." So I made them. And he would take them back or Mr. Yzaguirre would come back and pick them up. And that's all I knew about it.

Q So the list -- the information that you put on the list was brought to you by Mr. or Mrs. Yzaguirre?

A That's correct, sir.

Q And with respect to who got those groceries, you don't know?

A No, sir, I don't.

Q But with respect to that same list -- was it your testimony, Mr. Gonzalez, that there were names on the list that you knew didn't even live in that county?

A That's correct.

Q More than one, is that correct?

A That's correct, sir.

Q And you are familiar that some of those people have testified in this impeachment trial, aren't you?

A Yes, sir.

Q All right. That's all you had to do with that \$300.00 a month, isn't it?

A That is -- yes, sir.

Q All right. Now, you've used the phrase several times, "that's O.P.'s list." Is that correct?

A Yes, sir.

Q Now, would you explain to the Senate what you mean by "that's O.P.'s list"?

A Well, just like I said, Lauro would come in and say, "this is O.P.'s list of --"

MR. MITCHELL: I'm going to -- excuse me, Mr. Gonzalez.

Mr. President, I'm going to object. Now, he's testified to that twice, and I'll have to move to strike it, because what Lauro Yzaguirre would tell this man as to the nature and origin of that list would be hearsay as to this man. I let it come in three times. I'm going to move to strike it. I'm going to object to it at this time. Pure hearsay of the rankest type.

MR. DOYLE: Mr. President, I think all of this is in the transcript of the Judicial Qualifications Commission.

MR. MITCHELL: Well, as a matter of fact, Mr. --

MR. DOYLE: I'm attempting to highlight as I informed the Court I would --

MR. MITCHELL: As a matter of fact, Mr. President, Mrs. Yzaguirre testified she was sick and had an operation and was out of the business for a period of over two years commencing in August of 1971. Hadn't had -- wasn't even in the business for over two years. Mr. Lauro Yzaguirre did not testify. He was called that one time before the House and testified for about five minutes about his name and address and has never testified as to the substance of the question just put to this witness by counsel. Lauro Yzaguirre did not testify to the Judicial Qualifications Commission trial.

THE PRESIDENT: Mr. Mitchell, the Chair will overrule your objection. This is an effort to show a conspiracy.

MR. MITCHELL: Well, yes. I understand, Mr. President. But, Mr. Doyle must understand that Mr. Lauro Yzaguirre did not testify at Judicial Qualifications, and he has never testified.

THE PRESIDENT: Proceed, Mr. Doyle.

Q So, your only connection with the monies going from the Cash -- from the county to the Cash Store were the work you -- was the work you did for Ramiro Carrillo, is that correct?

A That's correct, sir.

Q All right. You didn't go down and pick up groceries and bring them to the Judge or nothing like that?

A No, sir, I didn't.

Q All right. And what you filled out as his assistant was done at his direction?

A That's correct, sir.

Q One thing I forgot to ask you a moment ago, Mr. Gonzalez. You testified you had a house and two little pieces of land down there. Do you own, you know, a bunch of stock in some company, or do you have any -- do you have any source of income other than what you've made running your business?

A I've got some small savings, yes, sir, but very small.

Q All right. But you don't have any source of income from some trust or from some oil company or anything like that, is that correct?

A No, sir. Not from my business right now.

Q All right. You are not a wealthy man, are you, Mr. Gonzalez?

A No, sir.

Q You work everyday?

A Yes, sir.

Q Now, Mr. Gonzalez, there was testimony elicited from you on cross by Mr. Mitchell concerning you now owning the Benavides Implement and Hardware. That's a fact, isn't it?

A Yes, sir.

Q All right. That has come about, I believe, you said in the last six or seven months, is that right?

A That is correct, sir.

Q Is there any connection between that, your ownership of that, and any thievery between you and Mr. Rudolfo Couling?

A No, sir, I've known Rudolfo for many years, but I never did have to do anything with him. I mean --

Q Mr. Mitchell indicated that you got \$75,000.00 or \$100,000.00 worth of inventory. Do you know how much inventory you got?

A Yes. I got about \$5,000.00. He still owed and that's what I paid him. You know, I had to pay this merchandise that was in there. He still owed on it all.

Q The total amount of inventory was about \$5,000.00.

A That's correct, sir.

Q Now, you worked there for about the last year previous to this. Is that correct?

A Yes, sir.

Q All right. And I believe you said ever since the middle of '74 you kind of hung around there. Is that right?

A That is correct, sir.

Q Kind of used that as a base of operations in your efforts as a welfare worker for the county?

A That's correct, sir.

Q Was the inventory of the store during that period of time \$75,000.00 to \$100,000.00?

A No, sir.

Q Was it pretty well consistent with what you had when you purchased it?

A That is correct, sir.

Q Benavides Implement and Hardware just wasn't a big concern with a great big inventory ever, was it, Mr. Gonzalez?

A I don't know, sir.

Q Well, you have been familiar with it intimately since the middle of 1974. Is that correct?

A Yes, sir.

Q And the inventory that you purchased here six or seven months ago, was it pretty much what it appeared to be the inventory during that previous time?

A Yes, sir.

Q Never, since you have been familiar with it, has it had \$75,000 to \$100,000 in inventory, has it?

A Not that I know of, no.

Q All right. Now, you are familiar with the fact that this vast amount of transcript has been introduced. You can see it on everybody's desk and you heard them talk about it awhile ago. Is that correct?

A Yes, sir.

Q Now, one of those Exhibits is No. -- Examiner's Exhibit No. 192.

A (Witness nodding negatively.)

Q You are not familiar with that, I take it?

A No, sir.

Q Do you remember the other day Mr. Mitchell got that big Exhibit out and was fixing to ask you some questions about it?

A Yes, sir.

Q Did you see that in the previous trial? You have not been exposed to that?

A No, sir.

Q All right, sir. I won't ask you any questions about it, then. Now, let's go back in history a little bit, Mr. Gonzalez.

MR. DOYLE: This is repetitive and I will apologize to the Court in advance for it.

Q When did you first begin to work for the County?

A In the latter part of 1962.

Q All right. Now, when did you go to work at the Farm and Ranch Store the first time?

A They just started about the same time.

Q All right. Now, the Farm and Ranch Store is a partnership owned by O. P. and Ramiro Carrillo. Is that correct?

A Yes, sir.

Q Now, you worked for the Farm and Ranch Store up until when?

A '74.

Q So, that's twelve years.

A Yes, sir.

Q Now, where are the records with respect to the Cash Store -- income taxes, bank statements, that sort of thing? Do you have all of those?

A They were there at the Farm and Ranch Supply.

Q All right.

MR. MITCHELL: Excuse me, Mr. President. Counsel, I don't know whether you inadvertently used the word "Cash Store" or "Farm and Ranch".

MR. DOYLE: I caught it, Mr. Mitchell. It was just a mistake.

MR. MITCHELL: I just didn't want the record to indicate that he had control of the Cash Store record while he was working for Farm and Ranch.

MR. DOYLE: Right. I would have corrected that.

Q Now, Mr. Gonzalez, you were an employee of the County. Is that correct?

A That is correct, sir, yes.

Q The county paid your salary?

A Yes, sir.

Q Every month?

A Yes, sir.

Q But you ran the Judge's Farm and Ranch Store. Is that correct?

A Yes, sir.

Q Were there any other employees on the payroll of the Farm and Ranch Store?

A No, sir.

Q Did you pay a light bill for the Farm and Ranch Store?
You were the only one there, weren't you? you ran it?

A Yes, sir.

Q Whatever assistance you got, you got from the partners, I assume? Mr. Ramiro and Mr. O. P. Carrillo? Is that correct?

A That is correct, sir, yes.

Q It didn't have a secretary, did it?

A No, sir.

Q Did it have any salesmen?

A No, sir.

Q Did it pay anybody any rent?

A No, sir.

Q Did it pay a water bill?

A No, sir.

Q Did it pay a light bill?

A Yes, I guess they paid it.

Q It paid a light bill?

A Yes, sir.

Q All right. Did it pay any other utilities? Did it pay for a telephone?

A No, sir.

Q It didn't pay you a salary, did it, except for one brief period of time?

A Yes, sir.

Q It paid your salary for about a year. Is that correct?

A That's correct, sir.

Q Other than that year, during that entire fourteen year period, it never paid you any salary, did it?

A No, sir.

Q So the Farm and Ranch Store had virtually no overhead, did it, Mr. Gonzalez?

A That's correct, sir.

Q Now, all during this time that you ran the Farm and Ranch Store, did you get any of the profit?

A No, sir.

Q Well, now, it made profit, didn't it?

A I guess it did, yes.

MR. MITCHELL: That would be hearsay. This witness doesn't know beyond his personal knowledge. And likewise, the previous question about whether it made a profit or not is beyond the scope of his knowledge. I move to strike his answers. It would be hearsay.

MR. DOYLE: Now, Mr. President, this is as good a time as any to cross -- to front this problem.

Now, the record here indicates that for a number of years, O. P. Carrillo, when he filed his income tax return -- there are any number of his income tax returns which have been filed as Exhibits in this cause, now -- shows his share of the profits from the Farm and Ranch Store. So, \$2,000.00, \$3,000.00, \$4,000.00 a year income is reflected as evidenced in this case which the accused herein received. And, if we are going -- if we are not going to accept it as being in the record for purposes of examining witnesses, we didn't do much good in letting all this stuff in.

MR. MITCHELL: I have not objected to evidence. In fact, I introduced it. It is R-96, 97, 98 -- my client's tax returns -- or made them available. I have no objection.

The use of this witness is what my objection is. The best evidence is the man's tax returns. They are in evidence and have been made available, Your Honor. That's the reason for my objection.

This witness, quite frankly, doesn't know. He will tell you if you ask him.

MR. DOYLE: Well, let me rephrase the questions, Mr. President. Perhaps I can avoid the objection.

THE PRESIDENT: Mr. Doyle, would you establish by questioning this witness what personal knowledge he does have, what record-keeping functions --

MR. DOYLE: Well, Your Honor, I thought I had accomplished that, Mr. President. He was the only employee of the store, so if anybody kept records, it was him.

But, I will be glad to do it in some other fashion.

Q Now, let me ask it this way, Mr. Gonzalez. Were there any other county employees that worked in there and helped you run this business? I believe Pat Gonzalez did for awhile, didn't he?

A Yes, sir.

Q Well, it stayed open for 14 years, didn't it, that you know about?

A Yes, sir.

Q Can you see any reason for keeping something open for 14 years that wasn't making a profit?

MR. MITCHELL: Well, I don't know about that question. We are going to object. It would be speculative whether this witness sees anything --

MR. DOYLE: I will withdraw the question, Mr. President.

THE PRESIDENT: That is not a proper question, Mr. Doyle.

Is your purpose in this line of questioning Mr. Doyle, to show that the store did make a profit, that Judge Carrillo derived --

MR. DOYLE: No, Mr. President. One of the Articles of Impeachment is that O. P. Carrillo, and others, entered into a conspiracy whereby they would use the Cash Store -- excuse me -- the Farm and Ranch Store, and through it, a sham known as the Zertuche Store, in order to do business with the County in violation of state law.

I have to establish, first, that he owned the Farm and Ranch Store. Next, I will go into his -- this gentleman's relationship with respect to the Zertuche Store. And then, from there, we will link up with the testimony previously elicited concerning Benavides Implement and Hardware which was used later as a scheme to obtain these monies.

MR. MITCHELL: If it please the Court, I submit that every bit of that testimony is in the record about four different times. I will stipulate to assist counsel.

The Zertuche General Store was a sole proprietorship that was owned by Arturo Zertuche and it went out of business December of 1970.

Farm and Ranch was a proprietorship owned by O. P. and Ramiro Carrillo that commenced -- up until date, and has filed a tax return which is in evidence.

Now, if we are going to try the Zertuche General Store account, I submit, if it please the Court, that this very witness has testified on the operation of the Zertuche General Store.

I don't really understand what Counsel is driving at. I am willing to agree on the record as it is. It has been proven a dozen times.

MR. DOYLE: Mr. President, perhaps Mr. Mitchell has found something in this record that I have not. I don't find anything in this record about the Zertuche Store. It is casually mentioned, but there are none of the details that I am confident the Senate needs us to go into -- canceled checks, checks made out to O. P. Carrillo -- these things are not in this record, and I intend for the Senate to know about these things.

MR. MITCHELL: Yes. If you would look at the December 16, 1975 extracts of the testimony of Cleofas Gonzalez, I have in detail gone into the operation of the Zertuche General Store, beginning on Page -- that's 12-05 and going right through 12-110, Zertuche General Store Exhibit attached to the Judicial Qualifications Commission hearing. This very witness, if it please the Court.

MR. DOYLE: Mr. President, what he is referring to was a transcript of testimony lifted from the House Impeachment Committee's report. That's what he has reference to.

MR. MITCHELL: Yes. He previously testified to it back in June, and then by agreement of Counsel, we took that same testimony and made it a part of the Judicial Qualifications hearing.

It is the very same testimony that has now been made a part of the impeachment hearing. It is the same testimony -- three different ways, three different times.

I am simply stating, Mr. President, it's a great deal of discussion. I questioned the witness in great detail about Zertuche General Store. It's all in there.

THE PRESIDENT: Is your objection, then, Mr. Mitchell, on the grounds of hearsay or on the grounds of repetition?

MR. MITCHELL: Yes. It is unduly repetitious, and it is hearsay, the way the last question was put to the witness.

But, in the interest of time, I'll withdraw the entire objection, Mr. President, and let him go. It's all in the record.

I will reserve the right, however, to extend my cross-examination of this witness beyond what I had previously asked him. I would just like to have that right, if he opens up these new doors.

MR. DOYLE: Mr. President, I am attempting to do --

THE PRESIDENT: Mr. Doyle --

MR. DOYLE: -- exactly what I said I was going to do. I am attempting to highlight what is in the record and to fill in the gaps in what is not in the record.

THE PRESIDENT: Mr. Doyle, are you familiar with the particular reference in the record that Mr. Mitchell just pointed to?

MR. DOYLE: Yes, I am familiar with it. What it is -- it is some testimony that was taken before the House committee, which by way of stipulation, was entered into the record in the Judicial Qualifications Commission hearing. The examiner's didn't even cross-examine in this testimony. It was not an issue in that case. The Zertuche Store was not even pled in that case and it is in this one.

THE PRESIDENT: Mr. Doyle, would you and Mr. Mitchell come to the rostrum, please.

THE PRESIDENT: Counsel for both parties have requested a recess until 3:30. If there is no objection the Court will stand at ease until 3:30.

Accordingly, the Senate, sitting as a Court of Impeachment, at 3:10 o'clock p.m. recessed until 3:30 o'clock p.m. today.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 3:30 o'clock p.m.

THE PRESIDENT: The Senate will come to order. Mr. Doyle.

MR. DOYLE: Mr. President, I'm not certain of the Chair's ruling with respect to evidence previously before the body by virtue of the transcript of the Judicial Qualifications Commission Hearing. And I was attempting, as I indicated to the Court when I started to sort of highlight the proceedings below or proceedings of the Judicial Qualifications Commission. Am I to take it that the Court does not want me to do that, or that it's permissible for me to go ahead and do that?

THE PRESIDENT: No, Mr. Doyle. The Court wants you to present your case in the best possible way but hopes that you will make maximum use of the record that is before the Senate in presenting your case.

REDIRECT EXAMINATION RESUMED

(Questions by Mr. Doyle:)

Q Mr. Gonzalez, you did testify before the House Committee, Special Committee on Impeachment, back last spring. Is that correct?

A Yes, sir.

Q And you were present at the Judicial Qualifications Commission Hearing on December 16th, when a transcript of that testimony was introduced into the Judicial Qualifications Hearing record. Is that correct?

A Yes, sir.

Q And virtually the entire -- or a great portion of the Judicial Qualifications Commission transcript for December 16th, which is among these materials is a verbatim transcript from the House Impeachment Committee's Hearing on your testimony. Is that also correct?

A Yes, sir.

Q Now, when did the Zertuche Store become a part of your duties as an employee of the Farm and Ranch Store?

A I can't tell you the exact date, sir.

Q All right. Just give us the approximate date.

A Well, it was probably late '67 and early '68.

Q All right. Now, you have testified previously that you were born and raised down there in Duval County. Is that right?

A That is correct, sir.

Q Was all of your life in Benavides?

A That is correct, sir.

Q Now, do you ever remember a Zertuche Store?

A No, sir.

Q Do you ever remember seeing it, going in there and buying anything or anything like that?

A No, sir.

Q All right. Now, let's tell the members of the Court a little bit about Benavides. How big is Benavides?

A Benavides is small, about 2,500 people living there.

Q Okay. Let's describe for the Members of the Court what downtown Benavides looks like. If I ask you about how big downtown Benavides was, how would you describe that to us?

A I think it's about -- if I'm correct, about two and a half square miles.

Q Okay. Is there just one main street?

A Yes, sir.

Q And how long -- give it to us in blocks or feet or yards, or however you want to, how long is that main street that has businesses and things like that on it?

A About half a mile.

Q Okay. So, are you thoroughly familiar with all of the businesses that are located in downtown Benavides, now?

A Yes, sir.

Q If we chose to ask you, now, Mr. Gonzalez, to start at one end of town and go to the other end of town, downtown, could you tell us each little business on each side of the street?

A Yes, sir.

Q Okay. And you are how old?

A 41.

Q Could you have done the same thing 10 years ago?

A Yes, sir.

Q 20 years ago?

A Yes, sir.

Q All right. Now, I want you to think back. Do you ever remember a business establishment known as the Zertuche Store?

A No, sir.

Q All right. Now, we've seen, for the record, now, has a number of references to the Zertuche Store, and invoices, checks made to the Zertuche Store, and the name has been dropped around for several days. I want to ask you some questions about the Zertuche Store.

When did you as an employee of the Farm and Ranch Store start having any knowledge of the Zertuche Store? I believe you said late '67, or early '68?

A I think so, yes.

Q All right. Now, tell the Court what that relationship was?

A Well, they just -- O. P. Carrillo and Ramiro Carrillo just took me a box of invoices that said "Zertuche General Store," and a box of statements for me to send out statements, and that was just about it.

Q All right. Did they say to you, "This is the Zertuche Store inventory?"

A No. They just -- it just --

Q All right. Did they say, "Now, this building over here contains the Zertuche Store inventory"? Or anything like that?

A No, sir.

Q Was there any evidence of an existence of a Zertuche Store other than a box of invoices?

A That's all they took to the Farm and Ranch, yes, sir, correct.

Q All right. Now, did O. P. Carrillo or Ramiro Carrillo offer you any explanation about the invoices?

A Well, yes, they said that they couldn't do any business with this governmental agency on account they held offices on them, and that everything that I -- that Farm and Ranch sold to them had to be billed out of this Zertuche General Store or cash -- invoice register.

Q All right. Now, when you first went to work for the County, Ramiro Carrillo was an employee of Precinct 3, is that correct?

A That's correct, sir, yes.

Q All right. Now, later, Ramiro Carrillo was appointed or elected County Commissioner of the Precinct 3, is that correct?

A That's correct, sir.

Q Now, when did he take office as County Commissioner of Precinct 3?

A Right along there, '67 or '68.

Q All right. He took office upon the death of his predecessor, is that correct?

A That's correct, sir.

Q Who was his predecessor?

A Atlee Parr.

Q Now, Mr. Atlee Parr passed away in late in 1967, didn't he?

A Probably around there, yes.

Q And Ramiro Carrillo was appointed to fill that vacancy, wasn't he?

A That's correct, sir.

Q And at the next election, he was elected to continue in that term of office?

A That's correct, sir.

Q And as of today, he is still County Commissioner of Precinct 3, Duval County?

A Right, sir.

Q All right. Now, coincidentally, with Mr. Ramiro Carrillo becoming County Commissioner as opposed to being just a foreman, you started doing business with Zertuche Store, is that correct, Mr. Gonzalez?

A That's correct, sir.

Q All right. Now, would you describe for the Senate how you would go about doing business with these governmental entities through the Zertuche Store invoice register that you have in your possession?

A Well, whenever one of these -- let's say that somebody worked for the school came in that needed something, and I would just write down -- write out an invoice of whatever they've taken, and have them sign it and everything, and at the end of the month, I will send a statement -- just make a statement and send it out, and then I guess it took it into Commissioners Court and --

Q All right. So, you would make an invoice from Benavides -- from the Farm and Ranch Store?

A No, I make out one for Zertuche General store.

Q All right. You made all the invoices, Zertuche and Farm and Ranch, both?

A That's correct, sir.

Q Now, this invoice set up you had for Zertuche was kept right there in the Farm and Ranch Store?

A That's correct, sir.

Q Now, the Farm and Ranch store was also inside the Precinct 3 barn, is that correct?

A That's correct, sir.

Q All one big happy family?

A Yes, sir.

Q All right. Now, when you were going to do business with some governmental entity, would you send that governmental entity a bill on Zertuche?

A Yes, sir.

Q All right. Now, when you sent that, was it in response to some purchase that they had made, or was that not the case?

A Well, it wasn't what they -- rental equipment and all that stuff, merchandise they had bought in there.

Q Okay. But what you were actually sending, then, when you did send merchandise, would be Farm and Ranch merchandise?

A Yes, sir.

Q All right. Now, then the county would pay Zertuche for whatever they got, I assume -- is that correct?

A That's correct, sir.

Q Now, the County would do this by -- or the school district or water district or the city, I assume?

A That's correct, sir.

Q All these governmental entities?

A Yes, sir.

Q Now, who would that -- who would the governmental entities check come to?

A To the Benavides -- Zertuche General Store.

Q All right. Did the Zertuche General store have a post office address or a post office box?

A Yes, sir.

Q What was it? Do you remember?

A No.

Q Was it different than that of the Farm and Ranch?

A Yes, sir.

Q All right. Who received the mail? Who got the mail of Zertuche?

A I did. I got it out for a while, sir, then they just cancelled that box number. I don't know. Never did --

Q For a time, there was a separate box for Zertuche, is that what you're telling us?

A Yes, sir.

Q All right. Were there any employees of Zertuche that you knew or ever saw or had heard tell of?

A No, sir.

Q Who emptied that post office box?

MR. MITCHELL: I don't want to interrupt him continually, but there is no evidence in this record that Zertuche General Store is anything but a sole proprietorship owned by Arturo Zertuche as of the first day of January, 1967. Any and all testimony therefore relating will be hearsay as to Judge Carrillo. I just want the record to reflect that objection. I will not interrupt if I can have a continuing objection, Mr. President.

MR. DOYLE: Mr. President, I would take issue with that. There is now evidence directly contrary to that in this record, and that evidence is the testimony of this witness. Who says he has such knowledge and has so testified for the last ten minutes.

MR. MITCHELL: That Zertuche General Store is owned and operated by O. P. Carrillo? If that's what he's testifying, I just want to know it.

MR. DOYLE: I haven't gotten to that point in testimony yet.

MR. MITCHELL: My objection is standing it's hearsay because this witness -- because there is no evidence in the record -- as a matter of fact, the records reflect it is a business owned and operated by Arturo Zertuche as of the first day of January 1967 to December the 31st of 1970.

THE PRESIDENT: Mr. Doyle, have you laid the predicate to show that those facts are within the knowledge of this witness?

MR. DOYLE: Yes, sir, he's testified about that in the last five or ten minutes.

THE PRESIDENT: Objection overruled.

Q Now, Mr. Gonzalez, when you first started the Zertuche thing, there was a separate post office box for the Zertuche store, is that correct?

A That's correct, sir.

Q Now, do you know of any person other than yourself that ever went and emptied that post office box and got the mail out of it?

A Yeah, there were some other persons, that --

Q All right. Who were those other persons?

A O. P. Carrillo and Arturo's father.

Q How about Ramiro?

A I don't think he did.

Q And who was the other person you named?

A Arturo's father, George.

Q George Zertuche?

A Yes, sir.

Q All right. Now, as a regular part of your duties, was that one of them, to go open that mail box of Zertuche Store? Did you do that in the regular ordinary course of your duties?

A I just did it for a short time for about a month or two, sir.

Q All right. Now, why did you cease doing it after a month or two?

A Well, because I was sending out statements and then getting them out myself. What was the use of doing it?

Q All right. Now, describe that to the Senate so the Senate will understand what you were doing.

MR. MITCHELL: May I have a time frame to constrain that one month with, was that '67, '68 or '69? If it's in any one of those years, it's totally irrelevant and immaterial. And, Judge Carrillo's Certificate of Election--and hadn't his office until January 1, '75.

MR. DOYLE: Mr. President, if I might respond to that. The allegations are that over an extended period of time while he was District Judge, there was a systematic taking of funds from governmental entities, and what I'm establishing now is that this scheme of things began at a time even before he was District Judge, and not only that, that scheme whereby this was accomplished after he was District Judge was almost exactly the same scheme that was used prior to the time that he was District Judge through a different entity.

THE PRESIDENT: Objection overruled.

Q Now, Mr. Gonzalez, for Mr. Mitchell's benefit, in all fairness to him, I will backup and put this in the proper time frame, and I apologize to the Court for not doing it earlier. I believe your testimony was that the Zertuche store thing started in late '67 or early '68, is that correct --

A Along there, sir. Yes.

Q All right. Now, when was it that you discontinued the use of that separate post office box? Was it shortly thereafter or a year later or when?

A Well, I just went there, just once or twice, and that's all. I don't know how long they kept it, really, sir.

Q All right. But that was very early in the scheme of things where they were using the Zertuche Store?

A That's correct, sir.

Q All right. So, it will be back in '67 or '68, sometime?

A That's correct, sir.

Q All right. Now, my question to you was, would you describe for the Senate why you quit using that separate box?

A Well, I didn't have anything to do, so, just -- I made out these statements, you know, for the merchandise and these governmental agencies had taken, and I was supposed to send the statement to Zertuche General store, and then one day, O. P. Carrillo told me to go get the mail and there were all these statements that I had sent there.

Q So, you were just making out the statements right there in your office, and going to the bank or post office and picking them up and bringing them right back?

A That's correct, sir.

Q So you quit doing that?

A That's correct.

Q All right. Now, you would send the county a bill is what it amounted to from Zertuche, is that correct?

A Yes, sir.

Q All right. Would the county then send a check back?

A Yes, sir, I guess, yes.

Q All right. Where did the check come to? Did it come back to your office?

A If Ramiro give them to me, yes, sir.

Q All right. Ramiro would just bring it back with him from the courthouse, or wherever?

A That is correct, sir.

Q All right. What would happen to that check?

A I would write "For deposit only", and deposit it on the Zertuche General Store account.

Q And then, did the money stay in the Zertuche Store account?

A No, sir. I went back and wrote a check -- Arturo gave me some blank checks and I had some there, at all times, and I would write a check from Zertuche to the -- payable to Farm and Ranch Supply.

Q Okay. So you would then take the money that you had just put into Zertuche and draw it out with a check? Is that correct?

A Yes, sir. The amount of the statement I could send, yes, sir.

Q And these checks had already been signed and left with you by Arturo Zertuche?

A That is correct, sir.

Q Now, where was Arturo Zertuche at this time?

A He was somewhere in college.

Q He wasn't around there?

A No, sir.

Q Do you know if he's related to Judge O. P. Carrillo?

A He is related, sir.

Q How is he related?

A They are cousins.

Q So -- now, when you take this money out of the Zertuche account, what would you do with it?

A I would write out a check to Farm and Ranch, and then I would write "For deposit only" and deposit it to the Ranch account -- Farm and Ranch account.

Q Okay. And who owned the Farm and Ranch? O. P. and Ramiro Carrillo? Is that correct?

A That is correct, sir.

Q Okay. Now, I may have asked you this earlier, and if I have, I apologize. Did you share in the profits of the Farm and Ranch?

A Not a cent, sir.

Q Did you share in the profits of the Zertuche Store?

A No, sir; not a cent.

Q Now, did you ever pay a light bill, or a water bill, or a gas bill or rent, or anything like that out of those Zertuche funds?

A No.

Q Zertuche operated then with a very low overhead? Is that correct, Mr. Gonzalez?

A I didn't get that question, sir.

Q I say, the Zertuche Store operated at a very low overhead. Is that correct?

A Yes, sir.

Q Zero?

A Yes, sir.

MR. MITCHELL: Well, now, just a minute. As a matter of courtesy, and I am not trying to interrupt. The bills are in evidence on the light bill. They have Comptroller's applications this man signed that that store was in existence in January.

Counsel, you are getting him way out on a limb and you are getting in trouble.

MR. DOYLE: Well, Mr. Mitchell, I --

MR. MITCHELL: I am going to object to the leading of that witness. I have tried not to interrupt him and tried to expedite the matter, but he is overloading himself. I am warning you, counsel. I have gotten written light receipts. I have gotten an application that he filed with the Comptroller on 1/1/67 on that very store.

I am going to object to him leading, Mr. President.

MR. DOYLE: If I have overlooked that in the evidence, Mr. Mitchell, I apologize. If you will tell me where I can find it --

MR. MITCHELL: Well, if you will look at Page 23 of that Exhibit, December 16, it says -- he filled it out 1/1/67, counsel, on Page 23. And, it did exist. He testifies to it; repeated occasions. He swore to the tax application. He swore to the Comptroller's form. You are getting him in trouble. You are overloading your own witness. I hate to do that to you.

THE PRESIDENT: The objection is sustained. Please refrain from leading your witness, Mr. Doyle.

MR. DOYLE: Yes, sir.

Q Okay. Let me rephrase that question, Mr. Gonzalez.

In the regular course of things, while the Zertuche arrangement was being used, did you, as a matter of course, pay ordinary bills?

A I think I was instructed by O. P. Carrillo to do somewhat, yes.

Q All right. Did you pay a light bill every month, or a water bill, or a gas bill, or rent?

A You are talking about Zertuche? Right?

Q Talking about Zertuche.

A No, sir.

Q All right. Now, Mr. Gonzalez, for what period of time did you -- did Farm and Ranch do business with these governmental entities through Zertuche? When did that stop?

A I think in the early or late '70's. Somewhere along there.

Q Late '70 or early '71? Is that what you said?

A Probably, yes.

Q All right. Now, at the time that stopped, did that same -- well, let me back up. What would you do with the monies that you received from Zertuche? Was it all deposited to the Farm and Ranch account, or were there occasions when other things were done with that money?

A Some of that money stayed in their account, the Zertuche General Store account.

MR. MITCHELL: Yes. He wrote on there "Zertuche General Store account, for deposit only", and the checks are in evidence. The question is unfair to the witness.

Q Well, Mr. Gonzalez, I am going to hand you some copies of some checks made out to the Zertuche Store and ask you if they were handled in some manner

slightly different from the norm.

MR. DOYLE: I need to have these marked.

MR. DOYLE: Mr. President and members of the Senate, these are four instruments that were not introduced in the Judicial Qualifications Commission hearing and I am having them marked. It will just take a second, and I will tender them to Mr. Mitchell.

Q Mr. Gonzalez, I'm going to ask you whether or not these four checks are checks issued by the treasury of -- issued by Duval County to the Zertuche General Store?

A The first one was paid to Oil Belt Chevrolet Company. I'm -- oh, the second one?

Q No.

A Yes.

Q This check.

A That's a check payable to Zertuche General Store, yes, sir.

Q All right. Aren't all four of them?

A Yes, sir. They are all paid to Zertuche General Store.

Q Now, Mr. Gonzalez, I'm going to ask you to turn the copies of the checks over and tell the Senate who appears to be the final endorser of all four of those checks.

MR. MITCHELL: May I make a point of inquiry of counsel?

Are you acquainted with the testimony of Mr. Couling that he forged those signatures, Mr. Doyle, of O. P. Carrillo? I just want to ask you out of fairness to you. He has so testified.

MR. DOYLE: You haven't seen them yet.

MR. MITCHELL: Oh, I know, but I know what you are getting ready to do. I just want to know before you carry him too far.

Do you know he testified under oath that those are forgeries?

A They were deposited by O. P. Carrillo.

MR. DOYLE: I don't believe that's the one, counsel.

MR. MITCHELL: No. I just didn't want you to --

I am going to object to H-24, 25, 26, 27 on the grounds that they are hearsay, best evidence rule is violated, beyond the scope of the present term of office, improper authenticated, do not relate to judicial conduct, and are particularly hearsay, if it please the President, in that they relate to Zertuche General Store, an entity which is owned and operated by -- or, was owned and operated by Arturo Zertuche from 1971 to December of 1970. It would certainly be hearsay to this -- perhaps '67 to '70.

MR. DOYLE: Mr. President, if I might reply, Mr. Mitchell's objections with respect to them not being the best evidence is certainly good, and they had definitely not been authenticated at this time.

However, they are a series of checks which correspond to a series of checks which were introduced in the Judicial Qualifications Hearing which were introduced by virtue of the testimony of an employee of a bank, a County official, another witness who identified the signature of O. P. Carrillo, and I was attempting to introduce them simply in this fashion to avoid having to bring all those witnesses up to prove these checks up. Certainly, those objections are good.

With respect to them being hearsay, or whatever other objections might be leveled, I would submit to you that I would like to introduce the checks for the purpose of showing that O. P. Carrillo indeed did have a direct and definite connection with the Zertuche General Store.

I will certainly -- the rest of his objections are as good as gold, if he wants to raise those kinds of objections.

MR. MITCHELL: Well, as to -- yes, I do. The rules of evidence entitle me to raise them and I am going to raise them.

H-25 is endorsed by Mr. Saenz. I am having a little trouble with that one, Mr. Doyle. That's the final endorsee on it.

And then, H --

MR. DOYLE: Well, here is O. P.'s signature right here.

MR. MITCHELL: Well, yes, but your question was "To whom did the witness -- the witness got -- who got the money?" The final endorsee is Jose Saenz, Terry. You will have to prove them up.

MR. DOYLE: Okay. I will prove it.

THE PRESIDENT: The Exhibits have been withdrawn.

Q Now, Mr. Gonzalez, during the time that the Zertuche Store arrangement was being used, were there occasions when you delivered checks to persons other than just delivering them to the bank for deposit? Did you ever give O. P. county checks made out to Zertuche?

A No, sir.

Q You don't remember doing that?

A No, sir.

Q All right.

A I don't.

Q Now, did you, in the regular course of things, submit a bill from Farm and Ranch to Zertuche for whatever transactions took place between those two entities?

A I don't get your question.

Q Okay. You said that you never saw any inventory owned by Zertuche.

A That is correct, sir.

Q And you said that you submitted bills to governmental entities in behalf of Zertuche?

A That's right, sir.

Q And the money was paid to Zertuche?

A That's right, sir.

Q And you were selling them Farm and Ranch goods?

A That's right, sir.

Q All right. So, were there any paper transactions between Farm and Ranch and Zertuche, or did you all just skip that? Did you bill Zertuche for Farm and Ranch?

A I am still kind of confused with that question, sir.

Q All right. You described taking checks and depositing them to the Zertuche account?

A Yes, sir.

Q And then taking the check and drawing it on the Zertuche account, made payable to Farm and Ranch?

A That is correct, sir.

Q Was there a corresponding invoice from Farm and Ranch to Zertuche, or did you all just not do that?

A From Farm and Ranch to Zertuche?

Q Yeah.

A No, sir. Not that I remember, no sir.

Q Okay. But, that would have been a logical thing, I take it, and that's why I asked you about it.

MR. MITCHELL: Yes, but that's not a proper question, whether it is logical or illogical.

MR. DOYLE: That was not a question, Mr. Mitchell.

Q Now, when you ceased doing business with the governmental entities through Zertuche, what then did you start doing? How did you accomplish this?

A Well, this -- I started doing the same thing but under Benavides Implement and Hardware Company.

Q All right. Now, this record is replete -- there is page after page after page of testimony concerning the Benavides Implement and Hardware arrangement. Are you -- let me ask you this, Mr. Gonzalez.

MR. DOYLE: Mr. Mitchell and the Court, I am doing my best to avoid asking a bunch of questions that I don't need to ask about the next arrangement. I am just having a little difficulty trying to decide how to go about it, Mr. Mitchell. I hope you appreciate the problem.

MR. MITCHELL: I understand. This witness has never testified to any connection that he's had with the Benavides Implement and Hardware. Now, the voluble Mr. Couling will take up from there in January of 1971.

MR. DOYLE: Right.

MR. MITCHELL: And I will agree that's the posture of the record.

Q Now, Mr. Gonzalez, I'm going to show you what is in Volume Two of the Examiner's Exhibits, which have been admitted into evidence containing Pages 561 to Page 1046. And ask you --

MR. DOYLE: Mr. Mitchell, I'm just opening the book up and looking for one. There's no magic in the number I'm going to give him.

Q Exhibit E-62 appears to be a statement from Benavides Implement and Hardware to Duval County, Precinct 2 in care of Mr. Juan Leal. It's a statement. Would you take a look at that just for a moment?

A Well, this is a statement that I would send to the Benavides Implement so that Farm and Ranch could get paid.

Q Now, that particular statement, No. 62, is that in your handwriting?

A Yes, sir.

Q Now, what -- give us the date on that one, please?

A That's 7/6 1971.

Q Okay. Now, prior to '71 you would issue statements like this to the County or to the water district or to the school district for the Zertuche Store. Is that correct, sir?

A That's correct, sir.

Q After '71 you issued the same kind of a statement made out on Benavides Implement and Hardware stationery. Is that correct?

A Yes, sir.

Q And the one I showed you is one that you did make out?

A Yes, sir, I did.

Q That's not to say that you made out all of them, is it, Mr. Gonzalez?

A That's correct.

Q The record is replete with evidence that Mr. Couling did the same thing?

A He probably did.

Q All right. But on at least some of the occasions and in at least some of the transactions, you would make out an invoice from Benavides Implement and Hardware to the various governmental entities. Is that correct?

A That's correct, sir, yes.

Q All right. Now, Mr. Gonzalez, let's look at these invoices around the one that I just asked you about. That's Exhibit -- E-62 in Examiner's Exhibits Volume Two, Pages 561 to 1046?

A That's correct.

Q Now, what is the amount of that invoice?

A \$1,018.65.

Q And you say that you made out this invoice. How did you get access to Benavides Implement and Hardware invoices? At that time it was a different entity. Is that correct?

A Yes, sir.

Q And it was indeed a going business, wasn't it?

A Yes, sir.

Q And where was it with respect to where your office was? There was a building in Benavides called Benavides Implement and Hardware, wasn't there?

A Yes, but they took me some of the invoices --

Q I understand that. That was my next question. But Benavides Implement and Hardware really existed, didn't it?

A Yes, sir.

Q And it was down the street somewhere?

A Yes, sir.

Q How far away, a block, two feet?

A About four blocks west.

Q All right. It was down the street?

A Yes.

Q Now, this particular statement that I just showed you, the one for \$1,018.65, who made that? Whose handwriting?

A I did.

Q Where did you get those invoices of Benavides Implement and Hardware when they're located some four blocks down the street?

A O. P. Carrillo took them to me.

Q Okay. Now, was any of Benavides Implement and Hardware inventory -- was any of that stuff in the building you were in?

A No, sir.

Q Now, this invoice that was sent out on this particular one on July 1st, '71, did you send any of Benavides Implement and Hardware's equipment to the county to get that back? You know, to deserve that money?

A No, sir.

Q Well, what does the invoice show that it's for?

A It's a statement that says it was Number 109.

Q Oh, that's right, that's just the statement, we have got to connect them back up. Do you, in fact, know what that particular one was for?

A No, sir.

Q Okay. In any event, Mr. Gonzalez, you would just fill out a Benavides Implement and Hardware invoice and send it to the county?

A That's correct, sir.

Q Okay. Mr. Gonzalez, I found it. Now, on the next page there appears to be a more detailed account of that statement. Is that in your hand, also?

A Yes, sir.

Q That number is --

MR. MITCHELL: Pardon me, Mr. -- Mr. Doyle, in order that I might not be held to waive any objection I'm going to object. These are Benavides Implement and Hardware Company invoices, January 30th of -- June 30th of '71 and they are hearsay, of course, as to Judge Carrillo. The evidence, as a matter of fact, the tax return reflecting that on that given date, if it please the Court, that entity belonged to Rudolfo Couling as a sole proprietorship.

MR. DOYLE: Mr. President, I take issue with that.

MR. MITCHELL: I just didn't want to waive objections.

MR. DOYLE: I understand, Mr. Mitchell.

MR. MITCHELL: I interrupted --

MR. DOYLE: This witness testified that they were made out in his own hand and I don't think it violates the hearsay rule.

THE PRESIDENT: Do I understand the objection to be withdrawn?

MR. MITCHELL: I want to preserve the record, if it please the Court. I don't want to be constantly in a position of objecting, but do you see he has a position -- the posture of the record is that the tax return shows that company was owned by another man and the business reported by another man and there is no inter-relationship between that other man and my client, Judge Carrillo. He has testified he executed it in his own handwriting on Benavides Implement and Hardware invoice and that would be hearsay insofar as Judge Carrillo is concerned.

THE PRESIDENT: Objection overruled. Mr. Mitchell, you may, of course, cross-examine him on that.

MR. MITCHELL: Thank you.

Q Okay. Now, on the next page in E-63 there appears to be a more detailed analysis of what the \$1,018.65 is for. Would you --

A That's an invoice sent to Duval County in care of Mr. Juan Leal for rental equipment and contract hauling caliche on County roads.

MR. MITCHELL: That would certainly be hearsay as to what this man had to do or the Benavides Implement and Hardware and a Mr. Juan Leal. We renew our objection.

MR. DOYLE: Well, I would submit to the Court, Mr. President, that I'm sure Mr. Mitchell can call Mr. Leal up here and ask him about these things. He has the power of subpoena.

MR. MITCHELL: That's not my burden.

MR. DOYLE: Well, Mr. Mitchell, you're the one that's suggesting that it's not true of something.

MR. MITCHELL: Counsel, I'm simply objecting that what you're doing is introducing hearsay by some off-the-side pocket implicating this Judge in some character of scheme on an invoice drawn by this man on Benavides Implement and Hardware to Juan Leal, Commissioner of Duval County on a Benavides Implement and Hardware invoice. That's all I'm --

MR. DOYLE: Mr. Mitchell, you introduced these, I didn't. Mr. Mitchell, you introduced these Exhibits. You put these in the record. I'm just asking questions about them.

MR. MITCHELL: Counsel, there again you're misinformed. Those Exhibits were introduced -- they're E Exhibits to begin with, which are Examiner Exhibits. And I objected there on the grounds they were hearsay and I am consistent today. I am objecting on the grounds they are hearsay again. As I stated preparatory of my objection I did not want to waive the record. I assumed the objection would be overruled and you would go right on down the road anyway, but I didn't want to waive the objection.

THE PRESIDENT: The objection is overruled.

MR. DOYLE: Well, Mr. President, let me make inquiry of the Court. Is Mr. Mitchell now objecting to evidence that I'm asking about out of Exhibits that he introduced to this body? Is that the nature of your objection?

MR. MITCHELL: Counsel, I haven't introduced anything to this body. This is the Judicial Qualifications Commission documentary, E-62, which was introduced by -- over my objections, by the examiner at that hearing. I objected then, I want to object now simply to inform this body that I did not want to waive my objections.

THE PRESIDENT: The objection is overruled. Please proceed, Mr. Doyle.

Q Okay. So you -- in 1971 you started billing the County through Benavides Implement and Hardware as you had done previously through Zertuche. Is that correct?

A That's correct, sir, yes.

Q All right. Now, the monies that came by virtue of this billing, did you get those monies?

A No, sir.

Q In the normal course of your duties as an employee of the County running the Farm and Ranch, did you make these deposits to the Farm and Ranch account normally?

MR. MITCHELL: Now Counsel, that question is unfair. The evidence shows, the deposit slips and the checks, that that money went into Benavides Implement and Hardware. That's an unfair question to this witness.

Q Mr. Gonzalez, let me ask you this way, Mr. Gonzalez. Mr. Mitchell is correct. Ultimately did you see checks from Benavides Implement and Hardware to Farm and Ranch?

A For merchandise these governmental agencies picked, yes.

Q Now, when that money came from Benavides Implement and Hardware to Farm and Ranch, in the normal course of things, I'm not asking you everytime, but in the normal course of things. Did you put that money in the Farm and Ranch account?

A Yes, sir, I did.

MR. DOYLE: All right. Now, Mr. Mitchell, I'm not trying to suggest that there may not have been exceptions to that, but in the normal everyday course of things

I'm just trying to establish that that's what took place.

MR. MITCHELL: There were about twelve instances that occurred in a period of something like fifteen years, Counsel, it couldn't have been a normal course -- thirty-four, I'm sorry.

MR. DOYLE: Mr. President, if you'll just give me a moment, I'm trying to establish some page numbers that I asked him about to allow the Senators to keep up with where I am. It'll just take a minute.

Q Now, Mr. Gonzalez, for the benefit of the Court in assisting them in keeping up with where we are, the Exhibits that I asked you about a moment ago, E-62 and so forth start with Exhibit Number E-60 Senate page number 00793 in the Examiner's Exhibits admitted, Volume Two. Does that appear to be correct?

A That's correct, yes.

Q All right. Now, the testimony, the corresponding testimony in the Judicial Qualifications Commission begins on the Impeachment Record, page number 1274. Now, your testimony -- in that Volume. And your testimony starts at page 1329 in the Senate --

A That's correct.

Q That's a Senate number?

A Yes, sir.

Q Now, in that record, Mr. Gonzalez, you and the examiner went into a number of invoices and transactions which took place between Benavides Implement and Hardware, and various governmental entities and ultimately back to Farm and Ranch, is that correct?

A Yes, sir.

Q And they were similar to the one I asked you about at random just a moment ago, is that correct?

A That's correct, sir.

Q And, for the Senator's purposes, the scheme with which to acquire this money was virtually the same with Benavides Implement and Hardware from your standpoint as was the Zertuche Store arrangement, is that correct?

A Yes, sir.

Q All right. Now, for instance, on the one I just asked you about, Mr. Gonzalez, the \$1,800.00 -- \$1,865.00 I believe it was or \$1,800.00 -- no, \$1,018.65, that appeared to be for rental of equipment, is that correct?

A That's correct, sir.

Q Now it was a bill from Benavides Implement and Hardware to the County which would indicate that Benavides Implement and Hardware, had rented the county

some equipment, is that right?

A That's correct, sir.

Q Now, did Farm and Ranch own any of the equipment that it could have rented to Benavides Implement and Hardware?

A No, sir.

Q Okay. Did Farm and Ranch, while you were running it all this time, was it in the business of renting equipment? Did you rent any equipment to anybody that you remember? Well, let me just ask you this: what did Farm and Ranch do mostly?

A They just had a -- just a business there.

Q What did it buy and sell?

A Hardware, seeds, cattle feed.

Q Did it own any bulldozers?

A Not that I know, sir.

Q Did it own any D-8 Cats?

A Not that I know.

Q Did it own a water rig?

A I don't know, sir.

Q You are familiar with -- or let me ask you this. Are you familiar with companies that rent heavy equipment?

A Yes.

Q That was not the nature of the Farm and Ranch store, was it?

A No, sir.

Q It sold relatively small items, is that correct, Mr. Gonzalez?

A Yes, sir.

Q Did you ever see any paper, any writing that indicated that Farm and Ranch owned any heavy equipment that was capable of being rented or leased out?

A No, sir.

Q Did the Judge or Mr. Ramiro Carrillo ever give you anything to indicate that Farm and Ranch owned things that were capable of being leased or rented to other persons for whatever uses there might be?

A No, sir.

Q Now, in the course of your employment, did you keep the Farm and Ranch books?

A Well, to the best I could, yes.

Q Do you have possession of those, or does Mr. O. P. Carrillo or his brother, Ramiro have them?

A I didn't get that.

Q Do you have possession of the books for any period of time when you worked there?

A No, sir. No.

Q Did you deliver -- ever deliver all or any part of those to anybody?

A Yes, sir, they took them all.

Q Who took them?

A Ramiro Carrillo took all the Farm and Ranch records, and O. P. the Zertuche records.

Q And when did they do this?

A I don't remember the exact dates. It would be probably '72, '73, right along in there.

Q You don't remember when the I.R.S. or the government -- the federal government's task force showed up down there in Duval County, do you, Mr. Gonzalez?

A I don't remember the exact date, but it was probably '72 or '73.

Q And you say, about that same time, Ramiro Carrillo took the Farm and Ranch records and O. P. took the Zertuche records?

A Yes, sir, that's what -- in '73, I went and testified over at the San Antonio Grand Jury, sir, and that's when they took the records, and I know that for sure.

Q Before you went to San Antonio?

A Yes, sir, it was '73, March or April. Around in there.

Q And by the time you got there, Mr. O. P. Carrillo and Mr. Ramiro Carrillo had all these records and were gone with them?

A I handed them out sometime before that.

MR. MITCHELL: That's improper. Just a minute. I'm going to object to that, and he knows that's improper. Those were delivered to I.R.S., and they have been

in the custody of I.R.S. plus about three thousand other items since that period of time. We are going to move to strike that gratuitous remark, please, Mr. President. "Gone with them." It's impertinent.

MR. DOYLE: Mr. President, perhaps the testimony --

MR. MITCHELL: I personally would testify to this body I delivered those records to the Appellate Division of the I.R.S., December of 1974, the entire Zertuche General store, Farm and Ranch Store records.

MR. DOYLE: Mr. President, I see no grounds for his objection.

Mr. Gonzalez said the records were delivered by him to O. P. and Ramiro Carrillo sometime in early '73, late '72, which is not inconsistent at all.

MR. MITCHELL: Your comments, Counsel, that they were gone with them is what I objected to. That's an improper comment before this Body.

MR. DOYLE: I will rephrase that question, Mr. President. Be happy to.

Q So, from and after sometime in late '72 or early '73, the records were no longer in your possession, but in the possession of O. P. and Ramiro Carrillo, is that correct?

A I have two witnesses that saw me giving the records to -- those records -- I have two witnesses that saw me, and I told them -- they were sitting right there, and I told them, "You guys are to be testified that I -- or witness that I gave these records to Ramiro Carrillo that morning."

Q Where did this transfer of records take place, Mr. Gonzalez?

A Right there at the Farm and Ranch Supply, sir.

Q Was it during regular working hours?

A Yes, sir. Early in the morning.

Q And who was present?

A Do you want me to name those two witnesses?

Q Sure.

A It's Guadalupe Reese and DeGuardio Garcia that were there. They used to work for the city, and they were wanting for me to sell some -- they got to do some work, and they wanted some -- some feed -- they wanted to do some work, but they had me so busy trying for me to put all these records in boxes so they could take them to San Antonio, I told them just wait. They were sitting -- you know, I had some -- some seats back there, and right in front of the big safe where I had all these records, and they just sat there and I told them, "You guys be witnesses that I'm putting all these records in these boxes."

So, they took them, and I -- first, I handed them out to O. P., and then later on, about toward an hour later, Ramiro came and I gave him the Farm and Ranch -- I gave O. P. the Zertuche, then later I gave Ramiro the Farm and Ranch records. Everything. They said for me to put just everything, notes and invoices and cancelled

checks and everything, all I had. That's what -- that's the best I could --

Q All right. So, up to that point in time, all the records that were available were delivered to O. P. Carrillo and his brother, Ramiro Carrillo?

A That's correct, sir.

Q And have you seen them since?

A No, sir. I saw part of them over at Corpus Christi on their trial.

Q I understand. But, I mean as a body or a group of papers, you haven't seen them since?

A No, sir.

Q All right. Now, in those records that you gave to O. P. and Ramiro concerning these two entities, Mr. Gonzalez, do you remember anything in those records that would show that Zertuche or Farm and Ranch owned any heavy equipment or any equipment that would be rented by a county or a school district or a water district? Do you remember anything in those records?

A Well, the only thing I remember is paying some notes, but I don't know what they were for really.

Q All right. You don't know whether they are for equipment or anything like that?

A No, sir, I couldn't swear to that.

THE PRESIDENT: Senator from Lamar.

SENATOR AIKIN: It is a quarter of five, and it looks like they're getting slow on this. I am going to move that the Senate stand adjourned until 9:00 o'clock in the morning.

THE PRESIDENT: Before putting the adjournment motion to a vote, the Chair recognizes the Senator from Harris, Senator Brooks.

SENATOR BROOKS: Mr. President, I would like to ask unanimous consent to have introduced into writing and printed in the Journal the remarks made in debate prior to the passage of the Senate Resolution known as the Senator Meier resolution which was adopted during an interlude in the Court of Impeachment on or about 2:16 o'clock p.m. on January 5, insofar as the remarks can be reduced to writing.

THE PRESIDENT: Senator from Harris moves that the debate -- Senator from Lubbock -

SENATOR HANCE: Point of inquiry. Would that include all the remarks that were made including the ones on my resolution?

SENATOR BROOKS: Yes, sir, pertaining to the Meier Resolution.

SENATOR MOORE: What about Hance's Resolution.

THE PRESIDENT: That was debate conducted in connection with the adoption of the Meier Resolution. You have heard the motion of Senator from Harris, Senator Brooks. Is there objection?

The Chair hears none. So ordered. Senator from Lamar moves the Senate stand adjourned until 9:00 o'clock tomorrow morning. All in favor signify by saying aye. Those opposed, no. The ayes have it. The Senate is adjourned.

Accordingly, the Senate, sitting as a Court of Impeachment, at 4:44 o'clock p.m. adjourned until 9:00 o'clock a.m. tomorrow.

FIFTEENTH DAY
(Tuesday, January 13, 1975)

The Senate, sitting as a Court of Impeachment, met at 9:00 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present: Adams, Aikin, Andujar, Braecklein, Brooks, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: Clower and Meier.

A quorum was announced present.

The Reverend Dr. Willard B. Southerland, Sweethome Missionary Baptist Church, Austin, Texas, offered the invocation as follows:

Lord, Thou hast been our dwelling place in all generations. Before the mountains were brought forth or even Thou hadst formed the earth and the world, even from everlasting to everlasting, Thou art God.

We come this morning with bowed heads and humbled hearts, according to Thy word, that all prayers, supplications and intercessions be made for those in authority, to the end, that we may lead a quiet and peaceful life in all godliness and honesty, recognizing that each one of us has rights and privileges given to us of Thee, in Thy goodness of heart.

We pray therefore, for all officials of state and local government, that they may have divine sanction of wisdom, integrity, courage, and faithfulness in the performance of the duties assigned them. May they remember that government is an institution ordained by Thee, for Thou, O Lord, doest not desire that mankind should live in a state of anarchy, we pray also that they remember that their positions are temporal trusts and their stewardship is accountable to Thee in the day of judgment.

Likewise, we pray for the citizens of our state. Cause us to know that it is righteousness that exalteth us, but sin is a reproach to any people. Grant, O Lord, all the knowledge and understanding to do justly, love mercy, and walk humbly before Thee.

These, and all blessings, we ask in the name of Jesus Christ our Lord and Saviour. Amen.

LEAVES OF ABSENCE

Senator Clower was granted leave of absence for today on account of important business on motion of Senator Aikin.

Senator Meier was granted leave of absence for today on account of important business on motion of Senator Farabee.

APPEARANCES

Judge O. P. Carrillo, Respondent; Honorable Arthur Mitchell, Attorney for Respondent.

Board of House Managers; Terry Doyle, Counsel; John Odam and Liz Levatino, Assistant Attorneys General on behalf of the Board of Managers.

EXECUTIVE SESSION

SENATOR AIKIN: I move that the Senate go into Executive Session.

THE PRESIDENT: Senator from Lamar moves that the Senate resolve itself into Executive Session.

All those not entitled to attend the Executive Session will please withdraw from the Court and gallery.

Accordingly, the Senate at 9:17 o'clock a.m. resolved itself into Executive Session.

IN SESSION

At the conclusion of the Executive Session, the President called the Senate, sitting as a Court of Impeachment, to order at 9:55 o'clock a.m.

THE PRESIDENT: Senate will come to order. Senator from Jasper.

SENATOR ADAMS: Mr. President, Members of the Senate. I would like to move to instruct the Special Counsel for the Court to prepare the necessary resolutions to effect a rules change in the rules of this Court so that the Articles of Impeachment may be voted on Article by Article rather than as presently required in the rules, that they be voted on in total.

THE PRESIDENT: You've heard the motion of the Senator from Jasper. Although technically not a rules amendment, that is, in fact what it is, and the Chair will hold it requires a two-thirds vote to prevail. Any Member of the Senate desire to debate the Motion? If not, the Chair will call on Counsel for the parties to express their views to the Senate. Mr. Doyle?

MR. DOYLE: Yes, sir.

THE PRESIDENT: Would you care to express your views to the Senate on the motion of the Senator from Jasper to instruct Special Counsel to prepare rules amendments to permit an Article by Article vote?

MR. DOYLE: Mr. President and Members of the Senate, I've just been handed what I would assume is a copy of the proposed rule change. I honestly haven't had it in my hand more than a couple of minutes and I haven't finished reading it yet. I understand from the discussions held with Counsel for the Defense and the Presiding Officer yesterday afternoon that there was some sentiment on the floor of the Senate to take a vote on Articles in which the prosecution had presented all of the affirmative evidence that it had to present. And I was inquired of by the Chair where I was with respect to Article I. That was the Article -- that was the only Article that we discussed at that time. And in response to his question, I said that the Board of Managers had presented all of the affirmative evidence that we intended to present on Article I. And he made similar inquiries of Mr. Mitchell. And I'm confident Mr. Mitchell will explain to you what position he took with respect to his position on Article I. I think it's quite clear that the Constitution allows the Senate sitting as a High Court of Impeachment to adopt rules, and I agree that a rule change such as was discussed -- now, I cannot say such as is here because I honestly haven't had time to read it yet, nor have any of the lawyers over here. But a rule change such as was discussed with the Presiding Officer appears to me to be quite constitutional and not in violation of any statute. I would only say to you that whatever changes in the rules you make, that you keep two things in mind. As I understand the law of Texas and the United States, the only appeal that one who is convicted in this Body has in the state courts is to the Supreme Court on a question of jurisdiction. Such a rule change, it seems to me, could not possibly touch on a question of jurisdiction. The only other avenue for relief beyond what this Body does would be in the federal system, and it would appear to me that in the federal system the only question that would appropriately come before the federal court is a question of due process. Now, with that in mind, I would point out to you that the Defense has had one rule change on him up to this time, and now you're fixing to change another rule on him. And, of course, you're doing the same thing to the Board of Managers, but we don't have any right to appeal to any jurisdiction. So what you do to us really doesn't make any difference with respect to the law. It only has to do with, you know, what you deem is proper for the Senate of the State of Texas to do. As I expressed to the Presiding Officer yesterday, I and the Board of Managers are opposed to this sort of decision-making by the Senate. I still take that same position, and I cannot make any comment with respect to the proposed resolution itself, and if I need to, I would request at this time the Chair give me that opportunity after I've had a moment to look at it, if you don't mind.

SENATOR ADAMS: Mr. President.

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: May I ask Mr. Doyle a question?

THE PRESIDENT: Yes, sir.

SENATOR ADAMS: Mr. Doyle, are you telling this Court that you have concluded all of your affirmative probative evidence in connection with Article I?

MR. DOYLE: Yes, sir.

SENATOR ADAMS: And that the only thing in connection with Article I that you have not concluded is rebuttal testimony and argument?

MR. DOYLE: Yes, sir. Of course, the Defense has not had its opportunity yet.

SENATOR ADAMS: I'm just asking you about your case.

MR. DOYLE: Yes, sir.

SENATOR ADAMS: I'm sure Mr. Mitchell will present his case. The only thing that you lack in regard to Article I is rebuttal testimony of whatever testimony Mr. Mitchell puts on and the argument of the case in regard to Article I, that's all you lack?

MR. DOYLE: Well, of course, any time any witness takes the stand, Senator Adams, we have an opportunity to elicit and present impeachment evidence.

SENATOR ADAMS: That's what I'm talking about.

MR. DOYLE: To impeach a witness.

SENATOR ADAMS: Rebuttal evidence.

MR. DOYLE: Okay. If you include that in rebuttal, that's all I'd have.

SENATOR ADAMS: Thank you, sir.

THE PRESIDENT: Understand, Mr. Doyle, that the question before the Senate now is not the adoption of the resolution you have in your hand, but, in effect, a vote to instruct the preparation of that, a vote to see what the sense of the Senate is.

MR. DOYLE: Yes, sir.

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: I have to be forgiven if I don't abide by the niceties of parliamentary procedure, not being a Member of the Senate or the House and not being a politician, but being an attorney. I get the feeling like we used to get back in Williamson County. You are, whether you want to be or not. Everytime I get the feeling that the case is falling through, everytime I get the feeling that justice is about to prevail, somebody changes the rule on me. Now, that's about what's happening here. The case is completely tried, gentlemen, in this record. You all went to an awful lot of trouble and a lot of agonizing and soul-searching. And I was pleased to be a member of that audience to see how the process worked. And the record is there before you.

Now, I say that due process is implicit in the proceeding to the extent that this man ought to know the rules by which he is going to be tried, and that they ought to hold still. Now, I'm not going to give you all a long discussion on constitutional law. I was just handed this resolution about two and a half minutes ago. And words fail me, and the Lord didn't give me that kind of mind, where I can sit here -- and I will agonize over this every night for the next month and say, "I wish I had said this, and I wish I had said that."

Now, if expediency is what we're after, we can take him out and I'll cut his head off, and we'll deliver it right here. If that's what we're after, we can do that. But if it's justice we're after and if it's right that we're after and if we're going to stand the test of history, then I say that this procedure must not fall one degree short of the due process requirements of the Constitution of our country. Now, what happens to this Judge from Duval County on that background is really immaterial. But what you tell your grandchildren and what we tell our progeny is something else.

Now, the rules on any criminal case are that the burden of persuasion and proof lies upon the State. You point your index finger at me completely, and you say, "I charge you with this offense under the following burdens of proof beyond a reasonable doubt." And a citizen in this country has the right to answer that. He has the right to take the fifth amendment, although someday I begin to wonder about that, he has the right to stand moot, he has the right to Counsel.

Now, the Senate says here, "We would like to hear from you about going in and passing the resolution to break it up, and let's listen to Article I." I would object to it only because that just ain't kosher. Whoever started a ball game and had the rules changed in the first inning? You say, "Well, lawyer, how you hurt. Do you have all your evidence in?"

No, I don't. And you say, "Well, what evidence would you have?" I have not had the opportunity to answer the accusations to begin with. I have not had the opportunity to discharge my burden if I choose to discharge it, although from time immemorial in the criminal case, I don't have that burden if I choose not to discharge it. I have not had the burden or the right to present rebuttal evidence on motive, intent, design and scheme. On all Articles. I have not had the opportunity to present evidence on and touching credibility of these witnesses on all Articles. Because, now, you understand, Members of the Court, this is the vehicle. This is the mold that has been cast under which I have been operating day and night now since last May. Now I'm sorry, I can't do it any other way. But, when Mr. Cleofas Gonzalez takes the stand, I have got the duty and the obligation of a lawyer and having taken an oath to touch on his credibility. And if I can't keep it within the narrow confines of No. I then I haven't discharged my duty. It might touch XIV or VIII or VI. It places, therefore, an onus burden on my client, to fracture these Articles. It shifts the burden to the Respondent to fracture these Articles. It changes the rules and therefore raises serious due process and ex post facto and bill of attainder consideration, and quite frankly, by the change of the rule, it also casts, in my opinion, a serious doubt on the competency of Counsel to continue representing this gentleman under those circumstances.

I say this, that if we want to expedite the procedure, I honestly say to you, gentlemen, this case has been tried and tried and tried and tried. Now, if he's got any more evidence, let him put it on. And then, let the Senate take that tons and tons of information and consider it and say, "Now, if we want some more, we want to hear some more." You all are the boss. But, now, you've got enough evidence there in my opinion, on all points. But, the inclination for expediency to prevail is such a terrible temptation, and I wouldn't want to walk away from these halls with a different attitude than Governor Moody did when he represented his Judge in the thirties but with an attitude that the Senate of Texas is the body before which you can get a fair trial, before which the sense of justice prevails and where for a change, we can get some fresh air on this case -- I can not intelligently comment any further on the constitutional questions, Mr. President.

SENATOR ADAMS: Mr. President.

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: May I ask Mr. Mitchell a question?

THE PRESIDENT: Yes, sir.

SENATOR ADAMS: Mr. Mitchell, if you were given the opportunity to present evidence in regard to Article I, if the Senate adopts a resolution, as prepared by the Special Counsel along these lines, given an opportunity to present evidence in the defense of your client on Article I until you had stood before the Senate and said, "I'm through," how can that violate due process, and how can that shift the burden of proof?

MR. MITCHELL: It couldn't, Senator. I submit that I would be through with all of them in the same period of time, though, all of them. I could do it -- but, about another ten minutes of examination of the witness I would call on one, and I could represent to you that I would have them on all of them.

SENATOR ADAMS: You understand that there is nothing involved in this motion, nor would there be anything involved in the resolution, and I would amend my motion to that effect, that would cut you off.

MR. MITCHELL: I understand.

SENATOR ADAMS: You understand that, do you not?

MR. MITCHELL: I understand.

SENATOR ADAMS: Thank you.

SENATOR TRAEGER: Mr. President. Does the Senator yield?

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: Senator Adams is the primary purpose of your submitting this resolution expediency of the trial?

SENATOR ADAMS: No, sir. I think --

SENATOR TRAEGER: What is the primary purpose?

SENATOR ADAMS: I think the Senate has the right to vote on these Articles any way they choose and I personally feel like that it would be actually advantageous to the Defendant to go ahead and vote on I before just the weight of the testimony falls on the whole Article of Impeachment, on the whole resolution passed by the House.

SENATOR TRAEGER: Senator, do you feel there could be an unrecognizable factor because this case has been tried in the newspapers, because this case has received great publicity, a preconceived feeling that the findings of guilt on one article would simply curtail a lot of time, that that feeling might be inherent in some of us who all of us would like to be somewhere else but are here because of our duty.

SENATOR ADAMS: Well, Senator, let me say to you that I don't have a preconceived notion and I'm going to presume that the other thirty members of this Senate don't have a preconceived notion of the guilt or innocence of this Defendant at this point, because we haven't heard from this Defendant. And let me assure you that I have no preconceived notion of this Defendant's guilt or innocence.

SENATOR TRAEGER: You feel that this in no way could be factor in the outcome of this Court's defense?

SENATOR ADAMS: In my opinion it would not, no.

SENATOR TRAEGER: Senator, under your resolution should the Defendant be found guilty under the first charge would that not terminate these proceedings?

SENATOR ADAMS: I don't think it would have to terminate them, no.

SENATOR TRAEGER: Well, I'm asking if the logical course of sequence of events, in your opinion, would that not occur?

SENATOR ADAMS: Senator, you're asking me to guess -- to make a prognostication as to what this Senate will do.

SENATOR TRAEGER: I'm asking for your opinion. Your proposal --

SENATOR ADAMS: I'm telling you that I'm pretty new here, Senator, but I'm not so new that I'm going to try to tell you what this Senate is going to do from one minute to the next.

SENATOR TRAEGER: Senator, I believe we both have been here the same length of time in the Senate.

SENATOR ADAMS: And I suppose that you wouldn't make that prognostication if I asked you.

SENATOR TRAEGER: But I never have found any reticence on the part of Senators in making forecasts. In fact, we get an awful lot of them.

SENATOR ADAMS: You will always find a hesitancy on the part of this Member of the Senate to forecast how the Senate is going to vote before it votes.

SENATOR TRAEGER: Let me rephrase my question then. Would it be possible to terminate these proceedings after one of the charges is determined, if the charge is guilty?

SENATOR ADAMS: We could terminate the proceedings right now, Senator.

SENATOR TRAEGER: So, it would be possible?

SENATOR ADAMS: Well, I suppose it would.

SENATOR TRAEGER: Thank you, Senator.

THE PRESIDENT: Question is on the motion from the Senator from Jasper. All those in favor vote "Aye", those oppose vote "No" as your name is called. Secretary, call the roll.

Yeas: Adams, Aikin, Andujar, Braecklein, Brooks, Creighton, Doggett, Farabee, Gammage, Hance, Harris, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Mengden, Patman, Santiesteban, Schwartz, Sherman and Williams.

Nays: Harrington, Jones, Ogg, Snelson and Traeger.

Absent-excused: Clower and Meier.

Absent: Moore.

THE PRESIDENT: There being 23 "Yeas" and 5 "Nays" the motion prevails.

A draft of the proposed resolution to accomplish that purpose is on every Member's desk. It's been pointed out there are a few typos in it, it's being retyped. I hope you will read this resolution and at a later time today when the Members of the Senate have had an opportunity to read the resolution, if somebody wishes to move to suspend the rules to take up that resolution the Senate can proceed to act on the specific rules amendment.

Now, Mr. Gonzalez is on the stand. Would you call Mr. Gonzalez?

Were you cross-examining, Mr. Mitchell?

MR. MITCHELL: No, he had him on direct, Mr. President.

MR. DOYLE: I had him.

Mr. President, we will pass this witness at this time.

THE PRESIDENT: Mr. Mitchell, do you have further questions of Mr. Gonzalez?

MR. MITCHELL: Yes, I do, Mr. President.

May I ask the Court to please take in its hand the December 16th, 1975 transcript. This testimony relates to the same witness, questions put to me by him -- I'm sorry, put to him by me on June 11th. I'm going to ask him some questions, if it please the Court, in connection with his positive sworn testimony on direct examination that he did not know of the existence of the Zertuche General Store. And that he knew it only as a pad of invoices. May I direct the Court's attention in connection with this testimony at Page 22, that would be 1222, the bottom of the page where I relate -- or refer to Carrillo's number 62. I would like to have this Exhibit marked, Mr. President, if I might, for the Senate hearings.

THE PRESIDENT: Mr. Mitchell, would you repeat the page reference?

MR. MITCHELL: Yes, it's -- this is the extract of testimony of Cleofas Gonzalez, this very same witness, December 16, 1975, it's on 0429 before the State Judicial Qualifications Commission and the Page is 22, the bottom of the page line 24. Oh, I see the page number -- I have the wrong -- for the reference for this hearing it's 0448, Mr. President.

THE PRESIDENT: Mr. Doyle, this is the Exhibit which Mr. Mitchell has offered into evidence.

MR. MITCHELL: It is a prior Exhibit, Your Honor, that was introduced before the House Select Committee back in June 12, 1975. It was also introduced in the federal trial. And it's the authenticated copy of the application for sales tax permit, the Zertuche General Store, 1/1/67.

MR. DOYLE: We have no objections to this being introduced into evidence.

MR. MITCHELL: May I have it, please, sir?

MR. DOYLE: I'm sorry, I thought you gave me a copy.

THE PRESIDENT: The Exhibit will be accepted into evidence and appropriately marked by the Clerk of the Court.

RE CROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q While the Secretary is marking that Exhibit, Cleofas, let's understand what you have testified to under oath here yesterday and previously testified, as a matter of fact, back in the early part of 1975 about the same thing. And that is that the Zertuche General Store had no existence.

A That's correct, sir.

Q And that the only existence that you knew about was when you were given some invoices by O. P. Carrillo.

A That is correct, sir.

Q That's right. Now, if you will recall back in June I asked you if, as a matter of fact, you caused to be filled out the application for the store license of that very same store, which you testified had no existence. And you testified that you did. Let me give you a copy of your sworn testimony.

SENATOR TRAEGER: Mr. Mitchell, would you repeat the page number?

MR. MITCHELL: Yes, in this procedure it's 0448, Gonzalez questions by me.

Q Mr. Gonzalez, I'm going to hand you a copy of your sworn testimony previously taken. Could I have the Exhibit, please?

Now, without repeating all of that, isn't it a fact, Cleofas, that you prepared the application for the Zertuche General Store. You filled it in and it's Carrillo 62 and in this hearing R-7(1)?

MR. ODAM: It's what?

MR. MITCHELL: R-7(1).

Q Now, you can refer to your testimony that you previously testified to under oath, Page 449 of that transcript that you have in your hand.

A I did not fill out this order, sir. I mean, this blank, -- this application, this questionnaire, I didn't fill it out, sir.

Q Your previous testimony was that you filled out the application for Arturo Zertuche. And without arguing with the witness I will just call the Court's attention and they can read the testimony, 0448, 0449. There you stated where the name was Zertuche General Store, located on Highway 529 on the north side. Isn't that correct.

A What line is that, sir?

Q Appearing on 10, Page 23. And I'm asking about this very same Exhibit before that committee at a -- the Exhibit was Carrillo 62, before this body is R-7(1). The fact of the matter is I've asked you about it on three occasions. I asked you about it back in June, I asked you about it back in September and I'm asking you about it now, the very same Exhibit. It not only shows that you filled out the application or the store license for the State Comptroller, but that you knew of the name of the business -

MR. DOYLE: Mr. President, I'm going to object at this time. Mr. Mitchell is attempting to impeach with previous testimony. All Mr. Mitchell needs to do when he impeaches from previous testimony is to read the testimony. What Mr. Mitchell has led the Senate to believe was that Mr. Gonzalez previously testified as to the existence. And what Mr. Mitchell actually should be reading is a question at Page 1223 wherein he says -- where Mr. Mitchell says where the thing was located and asked Mr. Gonzalez, merely, "Am I reading correctly?"

MR. MITCHELL: I think the gentlemen of the Court can read, if it please the Court. I wouldn't be put to this necessity of repeating had he not gone back into the Zertuche General Store.

MR. DOYLE: Mr. President, may I ask that you direct Counsel, if he's attempting to impeach with specific question, to read the specific question and read the specific answer.

Q Mr. Gonzalez, regardless of what your sworn testimony was here yesterday, what is the truth? The truth is that you filled in that application, didn't you?

A I did not fill the application, sir.

Q Look on Page 24, that would be 0450. You actually wrote in for that application of January 1st, 1967 -- I'm reading question three -- for sales tax certificate from the Comptroller for Zertuche General Store, didn't you? And your answer was then, "Probably that's right, yes, sir, yes, sir."

Q And then I asked you on Page 25 or 0451, "Now, tell us the truth when did you know what the Zertuche General Store was in existence? January 1st, 1967, the tail end of '69 or '65." That's the question. "Well, since I saw this one here," -- meaning that exhibit -- "probably 1/1/67." So, that the testimony that you gave here previously, that it was not in existence is not correct. I asked you then, back in June of last year, didn't I, Cleofas?

A Probably so. It was one of those questions that you tried to trick me, but I did not fill out this application, sir.

Q Now, look, as a matter of fact, the Zertuche General Store, the application that we're talking about, that Exhibit, was filled out 1/1/67. You knew of the existence of the store at the Vallejo Sales Building at that time, didn't you?

A No, sir.

Q Look at your answer now, look at the bottom of Line 25 on 0451. "Question: Where was the location of the Zertuche Store January 1st, '67, Mr. Gonzalez?"

Your answer then -- are you following me?

A No, sir.

Q Well, look at Page 0452, the top of the page. Your answer then, Line 2, "Well, as long as I know for two or three months it was at that old Vallejo Sales Building."

"For clarification, then your testimony is that from January 1st, 1967 for two or three months it was at that building?" And your answer then was, "Yes, sir; yes, sir." Sir?

A That's correct, sir. I think I did, but what I meant was that -- at that time it was the General Store, not the Zertuche General Store.

Q Actually, at that location there were about three or four stores, weren't there, Cleofas? There was the General Store, the Benavides Store, the Zertuche Store under Hector Zertuche, the Zertuche Store under Arturo Zertuche?

A I don't know that, sir.

Q All right. You don't know, for example, that Arturo succeeded his brother Hector Zertuche in that same location?

A That's correct, sir.

Q Don't you know, as a matter of fact, that the hurricane destroyed that building and the Zertuche General Store inventory was moved to the location of the Farm and Ranch?

A No, sir, that's not true. Nothing was destroyed by a hurricane and no merchandise was taken to the Farm and Ranch Supply, never.

Q Mr. Gonzalez, you know, we went through this earlier. Isn't it a fact that Mrs. Elvira Rodriguez and you talked about the operation of the Zertuche General Store when she was working at Farm and Ranch? Do you recall that testimony?

A I didn't get that question right, sir. Would you repeat it?

Q I say, you worked at the Farm and Ranch Store in 1967, didn't you and that location was separate and apart from the Zertuche General Store. Isn't that correct?

A Well, Farm and Ranch was -- still right, now, sir, -- I don't know anything about that general store or that Zertuche General Store, all those stores you mentioned -- just for a month or so.

Q All right. I'm going to ask you some questions as quickly as I can about your sworn testimony here yesterday that the Zertuche Store didn't have any real existence. You do recognize that as an application for a sales tax with the Comptroller of the State of Texas, don't you, that Exhibit you're holding in your hand?

A Sales tax application questionnaire it says here. That's all I can read. I can't read this --

Q All right. And who is it signed by?

A Hector Zertuche.

Q All right. And you're telling --

A Wait a minute. On one time it's signed by Arturo Zertuche and then over here at the bottom -- is Hector and then at the bottom it's signed by Arturo Zertuche, but I can't read those -- I don't know why --

Q Surely the Comptroller of Public Accounts in his certificate states that the -- as director of the Tax Record Division of the Comptroller's Department -- see if I'm reading -- "I'm the custodian of the microfilm. The original documents from which these microfilms were made have been destroyed by the Comptroller's Department by authority of Senate Bills 245 and 246, Acts of the 59th Legislature." Am I correct? Is that what it said?

A Yes, sir.

Q "The attached record numbered 67100000044, which I have initialed is a sales tax permit application signed by Arturo Zertuche February 14th, 1967, as owner of the Zertuche General Store." Isn't that what it says?

A That is correct, sir.

Q This record indicates the store had been under Arturo Zertuche's ownership since January 1st, 1967, and that the previous owner was Hector Zertuche.

A That is correct.

Q Does that refresh your recollection that the previous owner was Hector Zertuche and in January of '67, Cleofas, that it was Arturo Zertuche, his brother?

A That's what it says there, yes.

Q Sure. That's Albert F. Wallace, Director, Tax Records, and this is from the Comptroller of Public Accounts. Isn't that what it says?

A That's correct, sir, yes.

Q And let's read on. "The attached record which I have initialed is a taxpayer change request form filed by a field representative of the Comptroller's department, February 25th, 1972. This record indicates in Section II, Items 27 and 28, that Zertuche General Store under ownership of Arturo Zertuche has gone out of business on December 31, 1970."

A That's correct, sir.

Q So that if the Comptroller's records are accurate it would reflect that Arturo Zertuche had it, January 1, '67 --

MR. DOYLE: Now, Mr. President, I'm going to --

Q -- until December 31st, 1970. Am I correct?

MR. DOYLE: Mr. President, I want to raise an objection at this point. We do not object to the introduction of this sales tax application as an exhibit. However, we did not thereby stipulate that that was indeed Arturo or George Zertuche's signature. Obviously they would be the best witnesses to come up here and tell us whether or not they signed that or not. And it's appearing from Mr. Mitchell's questions of Mr. Gonzalez that we've reached some sort of stipulation on that, and we have not, and I object to that line of questioning.

MR. MITCHELL: I did not understand, Mr. President, that there was any stipulation. I'm offering this under a business entry as an official document from the Comptroller of Public Accounts, as an exception to the hearsay rule.

THE PRESIDENT: Mr. Mitchell, the Chair is going to sustain Mr. Doyle's objection. It has not been established that the witness here, Mr. Gonzalez, has personal knowledge of whose signatures those are.

MR. MITCHELL: May I ask one question in line with that?

Q Did you fill out the application form itself? Is that your handwriting?

MR. DOYLE: Mr. President, I would object to that. That's repetitive. He just answered that question "no" about five minutes ago.

MR. MITCHELL: Well, I have a right to ask him because he's sworn that he did. I'm testing his credibility.

MR. DOYLE: Mr. President, I'll challenge the record on that --

MR. MITCHELL: Unless you understand what's happening to him --

MR. DOYLE: He did not swear to that. All he ever said was probably. In the testimony he read to him, the only thing he said was probably, maybe.

MR. MITCHELL: I submit, Mr. President, he hasn't answered the questions. He's already answered it under oath. I'm satisfied. I just want the Senate to be satisfied that he previously testified he filled it in with his handwriting.

MR. DOYLE: Mr. President, I'm again going to object to that. It's misleading, and it's also not what is reflected by the record. I would challenge the record and ask the Senate to read Page 0450, which is designated also as 1224, where the question is, "You actually wrote in for the application," not filled out the application. Mr. Mitchell's question back then was did Mr. Gonzalez write in and ask the Comptroller to send him back an application. And even to that question he said probably, maybe, and not a definite yes, as Mr. Mitchell is attempting to lead the Senate into believing. And I object.

MR. MITCHELL: Mr. Doyle, if you would take that record and go through it line for line, you will find out I asked him line for line, sentence for sentence, about that application. He has testified previously under oath, notwithstanding what you're telling this body today, he filled in the body of that application and it was signed by the applicant, Arturo Zertuche. Now, you can ask him under oath today. Did you fill it in, Mr. -

THE WITNESS: I did not. This is not my handwriting, sir.

MR. MITCHELL: All right. If I ask him tomorrow, I submit he will testify to something else.

THE PRESIDENT: Mr. Doyle, your objection is overruled. You'll have an opportunity for redirect.

MR. DOYLE: Yes.

Q At any rate, Mr. Gonzalez, your testimony was yesterday that that store had no existence.

A That is correct, sir.

Q All right. But as a matter of fact, Mr. Gonzalez, you have also previously testified that every check that ever came into Zertuche General Store you took and you endorsed it with a stamp and deposited it in the Zertuche Store account, didn't you?

A That is correct, sir.

Q That ain't bad business for a business that didn't have any existence. How many checks would you say you deposited for the Zertuche General Store, '67?

A I can't tell you, sir.

Q '68?

A I don't know, sir.

Q '69?

A I don't know, sir.

Q '70?

A I don't know, sir.

Q Did it maintain a bank account?

A Yes, sir.

Q And you deposited in that bank account, didn't you, Cleofas?

A All the checks that came through that name, yes, sir.

Q Right. And you drew on that bank account, didn't you?

A Well, what they -- I had to transfer to the Farm and Ranch account, yes, sir.

Q All right. As a matter of fact, let's tell it the way it was. Arturo Zertuche's signature appears on every check that went into the Zertuche General Store account, didn't it? Every check that was drawn on Zertuche General Store was signed by Arturo Zertuche?

A That is correct.

Q And there's not one instance where O. P. Carrillo signed a check in that account, is there, that you can tell us about?

A That I can tell you, no, sir.

Q And every check was filled in by you, wasn't it?

A When I was instructed to do so, yes, sir.

Q Right. So that you knew there was a bank account. You knew there was a sales tax permit. You put those checks in the bank account, didn't you?

A I did, sir, yes.

Q And there was a "For Deposit Only" stamped endorsement on each and every one, wasn't there?

A That is correct, sir.

Q So that in addition every year you took those checks or you took the summary of those checks to Mr. O. D. Kirkland at Alice, Texas, so that the tax returns could be made out, didn't you?

A I did not, sir.

Q Who did that?

A Ramiro Carrillo or O. P.

Q The tax returns were made out every year and you know as a matter of fact they were, didn't you, Cleofas?

A I got the most information that I could sir, and that was it. Right. I did all I could and I told Ramiro this is all I could do and you better check it and see if it's right or not. And -- because this is all I could do. Yes, sir, that's correct. That's right.

Q And Mr. Kirkland over at Alice, the C. P. A. had a responsibility to make that tax return out for Zertuche.

A I don't know. I don't know that, sir.

Q All right. Now, you did know it was at the Vallejo Sales Building for a while, the Zertuche General Store? You did know that.

MR. DOYLE: Mr. President, I'm going to object at this time. There's evidence that there was a Zertuche Store in existence for many, many years, and there's confusing evidence, at least very confusing to me, and I would respectfully request the Chair instruct Mr. Mitchell to frame his questions within a time frame so we'll know what he's talking about, if he's talking about 1961 or 1971.

THE PRESIDENT: I think that's a fair request, Mr. Doyle, and I would ask you, Mr. Mitchell, to make clear in each instance the year that you're referring to.

MR. MITCHELL: The record reflects that the business came into existence 1/1/67 and went out of business December 31st, 1970. And my question put to him on the checks covers the whole spectrum of that time.

Q The checks that came for that period of time were put by you in the bank, were they not, Cleofas?

A I don't know, sir. I don't recall the dates. I can't tell you if I did or not.

Q Well, I mean every check that came in you took charge of it and endorsed it and put it in the bank --

MR. DOYLE: Mr. President, there is no evidence in the record that every check that came in came into his hands, and that is completely misleading, and I object.

MR. MITCHELL: He just got through answering in the --

MR. DOYLE: That has not been established --

THE PRESIDENT: Overruled.

Q All right. Now, as regards the doing of the business, let's talk about that for a minute. When the deposits were made, you filled in the deposit slips, didn't you, Cleofas?

A Yes, sir.

Q All right. Now, in addition there was some testimony that checks would be written by the Zertuche General Store to Farm and Ranch. You also wrote both checks too, didn't you?

A That's correct, sir.

Q And insofar as you know the records were kept and tax returns were filed for Zertuche General Store for December 31st, '67, December 31st, '68, December 31st, '69, December 31st, '70. Right?

A Probably so. I don't know. I can't tell you, sir.

Q All right. Now, you do recall that the Zertuche General Store moved to the location of the Farm and Ranch when the building, the Vallejo Sales Building, was damaged by a hurricane.

A No, sir.

Q You don't recall that you previously testified that you knew that the Zertuche General Store was at the Vallejo Sales Building and you noticed there was bicycles for sale over there?

A That was the General Store, and it just existed for about a month. That's all.

Q But you --

A It was sold.

Q You did see some bicycles for sale over at the Vallejo Sales Building during '67, '68 --

A I never did go there, sir.

Q You didn't testify to that under oath?

A Probably I did, sir, but I -- I -- I did -- I said they could bring in some merchandise once for a Christmas occasion, and that's just about it, sir.

Q Well, --

A Didn't that last for a month or so?

Q Well, Cleofas, my question is did you previously testify under oath that there were bicycles over there at the Vallejo Sales Building for sale and that you saw them? You did testify to that before, didn't you?

A Probably I did, sir.

Q All right. Now, let's move into the Farm and Ranch. The Farm and Ranch, of course, was located at another location, wasn't it, Cleofas?

A That is correct, sir.

Q Now, let's be sure we understand. Every check comes into the Farm and Ranch you endorsed with a rubber endorsement "Farm and Ranch for deposit only," and you deposited that check, didn't you?

A That's correct, sir.

Q So that up to now every check that went into the Zertuche Store you deposited. Every check that was written out of it, you wrote it. Every check that was written into Farm and Ranch you deposited. And every check that was written on Farm and Ranch you wrote it, didn't you, for the period of, say, '67, '68, '69 and '70. Let's be specific.

A I don't know if they were -- of the ones -- if they were all -- if all the checks that were written to those stores were taken to me, I don't know. Probably there were some that were not taken to me.

Q Well --

A The ones that were supposed to go to Farm and Ranch I got them, yes, sir.

Q Right.

A If I had to reimburse that money, yes, sir. But I don't know. If there were any other checks written to the store that I didn't get, I couldn't say.

Q And what we were testifying about yesterday that in the event there were goods sold from Farm and Ranch to Zertuche Store and in turn sold, let's say, to the

County agencies, you would sell it from Zertuche to the agency, deposit the agency check in Zertuche and then draw a check, if it was bought from Farm and Ranch, from Zertuche to Farm and Ranch. Isn't that correct? That's the way it was handled?

A Yes, sir.

Q Sure. And you didn't intend to leave the impression certainly that O. P. Carrillo was down there while he was County Attorney operating that Farm and Ranch or that Zertuche Store, did you, Cleofas? Because, as a matter of fact, you had the total and complete responsibility. What you didn't have or what little you didn't have, Ramiro had. Am I right?

A He went there sometimes, and we talked about the businesses, yes.

Q All right. Now, at the end of every year you also took I believe, the tapes of the gross sales and the tax information to O. D. Kirkland on Farm and Ranch, didn't you?

A I didn't take them, sir. I just did the best I could and gave them to Ramiro Carrillo.

Q All right. What I'm driving at is, Cleofas, you pulled the material together, you ran the tape on the gross sales, you ran the tape on the inventory, put that material together, and took that to the accountant, didn't you, Mr. Kirkland?

MR. DOYLE: Mr. President, I'm going to object. That's the third time he's tried to get this man to say he took the materials to the accountant. On each occasion he testified that he delivered them to Ramiro Carrillo. And I object because it's repetitive.

MR. MITCHELL: Mr. President, I didn't ask him, I don't believe, on Farm and Ranch. I'd asked him previously on Zertuche General Store. I'm not trying to be repetitive --

MR. DOYLE: Mr. President, I would challenge the record on that. He asked about Farm and Ranch --

MR. MITCHELL: Mr. Doyle, if you would just permit me to finish my question. You've come on very strong today, but you've got a bad witness, let's face it.

MR. DOYLE: Well, Mr. Mitchell, if you would just ask one question and then go on --

MR. MITCHELL: I'm asking.

MR. DOYLE: -- to the next one, I would quit objecting.

Q What part did you play in the procedure, Mr. Gonzalez, in execution of the Farm and Ranch --

MR. DOYLE: And he's answered it twice, "I delivered it to Ramiro Carrillo."

MR. MITCHELL: He hasn't answered it that I can hear.

Q What did you do in the form of putting together the material for the Farm and Ranch tax return?

A Farm and Ranch?

Q Yes, sir.

A Well, I just did what I said. I did the best I could with what I had. Whatever I got, I obeyed their instructions, what to put in there, and what not to put in there, and that's it.

Q Who executed the tax returns? Do you know that?

A Sir?

Q Who executed the tax returns?

A I don't know.

Q You don't know Mr. Kirkland did?

A Probably he did. I think he did. But, I'm not sure. Probably somebody else helped him, and he just signed it. I don't know.

Q As a matter of fact, you testified previously under oath that at the end of the year, that you would take that material and take it to the accountant, wouldn't you? Isn't that what you previously testified to?

A If I did, I said probably one or two times, but not every year, sir, but probably the last one or two years, but that was just about it. At the beginning. O. P. took most of his records, and I don't know what he did with them at the end of the year. But, I gave them to O. P. Carrillo, and they did all that. I guess that's what I have been testifying all the time since I've been testifying in these records here.

Q Now, after you terminated your employment with the Farm and Ranch -- Now, we've taken you back now, you worked for the -- the Zertuche Store, we got that. Did it incidentally have anything to do with Zertuche Store and Hector on this?

A Well, I didn't get the question.

Q Did you have anything to do with the operation of the Zertuche General Store when Hector owned it prior to the time Arturo owned it?

A Just what I was instructed to do and that's all.

Q It was at the same location that the Zertuche Store was when Arturo owned it, wasn't it?

A I don't know there was any store, sir. All I know is just paperwork, as far as I know.

Q Now, what connection did you have with the Benavides Implement and Hardware Store in say in 1967, '68, '69 and '70? Did you have any connection with the Benavides Implement and Hardware?

A No, sir.

Q It was owned by Rudolfo, wasn't it, Couling?

A Either Rudolfo or his brothers-in-law. I don't know. The Benavides Implement there used to be -- I don't know who really owned it then.

Q What connection did you have with the Benavides Implement and Hardware in '71, '72 and '73?

A Just what I was instructed to do, keep on doing what I was doing with the Zertuche.

Q And that would be what? Taking the -- operating the Benavides Implement and Hardware? Were you operating --

A Selling merchandise in Farm and Ranch and making it out of this Benavides Implement invoice register.

Q All right. So that any purchases that were made by Farm and Ranch from Benavides Implement and Hardware, you would see that the Benavides Implement and Hardware received a check for those purchases like you did in Zertuche Store?

A You mean that if the school came in and bought something, I was going to bill it out from -- yes, sir. Yes, sir.

MR. MITCHELL: Now, Mr. President, may I without expending the examination of this witness unduly, may I point out for the Senate, and this testimony relates to the Benavides Implement and Hardware business. This would be the tax return of Rudolfo Couling for 1972 appearing at Page 835, and Respondent's Exhibit, Page 1 to 82.

Q Mr. Doyle has asked you in connection with questions that I had previously put to you about the inventory in the Benavides Implement and Hardware. Do you remember those questions?

A Yes, sir.

Q He asked you. And, of course, the reason for that was -- I believe he asked you about how many -- how much property you owned, whether you had any ranch house, pickup, this type of thing. Do you remember those questions? He asked you as regards the inventory. And I want to call your attention and the Court's attention, if I might to the schedule attached to Mr. Couling's tax return. See if I'm reading this correctly. That would be a Schedule C, "Profit and Loss from Business, Rudolfo Couling, 1972." That shows that in 1972, the Benavides Implement and Hardware which, incidentally, for the record reflects, then you went to work for Benavides Implement and Hardware when, now?

A In June of '74.

Q Right. You bought it in '75?

A That's correct, sir.

Q '72, it did \$109,882.32 worth of business, didn't it?

A That's what it says there.

Q That's what your buddy, Rudolfo's, tax return says. Wouldn't you say that's true?

A Well, I didn't have nothing to do with the '72.

Q It was quite a going business. It reflects a \$65,000.00 inventory purchase for that year, doesn't it?

A It says there --

Q Cost of goods.

A "Less; cost of goods sold, and/or operations."

Q \$65,203.23, right?

A That's correct, sir.

Q All right, now, let's go to the '73 --

MR. DOYLE: Mr. President, might I make inquiry of Counsel to make sure I'm in the right place with him? Mr. Mitchell, is that the 1972?

MR. MITCHELL: Schedule C, '72 return. Mr. Couling would not deliver his '71, as the record reflects.

MR. DOYLE: Is that, to verify my copy, would you look on Page 2 of that up at the top where it shows "inventory, \$500," are we talking about the same --

MR. MITCHELL: I'm talking about his Schedule C, Profit and Loss from his business and profession and the \$65,000.00 figures of costs of goods sold.

MR. DOYLE: Is that the same one on the next page shows that the inventory of the store was a total of \$500.00? Are we talking about the same one?

MR. MITCHELL: Counsel, I request respectfully you put your questions to your witness and leave me out of the picture. I'm asking the questions.

Q Look at Schedule C, now, for 1973. This is Rudolfo Couling, it shows a sale of how much? \$129,609.00, isn't that correct? \$129,609.89. And the cost of goods in excess of \$80,000.00, am I correct, Cleofas? Am I reading that correct?

A Gross receipts or sales?

Q Yes.

A I guess you're right, yes, sir.

Q Yeah, that's what the tax return reflects, doesn't it, \$129,000.00? You bought the business? Didn't you?

A I did, sir, yes.

Q Now, look at Schedule C for 1974. His gross receipts in that year had dropped to right at \$49,669.00 for the Benavides Implement and Hardware, am I correct?

A That's correct, sir.

Q All right. And your testimony before this group was that it had no inventory, maintained no inventory when you bought it?

A I told you what the inventory was when I bought it.

MR. MITCHELL: One more matter, if it pleases the Court. I would like to call to the attention of the Court without an extended examination, and that relates to the questions put to this witness as regards -- Counsel put the question to him as regards the availability of equipment in Farm and Ranch for rental purposes. I would like to introduce Judge O. P. Carrillo's Depreciation Schedule as it appears in his tax return showing the equipment available -- or the equipment owned by Judge Carrillo. And I will offer testimony by Judge Carrillo that that equipment was available for rental. And if I might just call the Senate's attention to Judge Carrillo's tax return which appears at --

MR. DOYLE: Now, Mr. President, we would object to this line of questioning at this time.

THE PRESIDENT: Objection sustained. You can establish that through Judge Carrillo's testimony.

MR. MITCHELL: Well, Mr. President, this witness testified unequivocally in answers to questions put to him by Counsel that there was no equipment at Farm and Ranch for rent. And I would like to touch -- I want to go into tax returns. I'll just ask him point-blank.

Q As a matter of fact, there was a lot of equipment over there, Cleofas, both that Judge Carrillo owned and Ramiro owned that was rented by Farm and Ranch, isn't that correct?

A Not that I know, sir.

Q All right. You're testifying under oath that there was no equipment owned by either O. P. Carrillo or Ramiro that was available to the Farm and Ranch for rent?

A That's correct, sir. There was so much I would have known -I should have known it some other way or another, sir.

Q How about those two tractors that Judge Carrillo owned?

MR. DOYLE: Mr. President, again, I would object and ask you to direct Counsel to tell us what time he's talking about, when these tractors were there. I don't know whose they were, whether they belonged to the Farm and Ranch partnership, whether they belonged to the accused, whether they belonged to his brother, and I don't know what year he's talking about or what month or anything else. And I'm confident the Senate doesn't know either.

THE PRESIDENT: What year are you referring to Mr. Mitchell?

MR. MITCHELL: Mr. President, appearing at R-91, and this is on Page 781, the total complete breakdown of the rental from 1973 and forward on the tractors, et cetera, quoting complete breakdown in the Exhibit form. With that -- I may have one or two more questions. I'm about through with him. And I would like to refer the Senate to those Exhibits reflecting equipment on hand.

Pass the witness, Mr. President.

MR. DOYLE: Mr. President, I didn't -- I think he said, "Pass the witness." Is that right?

THE PRESIDENT: Your witness, Mr. Doyle.

REDIRECT EXAMINATION

(Questions by Mr. Doyle:)

Q Mr. Gonzalez, to clear up a point which I'm afraid there may be some confusion over. Is it your testimony that every single check that came into the Zertuche General Store came into your hands?

A Just like I said a while ago, I mean, the checks that I had to -- that had to come to the store, I got them. I don't know there were other checks written to -

Q I showed you some yesterday, didn't I?

A Yes, sir.

Q All right. So, the questions you answered for Mr. Mitchell with respect to what happened to the money were only the checks that came into your hands that you knew about?

A That's correct, sir, whatever had to go through the Farm and Ranch, I got them, and then that's how come I had to reimburse the money to --

Q Now, you're not telling the Senate that every single check that the Zertuche General Store issued or every check that was issued from that account, let's put it that way, came into Cleofas Gonzalez' hands?

A No, sir.

Q All right. Now, in the same regard, are you suggesting that every check that went out of that account went out of there through your hands?

A No, sir.

Q All right. Now, there has been much talk about Arturo and Hector Zertuche. Is Arturo Zertuche alive?

A Yes, sir.

Q Is Hector Zertuche alive?

A Yes, sir.

Q Now, in response to some of Mr. Mitchell's questions about bicycles for sale in the Vallejo Sales Building and so forth, was there indeed a Vallejo Building?

A I didn't get that.

Q I may be mispronouncing it, but the building that he was asking you, Vallejo?

A Vallejo Building.

Q Vallejo.

A Yes, sir.

Q There is indeed a Vallejo Building?

A Yes, sir.

Q And hasn't there been for many years?

A That's correct, sir.

Q There was an occasion, I believe you testified, in -- around Christmas time of one year where there were some sales going on down there, is that accurate?

A Yes, sir.

Q Do you know who was selling them?

Do you know whether it was Hector or Arturo or George Zertuche?

A No, sir, I couldn't tell you that.

Q Do you know the name of the company or owner -- no, or whatever it was that purchased those goods and sold those goods? If you don't know, say you don't know. If you do know, say it.

A Who bought all that merchandise?

Q Yeah, who bought it and sold it? Do you know that?

A I might -- I'm going to get you confused, but I don't know who bought the merchandise, but Farm and Ranch paid for it.

Q Okay. But there was some merchandise being sold down there, and you were aware of that?

A I don't know if it was sold or given away, sir, but I guess most of it was given away.

Q But there was some down there?

A Yes, sir.

Q All right. Now, I believe the record is replete with evidence that Judge Carrillo introduced that indicated George and Hector and Arturo Zertuche had some kind of a business going on down there at that building about that time, is that correct? That's what Mr. Mitchell has indicated.

A That's what he said, yes.

MR. MITCHELL: Now, there is nothing in the record that shows Judge Carrillo had anything going on down there. It's a business owned by Arturo Zertuche. I have failed miserably if he hadn't gotten that. It's a business owned by Arturo Zertuche at that store, if it please the Court. He misstates the record.

MR. DOYLE: No, sir, Mr. Mitchell, you misunderstood my question. I did not misstate the record. I will restate the question.

Q Judge Carrillo's testimony indicates that at some time, a Zertuche had a business in the Vallejo Building?

A Probably for a month or so, yes.

Q That seems to be their position, is that accurate?

A Yes, sir.

Q All right. Now, George -- Arturo Zertuche is alive, Hector Zertuche is alive. How about George Zertuche?

A Yes, sir.

Q He is still alive too?

A They're all alive, yes, sir.

Q All right. In fact, all three of those gentlemen are cousins of O. P. Carrillo, is that correct?

A That's correct, sir.

Q Now, all these questions that you answered in response to Mr. Mitchell about you running the Farm & Ranch. He asked you several questions to indicate you were the one that really ran the show down there. That's accurate, isn't it?

A It is, sir, yes, sir.

Q Yet Farm and Ranch never paid you a salary, did they?

A Never, sir.

Q Only Duval County paid you a salary, is that correct?

A That's correct, sir.

Q Now, the only help you had down there during that period of time that Mr. Mitchell asked you about, '67 up to '71, I believe it was -- I'll even extend it to '74. The

only help you had running that store other than O. P. and Ramiro Carrillo was Pat Gonzalez, is that right?

A That is correct, sir.

Q Did Pat Gonzalez get paid by Farm and Ranch Store?

A No, sir.

Q Was Pat Gonzalez likewise a full-time employee of Duval County?

A Yes, sir.

Q The only place that he got a pay check from that you knew of?

A Yes.

Q And you handled the business of Farm and Ranch and paying their bills and so forth. Is that correct?

A That's correct, sir.

Q Mr. Gonzalez, I'm going to ask you some questions about the income tax return of Mr. Couling that Mr. Mitchell asked you some questions about just a moment ago. Now, Mr. Mitchell showed you the front side of Schedule C, on his 1972 return, showing his gross sales. Isn't that what he asked you about a moment ago?

A That's correct, yes.

Q Now, I would like for you to take a look at the back side, Page 2 of that '72 return, which is in the Senate Exhibit -- or the Senate number is 00836. That's in Respondent's Exhibits Pages 1 to 872. Now, would you recite for the Senate what the inventory of Benavides Implement and Hardware are while they had this huge income from governmental entities? What's their inventory?

A Inventory at the beginning was \$500.00.

MR. MITCHELL: All right, Counsel, have him read the purchases that were made, \$65,185.83 during the year.

Q Now, Mr. Gonzalez, I think that in summary I could ask you two questions about Zertuche. During this time that we're talking about, this critical time when this scheme began that I was asking you questions about yesterday, you know that Zertuche -- or that there existed an inventory -- I mean an invoice register that has Zertuche Store stationery in it. Is that correct?

A That's correct, sir.

Q And at least for one year Mr. Mitchell has shown us that the Zertuche Store had a sales tax permit. Is that correct?

A That's correct, sir.

Q Do you know of any other evidence of it doing business that exists for that period of time?

A No, sir.

Q Now, with respect to the work -- the bills that you sent out on the Zertuche invoices, did you ever send one out to anything other than a governmental entity?

A No, sir.

Q You never did sell John Doe anything that had -- on one of those Zertuches or anybody else?

A No, sir.

Q Just the county, the school district, the water district and perhaps the city?

A That is correct, sir.

Q Only to governmental entities?

A Yes, sir.

MR. DOYLE: Pass the witness.

RE CROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q Mr. Gonzalez, I'm not going to go back and forth over this, but as a matter of fact there were many checks that came into both Farm and Ranch and to the Zertuche account. Isn't that correct? There were many checks that came in to both the Farm and Ranch and Zertuche account?

A I guess so, yes.

Q And if they came into the Farm and Ranch you would deposit them to the Farm and Ranch and if they came into the Zertuche you would deposit them to the Zertuche account, am I correct?

A Yes, sir.

Q And, I believe, the record reflects that those checks were endorsed for deposit only either Farm and Ranch or deposit only Zertuche General Store.

A That is correct, sir.

Q And the checks that were written on the Zertuche General Store were signed by Arturo Zertuche, am I correct?

A That's correct, sir.

Q And the checks that were written on the Farm and Ranch account were signed, I believe, by the owner of the store -- one of the owners, Ramiro Carrillo. Is

that correct?

A As far as I remember, yes, sir.

Q And at the end of the year you would make an inventory, would you not?

A Yes, I testified to that yesterday.

Q And take that -- I'm talking now about the Farm and Ranch, you would take that inventory, plus the figures necessary for Mr. Kirkland to make out his tax return over to Mr. Kirkland. Isn't that correct?

MR. DOYLE: Mr. President, again I'm going to object, this is the fourth time he's asked that question. And the last three times he gave the same answer, he delivered the stuff as a general rule to the Carrillos and not to the accountant.

Q All right. Is that your testimony, what the lawyer just got through saying?

THE PRESIDENT: That objection is sustained, Mr. Mitchell. We have been over this ground countless times.

Q May I ask the witness to look at 074, his sworn testimony of December 16, 1975, and I ask you the question, "And you would bundle all that material up and you would go see Mr. Kirkland, didn't you, the accountant?" And your answer then was, "I used to write everything down for him, all he had to do was just read that and he would make the income tax, yes, sir." That was your answer then, wasn't it, under oath?

A That is correct.

Q All right. Now, your lawyer and you just got through saying that you didn't deliver all that to Mr. Kirkland, you delivered it to O. P. Carrillo, now what's correct?

MR. DOYLE: Mr. President, I want to raise an objection here again. He's attempting, again, to mislead the Senate. The question Mr. Mitchell asked in December was, "You wrote the stuff down for the accountant", not did you deliver it to the accountant. He's trying to impeach him and it's not impeaching testimony. It is not inconsistent with what he's saying now at all and I respectfully object.

MR. MITCHELL: May I read the question?

THE PRESIDENT: Read the question again, please.

Q See if I am reading it correctly.

"And you would bundle all that material up and you would go see Mr. Kirkland, didn't you, the accountant?"

A "I used to write everything down for him, all he had to do was just read that and he would make the income tax, yes, sir."

"All right, sir."

"But I did that for just about two or three years." That's what you testified then, am I correct?

A That's correct.

Q And my question then was, "Well, I understand. . ." Am I reading this correct now ". . . for two or three years." Your answer then was, "For Zertuche or Farm and Ranch." And question, "Zertuche". And your answer then was -- you were talking about Zertuche, "Yes, sir, I did it for about two or three times, yes, sir." Wasn't that your sworn testimony?

A I just bundled everything and -- but it doesn't say there I took it to him.

Q The point was that Mr. Terry Doyle had you delivering it to O. P. and you agreed that that's where it went. And I put to you that you previously testified that you delivered it to the accountant.

MR. DOYLE: Now, Mr. President, again, I would object, that is not the previous testimony he just got through reading in the case to the Senate and I would object and ask you to please rule on my objection.

THE PRESIDENT: Mr. Doyle, the question that Mr. Mitchell read to the Court seemed very clear to the Chair.

MR. DOYLE: But the answer is not, Mr. President. The answer that he read indicates that he prepared the stuff for the use of the accountant and not that he delivered it. And that's why I'm making the objection.

THE PRESIDENT: The answer specifically was that he took it to the accountant.

MR. DOYLE: No, sir, that is not what Mr. Mitchell read.

MR. MITCHELL: Why don't you look at the document, Mr. Doyle, and quit fussing and see what it says in black and white. It's quite simple if you can read English.

Q Did you bundle it up, Cleofas, and take it to the accountant? Tell your lawyer, so he will be smiling. What did you do with it?

A I bundled everything and gave it to either Ramiro -- I took it myself but only one time, that is correct, sir.

MR. MITCHELL: I submit that the credibility of this witness you can ask it fourteen different other ways, Mr. Doyle, and he will answer fourteen different other ways for you.

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: I have no further questions and I withdraw that last, that was improper.

REDIRECT EXAMINATION

(Questions by Mr. Doyle:)

Q Mr. Gonzalez, in the course of your employment as an employee of Duval County, was it part of your duties to assist O. P. and Ramiro Carrillo in preparing their business records for their accountant for income tax purposes?

A No, sir.

Q Well, did you do it at the direction of Ramiro Carrillo?

A That is correct, sir.

Q It was not part of your duties, but you did it because your boss told you to do it. Is that correct?

A That's correct, sir. I did the best I could, yes.

Q Now, this went on for a number of years. Is that correct?

A That's correct, sir.

Q Now, you did this for the Zertuche Store records and for the Farm and Ranch records?

A That's correct, sir, I did.

Q Now, my question to you is: As a general rule what did you do with the records when you finished your work for tax purposes?

A Just like I said I did the best I could and Ramiro -- I don't remember taking them to Mr. Kirkland, but probably one or two times, because I was going that way --

Q My question to you is, Mr. Gonzalez, as a general rule what did you do with these records when you finished your work on them at the end of the year -- your work on them at the end of the year?

A I just kept them there and they were picked up by either Ramiro or O. P.

Q All right. Now, in fairness to Mr. Mitchell, is there a chance that on an occasion you personally delivered the records to the accountant?

A I did one time.

Q But not as a general rule. Is that correct?

A That's correct, sir.

MR. DOYLE: Thank you, Mr. Gonzalez.

MR. MITCHELL: Are you finished?

MR. DOYLE: Yes, sir.

RE CROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q The record reflects that the Zertuche General Store was in existence 1967, '68, '69 and '70, that's four years, right, Cleofas? Will you agree with me on that?

A Right.

Q And the record reflects that you I believe testified that you took them over there two or three years. Now, you want to tell us that it just perhaps is that you took the material to Oscar Kirkland one year?

A For Zertuche General Store I just took -- if I did it I don't recall if I really did or not, sir. But if I did I only took it once because I was going that way, I was going to fix my own income tax and Ramiro knew about it, he said, "Would you take this and drop it into Kirkland's office?" So, I did it, sir, that's the only thing I did. I didn't talk about it -- Mr. Kirkland didn't ask me anything about it, I just did him a favor of taking that.

Q All right. At any rate, you did know Mr. Kirkland was charged with the responsibility of making out the tax returns for Zertuche at the time that you did take the material?

A I don't know who did it, but I took it to his office and probably Mr. Kirkland, I don't know.

MR. MITCHELL: All right. Pass the witness.

MR. DOYLE: We have no further questions.

MR. MITCHELL: May I request, Mr. President, he be on recall for the possibility of recalling him at a future time when our case commences?

THE PRESIDENT: Mr. Gonzalez, you understand there's a possibility that you may be recalled to testify before this Court, therefore it's the duty of the Chair to warn you that you are still under the Rule, that you are not to converse with any other person except Counsel for the two parties, you're not to read any report or comment on testimony before this Court. Any person violating these instructions may be punished for contempt. Do you understand that?

THE WITNESS: That means I have to be here every day?

THE PRESIDENT: No, sir, it means you can go back to Benavides, but hold yourself available to be recalled before this Court and comply with the instructions that the Chair has just given.

THE WITNESS: Okay. Thank you, sir.

THE PRESIDENT: Mr. Doyle, call your next witness.

MR. DOYLE: Our next witness will be Mr. Rudolfo Couling.

THE PRESIDENT: Mr. Couling, would you raise your right hand, please?

MR. COULING: Yes, sir.

THE PRESIDENT: "Do you solemnly swear or affirm that the evidence you give upon this hearing by the Senate of Texas of impeachment charges against O. P. Carrillo shall be the truth, the whole truth, and nothing but the truth, so help you God."

MR. COULING: I do.

THE PRESIDENT: Mr. Doyle.

MR. ODAM: May it please the Court, before we proceed, I have this morning gone through the Senate Journal and determined the pages where this witness testified and how many days he testified, both on examination by the Examiners, myself and by Mr. Mitchell. My rough calculation is that Mr. Couling testified both on my questions, as well as Mr. Mitchell's questions for approximately eleven days. He was on the stand and off the stand, those certainly do not indicate full days of testimony. What I would like to do, very briefly, sir, is for the benefit of the Senators, for benefit of the Court, make references from my notes as to where Mr. Couling's testimony is found in the Senate Journal by the Senate Journal pages of where he testified. And then just ask him a very few questions in summary of that testimony. I do not intend to go back through eleven days of questions, direct or cross-examination, but with permission of the Court I would like to do that.

MR. MITCHELL: Mr. President, may I ask Counsel to also note for the purpose of saving time where I asked him questions. I will be quite pleased to rely on Mr. Odam's representation on where he questioned him and I questioned him and then perhaps I might be given just a short period of time to point up some of my testimony.

THE PRESIDENT: Is that agreeable with you, Mr. Odam?

MR. ODAM: Yes, sir, what I did is take when Mr. Couling started, say, on direct examination and then Mr. Mitchell take him on cross-examination -so, the page references I give you are both my questions and Mr. Mitchell's questions. They're inclusive until he went off and another witness came on. So, both direct and cross-examination is included in here. I don't have it broken down as to when I had direct or he had cross, but it's all in this package of information.

SENATOR PATMAN: Mr. President.

THE PRESIDENT: Senator from Jackson.

SENATOR PATMAN: I believe Mr. Odam said he was referring to pages in the Senate Journal.

MR. ODAM: Yes, sir.

SENATOR PATMAN: You're referring to pages in the proceedings before the State Judicial Qualifications Commission.

MR. ODAM: Yes sir, I will refer to both. When the Senate Print Shop redid it, in the upper right-hand corner or left-hand corner of the Senate Journal, those are

the Senate Journal pages. Down the middle of the testimony are the daily copy pages. I'll be making some reference and I'll try to make it clear as to the daily copy or our testimony pages. But I'll -- since they're a number of daily copy pages or Judicial Qualifications pages appearing on one page, I'll try to give the upper right-hand corner reference to the Senate Journal.

Mr. Couling was called to testify in the Judicial Qualifications proceedings with respect to Paragraph 7 through 12 of the Judicial Qualifications pleadings. And those pleadings, first of all, were admitted as Respondent's Exhibits. The pleadings themselves, to see where our allegations were and what he was testifying about, were in the First Amended Notice of Formal Proceedings. This is the Respondent's Exhibit 18, and this is found in the Senate Journal, Pages 501 through 510. Now, that is the Respondent's Exhibit. That's the large gold -- they were introduced by Mr. Mitchell. And there's where our pleadings are, 501 through 510. And as I said, he testified specifically about Paragraphs 7 through 12, which have to do generally, as they relate to the Articles of Impeachment, to the rental of non-existent equipment, Article of Impeachment. Specifically, Page 7 -- or correction, Page 507 through 509 of these Respondent's Exhibits are our allegations that he was testifying both on direct and cross-examination about.

The first time that Mr. Couling took the stand in Corpus Christi was on November the 19th. That was beginning at Page 1360 of the Senate Journal. And as the Senate will recall, the daily copy correction -- our testimony down there, each little package is in a different day. So if you pick up a day -- this one, for example, is December the 16th. So each day is by itself. So if you have the one for November the 19th, the page where he began to testify was at Page 1,360. I'm sorry, that was November 19. He testified that day through Senate Journal Page 1375 on November 19 and he was recalled, and his testimony begins again at Page 1684 of our daily copy. And that is the Senate Journal Page 1391. And that's on November 20, the next day he came back.

MR. MITCHELL: Just a minute, John. Thirteen what, please?

MR. ODAM: 1391, the Senate Journal, and this is in the volume for November 20th.

MR. MITCHELL: All right.

MR. ODAM: And his testimony continues through Senate Journal Page 1429 for that day. Then there's an interruption with a Ms. Wimberly witness, Carl Williams, a witness. He resumed testifying that day at Senate Journal Page 1434, then there was a break-off where Mr. Kurtz testified and Mr. Red Craig testified, Mr. Crisoforo Chapa, Mr. Amaraz, Mr. Ruiz and Mr. Fidel Saenz. And we pick up again with Mr. Couling, he came back on his third day, which is November the 21st, and that begins at Page 1476 of the Senate Journal.

And this is a good time, for the benefit of the record and for the benefit of the Senate, the Court Reporter down in Corpus Christi misnumbered some pages, and I would like just to call these to your attention now. These are pages 1494 through 1497. And let me refer to that specifically so that if you want to make a pen and ink notation in the page numbers. This is for November the 21st. Judge Meyers called our attention to this in the page numbers. At Page 1494, the Senate Journal -- this is on November the 21st. This is Mr. Couling's testimony. You'll see Page -- our Judicial Qualifications Page Numbers 1939 and 1940 and at the bottom of that page where it says 1941, that should be 1945. Then over in the middle of the next page where it says 1942, that should be Page 1944. And at the bottom there where it says 1943, that is correct. That should be 1943. In the middle of the next page, 1944, that should be

1942. At the bottom of Page 1945 should be 1941. I guess he simply misnumbered the pages and got them out of order.

Cross-examination by Mr. Mitchell began on the fourth day, which was December 1st, at Senate Journal Page 1960 running to Senate Journal Page 1567, and an interruption, Mr. Jim Bates, bank officer. Came back in and started again at Senate Journal Page 1577. Came back for this fifth day of testimony on December the 2nd, started at Senate Journal Page 1586, going down to Senate Journal Page 1612, and had an interruption by several witnesses. Mr. Couling came back for his sixth day of testimony on December 3rd, which is Senate Journal Page 1688. And there's some interruptions. He came back on his seventh day, Senate Journal Page 1737. And then there's an interruption with testimony of Mr. George Zertuche. And then right after Mr. Zertuche's testimony -- I don't have the page number -- Mr. Couling starts again at our daily copy page 2657. When I say daily copy, I'm referring to Judicial Qualifications page. He came back for his eighth day of testimony on December the 5th at our Judicial Qualifications page No. 2675. And then Judge Carrillo testified for a number of days in here and then Mr. Couling came back on our rebuttal on December the 18th, our ninth day, beginning on Senate Journal Page 4055. And then he came back and testified the next day, December 19th, the tenth day, would be Senate Journal Page -- beginning that volume. And then the eleventh day of testimony was December the 29th, Senate Journal Page, I believe, it's 2330. I gave a 4055. I'm sorry. That was our daily copy page.

I think that I've tried to indicate where Mr. Couling's testimony is in there, and as briefly as possible I would also like to summarize some of the points from his testimony from eleven days.

MR. RUDOLFO M. COULING, the witness, called by the State, having been first duly sworn, testified as follows, to-wit:

DIRECT EXAMINATION

(Questions by Mr. Odam:)

Q Would you please state your full name for the record?

A Rudolfo M. Couling.

Q Would you move your microphone over so the Court can hear you. Would you restate that?

A Rudolfo M. Couling.

Q Rudolfo M. Couling?

A Yes.

Q Where do you reside, Mr. Couling?

A In Benavides, sir.

Q And how long have you lived in Benavides, Texas?

A Most of my life, sir.

Q How old are you?

A Fifty-four.

Q You know Judge O. P. Carrillo?

A Yes, sir.

Q You know Mr. Ramiro Carrillo?

A Yes, sir.

Q And how long have you known Judge O. P. Carrillo?

A More or less about twenty-five years, sir.

Q You resided in Benavides, Texas, nearly all of your life?

A Yes, sir.

Q Okay. What is your present employment?

A Now I'm self-employed, and I'm raising cattle, sir.

Q Prior to having that employment, where were you employed?

A I was working as a tax collector for the Benavides Independent School District.

Q And do you recall when you began to go to work for the tax office for the school district?

A Yes, sir. It was in the latter part of 1962.

Q And when did you leave the tax office?

A It was in April of 1974, sir.

Q And your position as tax collector there with the school district, when you left the school district in that position, what type of business did you then go into?

A In the meantime -- when I was tax collector, I had a store too, at the same time.

Q And what's the name of that store?

A Benavides Implement and Hardware Company.

Q Benavides Implement and Hardware Company?

A Yes, sir.

Q And where is Benavides Implement and Hardware Company located?

A That's in Benavides on the north side of the railroad track.

Q And at one point, I believe, your previous testimony was that you sold the Benavides Implement and Hardware Company, is that correct?

A Yes.

Q And to whom did you sell that store?

A To Cleofas Gonzalez in June of 1975.

Q What type of arrangement did you have as to how much he would pay you for the Benavides Implement and Hardware?

A I told him if he would take the store over and take care of all of the outstanding debts the store had and whenever he got through paying them, we would agree on a price.

Q Did you know in the Judicial Qualifications Commission there were a number of questions asked about equipment that you had available to rent. Do you recall those questions?

A Yes, sir.

Q First of all, let me ask you with respect to the inventory of the store. What type of inventory did the store, Benavides Implement and Hardware, have?

A We had barbed wires, staples, bolts, windmill parts and a few household parts like toilet parts.

Q What type of vehicles did -- or equipment did the store have to rent other than -- not talking about that which you just described. I don't consider that. But what type of equipment did you have to rent?

A The store didn't have no equipment to rent, sir.

Q Had no equipment to rent?

A No, sir.

Q I believe there's previous testimony -- I'm sure Mr. Mitchell would ask you about -- I believe it's a dump truck that the store owned.

A Yes, sir.

Q Did the store own a dump truck?

A I owned a dump truck. I believe I bought it in -- I don't know if it was -- somewhere in '72 or '73. But it was never leased to nobody, sir.

Q When you worked at the store, you say you never leased that particular truck to anyone?

A No, sir. I leased it later on in 1972 to the water district.

Q To the water district.

A Yes, sir.

Q In what year?

A 1973, I believe. Latter part of '73 and '74.

Q Again you stated that the Benavides Implement and Hardware had no equipment to rent. Is that a statement as to all years, the store never had any equipment to rent?

A That was the only time he rented it, which was to the water district, which was around, I'd say, in the early part of '74.

Q But before that, he never had no equipment -- never rented no equipment to nobody, sir.

Q Now, I'll refer the Court to the Volume 2 of the admitted evidence. It says on the front Examiner's Exhibits. It's the green bound one. It says Pages 561 to 1046.

Q Recall or refer back to the testimony of Mr. Gonzalez about some tickets that were filled out, invoices and statements. These appear at Page 793 in this volume. I'll refer to it at this time.

Mr. Couling, if you would, also find Page 793. The page numbers are the ones that are up at the top, 00793.

A Yes, sir.

MR. ODAM: I'll also explain to the Court that I've asked Mr. Schnabel to have available for examination by the Court and Mr. Mitchell the original copies of the Exhibits that are reproduced in here. I'll take this one, for example, it's reproduced somewhat poorly. And as you go through them, you'll see also that particularly the checks reproduced very poorly. All the original Exhibits are in boxes up here in front of Governor Hobby. I refer specifically now to Page 793 to E-60.

Q Mr. Couling, I'd like to ask you questions about the invoices and the statements, first of all. Let's take E-60. Did you personally fill out E-60?

A No, sir, I did not.

Q Do you know who filled that out?

A It looks like Mr. Gonzalez' writing, sir.

Q Can you read what it says on this particular ticket?

A "Contract for fencing and --"

MR. MITCHELL: John, he's testified he didn't know who wrote it. And I believe we've been through that before. I'm going to object that it would be speculation and not based on personal knowledge. I think the witness quite frankly said he did not

know who executed the Exhibit.

MR. ODAM: That's fine. We'll rely on Mr. Gonzalez' testimony with respect to 793.

Q Can you read what it says there on the ticket top?

A "Contract for fencing and road hauling."

Q What is the last word there?

A It looks like hauling.

Q Hauling?

A Yes, sir.

Q And the amount of money there is \$1,008.00, isn't that correct?

A Yes, sir, that's correct.

Q And that goes with 793-A which is on the next page for \$1,008.00?

A Yes, sir.

Q I would like to ask you questions about -- I'm going to refer to these page numbers, and I'd like for you to turn with me through these very quickly. The one there, Page 793, 793-A, 794, and I want you to note at the top of 794, it says, "Benavides Implement and Hardware." I'll come back and ask you a question about that.

MR. MITCHELL: John, would you mind if I please find where you are? Are you in the exhibit section of Exhibit 60 series in the --

MR. ODAM: This is Page 794.

MR. MITCHELL: May I take a minute, Mr. President?

MR. ODAM: Volume Two.

MR. MITCHELL: Volume Two? Thank you. I'm with you.

Q Page 795, Benavides Implement and Hardware invoice there, can you read what it states on that?

A That's --

Q Page 795?

A Yes, it says "Rental and equipment and contract hauling caliche for county road."

Q Mr. Couling, if you refer over to Page 805, E-71, the invoice with BIH. Benavides Implement and Hardware.

A Yes, sir.

Q Can you read what it states on that ticket?

A "Rental of equipment and contract hauling of caliche."

Q And the amount of money there?

A \$1,006.00, sir.

Q And the statement on the next page, 806, pertains to that same amount, 806?

A Yes, sir.

Q Then, as we go through them, I would like for you to look at the county check on Page 808.

A Yes, sir.

Q Page 810, the check -- I'll come back to these. I want you to notice where they are, checks to Judge Carrillo with your signature.

A Yes, sir.

Q Page 812, the check to Judge Carrillo with your signature, that's E-76?

A Yes, sir.

Q Page 815, Exhibit E-78, can you read what's on that ticket, Benavides Implement and Hardware?

A "Rental of equipment, county road, hauling caliche."

Q And then the corresponding Benavides Implement and Hardware statement on Page 816, you'll notice the check, E-80, which is on Page 817?

A Yes, sir.

Q And Page 820, the check to Judge Carrillo for \$995.00?

A Yes, sir.

Q Now, having looked at all those, you stated previously that you did not personally fill out the one I referred to specifically, E-8 or E-60, is that correct? You did not fill it out?

A No, sir, I did not fill it out, sir.

Q These are made out on the invoice -- for example, the one, E-60 on Page 793, this is an invoice of Benavides Implement and Hardware Store, is that correct?

A It doesn't state on the top, sir --

Q I won't refer to that one. It just did not come clear. Let's refer to the one on Page 795.

A Yes, sir. That's from the Benavides Implement and Hardware Company.

Q Can you explain to the Court, if you know, why your Benavides Implement and Hardware tickets that you did not fill out, why they would state on there what they would be for?

A When we opened the store, Ramiro came by and picked up the boxes of empty statements and took them to the Farm and Ranch Store so he could fill them out, sir.

MR. MITCHELL: We're going to object to that as we did previously on the grounds it would be hearsay what the third person did with this witness, Mr. President. And it previously conflicts with the testimony of Cleofas Gonzalez, if it please the Court.

MR. ODAM: Your Honor, I asked the witness why the information appeared on the Benavides Implement and Hardware ticket on Page 795. The witness stated that Ramiro Carrillo -- let me rephrase the question for Mr. Couling.

Q Refer to the invoices themselves, Benavides Implement and Hardware invoices, which are in here --

A Yes, sir.

Q -- what did you do with these particular invoices when you originally had them?

A I had those invoices printed, and when I had them printed, Ramiro came by and picked up a box in my office and took them to the Farm and Ranch Store.

Q Ramiro who?

A Ramiro Carrillo.

Q What office are you referring to?

A Tax office in the school district, sir.

Q He picked up the invoices from you?

A Yes, sir.

Q You did not particularly -- you did not personally fill these invoices out?

A No, sir.

Q When was the first time that you actually saw the invoices once they were filled out?

A These particular invoices, I never did see them. The only thing I saw was the check when it came back from the county, sir.

Q You would only see the checks?

A These particular ones, yes, sir.

Q You would be referring to the checks which are in evidence in the Judicial Qualifications, such as the county checks we looked over, for example, on Page 801, E-68?

A Yes, sir.

Q Let's take that one. When would you first see this particular check?

A When they were issued by the county, they were brought to my office by Ramiro Carrillo.

Q When Ramiro Carrillo brought the check to the office, once you got the check in hand, what would you do with that check?

A I asked him what it was for, and he -- those particular checks, he told me it was bills that --

MR. MITCHELL: Excuse me, Counsel. I don't want to object and delay the proceeding, but may I request Mr. President that we talk about a specific check? There are quite a number here. And the witness, he paints with a broad brush.

MR. ODAM: I was referring to the one on Page 801.

MR. MITCHELL: Thank you, Counsel.

Q Once Mr. Ramiro Carrillo -- was he County Commissioner at the time?

A Yes, he was.

Q Now, this particular check we were looking at here, the date is -- looks like July 15 of 1973. When he brought you this check, what would you do with that check, the county check?

A I asked him what was the check for and he said it was some invoices that he had -- he had made at the -- his Farm and Ranch Store, and that it was money that O. P. Carrillo wanted, and I was to issue a check in turn for the amount of the check that I got from the county, sir.

Q You issued the check to whom?

A To Mr. O. P. Carrillo, sir.

Q Now, let's -- if we could go back to Page 793 and go through the checks. I refer to Page E or to Exhibit E-65, and I'm looking at Page 797 of this Volume Two. Page 797, can you describe that for the Court?

A The check for the Benavides Implement and Hardware made out payable to O. P. Carrillo, sir?

Q Yes, sir.

A That was another check that probably -- I got a check from the county at the same time, and on the same day or a day after I made a check again made payable to O. P. Carrillo, which was instructions that I had, I believe, from Ramiro Carrillo, sir.

Q Now, I refer back, for example, to Page 793. Do you have the invoices for that \$1,008.00?

A Yes, sir.

Q Page 793-A, there is an invoice for \$1,008.00?

A Yes, sir.

Q Page 796, there is a claim jacket. Do you know what the item is on Page 796?

A Yes, sir.

Q What is that?

A That's a jacket from the county, and it states the code number and the precinct number of the check was issued from.

Q How much is the claim placed on the county there?

A For \$1,008.00, sir.

Q And then your check to Judge Carrillo for \$1,008.00 is on Page 797?

A Yes, sir.

Q Once you made out this particular check, what did you do with this check for \$1,008.00?

A I believe I give this one to O. P., sir.

Q You personally gave it to Judge Carrillo?

A I can't be sure. Him or Ramiro Carrillo, sir. But I believe I gave this one to O. P. Carrillo.

MR. MITCHELL: Excuse me, John. He hasn't testified a personal knowledge of it, Mr. President. He has testified he believes. This would be speculation. He said he didn't know who he gave it to. We would object and move to strike it on the grounds it would be conjecture and guess.

Q Let me rephrase the question to you or restate the question. The check for \$1,008.00, and I don't want you to speculate, but of your own personal knowledge, if you recall, what did you actually do with the check that's on Page 797 for Judge Carrillo?

A I gave it to O. P. Carrillo, sir.

Q Now, on the back of Page 798, can you identify the signature of the particular check there?

A Yes, sir, that's the signature of Judge O. P. Carrillo, sir.

Q And what's your basis for being able to identify that's Judge Carrillo's signature?

A He used to be president of the school board, and I had the occasion of watching him sign hundreds and hundreds of checks, and so I got to know his signature pretty well, sir.

Q Now, refer over to Page 799. Do you notice there the deposit slip from Judge Carrillo's bank account which speaks for itself, Benavides Implement and Hardware, \$1,008.00?

A Yes, sir.

Q Page 801, you have an item. Could you explain to the Court what that is for?

A That's the county check for \$1,018.65 from --

Q If you would, glance back up to Page 794. That's the invoice on the store, is that correct?

A Yes, sir.

Q The next page, 795 is a statement on your store?

A Yes, sir.

Q Now, this statement -- to whom is this statement on Page 795 made out?

A To Duval County, care of Mr. Juan Leal, Jr., sir.

Q Did your store actually rent the equipment to Duval County or Mr. Juan Leal?

A No, sir, the store never had no equipment to rent to the county at all, sir.

Q And how much was Duval County being charged there for rental of equipment?

A \$1,018.65.

Q Mr. Juan Leal, was he a County Commissioner?

A County Commissioner from Precinct 2, sir.

Q Is Benavides, Texas in Precinct 2?

A No, sir, Precinct 3.

Q Who is County Commissioner with Precinct 3?

A Ramiro Carrillo, sir.

Q Now, this particular invoice is for \$1,018.00. If you look over Page 800 you will see the claim jacket for \$1,018.00.

A Yes, sir.

Q Now, I refer you to Page 803, can you identify for the Court what that item on 803 is?

A Yes, sir, that's a check from Benavides Implement and Hardware Company made out payable to O. P. Carrillo for \$1,018.00.

Q You identify, as you have before, your signature on that check?

A That's my signature on the bottom, sir.

Q And do you recall what you did with the check made out to Judge Carrillo?

A I give this check to Ramiro Carrillo, sir.

Q I refer you over to Page 805. You notice the entry or the deposit to Judge Carrillo's bank account, for \$1,018.00.

A Yes, sir.

Q Now --

MR. MITCHELL: Excuse me, John. I want to object, if it please the Court, to the prior testimony of the witness that he gave the check appearing on 803 to Ramiro Carrillo on the grounds of hearsay, and, secondly, it violates the best evidence rule, the check not being endorsed by my client, O. P. Carrillo, but bearing the bank stamp, which, of course -- that's on Page 804, for the Court. That would be hearsay as to Judge Carrillo, and we would move to strike the testimony.

THE PRESIDENT: Mr. Odam?

MR. ODAM: First of all, with respect to hearsay objection, the witness stated that he gave the check -- he gave the check to Judge Carrillo. That's -- I don't see how the hearsay objection pertains to the witness' testimony as to what he did with the check. It is my understanding of the hearsay rule that I don't think it pertains to that, but I would say as -- so, therefore, I think the hearsay objection does not apply. That certainly does not pertain to a statement made by a third party outside of this proceeding, the hearsay objection doesn't apply.

Second of all, with respect to that objection as well as the best evidence objection, and to what is stated on back of it, I would submit that all of these documents, every one of these documents are in evidence. Every one of these --

THE PRESIDENT: Objection overruled.

Q Now, referring to Page 805, I refer you to the bottom of Page E-71. Can you read what was put on this Benavides Implement and Hardware ticket?

A "Rental on equipment and hauling" -- I can't read that -- the bottom, Mr. Odam. "Contract hauling for caliche," it looks like.

Q Contract hauling caliche?

A Yes, sir.

Q And this is made out to whom?

A Duval County, Precinct 2, to Mr. Juan Leal, Jr.

Q Now, this E-71 for \$1,006.00, turn the page, 806, is a statement, \$1,006.00?

A Yes, sir.

Q Next page is a claim jacket for Duval County for \$1,006.00.

A Yes, sir.

Q Turn to Page 808, and you have Duval County checks made out to your store for \$1,006.00?

A Yes, sir.

Q Turn to Page 810, E-75. Now, explain to us, please, what the item is on Page 810?

A That's a check made payable to O. P. Carrillo from the Benavides Implement and Hardware Company for the amount of \$700.00.

Q Now, look at that one and refer over to Page 812, Exhibit E-76.

A That's another check payable to O. P. Carrillo from Benavides Implement and Hardware Store for the amount of \$306.00, sir.

Q Now, that check for \$700.00, and \$306.00, a total of \$1,006.00?

A Yes, sir?

Q Why was it that you gave or made out two different checks to Judge O. P. Carrillo?

A I gave him the check on September 22nd for the amount of \$700.00, he said he needed some money, so I went ahead and gave him a check for \$700.00.

Q Now, I notice on here that it states on the check on Page 810, it says, "Rent on truck." Do you see that?

A Yes.

Q It looks like something was on there and stricken. Can you tell us what that was?

A I'm not sure. Arturo had put there -- for some kind of service, consulting service or something. He made me scratch that out, and I wrote just -- for write it and for figuring I just wrote, "Rental trucks."

Q Why did he ask you to strike it out?

A I don't know, sir.

Q And when you say he, are you referring to --

A O. P. Carrillo.

Q Judge Carrillo?

A Yes, sir.

Q Now, this particular item I'm referring to is a check which is marked E-75 on page 810 and I would like to have the clerk pull that check and see if you can identify it from looking at 75 which was written on the check. I show you the bank photostatic copy --

MR. MITCHELL: Excuse me, John, don't we have the original of that item, in fact, I'm sure we do.

MR. ODAM: This is a bank photostatic copy E-75. I don't think we have the original check.

MR. MITCHELL: We sure do, somewhere.

Q Can you read from the bank photostatic copy what was written, the line through?

A Legal services.

Q Legal services?

A Yes, sir.

Q Did Judge Carrillo perform any legal services for Benavides Implement and Hardware?

A No, sir.

Q This is in September of 1971?

A Yes, sir.

Q Judge Carrillo asked you to mark out where it said legal --

A He said he didn't want nothing written on the checks, so I scratched it off and I just put the first thing that came into my mind, which was "rent on truck" or

whatever --

Q Now, Judge Carrillo has testified in the Judicial Qualifications Commission about some trucks that might have been -- or equipment that might have been available for rent. Now, on this particular check, did you write out a check to Judge Carrillo to pay him some rent on a truck that you rented from him?

A No, sir.

MR. MITCHELL: We're going to object, of course, the evidence speaks for itself, Mr. President. It says, "Rent" clearly. Now, the witness is attempting to impeach the documentary evidence, which is also the Counsel's evidence and, of course, is improper. We object, the best evidence rule speaks for itself. The Exhibit says, "Rent."

THE PRESIDENT: Objection is overruled.

Q It states on here, "Rent on truck." Did you rent a truck from Judge Carrillo?

A I never did rent a truck from O. P. Carrillo, sir.

Q Now, on this particular check for \$700.00, you weren't paying rent on a truck?

A No, sir.

Q And you just answered, and I want to clarify, not only for this check, but at no time you rented a truck from Judge Carrillo?

A I never rented no equipment from O. P. Carrillo, no truck, no nothing, sir.

Q Now, you made out the check for \$700.00 to him. Why did you make out a check for \$306.00 later on?

A So he could get the full amount of \$1,006.00, sir, which was check -- the total of the check that was issued from the county to my store, sir.

Q That's the county check that appears on Page 808?

A Yes, sir.

Q Now, I refer you over to the \$306.00 check. I want to be clear -- that's the one on Page 812?

A Yes, sir.

Q It says "rent" on that check?"

A There's no rent due to O. P. Carrillo at all, sir.

Q So, you weren't paying Judge Carrillo any rent on any equipment there?

A No, sir.

Q The deposit slip on that check or both of the checks is on Page 814. On Page 813, can you identify Judge Carrillo's signature on those two checks?

A Yes, sir, that's his signatures.

Q On Pages 815 and 816 are the Benavides Implement and Hardware invoice statements made out to the county?

A Yes, sir.

Q And how much are those invoices made out for?

A \$995.00, sir.

Q And on Page 817 that's the Duval County check you received pursuant to those invoices?

A Yes, sir.

Q And the claim jacket on those is on Page 819? Do you see that?

A Yes, sir.

Q And on Page 820 --

A That's a check from our store to Benavides Implement and Hardware made payable to O. P. Carrillo for the amount of \$975.00, sir.

Q Nine hundred and what?

A \$995.00.

Q And then the deposit slip on that is on Page 822. Can you identify on Page 821 Judge Carrillo's signature on that check?

A Yes, sir, that's his signature, sir.

Q Now, on these particular invoices and statements that say "rent on equipment" -- I just want to clarify it -- did your store at any time rent any of this equipment to Juan Leal, Precinct 2 or to Duval County?

A Never did, sir.

Q Now, I will refer to the check that is on Page 823 -- and for the benefit of the Court this was raised in the Respondent's exhibits -- or in the Judicial Qualifications Commission, Paragraph 10, referred specifically to the amount of money in the water district. And the Respondent's Exhibits contain those particular pleadings I referred to earlier.

I direct your attention there to Page 823. Can you describe for the Court the items on Page 823?

A Yes, sir, there's a check made payable to Benavides Implement and Hardware Company from Duval County Reclamation and Water District for the amount of \$5,625.00 and it's signed by D. C. Chapa who is O. P. Carrillo's daddy and --

MR. MITCHELL: Object -- pardon me, Mr. Couling. I'm going to object and move to strike that. I don't know the relevancy of that check to any Article contained -- any specification contained in the Articles of Impeachment. I would like to have Counsel point out to me what relevancy does that check have to what Article, please.

MR. ODAM: Your Honor, this check is relevant to the allegations made in the Article of Impeachment pertaining to the rental of nonexistent equipment, and also pertains to the allegations that's made -- I believe that's Paragraph VII on the existence or rental of nonexistent equipment. It also would relate to and be relevant to the paragraph on Zertuche General Store or other entities, businesses doing business through Judge Carrillo with governmental entities. So, it pertains either to Paragraph V and to Paragraph VII.

MR. MITCHELL: Well, we're going to object, we were not put on fair notice of that check, if it please the Court, as regards to what is obviously a very general statement by Counsel of where he is trying to put that check. So, I'm going to object, we're not on notice of it, as it relates to the impeachment proceeding and therefore it should not be admitted and the witness should not be asked any questions concerning it.

THE PRESIDENT: Was this check in the Qualifications Commission's Exhibits?

MR. MITCHELL: Yes, it was, Mr. President, but it related to a specific Article, -

THE PRESIDENT: Objection overruled.

MR. MITCHELL: Might I be permitted to finish my -- it was a specific charge on a specific check is what I meant to say, Mr. President. Note our exception.

Q Now, this particular check that I'm referring to on Page 823 from the water district, can you state again who countersigned as President of the Board of Directors of the Water District?

A Mr. D. C. Chapa, who is the father of O. P. Carrillo, sir.

Q Okay. And who signed as Secretary for the Board of Directors?

A Jose Tovar.

Q Jose Tovar?

A Yes, sir.

Q Now, did you personally receive this check on Page 823?

A Yes, sir.

Q And do you recall who delivered the check to you?

A I stated before it was either Rogelio Guajardo, Jr., or O. P. Carrillo.

Q Now, Rogelio Guajardo, is he -- first of all, is he any kin, if you know, to Judge O. P. Carrillo?

A He's the nephew of O. P. Carrillo, sir.

Q Now, did he have any position at that time with the water district?

A He was working for the water district.

Q Now, it states on here, if you can read into the record what is on Page 823, what the description of work is on the water district check.

A It says "invoice number 289, 290, 291 and 292, Benavides." But that's the first time I've seen those numbers, when I got the check for those invoices -- I never did see no invoice at all.

Q Now, did you have any prior conversation with Judge O. P. Carrillo about this particular check?

A Yes, sir, he told me that he had made arrangements with George Parr that he was going to get a station wagon from the -- and the check was to be issued from the water district to my store so he could get a station wagon, sir.

MR. MITCHELL: Did he say George Parr? Is that who you are talking about, George Parr?

THE WITNESS: Yes, sir.

Q And what position did Mr. George Parr have?

A I believe he was an attorney for the water district at that time, sir.

Q And Judge Carrillo made a statement to you that the water district was going to pay for a station wagon?

A Yes, sir.

Q Did you ever actually see a station wagon?

A Yes, sir, I did, sir.

Q And Judge Carrillo -- did he make the statement to you before or after you received this check on Page 823?

A I believe it was before, sir.

Q Now, when Judge Carrillo made that statement to you -- strike that. At a later point you received this particular check?

A Yes, sir.

Q Now, did you turn into the water district any invoices that are referred to here, 289, 290 or 291 or 292?

A No, sir.

Q Did the Benavides Implement and Hardware rent any equipment to the water district to cause this check to be issued to your store?

A Not in 1972. The only rentals that we rented was in 1974, sir.

Q Did your store sell any equipment pertaining to these invoices?

A No, sir.

Q So, did you ever submit those invoice numbers to the water district?

A No, sir.

Q So, when you got the check from Mr. Rogelio Guajardo or Judge Carrillo, that was the first time that you saw the invoice references?

A Yes, sir.

Q Now, I refer you to Page 824. As you will see that did not come out clearly, but I submit that is a bank photostatic copy of a check which is marked E-85, and I will ask the witness to identify it, since it is a poor copy in the Senate's Journal. Can you describe E-85 that appears there on Page 824?

A Yes, sir, that's a check issued by the Benavides Implement and Hardware Company on January the 13th, 1972 for the amount of \$5,725.34. And it's stamped "First State Bank and Trust Company, Rio Grande City," and it states "one station wagon."

Q Says "one station wagon" on it?

A Yes, sir.

Q Did you personally make out that check?

A I signed it and I put "station wagon" on it and just the date. I didn't fill the amount or nothing else.

Q That's your signature on the check?

A Yes, sir.

Q Who is the payee on the check?

A First State Bank and Trust Company, Rio Grande City.

Q Is that written out or is that signed?

A It's a rubber stamp, sir.

Q Rubber stamp?

A Yes, sir.

Q Once you made out the check, what did you actually do with the check?

A I gave it to O. P. Carrillo, sir, in blank.

Q Did you have any conversation with Judge Carrillo when you gave him that particular check?

A Well, I said -- he asked me if I had gotten the check from the water district and I said that I did. So, he said he wanted the check made so he could buy the station wagon -- or pay the note on the station wagon and to leave the amount blank, which I did.

Q Now, I will refer you to the -- back to the Senate Journal, Mr. Couling, Page 825 is the note card on the note of Judge Carrillo at First State Bank and Trust at Rio Grande City, 825, that's E-86. Now, the station wagon, did you ever see the station wagon?

A Yes, sir.

Q Could you describe for the Court what type of a station wagon that was?

A It was a Pontiac, sir.

Q What year was it?

A I believe it was a '72 or '73, I don't recall exactly.

Q Okay. I will refer you, Mr. Couling, to Page 830, which is a certified copy of the Texas Highway Department Motor Vehicle Registration papers on that station wagon, Pontiac, 1972?

A Yes, sir.

Q Page 830, 831, 832, 833, Page 834 -- you notice on 834 there -- can you identify Judge Carrillo's signature on that card?

A Yes, sir, that's his signature, sir.

Q And can you identify on that particular piece of paper what type of vehicle that is?

MR. MITCHELL: Well, now that speaks for itself, Counsel, he doesn't have any personal knowledge of that thing.

MR. ODAM: Okay. Strike the question, it speaks for itself.

Q 835 is a part of that package, as is 836 through the certification on page 838.

SENATOR AIKIN: Mr. President.

THE PRESIDENT: Senator from Lamar.

SENATOR AIKIN: Apparently we're not going to get through with this witness. I move the Senate stand in recess until 2:00 o'clock.

THE PRESIDENT: The Senator from Lamar moves the Senate stand recessed until 2:00 o'clock this afternoon. All in favor say Aye, those opposed No. The Ayes have it, the Senate will stand recessed.

Accordingly, the Senate, sitting as a Court of Impeachment, at 11:59 o'clock a.m. took recess until 2:00 o'clock p.m. today.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 2:00 o'clock p.m.

THE PRESIDENT: The Senate will come to order. At this time, the Chair proposes to recognize any Senator who wishes to offer a resolution amending Senate Rules carrying out the intent of the resolution adopted by the Senate, by the Senator from Jasper earlier today.

SENATOR ADAMS: Mr. President, I would like to send up a resolution.

THE PRESIDENT: Following resolution.

SENATOR ADAMS: And I would like to move to suspend all necessary rules and take it up and consider it at this time.

THE PRESIDENT: Senator from Jasper moves to suspend Senate Rule 22 or Trial Rule 22 which requires 24 hour notice on an attempt to amend the trial rules. Is there objection? The Chair hears none and lays out the following resolution:

SENATE RESOLUTION 6

Senator Adams offered the following resolution:

WHEREAS, some of the articles of impeachment preferred by the House of Representatives against O. P. Carrillo, Judge of the 229th Judicial District, contain issues that are separate and distinct from those contained in other articles; and

WHEREAS, the cumulative number of exhibits and amount of testimony likely to be introduced during the course of the impeachment trial may make difficult an adequate understanding of the issues and evidence relevant to each article; and

WHEREAS, the interests of justice may best be served by the Senate voting on an article of impeachment while evidence relevant to the article is freshly in mind and before proceeding to evidence relevant to another article; and

WHEREAS, Article XV, Section IV of the Texas Constitution prescribes the extent of any judgment of impeachment, which may be the same for one or more articles of impeachment; therefore, be it

RESOLVED, by the Senate of Texas sitting as a court of impeachment that Rules 19, 20, 21, and 22 of the special rules of impeachment for the trial of O. P. Carrillo, Judge of the 229th Judicial District, are revised to read as follows:

"Rule 19. Court Deliberation After Final Argument. (a) At any time during the trial, the court, on a written motion of a member of the court, may decide on a vote of a

majority of the members present to proceed to deliberate and vote on an individual article specified in the motion. Before deliberation or voting occurs, each party and Counsel must be given an opportunity to conclude the presentation of evidence and argument relevant to the specified article; provided that evidence not admitted by the court under Rule 28 shall not be considered necessary to the conclusion of such presentation.

(b) The court may deliberate (1) on an individual article of impeachment after argument is concluded on that article if the court decides to proceed to vote under Rule 19 or (2) on all articles of impeachment not considered under Rule 19 after final argument is concluded on all such articles. Deliberation must be in open session unless on motion of a member of the court the court decides on a vote of a majority of the members present to close the session.

“Rule 20. Submission of the Final Question. No article of impeachment is divisible. No vote on the merits of an article of impeachment may apply to more than one article. Voting may occur (1) on an individual article of impeachment after deliberation on that article if the court decides to proceed to vote under Rule 19 (a) or (2) separately on articles of impeachment not considered under Rule 19 (a) after deliberation on all such articles. The article to be voted upon is read and the final question is put, ‘Shall this article of impeachment be sustained.’ Each member of the court, as the member’s name is called, shall rise in place and answer yea or nay, which vote shall be entered on the record. The vote by which an article of impeachment is sustained or rejected is final and may not be reconsidered.

“Rule 21. Judgment of Acquittal. (a) If an article of impeachment is not sustained by the vote of two-thirds of the members of the court present, a finding of acquittal is entered as to that article.

(b) If a non-sustaining vote occurs after deliberation on an individual article under Rule 19 (a), the court may proceed to the presentation of evidence and argument on the remaining articles of impeachment, subject to another motion to proceed to vote on an individual remaining article as provided in Rule 19 (a).

(c) If a non-sustaining vote occurs on an article of impeachment after deliberation on all articles not considered under Rule 19 (a), the court may proceed to a vote on each of the remaining articles of impeachment.

(d) After voting occurs on all articles of impeachment and if no article is sustained, a judgment of acquittal is entered as to all articles. The presiding officer shall appoint a committee of members of the court to prepare a final judgment in accordance with the decisions of the court. The judgment is entered on the record of the court and a certified copy is deposited in the office of the Secretary of State.

“Rule 22. Judgment of Conviction. (a) If an article of impeachment is sustained by the vote of two-thirds of the members of the court present, a finding of conviction is entered as to that article. Conviction results in removal from office.

(b) If a sustaining vote occurs after deliberation on an individual article under Rule 19 (a), the following question is put, ‘Shall the judgment for conviction on article (appropriate number) extend to disqualification from holding any office of honor, trust or profit under this state?’ Parties or their counsel may present argument on the question. The judgment extends to disqualification only if approved by the vote of two-thirds of the members of the court present. If disqualification is approved, the presiding officer immediately shall appoint a committee to prepare a judgment in accordance with the decisions of the court. The committee shall be subject to Rule 22 (d). If disqualification is not approved, the court may proceed to the presentation of evidence and argument on the remaining articles of impeachment, subject to another motion to proceed to vote on an individual remaining article as provided in Rule 19 (a).

(c) If a sustaining vote occurs on an article of impeachment after deliberation on all articles not considered under Rule 19 (a), the court may proceed to a vote on each of the remaining articles of impeachment. After voting occurs on each article of

impeachment, the presiding officer shall appoint a committee of members of the court to prepare a judgment in accordance with the decisions of the court, including those articles of impeachment sustained under Rule 19 (a) but for which disqualification was not approved. Parties or their counsel may present argument on the final judgment. A motion to instruct the committee to extend the judgment to include disqualification from holding any office of honor, trust, or profit under this state is adopted only if approved by the vote of two-thirds of the members present. The committee shall be subject to Rule 22 (d).

(d) The written report of a committee appointed under Rule 22 (b) or (c) is to be filed with the clerk of the court and read in full. The question occurs on adoption of the report and each member of the court, as the member's name is called, shall rise in place and answer yea or nay, which vote shall be entered on the record. The report is adopted if approved by the vote of two-thirds of the court present. If the report is finally rejected, the presiding officer may discharge the committee and appoint a new one to prepare a judgment in accordance with the decisions of the court, which shall be considered in the same manner as the first report. Adoption of the committee report constitutes the pronouncement of judgment by the court and a certified copy of the judgment is to be deposited in the office of the Secretary of State. The judgment must extend to removal from office and may extend to disqualification from holding any office of honor, trust or profit under this state. If the judgment finally disposes of matters before the court, the court may adjourn sine die.

The resolution was read.

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: Mr. President and Members of the Senate, this is the resolution that the Senate expressed its sense on before dinner. If the Senate adopts this resolution, it will have to be done by two-thirds vote of the membership present to amend our rules so that we may, not shall, but may, if the Senate desires, by written motion proposed by some Member of the Court, request that or move that one Article of Impeachment may be separated and voted on separate and apart from the other Articles of Impeachment. In other words, it would simply allow the Court to make its decisions on Article I if it so desires without regard to the other nine Articles being considered all at one time. The present rules require that they all -- all of them be disposed of at one time. That is the sum and substance of this rule change.

SENATOR CREIGHTON: Does Senator Adams yield?

SENATOR ADAMS: I yield.

SENATOR CREIGHTON: Senator, is this along the lines of the suggestion that I made last August?

SENATOR ADAMS: Suggestion, Senator Creighton, it is very much along the lines of your suggestion last August. It simply allows the Court to --

SENATOR CREIGHTON: That's the suggestion --

SENATOR ADAMS: That's all it is.

SENATOR CREIGHTON: Thank you, Senator.

SENATOR ADAMS: Any other questions? It makes several rules -- it may change several of the rules, all of them to accommodate the separation of one Article if the Court so desires.

THE PRESIDENT: Senator from Wichita.

SENATOR FARABEE: Mr. President, I have a question.

SENATOR ADAMS: I yield.

SENATOR FARABEE: Would these amendments provide opportunity that if we had heard evidence on say Article I, V, VI or some other combination that we can proceed to vote on those three or four that we had already heard evidence on?

SENATOR ADAMS: Under these rules, the motion would have to be in writing and would have to be one at a time. In other words, I don't think that you can make a motion that we consider at the close of the evidence and at the end of the argument of Counsel, that Court consider Articles I and X. I think you would have to do these one at a time if you want to separate or carve an Article out.

SENATOR FARABEE: But, if we had heard all of the evidence that either side cared to present on several Articles, we could under these changes of rules that you're proposing vote on Articles I, V, or VI or some other combination, if we had heard all the evidence that either side cared to present evidence on.

SENATOR ADAMS: You can do it one at a time. It says, "And individual Articles specified in the motion."

SENATOR FARABEE: All right.

SENATOR LONGORIA: Does the Senator yield?

SENATOR ADAMS: I yield.

THE PRESIDENT: Senator yields.

SENATOR LONGORIA: Senator, along the lines of the question you just answered for Senator Farabee, would this -- this would not necessarily mean that you would have to take I, V, VII in that order, it could be V, VII, I, in the order that motions would come up?

SENATOR ADAMS: "And individual Articles specified in the motion."

SENATOR DOGGETT: Senator.

SENATOR ADAMS: I yield.

THE PRESIDENT: The Senator from Jasper yields to the Senator from Travis.

SENATOR DOGGETT: Is it a practical matter at this point, if the Prosecution has put on all their evidence in Article I, would this have a practical effect, then, of causing the Prosecution to close and begin with the Defense testimony on Article I?

SENATOR ADAMS: This rule change would not.

SENATOR DOGGETT: This rule change would not?

SENATOR ADAMS: No. Now, if you send up a motion, Senator Doggett, and say, "I move that we now proceed on Article I," and carve it out of the Articles of Impeachment, then, at that time, I would hope that the questions of the House Managers be asked that I asked this morning about the conclusion of their testimony.

And Mr. Mitchell will be given the same opportunity to tell us he's through. And, then, at that point, I would assume that if your motion was adopted, and then we would decide how long the arguments were going to be on Article I. And after we have concluded those arguments, I would presume if your motion were adopted, then we would proceed to deliberate in accordance with the rules and make a decision on Article I.

SENATOR DOGGETT: So, we would still have an opportunity to hear the rest of the testimony from the witness currently on the stand on Article VII unless somebody offers a motion following your rule?

SENATOR ADAMS: Until somebody offers a written motion to consider Article I, this rule change has no effect whatsoever.

SENATOR DOGGETT: Do you have such a motion?

SENATOR ADAMS: I will certainly consider it if you would like for me to.

SENATOR DOGGETT: Thank you.

THE PRESIDENT: Senator from Jasper yields to the Senator from Hidalgo.

SENATOR LONGORIA: Senator, even if this resolution should pass, don't we have an obligation under the Constitution to dispose of all the Articles of Impeachment?

SENATOR ADAMS: Senator, you can read the Constitution just like I can.

SENATOR LONGORIA: Well, I mean, I'm asking you the question. If we do pass this resolution, do we still have the obligation --

SENATOR ADAMS: Do you think we should? Do you think we do?

SENATOR LONGORIA: Sir?

SENATOR ADAMS: Do you think we have that obligation?

SENATOR LONGORIA: I think when the House of Representatives impeached a man on ten Articles of Impeachment, I think we ought to try him on ten Articles of Impeachment, yes, sir. That's what I think about it.

SENATOR ADAMS: Any other questions?

THE PRESIDENT: Mr. Doyle.

SENATOR ADAMS: Mr. President, if there are no other questions, I would like to move the adoption of the resolution.

THE PRESIDENT: I would like to recognize Counsel, Senator.

SENATOR ADAMS: Yes, sir.

MR. DOYLE: Mr. President, I would direct the attention of the Senate to Page 2 of the resolution which would be Rule 21, Subpart C where it reads, "Following a non-sustaining vote, which occurs after deliberation on all Articles not considered under Rule 19A, the Court shall proceed to a vote on each of the remaining Articles of Impeachment." I am not certain what that means. I think perhaps the author of the resolution might have put a "not" in there in that second line where he didn't intend one to be. It seems to me it would read more logically if you left out the "not" in the second line. Following the non-sustaining vote which occurs after deliberation on all Articles not considered under Rule 19. Well, as it stands now, if you voted -- Let's say you voted right now on Article I and you didn't sustain the Article of Impeachment, it would appear to me as though this rule as reads now would require you to proceed to vote on all the rest of the Articles, and we haven't finished presenting evidence on those, whereas, if you left out the "not" and said, "Following the nonsustaining vote which occurs after deliberation on Articles considered under Rule 19, the Court shall proceed to a vote on each of the remaining Articles of Impeachment," I still don't like the language, and it still appears to me to be very confusing. I would certainly hope that you take a hard look at this.

SENATOR ADAMS: Mr. President, I don't -- I certainly don't intend that --

MR. DOYLE: But the point is, Senator, in the present language, the rules are assuming that everything has been closed, both sides have presented all their evidence, and both sides have rested, and both sides have argued on all the arguments.

SENATOR ADAMS: Mr. President.

SENATOR TRAEGER: Mr. President.

SENATOR ADAMS: Now where am I? I'm not concerned about the question he raises. I think this -- I just don't think that this Court is going to proceed to any kind of judgment without evidence.

THE PRESIDENT: Mr. Mitchell:

Question is on adoption of the resolution sent up by the Senator from Jasper. This is a rule change, requires two-thirds vote.
Secretary, call the roll.

Yeas: Adams, Aikin, Andujar, Braecklein, Brooks, Creighton, Doggett, Farabee, Gammage, Hance, Harris, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Mengden, Moore, Patman, Santiesteban, Schwartz, Sherman and Williams.

Nays: Harrington, Jones, Ogg, ~~J~~nelson and Traeger.

Absent-excused: Clowe and Meier.

THE PRESIDENT: There being 24 "Yeas" and 5 "Nays" the resolution is adopted.

The Chair at this time will recognize Mr. Mitchell for a statement for the record concerning the absence of Judge Carrillo.

MR. MITCHELL: Thank you, Mr. President. He is ill in the motel, he has the flu and I have been authorized to excuse his presence -- request that his presence be excused for this afternoon. Hopefully he will be back in pocket tomorrow afternoon. We waive presence. And I meant to make that fact known to the Court and certainly did not intend to preclude the Court from proceeding with its business.

THE PRESIDENT: Did you waive your client's presence?

MR. MITCHELL: Yes.

THE PRESIDENT: And you waive any appeal or protest based --

MR. MITCHELL: Yes, on that grounds I will.

SENATOR OGG: Point of information.

THE PRESIDENT: Senator from Harris. Senator Ogg.

SENATOR OGG: It seems as though we discussed this particular rule when we took up the rules several months ago, but what is the Chair's feeling or what is Counsel's feeling on this, not necessarily in relation to the rules of evidence, but in relation to our rules here as to him waiving his client's rights and what that might do on appeal.

THE PRESIDENT: The Chair recognizes the Special Counsel.

MR. JAWORSKI: I assume from what Mr. Mitchell has said that he is waiving the presence of his client. And I assume that he's speaking on the authority of his client. Am I right, Mr. Mitchell, you have been authorized to do that?

MR. MITCHELL: Yes, I have been authorized to speak in his behalf and I am so representing to this Court.

MR. JAWORSKI: I think that's sufficient, Senator.

THE PRESIDENT: Mr. Odam, would you recall your witness?

MR. ODAM: We recall Mr. Couling.

And for the benefit of the Senate -- the Court, while Mr. Couling is coming in the next item, Mr. Mitchell, I will be referring to is in the Examiner's Exhibits Admitted, Volume Three, Page 1555, a chart which begins at that page, 1555, and extends through the end of that particular volume.

THE PRESIDENT: Mr. Odam, before you resume questioning, in view of the action just taken by the Senate, I would like to ask Mr. Doyle -- Mr. Doyle, could you advise the Members of the Senate as to where you are on the presentation of probative evidence on the various charges?

MR. DOYLE: Mr. President, do you mean with respect to all of the Articles of Impeachment? With respect to all of the Articles of Impeachment?

THE PRESIDENT: With respect to any Articles, Mr. Doyle, the presentation of which you may be near conclusion.

MR. DOYLE: As I stated earlier we have finished the presentation of affirmative evidence on Article I. I would think that the next Article that we're nearest on is Article VII, which is primarily what Mr. Couling is testifying about now. I will have to -- to conclude the evidence on Article VII I will have to get a representative of the County, a representative of the bank and probably one other witness to get in some evidence that I need to get in. And then, except for highlighting of the evidence that was excepted from the Judicial Qualifications Commission Article VII will be complete.

Article II -- there's been a great deal of evidence in the record, in the Judicial Qualifications Commission on Sub-part 1, very little in Sub-part 2, very little, if any in Sub-part 3 and very little, if any, in Sub-part 4. So, we will have a good bit of evidence to present on Article II in the sections I've mentioned.

Article III, Section 1, it seems as though we have presented virtually all of our evidence. Article II, virtually all of our evidence. Sub-part 3, 4 and 5 are all covered quite well in the JQC evidence.

Article V, parts of it were covered -- the bulk of it was covered in the JQC -- excuse me, that's Article IV. The bulk of it was covered in the Judicial Qualifications Commission. And what little evidence we have will be just to highlight that, since it was covered fairly thoroughly in that proceeding. Article V, again, we have some evidence left to put in that would come from the people I just mentioned earlier on that Article.

Article VI was not even in the Judicial Qualifications allegations, so, we have presented no evidence on that and none is before the Senate. We will have to prove up that entire Article.

Article VIII -- excuse me, VII I have covered. VIII, we will have a considerable amount of evidence to put in on Article VIII, Mr. President, but it ought to go fast, in all honesty.

Article IX is -- again, we will have some evidence to put in, but it will go relatively fast also, because it's a pretty well cut and dried issue. And it was covered in the JQC to some degree.

Article X is virtually all in.

THE PRESIDENT: To summarize then on Article I and X you're virtually complete. Article VII you need about three or four more witnesses.

MR. DOYLE: Article X was covered, you know, through testimony on other Articles, but I -- we might have to prove up a little bit more in that, but it would be very little.

Frankly, Mr. President, I would have to look over the JQC thing again on Garza, because I have not covered it as thoroughly as I have some of the other Articles, which I anticipated we would be working on earlier.

THE PRESIDENT: You mentioned on VII you would need about three witnesses. What kind of time estimate?

MR. DOYLE: Well, I've got to prove up those checks I tried to get in yesterday. VII -- after we finish the examination that we're on now with Mr. Couling and that additional evidence that I mentioned which has a bearing on two Articles, that

will finish us on VII.

THE PRESIDENT: Were the checks that you referred to, were they admitted in the IQC?

MR. DOYLE: No, sir.

THE PRESIDENT: Mr. Mitchell, could you advise the Senate as to the status of your defense, if the Senate should decide to vote on less than all Articles?

MR. MITCHELL: On Article I, I would have the examination of Mr. Couling on the area involved in Article I, Mr. President. I would have my client, Judge O. P. Carrillo, that I would want to put on the stand in connection with it. And I would like to have the right to put on the Representative -- State Representative Terry Canales. That would, I believe, fairly well make our defensive posture known as regard to Article I.

Article II, if it please the Court -- did the Court ask me about Article II? I think Article II is complete, if it please the Court. Article II, sub-division 1 is thoroughly tried. Article II, sub-division 2 -- I respectfully represent is thoroughly tried. And I disagree with Mr. Doyle, I think that Article II, sub-division 3 is tried. I believe the testimony on -- also on 4, the petitions to remove, et cetera in the Gene Powell, the Texas Ranger's testimony, along with the testimony of Judge Carrillo. At any rate my opinion would be there is very little on Article II that I would rebut. Article III, I think, is complete, both as to Cleofas, Pat Gonzalez, Francisco Ruiz, Oscar Sanchez, Patricio Garza, I think, tried, I think time and again in the Judicial Qualifications Commission.

Article IV I think is complete as to the use of the equipment. I think I would be -- unless there's matters that are brought up that are wholly beyond the Judicial Qualifications Commission hearing I would have no further testimony on it. There's some -- depending on where they're going now, Mr. President, there would be some follow up testimony on the existence, perhaps, of Zertuche General Store. The record is fairly complete, except there are some matters that perhaps I could -- I would have the witnesses George Zertuche, Alvira Rodriguez and a Mr. Lozano perhaps on that, which I would represent to the Court shouldn't take me over two hours, it didn't take it before. I would like to offer that on the existence of the Zertuche General Store. The Article VI -- I would stipulate to the -- I know the file that they are talking about. I would stipulate that that's the financial statement filed by the Secretary of State. I could have Oscar Kirkland -- I believe his testimony is already in the record, as to why a statement is in in that financial statement. I think it would probably take 10 minutes or 15 minutes.

On Article VII, of course, Mr. Couling here, my cross-examination would be chiefly Mr. Couling and my affirmative testimony would be Judge Carrillo. The same is true with VIII.

Article IX, I think the Judicial Qualifications Commission hearing is complete on Judge Carrillo's testimony from my posture in the case.

And that is also true with Article X. I think if they examine their case very carefully on Article X that Article X has no substance in the case. I don't think there's any question about his working for Judge Carrillo of time. But at any rate, that's in evidence, I wouldn't want to offer any further testimony on it, Mr. President.

So, I believe that it would appear that depending on where they're going at the present time that we could be through, oh, in a couple of days with ours, with all of them.

THE PRESIDENT: Mr. Odam.

MR. ODAM: Are you ready to proceed, Your Honor?

THE PRESIDENT: Yes.

MR. MITCHELL: Excuse me, Mr. President. I'm going to object. I think Mr. Odam has indicated he's going to 1555, that's 192-A, I suppose it's the Judicial Qualifications Commission. It has no relationship, that I can see to any of the Articles. And I would request that Counsel simply state, if he would, what Articles he's offering them for or with or in connection, there being related to specific Articles in the Judicial Qualifications Commission. I don't see the comparable Articles in the Articles of Impeachment.

THE PRESIDENT: Mr. Odam.

MR. ODAM: Yes, sir. First of all, I take the same position in respect to this item as with all others. I think legally it's admitted into evidence for all purposes. That's the first thing. But specifically what the record for the Judicial Qualifications proceeding and even the testimony here today has taken a path somewhat along these lines. Number one, Mr. Gonzalez has testified he did not have equipment to rent; number two, Mr. Mitchell has referred to the income tax return of Mr. Couling, attempting to show the amount of income to leave the presumption, as was the presumption in the Judicial Qualifications' record for some time, that Mr. Couling did have equipment to rent and that he did in fact rent equipment. The purpose of the introduction of this chart, which is -- well, I won't explain what it is at this point. But the purpose of this chart is to rebut the presumption that Mr. Couling had any equipment to rent and that he did in fact rent any equipment. The chart's in evidence. The chart is on the Senator's desk. I think it's relevant and aside from the relevancy it is already in evidence, as is the testimony. I simply wish to highlight it.

MR. MITCHELL: Mr. President, may I make a statement and address myself to Counsel's remarks. Chiefly, I suppose his basis for relevancy is on rebuttal, equipment rental rebuttal. I submit that I haven't gotten anything into evidence on a positive basis for him to rebut. Now, I have not been given a laboring oar at this point. Of course, if I raise it and open it up, I submit it would become relevant. I just wanted to make those observations for the record.

MR. ODAM: Well, the door is already opened by the admissibility of all the testimony that Judge Carrillo has already given, which caused us to call Mr. Couling on rebuttal anyway. It's already there in evidence. The door has already been opened.

THE PRESIDENT: The objection will be overruled. The Exhibit has been entered in evidence. Please proceed, Mr. Odam.

MR. ODAM: Again, I'll refer to the Court and the Senators the chart was this size, and Mr. Couling will discuss his preparations. It's just physically impossible for the Senate Print Shop to reduce this to a size to go on a page. So what happened was that this chart was typed, and the typed copy is in the Examiner's Exhibits up there, and it is a typed copy on your Volume Three. It's E-192, begins on Page 1555. I will give Mr. Couling this chart to ask him questions about. And the questions I'll be asking him about will be in the typewritten chart that you have before you.

And this morning before I began I referred the Senators to the daily copy. And again I would refer the Court's attention. What I will attempt to do is summarize the

testimony of Mr. Couling, both direct-- I won't intend to summarize the cross-examination. But I referred earlier to the fact that Mr. Couling came back approximately on December the 18th and then December the 19th and then came back again on December the 29th and he testified about this chart. And all that testimony is in the daily copy in the stack.

Q Mr. Couling, I show you E-192, which the Senators have before them in the volume of testimony. Have you seen this chart before?

A Yes, sir. I have.

Q And again it

SENATOR ADAMS: Mr. President.

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: I'd like to ask the Counsel for the House Managers to advise this Court and advise me when you've concluded your evidence on Article VII.

THE PRESIDENT: Counsel for the Board of Managers will comply with that request.

SENATOR ADAMS: I'm not asking for it right now, Mr. Odam. Just whenever you're through, just to let me know.

MR. ODAM: I will advise Mr. Doyle whenever he returns. I certainly will.

SENATOR ADAMS: Thank you.

Q On the chart that you have before you, again the testimony is in the Judicial Qualifications record, as the preparation. Could you first explain for the benefit of the Court the preparation of the chart. Is the chart in your own handwriting?

A No, sir, it is not in my handwriting, sir.

Q To your personal knowledge, do you know in whose handwriting the chart is reproduced?

A Well, part of it is in Ms. Levatino's and Don Lee's and Max Flusche.

Q And Ms. Levatino, you're referring to was one of the examiners in the Judicial Qualifications --

A Yes, sir.

Q And Mr. Don Lee is with the Department of Public Safety?

A Yes, sir.

Q And Mr. Max Flusche was one of the examiners in the Judicial Qualifications?

A Yes, sir.

Q Now, were you present when they prepared this particular chart?

A Yes, sir, I was.

Q And in preparing the chart -- while I put this in the form of a question it is also in evidence -- in evidence are the bank statements of this particular bank account and the checks and the deposit slips. Now, this particular bank account -- first of all, can you explain for the benefit of the Court where this bank account is.

A This bank account is in the First State Bank of San Diego in San Diego, Texas.

Q And can you describe for the Court what the chart is a reproduction of.

A Well, on the left-hand side it's got the date of the deposit, then the deposits and the source where they were deposits from, from the County or the water district --

Q Can you speak a little bit closer into the microphone, please.

A Whether the deposit was made out from the County, water district, or school district or individuals.

Q First of all, is the --

MR. MITCHELL: Excuse me. Mr. President, may I ask Counsel a question, please. Mr. Odam, could you represent to me -- I noticed that E-192, which this is a reproduction of, is not page for page the same. Can you represent that you checked the typewritten pages that appeared 1555, with E-91(1) and that they are accurately reproduced. I just want a statement from you, if you don't mind.

MR. ODAM: I will state that it was checked in our office totally with the chart with the pages. And I'll also explain that like on Page 1555, it's marked at the bottom, 1 B, and at the top of the next page is the remaining information. That's all the first page of the chart and you go to the next page. All of that is Page 2 of the chart, and what's left over there on the chart --

MR. MITCHELL: You're stating to this Court and to me and to the officials here that Page, for example, 192(1) is 1555 and 1556, so I won't have to worry about it.

MR. ODAM: Yes, sir.

MR. MITCHELL: That's accurately reproduced.

MR. ODAM: If it is -- my statement is that it's accurately reproduced. It is.

MR. MITCHELL: Thank you, Mr. President.

THE PRESIDENT: Mr. Odam, would you give me a page reference?

MR. ODAM: Yes, sir. It begins at Page 1555 in Volume Three in the Examiner's Exhibits, the green volume.

THE PRESIDENT: Thank you.

MR. ODAM: Now, the first page of the chart -- Mr. Couling, may I see the first page. No, the cover sheet. I would have to explain that the first page of the chart states on it to be Benavides Implement and Hardware Account, First State Bank of San Diego, 4/71 through 12/74, that has E-192 on it.

This particular page of the chart was not reproduced in the volume, and because of that I need to back up and explain what the chart is. You will not find this first page in the volume. It starts with the first page of entries.

Q Let's explain that, first of all, Mr. Couling.
What bank account is this that we're looking at here?

A This charge is made out from the First State Bank of San Diego, San Diego, Texas, sir.

Q And the First State Bank of San Diego, this is the bank account for your store, Benavides Implement and Hardware?

A Yes.

Q And this is a reproduction or intended to be a reproduction of the money into that account and the money out of that account for the period stated there on the first page of the chart?

A Yes, sir.

Q Now, again, referring back to the cover sheet on this chart, what are the dates stated on the cover sheet?

A 4-71 to 12-74, sir.

Q Well, this is the money that -- the source of the money and then to whom the checks were made out.

A Yes, sir.

Q Now, let's don't go into specifics yet, but let's take, for example, on the first page, which is Page 1555, the first entry there, 290. What does the word "accounting" mean out beside that?

A That means that was the check issued from Duval County to my store, sir.

Q And the next entry where it says County, that would be money also from the County?

A Yes, sir.

Q How about where it says water district?

A That's a check issued from the water district, sir.

Q And over to right is an indication as to who checks were made out to?

A Yes.

MR. ODAM: I'd also state to the Court, as Mr. Mitchell knows, on the right-hand side, the payees, all of the checks that made the basis for this chart, all the checks are in evidence and they are all the checks that are before here. In other words, the chart was based upon evidence, as attorneys know, based upon evidence that was already admitted into evidence and which appears earlier in this volume. For example, there's a reference there on the right-hand side of where it's 308, R. Carrillo and Brothers, E-65. If you were to find E-65, you'd find a check made out to R. Carrillo and Brothers. Same thing, Farm and Ranch Store, E-186-12. That's a check made out to Farm and Ranch in that amount. And these notations in pencil on the chart were made as we went through the Judicial Qualifications proceeding by Mr. Couling as he was testifying, and you'll find all that in his testimony.

MR. MITCHELL: Well, that's not exactly accurate, John, but it's good enough. I'll accept it.

MR. ODAM: Close enough not to give me an objection.

Q Now, Mr. Couling, Mr. Mitchell had asked some questions earlier about an income tax return. Do you recall the Judicial Qualifications proceeding that Mr. Mitchell asked for some income tax returns of yours?

A Yes, sir.

Q Now, he asked, for example, for 1971. Did you have at that time in your possession income tax returns for Benavides Implement and Hardware for 1971?

A No, sir.

Q And had you requested the Internal Revenue Service for a copy of that?

A Yes, sir, I had requested and I am still waiting for an answer. I got an answer for 1972, which I already had, but not '71. I'm still waiting for it.

Q So you at the time Mr. Mitchell asked for it did not have it?

A No, sir.

Q And you do not have it in your possession at this time?

A No, sir.

Q 1972. Did you have that -- 1972?

A I believe I turned that over to you.

Q And 1973?

A Yes, sir.

Q 1974?

A Yes, sir.

Q All those income tax returns were tendered to Mr. Mitchell and are evidence in this case?

A Yes, sir.

Q Now, Mr. Carrillo -- you testified earlier that you sold the Benavides Implement and Hardware Store to Mr. Gonzalez, I believe. And this morning I asked you the question, I believe, what was the consideration -- how much did he pay you for the purchase of Benavides Implement and Hardware?

A Mr. Gonzalez has not paid me a penny up to date. And we're waiting until he clears -- paying all the accounts that were outstanding to the store when I had it.

Q Now, the account for these years that we have in evidence here, this chart, E-192 from 1971 to 1974, these are the years that you operated the store?

A Yes, sir.

Q And, Mr. Couling, you had not sold the store to Mr. Gonzalez at that date?

A No, sir.

Q When did you actually sell the store to him?

A It was on last year in June, I believe. June, 1975.

Q As you recall, Mr. Mitchell asked you a number of questions -- **great deal** of testimony in here about the rental of equipment, and right before we took our morning break I asked you if you had ever rented any equipment.

A No, sir.

Q Now, let's look at the chart, and I'll begin with Page 1555. The lines that are on the chart, did you actually place -- or can you explain what the lines are intended to represent on the chart. Let's take, for example, the first one where it's \$290.80 from the county.

A Yes, sir.

Q Can you explain why there is a line across to a check to Farm and Ranch?

A Well, to show that the monies was coming in from the county and going right back to the Farm and Ranch, sir.

Q Now, when you got a check from the county -- let's take those first two checks, \$290.80 and then a check for \$941.47 from the county. Then you wrote out a check for that total amount to the Farm and Ranch Store.

A Yes.

Q This is the Farm and Ranch Store owned by Judge O. P. Carrillo and Ramiro Carrillo?

A That's right, sir.

Q Why would you write a check out to Farm and Ranch Supply for \$1,205.27?

A I believe that they had taken the bills to Duval County. The County issued a check to my store, which I in turn turned it back to.

MR. MITCHELL: Objection.

A - to Farm and Ranch.

MR. MITCHELL: That would be hearsay, of course, what they did. We'd object.

Q Let me rephrase the question. Did your store, Benavides Implement and Hardware -- did your store do business with Duval County, actually rent equipment or any type of business with Duval County to have obtained that money from Duval County?

A No, sir, not that particular check. No, sir.

Q Now, the check to Farm and Ranch Supply, that's the check E-186(12). Do you see that?

A Yes, sir.

Q There are a number of checks in here made out to Farm and Ranch, the one right above it, E-186(11). Can you trace a line across on the check for \$594.95?

A Yes, sir.

Q Why did you make out a check to Farm and Ranch Supply for that amount of money?

A The check from the water district was brought to my store. I asked what it was for. They said that there was some bills that were submitted from the Farm and Ranch to the county under the name Benavides Implement and Hardware Company, sir.

Q Now, who told you that?

A Rogelio Guajardo, Jr., who was the one that used to pick up bills for the water district in Benavides.

Q Now, the Rogelio Guajardo, that was the one referred to just before the noon break, Judge Carrillo's nephew?

A Yes, sir.

Q Let's take the first entry there, \$308.00, made out to R. Carrillo and Brothers. You have a line across to the county, \$308.00. Why did you get a check from Duval County for \$308.00?

A When I got --when I received that particular check made out for \$308.00 -- and it was made out from countywide funds from the County, and I wanted to know what it was for. That particular time Ramiro told me it was checks that was going to get monthly from that account, from the countywide account, made for the amount of \$305.00, \$308.00, \$310.00, that I in turn had to make a check payable to Ramiro Carrillo and Brothers, which is an account that was mostly used by D. C. Chapa.

Q Now, the R. Carrillo and Brothers, could you explain if you know what is R. Carrillo and Brothers?

A As far as I know, it's just a checking account where they put the money of the cattle sale and whatever they had on that account. But they had no business whatsoever, just --

MR. MITCHELL: Trust. The evidence is that is a trust created by D. C. Chapa many, many years ago, Mr. Odam, maybe you can inform this gentleman.

Q \$308.00, why -- did you rent any equipment from R. Carrillo and Brothers?

A No, sir.

Q Did you purchase any equipment from them?

A No, sir.

Q Did you purchase any supplies from R. Carrillo and Brothers?

A No, sir.

Q Once you made out a check for \$308.00 to R. Carrillo and Brothers, what did you actually do with that check?

A I gave that check to Ramiro Carrillo.

Q Let's take the next one down is O. P. Carrillo, that's an earlier check we referred to, the \$1,008.00, that's the one we discussed this morning. We discussed the two Farm and Ranch checks. Did you rent any equipment from Farm and Ranch? Did your store rent any equipment --

A No, sir. We never did.

Q Now, if Farm and Ranch rented any equipment directly to the County, who would know if they did that?

A The only one that would know would be the County Commissioner, Ramiro Carrillo or Cleofas Gonzalez.

THE PRESIDENT: Let the record show Senator Creighton in the Chair.

Q Okay. The next one we come down to is Mr. Oscar Carrillo. Is this Oscar Carrillo any kin, if you know, to Judge O. P. Carrillo?

A Yes, sir, he's brother to O. P. Carrillo.

Q And you wrote out a check for \$500.00 to Oscar Carrillo?

A Yes, sir.

Q Could you explain to the Court why you would write out a check for \$500.00 to Oscar Carrillo?

A As you notice a check that came in from the water district for \$750.00, you would later on see it on down the chart, I mean, about every month. I inquired about that check and I was told by Rogelio Guajardo and D. C. Chapa that when I got a check for \$750.00 from the water district that I was in turn to make the check payable to Oscar Carrillo for the amount of \$500.00 or to D. H. Carrillo.

MR. MITCHELL: I'm sure I don't see what that's got to do with my client, and we're going to object as to hearsay, Mr. President.

MR. ODAM: First of all, I again state that it is all in evidence, and therefore the objection is not good for that reason. The second thing is I intend to ask the question of whether or not Mr. Couling rented any equipment or had any legitimate transaction to explain why he wrote out checks to Oscar Carrillo.

THE PRESIDING OFFICER: Overruled. Let's proceed.

Q Now, you stated that on a periodic basis, you would get water district checks. Who would actually bring in the water district check to you?

A Rogelio Guajardo would bring them to my office or I sometimes would pick them up at D. C. Chapa's house.

Q Now, Rogelio Guajardo, what position did he have with the water district at that time?

A He was some kind of superintendent on the water district.

Q And Judge Carrillo's nephew would bring them to you either at your office or

--

A Or I picked them up from D. C. Chapa's house.

Q Let's look just for a moment at the \$750.00 checks from the water district. The \$750.00 check that you got on April 16 of 1971, was there any legitimate business done?

A No, sir.

Q By your store or with the water district to get that money?

A No, sir.

Q When you paid out the \$250.00 -- you have a line going to it to R. Carrillo and Brothers, was that a legitimate business, or did you rent any equipment or were you making any payment to R. Carrillo and Brothers for any equipment there?

A No, sir.

Q Now, skip down to 5/17/71. Do you see that \$750.00 entry?

A Yes, sir.

Q You have a line going across to a \$500.00 check to Oscar Carrillo, E-188-2. Did you rent any equipment from Oscar Carrillo?

A No, sir.

Q Did you ever rent any equipment from Oscar Carrillo to be making the payments?

A No, sir, I never did rent nothing from Oscar Carrillo also.

Q Check. And E-188-2, which the Senators have in their volume of evidence, that's the check to Oscar Carrillo?

A Yes, sir.

Q Now, the water district, you have a line going across to R. Carrillo and Brothers on that one on May the 17th of 1971. Did you rent any equipment from R. Carrillo and Brothers for that amount of money?

A No, sir. I never did rent no equipment from Ramiro Carrillo and Brothers.

Q Down on June 17 of 1971, there is another \$750.00 water district check. I ask you the same questions there. Did you have legitimate business with the water district to get that money?

A No, sir, not to get this money, no, sir.

Q The line down to Oscar Carrillo and Ramiro Carrillo on those -- at the bottom of the page, which is at the top of your next page is the completion of the first chart -- page of the chart. I refer you -- this is still on your first page of the chart, Mr. Couling, to 7/15/71, water district check for \$750.00 there. Now, there is a line running across to David H. Carrillo. Can you explain first of all who is David H. Carrillo?

A David H. Carrillo is the son of Oscar Carrillo and the nephew of O. P. Carrillo, sir.

Q Did you ever rent any equipment from David H. Carrillo?

A No, sir.

Q Did you have any legitimate business dealings with David H. Carrillo?

A None whatsoever, sir.

Q I don't want to skip any of these payees, and I'm sure if I do, that Mr. Mitchell will pick them up. One he asked you about back on the first page, 1555, there is one to Continental Oil Company. This is back up on 4/26/71?

A Yes, sir.

Q Why did you write out a check to Continental Oil? I believe Mr. Mitchell asked you about that one.

A Well, I believe -- about two or three weeks before the date of the -- 4/26/71, Ramiro came by and told me that Continental had a truck for bids for sale. Now, he wanted for me to put in a bid, which I did, and later on we were notified that we were -- the ones that they gave the bid to. I made a check out payable to Continental, Ramiro picked the check up and took it to Continental, and he picked up the truck. And up to the present time, I have never had no use of that truck at all. The truck is still in my name at the store.

Q Is this the dump truck that we referred to earlier?

A No, sir, this is a winch truck.

Q Winch truck?

A Yes, sir.

Q That particular winch truck, as far as you know, was that in the possession of Ramiro Carrillo?

A It was, yes, sir, last time I saw it was still in his possession.

Q Did you ever rent that winch truck to the county?

A No, sir, Ramiro had it all the time.

Q On the chart, there is an entry here for \$80.00 to Eloy Carrillo, like on May 18 of 1971. Who is Eloy Carrillo?

A Eloy Carrillo is the Deputy Sheriff of Benavides, and he is the first cousin of O. P. Carrillo, and he used to work parttime in my store on 1971 which was closed and was open only when people required that we sell some merchandise to them.

Q And the payments to Eloy Carrillo were payments for when he actually worked in the store?

A Yes, sir. I paid him around -- about \$80.00 a month for his work.

Q Now, you have a check right above the one to Eloy Carrillo. This is one on May 13 of 1971, check for \$875.00 to R. Carrillo and Brothers. You have a line running across to the school district. First of all, I ask you, with respect to the school district, you got a check from the school district for \$875.00?

A Yes, sir.

Q Did you do any legitimate business with the school district to have obtained that check for \$875.00?

A Not for this particular check, no, sir.

Q Now, you have a line going across to a check made out the same date to R. Carrillo and Brothers which is also in evidence.

A Yes, sir.

Q Why did you write out a check to R. Carrillo and Brothers when you got the school district check?

A On this particular check, Mr. Chapa said that he needed some money, and he specified the amount, \$875.00, which I in turn caused the bill to be made to the school, and then later on I made a check from my store to Ramiro Carrillo and Brothers.

Q Now, D. C. Chapa is Judge Carrillo's father?

A Yes.

Q Was it at this time D. C. Chapa, was he President of the School Board?

A He was the President of the School Board at that time.

Q Check down on 5/20/71, \$1,000.00 check to O. P. Carrillo. It's check E-156, check number 120. Do you see that, Mr. Couling?

A Yes, sir.

Q Now, that check to Judge Carrillo, I believe there is earlier testimony, and we can pull out the check for -- and see what was stated on it, but let me ask you this particular question. Did you rent equipment from Judge O. P. Carrillo, and were you making the payments to Judge Carrillo for this particular check?

A No, sir, never rented anything from O. P. Carrillo, sir.

Q I did not ask you earlier this morning, but there was testimony by Judge Carrillo which is in this transcript about a water well drilling rig. My question to you, did your store, Benavides Implement and Hardware, ever rent a water well drilling rig from Judge Carrillo?

A No, sir, we never -- never -- we never rented a water well rig, and I believe that rig, they were confused it was operated in 1965 to 1967 only.

Q Remember when Mr. Mitchell asked you some questions about the rig in Corpus Christi?

A Yes, I sure do.

Q Now, this water well drilling rig, the testimony in the record is -- states for itself, that about the water rig going out on various pieces of property. The testimony in the record is with respect to that check this morning on the station wagon that that was an advance, that you were paying in advance to Judge Carrillo for rent that you had -- must have received for that water well rig. I know you haven't heard that testimony before, but I assume, and if I am incorrect about it, Mr. Mitchell will correct me. My question to you, that check this morning that you gave to Judge Carrillo I asked you about on the station wagon, were you making a payment to Judge Carrillo because you had rented this water well drilling rig?

A No, sir, I stated that he had come by, and said that they were giving him --

THE PRESIDING OFFICER: Excuse me. Mr. Odam, I would like to direct a question to you. Did this witness testify to this testimony before the Judicial Qualifications Commission?

MR. ODAM: Yes, sir.

THE PRESIDING OFFICER: Has he been granted immunity from prosecution?

MR. ODAM: I can explain that now. He is -- he has not been granted immunity, per se.

MR. MITCHELL: Now, that's not -- that's not exactly correct, Mr. Odam.

MR. ODAM: Can I explain that with this witness?

THE PRESIDING OFFICER: Go ahead, Mr. Odam.

Q Mr. Couling, I'll refer you to the respondent's Exhibits, and I refer the Court to R-57. You were given this morning an index to the Exhibits, R-57 --

MR. MITCHELL: Page 646, Counsel, of Respondent's Exhibit.

MR. ODAM: Page 646. This is in the Gold Volume, Page 646. Page 646, the Gold Volume is entitled, "Memorandum of Understanding," and I think the testimony about this will answer the question if the document itself does not.

Q Mr. Couling, do you have R-57 before you?

A Yes, sir.

Q You've seen R-57 before, have you not?

A Yes, sir.

Q I believe this was a document that was in the tax case Mr. Mitchell had down in Corpus Christi, is that right? This is the sticker on the bottom of it, the government's Exhibit in that case, is that correct?

A Yes.

Q Now, I refer you over to the second page which is Page 647. Do you identify your signature on that?

A Yes, sir.

Q And that of Arnulfo Guerra, and Assistant Attorney General John Blanton. Now, Senator Creighton has asked the question of whether or not you were granted immunity.

MR. ODAM: Rather than ask the witness questions, Senator Creighton, the memorandum of understanding speaks for itself. The witness has agreed to testify. As

it states in Paragraph 4 "as a witness for the State of Texas or of the United States under subpoena in any criminal proceedings," and then return to the top of Page 6, that "Rudolfo M. Couling agrees to enter a plea of guilty to one felony criminal indictment under the Penal Code with the understanding agreement that after such entry of guilty, the State of Texas will immediately thereafter make a recommendation for probation." So, he is not per se been granted immunity, but this has been entered into. No other --

MR. MITCHELL: There being five indictments, Mr. President, presently pending against this gentleman.

THE PRESIDING OFFICER: Five indictments?

MR. MITCHELL: And he's made a deal to plead on any one of them. Just take your choice. He's guilty of all of them. He'll plead to any one of them.

THE PRESIDING OFFICER: That answers my question, and you may proceed.

Q Mr. Couling, with respect, first of all, while we have this out, "agrees to enter a plea of guilty to one felony criminal indictment," have you at this time entered a plea of guilty to any --

A No, sir, not at the present time.

Q Mr. Mitchell is correct in asking the question that you had five indictments against you, is that correct?

A Yes, sir.

MR. MITCHELL: For the benefit of the Court, they appear back-to-back, the contract, gentlemen. They appear -- the indictments appear -- and if I might be permitted, Mr. President, at 654 is one indictment, 657 is another indictment and 660 is another indictment against Mr. Couling, and 663 is another indictment, and 666 is another indictment. And I might call attention to the Court that when he testified up here in March, he took the Fifth Amendment for something like two or three hours. I think two. All that should be before the Court.

MR. ODAM: And as you said before all parties --

MR. MITCHELL: In answer to the question Mr. President put to you, Counsel.

MR. ODAM: You certainly do not hold it against someone to take the Fifth Amendment.

MR. MITCHELL: Absolutely not.

MR. ODAM: Every witness has the right to take the Fifth --

MR. MITCHELL: The quid pro quo, we can see where the quid pro quo went, however.

THE PRESIDING OFFICER: Gentlemen, I think the record is clear and the Court understands the situation for which this testimony is being elicited, so let's

proceed.

Q Mr. Couling, I refer you back to the chart on the -- the chart to Alamo Iron Works. I'm referring to the first page of the chart on May 28th, 1971. Do you see that check to Alamo Iron Works, check for \$2,000.00?

A You're still on the first page, please, sir?

Q Yes, sir, 5/28/71.

A Yes, sir.

Q For what reason did you write out a check to Alamo Iron Works?

A I used to buy wire, staples, bolts, rods and windmill supplies from the Alamo Iron Works, sir.

Q So, this would be a legitimate check to Alamo Iron Works?

A Yes, sir.

Q For items of supply that you actually purchased from them?

A Yes, sir.

Q Looking further down the chart I see a check made out to Paul Ramirez. Can you explain to the Court who Paul Ramirez is?

A What date is that?

Q This is 6/17/71. First of all, who was Paul Ramirez?

A Paul Ramirez is a fictitious name used by Rogelio Guajardo, Jr., sir.

Q A fictitious name used by who?

A Rogelio Guajardo, Jr.

Q And why would Judge Carrillo's nephew use a fictitious name, if you know?

MR. MITCHELL: I'm going to object, first of all to the fictitious name bit and move to strike it, it would be hearsay. And certainly why it would be speculative.

MR. ODAM: Well, if he has personal knowledge as to why he used the name, then it would not be hearsay.

THE PRESIDING OFFICER: Counsel, let's develop what he has personal knowledge of, if he knows it.

MR. ODAM: Yes, sir.

Q My question, Mr. Couling, of your own personal knowledge is this -- first of all, let me ask you this. Is the name Paul Ramirez, from your own personal knowledge, is that a fictitious name?

A Yes, sir, it is.

Q What is the basis, from your personal knowledge, that that is the case?

A Rogelio Guajardo came by and told me for me to issue a check under that name. And I asked him who it was and he said it was a name that he was going to use to get some money out of the school district and the water district.

Q Rogelio Guajardo is the same gentleman that, well you do not know this, but Mr. Mitchell will correct me if I'm wrong. Mr. Rogelio Guajardo took the Fifth Amendment in the Judicial Qualifications proceeding.

A Yes, sir, he's the same person.

Q On the next page of the chart, I refer you to a check made out to R. Guajardo. This is on your first page of the chart, 7/15/71.

A Yes.

Q Can you explain first of all who is R. Guajardo?

A R. Guajardo, Jr. is the same Rogelio Guajardo, Jr.

Q He would be the same as the Paul Ramirez?

A Yes, sir.

Q Why did you write out a check to R. Guajardo for \$95.00?

A For how much?

Q 7/15/71, \$95.00, check number 140. It's on the first page of your chart.

THE PRESIDING OFFICER: What page are you on, Counsel?

MR. ODAM: It's on Page 1556, Your Honor, of the book.

A The check is made for \$150.00.

Q Do you find the check for \$95.00?

A Yes, I did, sir.

Q Why did you make out a check to R. Guajardo for \$95.00?

A I believe he wanted some money and I just made him a check for \$95.00.

Q Now, the entries here on the left, where it says Farm and Ranch Supply -- you have an entry here on 7/15/71 of \$495.00. And you have a line going to a check from the water district for \$495.00. Again, I ask you the question, did your store do any legitimate business with the water district to obtain the \$495.00?

A Not on this particular check, no, sir.

Q Explain, again, why you wrote out on this particular check a check to Farm and Ranch Supply for \$495.00?

A Because I was told by Rogelio Ramirez, Jr. -- Rogelio Guajardo, Jr. that he had issued -- that he had some supplies from the Farm and Ranch and then in turn had made a bill from the Farm and Ranch to the county under the name of my store, so I had to make the check payable back to the Farm and Ranch Store.

Q Now, on the check to Judge Carrillo, that's the last entry on the first page of the chart for \$1,018.00, Judge Carrillo -- this has already been in evidence, previously testified to, I will not go into it.

I will refer you to the second page of the chart and just pick out a couple of these. R. Guajardo, Jr. -- looking at the 8/15/71, this is for the benefit of the Court is at Page 1557. Did you rent any equipment or purchase any supplies from R. Guajardo, Jr.?

A No, sir.

Q Why did you make out that check for \$150.00?

A That was a monthly check that he was getting from the school district every month, sir.

Q Now, the check to David -- correction, D. H. Carrillo, I'm looking at the entry on 8/12/71. Do you see that?

A Yes, sir.

Q Is D. H. Carrillo the same as David Carrillo?

A Yes, sir. The same one, the son of Oscar Carrillo, sir.

Q Were you renting any equipment from D. H. Carrillo?

A No.

Q Explain, again, why you wrote out that check for \$500.00 to D. H. Carrillo?

A As you notice I traced a line from the water district check for the amount of \$750.00 and issued a check to D. H. Carrillo for \$500.00 and a check to Ramiro Carrillo for \$250.00, which would give us the total of \$750.00, which I was instructed at the beginning that a check for \$750.00 was issued from the water district, that I in turn had to make checks payable either to Oscar Carrillo or D. H. Carrillo and Ramiro Carrillo and Brothers.

Q Would this be the same further on down the chart? I will look on 9/17/71, a check to D. H. Carrillo for \$500.00, a check on 9/20/71 to R. Carrillo and Brother. Is that the same type of operation?

A Yes, sir.

Q The next check down there on 9/21 -- or '71 -- \$540.33 to Farm and Ranch. Do you see that check?

A Yes, sir.

Q And you have a line going back up?

A Yes, sir.

Q To \$540.33 from the water district. Did your store do any legitimate business with the water district?

A Not for this particular check, no, sir.

Q Did you do any legitimate business with the Farm and Ranch to be paying a check to them for that amount of money?

A I never bought anything from the Farm and Ranch, sir.

Q Did you ever rent any equipment from Farm and Ranch?

A No, sir.

Q The check to Judge Carrillo is down here on 9/22/71 for \$700.00, that's the one your testimony was about this morning, check number 176? Same thing on the bottom of that chart, which is Page 1558 of the Volume of Exhibits. You see the \$306.00 check to Judge Carrillo?

A Yes, sir.

Q Well, we went into that this morning. Who is Rosario Vaello, the check made out on October 18, 1971?

A Rosario C. Vaello, well, she's my daughter, sir.

Q And why did you make out a check to her?

A I believe it was close to Christmas and that she had a little girl in the hospital, so I made her a loan of \$500.00.

Q You don't deny -- or let me ask you this. Do you know, with respect to this chart, you in fact received money yourself through the operation of Benavides Implement and Hardware. Is that correct?

A That's correct, sir.

Q We could go back through and the chart speaks for itself to where there are cash withdrawals, checks made out to you and advice of charges. Is that correct?

A That's correct, sir.

THE PRESIDING OFFICER: Mr. Odam.

MR. ODAM: Yes, sir.

THE PRESIDING OFFICER: I would like to ask the witness a question. On that entry on the 10th-18th '71 to your daughter, who authorized you to make that

\$500.00 check?

THE WITNESS: I was the only one that made checks from the store, sir.

THE PRESIDING OFFICER: Well, who told you to do that?

THE WITNESS: Nobody.

THE PRESIDING OFFICER: You just did it yourself?

THE WITNESS: Yes, sir.

THE PRESIDING OFFICER: Your witness.

Q Who is the owner of Benavides Implement and Hardware Store at that time?

A The store was in my name, but it was a silent partnership with O. P. Carrillo and Ramiro Carrillo.

Q Again, there is testimony in the record with respect to that silent partnership on the setting up of the store. What amount of money did it take to initially set up the Benavides Implement and Hardware Store?

A We started with \$3,000.00, a loan signed by Ramiro Carrillo and myself at the First State Bank of San Diego.

Q You and Ramiro Carrillo?

A Yes, sir.

Q But evidence in the record is that only your name appears as being the owner of the store. Is that correct?

A That is correct, sir.

Q Could you explain why it is that only your name appears throughout all the Exhibits that Mr. Mitchell got in?

MR. MITCHELL: Yeah, I want to hear that.

MR. ODAM: Say again.

MR. MITCHELL: I do want to hear that.

Q Why were you the one that's indicated to be the owner of the store?

A Because at that time the agreement was reached between Ramiro and myself -- he said that he never wanted his name known that he was a part owner or O. P. Carrillo of my store. It was just -- it was to appear in my name only.

Q And that is the basis of why your name appears on all the documentation with respect to this bank account?

A Yes, sir.

Q Where else was there a bank account for the store?

A Rio Grande City, sir.

Q We will get into that bank account a little bit later.

The page I will refer to now is Page 1559 in the Senate Journal of Exhibits. A check there made out for \$735.00 at the top, 11/1/71 the check was E-188-35. Do you see that check?

A Yes, sir.

Q Why did you make out a check to Edwards' Furniture Store?

A That particular check I gave it in blank to O. P. Carrillo, sir. I just signed the check and it was left completely blank.

Q Did you have any conversation with Judge Carrillo when you gave him that check?

A No.

Q No conversation?

A No.

Q The check on November 12, 1971, \$1,228.03 to Farm and Ranch. You have two County checks in that totaled that amount on the same day. Did your store do any legitimate business with the County to have gotten that money?

A No, sir, if it went to the Farm and Ranch it was strictly one of their own bills that was issued to my store and then to the County, sir.

Q Then, if there was any legitimate business done between Farm and Ranch and the County, I believe you said earlier, that Mr. Cleofas Gonzalez would know of that.

A Yes, sir.

Q Or Ramiro Carrillo.

A Yes, sir.

Q Or O. P. Carrillo?

A Yes, sir.

Q Are you aware of the fact that Ramiro Carrillo thus far in the proceedings has taken the Fifth Amendment?

A Yes, sir.

MR. MITCHELL: Well, of course, that's inappropriate.

MR. ODAM: I will strike that.

Q Juan Garcia -- look down at 12/16/71, do you see the check for \$1,000.00 to Juan Garcia? This should be on your Page 2?

A Yes, sir.

Q Who is Juan Garcia?

A That's just a name that was picked up to issue checks when the County Commissioners needed some kickback after I sold them some barbwire.

Q You better run that by a little bit slower.

THE PRESIDING OFFICER: What page are you on now?

MR. ODAM: I'm on Page 1559.

THE PRESIDING OFFICER: What date?

MR. ODAM: Page 1559 and this is the check, the date was 12/16/71, check for \$1,000.00 to Juan Garcia, the check number is 214.

Q A thousand dollar check to Juan Garcia. Once you wrote out a check to Juan Garcia who did you give the check to?

A I gave the check to Ramiro Carrillo, sir.

Q Explain again why you made out a check to Juan Garcia?

A Okay. You notice on the deposit that I had a large deposit that month from the County.

Q Which large deposit are you referring to?

A Well, you take them down the line. You say you start with \$1,008.00, \$1,250.00, \$1,250.00, \$2,900.00, \$2,900.00, \$2,900.00, \$2,900.00, and \$3,712.00.

Q This is on December 16, 1971?

A Right, sir.

Q You received all that money from the County?

A Yes, sir.

Q And why did you receive all that money from the County?

A I bought about a thousand rolls of barbwire from Alamo Iron Works and in turn the four Commissioners were going to get equal amounts and the County Judge was going to get equal amounts of barbwire.

Q Okay. Now, you bought the barbwire from Alamo Iron Works. Would that be the check on December 16, 1971 for \$12,000.00?

A Yes, sir, \$12,038.40.

Q So, you got the money in from Duval County for these amounts of money here and you turned around and wrote out a check to Alamo Iron Works to buy the barbed wire?

A Right.

Q Okay. Then you had the barbed wire in the possession of the store, then what was the next item that occurred. What happened next?

A When I ordered the barbed wire I had to agree that I had to give each Commissioner \$500.00 back as a kickback in order for me to sell the wire to the County.

Q Who are the Commissioners you're referring to?

A Ramiro Carrillo, Dan Tobin and Juan Lean and Felipe Valerio and Archie Parr was the County Judge.

MR. MITCHELL: Yeah, don't forget the County Judge.

Q So, the check for \$1,000.00 for Juan Garcia -- there's no Juan Garcia?

A No, sir, that was -- that money went either to Dan Tobin and Juan Leal, I believe it is, \$500.00 a piece.

Q The check to -- where is the money to the other Commissioners, if that was a kickback?

A There's another one further down, check number 226 made payable to A. Garcia.

Q Okay. Let's go on -- two checks on a kickback scheme on December 12th, 1971. Who -- I am referring, first of all to the check for \$500.00 to A. Garcia. Who is A. Garcia?

A That's just another name picked out so they wouldn't trace the check back to the Commissioners.

Q And who would get the money for that A. Garcia check?

A I don't know that particular one -- I don't -- I couldn't say, but the balance of the \$1,000.00 I gave in cash, which went to Ramiro and Archie Parr, \$500.00 a piece.

Q And the \$400.00 check to A. Garcia, this would be part of the same scheme? I'm referring to A. Garcia, the check number 228?

A I can't say for sure, there are several checks made out to A. Garcia that were mainly when Ramiro wanted a bill made out -- or a check made out to that individual, when money came in from the County to the store.

Q So some of the checks made out to A. Garcia were part of the barbed wire kickback scheme and some of them were just checks to A. Garcia that went to Ramiro Carrillo.

A That's correct, sir.

THE PRESIDING OFFICER: Mr. Odam, will you yield to the chair for just a minute. All of these items and Exhibits are in evidence and what you've been doing is just touching on the typical type entry here at the bottom of the page. How much longer are you going to typify the transactions? It's all in evidence, is it not? I'm trying to move us along here --

MR. ODAM: Yes, sir. All of the testimony that Mr. Carrillo has given in the Judicial Qualifications proceedings, of course, is in the record --

MR. MITCHELL: Couling.

THE PRESIDING OFFICER: Just a minute, Counselor. Just a minute.

MR. MITCHELL: Excuse me, Mr. President. He said Mr. Carrillo. He's --

MR. ODAM: I'm sorry. Not Judge Carrillo.

All of the testimony of Mr. Couling with respect to the chart, which he testified to in the Judicial Qualifications is in the record. I did the same thing with Mr. Couling in Judicial Qualifications, that is, simply summarize it. The chart is in evidence. All the checks are in evidence. And I can stop anytime the Senate feels like they have a pretty good feel for what the scheme was.

THE PRESIDING OFFICER: If you don't have any really prevailing reason for continuing, I think we've got the drift of things.

MR. ODAM: All right, sir.

THE PRESIDING OFFICER: Unless you have a reason and want to go further.

SENATOR TRAEGER: Mr. President.

THE PRESIDING OFFICER: Senator.

SENATOR TRAEGER: Mr. President, could I ask Mr. Odam a question as to which charge these are relative to.

MR. ODAM: Yes, sir, this is relevant to Article V and Article VII on rental income of nonexistent equipment, and also Article V pertains to either Zertuche General Store or other business entities; i.e., Benavides Implement and Hardware Store, having done business with governmental entities. And here is the listing of all the governmental entities. I'd just like to ask the witness a very few more questions.

THE PRESIDING OFFICER: Go right ahead.

Q I asked you in the Judicial Qualifications proceedings and I'll ask you again, have you had occasion to total up the amounts of money that this chart reflects with respect to individuals, both you and other people?

A Yes, sir.

Q And have you made notation as to that amount of money?

A Yes, sir.

Q Do you have those notes with you?

A Yes.

Q Would you pull those notes out?

Q Can you explain to the Court what the notes reflect that you have before you?

A Yes, sir, it's income from 1971 on the first page and the amount going to individuals and the amount per month and the total at the end of the year, sir.

Q And this is based upon, say, 1971, upon the chart itself here?

A Yes, sir.

Q And you have pages for 1972, and what other years?

A '73 and '74.

Q And this is a total of the amounts of money that individuals received during those years --

A Yes.

Q -- as evidenced by the charts?

A Yes.

Q Have you totaled there, for example, 1971, how much money that you got out of the Benavides Implement and Hardware Account?

A Yes, sir.

Q How much is that?

A About 85 -- \$8,500.00, sir.

Q \$8,500.00. And that was money that you personally got out of the account?

A Yes.

Q And the -- what other type of breakdown did you make as to --

A Ramiro Carrillo and Brothers, sir.

Q R. Carrillo and Brothers?

A Yes.

Q And for 1971, how much did R. Carrillo and Brothers --

A \$7,389.00.

Q \$7,389.00. What other --

A D. H. Carrillo.

Q D. H. Carrillo?

A Yes.

Q And how much did --

A \$2,500.00.

Q Who else did you --

A Oscar Carrillo, \$1,500.00.

Q And this is still for 1971?

A Yes.

MR. MITCHELL: How much was that?

THE WITNESS: \$1,500.00.

MR. MITCHELL: Thank you.

A Farm and Ranch, \$27,817.00.

Q Twenty-seven thousand --

A Eight hundred seventeen.

THE PRESIDING OFFICER: Senator Jones.

SENATOR JONES: What page is he on?

MR. ODAM: What the witness is testifying, Senator Jones, is that he has totaled up the amounts of money himself.

SENATOR JONES: Is it in the book?

MR. ODAM: No, sir, it is not. The totals are not. The figures that he is giving, for example, R. Carrillo and Brothers, \$7,389.00 for 1971 would be obtained by taking it and individually ourselves adding it up. Same thing with Farm and Ranch, \$27,817.00. You will not find that figure \$27,817.00 in there, but you would according to this witness' testimony if you added up all the Farm and Ranch checks. That is not in there, and that's why I asked him these questions.

Q We got down to Farm and Ranch for 1971. Have you made any other notations?

A Yes, sir, we have one for O. P. Carrillo.

Q How much did O. P. Carrillo checks --

A \$8,406.00.

Q \$8,406.00 --

A Dollars, yes.

Q And any other checks?

A Rogelio Guajardo Ramirez and Paul Ramirez.

Q Rogelio Guajardo --

A Yes.

Q Who is the same as Paul Ramirez?

A Yes.

Q Who is the same as -- what was the third one you gave me?

A Rogelio -- R. Ramirez.

Q R. Ramirez. How much did Rogelio Guajardo --

A \$2,650.00.

Q Two thousand --

A Yes.

Q -- six hundred fifty dollars?

A Yes.

Q Now, are there any others for that year?

A No, sir.

Q Now, the Farm and Ranch Supply that was owned by Judge O. P. Carrillo and Ramiro Carrillo, got \$27,817.00.

A Yes.

Q Again I ask you a question with respect to 1971, that \$27,000.00 that you paid out to Farm and Ranch, did you do any legitimate business with the Farm and Ranch by which to make those checks out to Judge Carrillo and -- or strike that -- to Farm and Ranch Supply?

A I never did buy anything from Farm and Ranch Supply.

Q These are the ones you testified to earlier after you got the county checks or water district checks or school district checks in?

A Yes.

Q And the check -- the total amount of checks to Judge O. P. Carrillo for 1971, \$8,406.00, did you ever rent any equipment from Judge Carrillo for those checks?

A No.

Q Do any legitimate business with Judge Carrillo --

A No, sir.

Q -- to have written out those checks.

A No, sir.

Q Have you totaled up -- well, R. Carrillo and Brothers, this is a trust that Mr. Mitchell referred to earlier. R. Carrillo and Brothers, that would be Ramiro Carrillo and who -- who are his brothers?

A Oscar Carrillo.

Q Okay.

A And Ramiro Carrillo.

Q And O. P. Carrillo?

A O. P. Carrillo.

Q And those four brothers, R. Carrillo and Brothers, participated in that trust. Did you do any legitimate business with R. Carrillo and Brothers in 1971?

A No, sir.

Q Have you totaled up how much that is, that was paid out to R. Carrillo and Brothers, to the Carrillos, for 1971?

A The whole total paid out to the Carrillos was \$50,262.97.

Q Now, the fifty thousand two hundred sixty-two dollars?

A Yes.

Q Ninety-two cents that you paid out in 1971 --

A Ninety-seven cents.

Q Ninety-seven cents. Was that legitimate business that you did with the Carrillos there?

A No, sir.

Q This would be money that you got having received money from the governmental entities?

A Yes.

Q The Carrillos got fifty thousand and you got eight thousand.

A Yes.

Q Have you totaled up any other years?

A I've got '72, sir.

Q All right. Give us the figures you totaled up there in 1972.

MR. ODAM: Again, as I point out to the Senate this does not appear as an Exhibit. It's Mr. Couling's testimony with respect to what E-192 shows.

Q 1972. How much money did you get out of the account in 1972?

A I got \$13,943.00.

Q \$13,000.00 -- say again.

A Yes. \$13,943.00.

Q How about the R. Carrillo and Brothers?

A I got seven thousand -- I mean \$4,700.00 more.

Q \$4,700.00 more?

A Right. But out of that I issue cash monies in the amount of \$1,500.00, \$1,000.00, \$1,700.00, \$1,600.00, which should be subtracted from that amount.

Q So you got \$4,700.00 in cash?

A No, no. I mean -- on the 13,947.00 was cash monies.

Q Thirteen thousand -- I'm sorry. Say it again.

A \$13,943.00.

Q Was it in cash?

A Yes.

Q And out of that you paid the \$1,500.00, the \$1,000.00, the \$1,700.00, and \$1,600.00 in cash.

A And \$1,600.00.

Q And to whom did you make those payments out?

A Ramiro Carrillo.

Q So the \$13,000.00 plus, some of that was paid out in cash to Ramiro Carrillo?

A Yes.

Q Now, in 1972, have you totaled up how much R. Carrillo and Brothers got in 1972?

A Yes. \$7,905.95.

Q Go through it slowly because I want to take notes on it, and I notice Mr. Mitchell is taking notes. Seven thousand --

A Nine hundred five ninety-five.

Q \$7,955.00. R. Carrillo and Brothers. How about David -- D. H. Carrillo?

A \$6,500.00.

Q Oscar Carrillo?

A \$1,000.00.

Q Farm and Ranch?

A \$45,026.14.

Q Wait, wait, wait. How much?

A \$45,026.14.

Q O. P. Carrillo.

A \$3,974.00.

Q Rogelio Guajardo?

A \$3,659.19.

Q Three thousand -- I'm sorry. Three thousand how much?

A \$659.19.

Q Any others on 1972?

A No, I believe you got them all, sir.

Q Now, how much did that total up to that the Carrillos got there?

A \$68,000.00.

Q \$68,000.00.

A \$65.28.

Q I'll ask you the same question with respect to particularly the Farm and Ranch payout of \$45,000.00. Did you do any legitimate business with Farm and Ranch to have made out -- paid them \$45,000.00?

A No, sir.

Q Judge O. P. Carrillo got the \$3,974.00. Same question. Did you rent any equipment from Judge O. P. Carrillo to have made those payments?

A No, sir.

Q Did you buy any pear burners from him?

A No, sir.

Q Did you buy any -- rent any water well rigs?

A No, sir.

MR. MITCHELL: Of course, those -- we object, of course, all violating the best evidence rule, with the checks say pear burners, checks say loans. And we could see that, don't we, Mr. Odam?

MR. ODAM: I know what they say. I was just asking --

MR. MITCHELL: For the best evidence rule, Your Honor, we object.

THE PRESIDING OFFICER: Take care of that on cross examination, Mr. Mitchell. Let's proceed.

Q Now, in 1972, you got 13 -- approximately \$14,000.00 and paid out cash of about \$6,000.00?

A Yes, sir.

Q And then the Carrillo's got \$68,000.00? I asked you the total question with respect to that \$68,000.00 for 1972. Did you ever rent any trucks, rent any equipment from any of these Carrillo's to have gotten that money?

A No, sir.

Q Or, correction, to have paid out that amount of money?

A No, sir.

Q And did all this amount of money here, \$68,000.00 that you're referring to, did that come from governmental entities?

A Yes.

Q What governmental entities would those be?

A That was Duval County, Duval County Water District Reclamation and the Benavides School District, sir.

Q Now, your store did make some legitimate sales I take it?

A Yes, sir.

Q But this money here did not come from the legitimate sales?

A No, sir.

Q Did it total up any other years?

A In 1973, sir.

Q What do you have for 1973?

A I took in checks \$3,763.

Q \$3,000 how much?

A Yes, sir.

Q \$3,000.00 how much?

A \$763.00.

Q That's how much you got out?

A And then in cash, I got \$8,147.00.

Q And those total are the amounts of money that you got out of the account that year?

A Yes, those two totals. And I gave Ramiro cash \$7,100.00.

Q \$7,100.00, would that come from the two figures you just stated earlier?

A Yes. No, that's beside the two figures. In other words, I had cashed \$15,000.00.

Q Okay.

A And I kept \$8,147.00 and give Ramiro \$7,100.00.

Q \$8,147.00 was cash you kept?

A Right.

Q Then you got cash \$7,100.00 which you gave to Ramiro Carrillo?

A Yes.

Q Now, you received approximately \$11,000.00 in 1973, and totaled up how much the Carrillos got in 1973?

A I had not totaled up, but it's \$16,945.32 to the Farm and Ranch.

Q Okay. Run that figure by me again.

A \$16,945.32

Q That was paid out to Farm and Ranch?

A Yes, sir.

Q And --

A And the others I have listed just as orders, which include Oscar Carrillo, D. H. Carrillo, Rogelio Guajardo, A. R. Carrillo, R. D. Carrillo for the amount of \$6,219.80.

Q So your notes show Farm and Ranch the \$16,000.00 or nearly \$17,000.00, and the rest of the Carrillos are just listed under "Other", is that correct?

A Yes, sir.

Q Would that include money paid out -- was there any paid out that year to Judge O. P. Carrillo in 1973?

A There was no money.

MR. MITCHELL: No money paid out in '73.

Q No money paid out in 1973?

A No, sir.

Q The \$6,219.80, I take it that cannot include the money -- you paid out cash to Ramiro Carrillo?

A No, sir.

Q I ask you the same question with respect to the seventeen -- or approximately \$17,000.00 that Farm and Ranch got, the money you paid out to the Carrillo's, \$6,219.00 plus the \$7,100.00 in cash paid out to Ramiro Carrillo, all of that money was that legitimate business that you did with them?

A No, sir.

Q Was this money that you had received from the water district or school district of the County?

A Yes, sir.

Q Had your store done any legitimate business with water district and school district or County to have --

A Yes, sir.

Q To have obtained this amount of money?

A Not the big amounts, just the small amounts.

Q But the other entries would not include these here?

A No, sir.

Q I'll restate that. On this --

A On the amount that I got for say for \$3,700.00 for the -- could be the sale from the school, water district and the County and individuals.

Q How about 1974? Have you made any totals there?

A Yes, sir.

Q What do you have for 1974?

A That was -- that was the last year we did business -- I have \$5,070.00 that I took.

Q What happened to the \$5,070.00?

A That's the one I issued checks on myself, sir.

Q So you got in 1974 \$5,070.00 out of this --

A Yes. I got cash, \$8,225.41. I gave out that to Ramiro Carrillo \$1,600.00, \$1,000.00, and \$1,300.00.

Q \$1,600.00, and then how much?

A Sixteen and thirteen.

Q \$1,300.00, and that's all?

A And there's another one for \$1,000.00.

Q \$1,000.00. \$3,900.00. Okay. How about the Carrillo --

A Farm and Ranch got \$4,039.30.

Q \$4,039 and how much?

A Thirty cents.

Q And did you make any other total computation?

A No, sir.

Q Didn't compute their -- well, did the other Carrillos get any money in 1974 --

A No, just the Farm and Ranch.

Q Just Farm and Ranch got the \$4,000.00? Now, the money that you wrote out or the money that you gave to Farm and Ranch, to Judge Carrillo and Ramiro Carrillo's store there, did you do any legitimate business with Farm and Ranch to have given them that money?

A No, sir.

Q With respect to the money that you gave to Ramiro Carrillo, the \$3,900.00 in cash, was that -- had you purchased anything from Ramiro Carrillo for that amount of money?

A No, sir.

Q Had you rented any equipment from Ramiro Carrillo?

A No, sir.

Q The -- in 1974, it obviously drops off quite a bit. I take it that you must have stopped receiving money from the water district and school district in the County in a certain period, is that correct?

A That's correct, sir.

Q And why was it that you stopped receiving the money?

A That was when school election came about, and I decided not to do no more business with the County that would -- I didn't want to do anything more with the Carrillos after the school election.

Q Why did you not want to do anymore with them?

A Well, I just quit. About the time they removed the school board from the school.

Q And why -- you had to have a reason why you quit with them.

A Well, I decided not to do no more business, and I wasn't going to help them no more.

Q Why is that? You had to have a reason.

A I --

Q Were you working for the school district at this time?

A I worked until -- until April, nineteen seventy --

Q April, nineteen seventy what?

A '75 or '74. I'm not sure what date it was.

Q Well, if I don't ask you, I know Mr. Mitchell is going to -- well, I'll ask you, and I want to know, why did you stop getting all this money in from the governmental entities?

A Well, it happened right after school elections, and we drafted a board -- the Carrillo -- the Carrillo -- we drafted a board. We don't associate no more, so we decided to quit doing business through them.

Q You weren't going to take anymore money from the governmental entities?

A No, sir.

Q Did you have a conversation with Ramiro Carrillo to that effect that you weren't going to be doing this type of operation any more?

A Well, see, it happened that when I got notice from my income tax that I had owed so much income tax from 1972 and '73, I approach Ramiro that he had to pay me some money so I could pay my income tax, and he refused.

Q Now, did you have to pay income tax on all this money you got?

A Yes, sir, I was assessed the value for about \$69,000.00.

Q You had to pay all this income tax on all this money that was coming to the store?

A Yes, sir.

Q Did you talk to Ramiro Carrillo about assisting you in paying the income tax?

A Yes, sir.

Q And what did Ramiro do?

A He said he would help me later on, but he never did, sir.

Q Is that part of the reason you stopped getting the money from the entities?

A Yes, sir. And I only have paid \$20,000.00 out of that \$69,000.00.

Q What is the status as far as -- have you been indicted, had any criminal cases against you with the federal people on any kind of income tax case?

A No, sir. They just sent me a notice that I had to pay the amount of tax due.

Q Now, the -- did you show the returns on your income tax, the money that you paid out to these entities?

A On income tax?

Q Yes, sir, to these people here.

A I showed the amount -- yes, I did, but the government refused to allow some of the checks that I deducted made out to the Farm and Ranch Store.

Q And why did they do that?

MR. MITCHELL: Oh, that would be hearsay.

MR. ODAM: That's right. I strike that.

MR. MITCHELL: Obviously assessed the deficiency of \$69,000.00 --

PRESIDING OFFICER: Sustained. Proceed.

MR. ODAM: Your Honor, what I would like to do at this point is continue with the same question, but I'd like to ask Mr. Couling a series of questions, again with respect to the Article VII of the Articles of Impeachment dealing with the rental of nonexistent equipment, and this would particularly pertain to Article XII -- I mean Paragraph 12 of our Judicial Qualifications with respect to some Caterpillars that were purchased by the Benavides Implement and Hardware Store and purportedly rented to the County, and I'd like to continue in that questioning unless -- that's where I intend to go now.

PRESIDING OFFICER: You have permission.

MR. MITCHELL: I certainly don't see any relevance as to any Articles before this Court about a Caterpillar.

PRESIDING OFFICER: Would this relate to VII?

MR. ODAM: It relates to Article VII, yes, sir.

PRESIDING OFFICER: O.K. Go ahead and proceed, counsel.

MR. ODAM: For the benefit of the Court, I refer as I did earlier to the fact that the Judicial Qualifications pleadings, the First Amended Notice of Formal Proceedings, Paragraph 12 thereof pertains to a certain amount of money. Paragraph 12 of the Judicial Qualifications pleadings, and those were Respondent's Exhibits, I believe it's R-18 which I referred to earlier and gave the page reference. So, I will be asking questions about the testimony with respect to that allegation, the Judicial Qualifications. So, the Respondent's pleadings or Respondent's gold Exhibits.

Q Now, first of all, Mr. Couling, I refer you back to the Volume Two of the Examiner's Exhibits. Do you have that up there?

A No, sir.

Q We had stopped on the volume with looking at the check that was reproduced at Page 824. And I will open the volume up, and I refer the Senate to Page 824 of Volume Two of the Examiner's Exhibits admitted in the Judicial Qualifications, Page 824. Yes, sir, Volume Two, Page 824, that's where I left off this morning. That was a

check that was -- had the rubber stamp on it to -- what was the name of the bank in Rio Grande City, Mr. Couling? What was the name of the bank, Mr. Couling, that is on that E-85?

A The First State Bank and Trust Company, Rio Grande City.

Q Now, skip over, if you would, sir, to -- I refer the Senate now to again Examiner's Exhibits, admitted, Volume Two. I'll begin specifically on Page 839. We left off at 824. I'll pick up at 839.

We'll run through these quickly to get a picture of this allegation. You see Page 839 there, Mr. Couling?

A Yes, sir.

Q Can you read what is on the Benavides Implement and Hardware ticket there?

A It's made out to Duval County Precinct 2, care of Juan Leal, rental of equipment and work on county road, I believe.

Q I believe Mr. Gonzalez has previously testified that this was filled out in his handwriting as indicated by his initials there. Did your store do any legitimate business to cause this invoice to be issued to Duval County?

A No, sir.

Q \$1,006.00, and turn the page to Page 840, the statement from Benavides Implement and Hardware which pertains to E-92, those two statements relate to the claim jacket which is on Page 841, for \$1,006.00?

A Yes.

Q Turn over to Page 842. Do you see the copy of the check on Duval County?

A Yes, sir.

Q It's for \$1,006.00 also?

A Yes, sir.

Q Do any legitimate business -- well, to have gotten that check for \$1,006.00?

A No, sir.

Q Turn the page to 843. You see the claim jacket there for a \$1,018.00 on Page 843?

A Yes, sir.

Q You see the invoice that appeared inside that claim jacket, E-95?

A Yes, sir.

Q Now, is that in your handwriting, the invoice --

A Yes, sir.

Q And what does that invoice state to be for?

A Rent on winch number two and -- and rent on dump truck number 10, sir.

Q How much of the total amount there?

A \$1,018.10.

Q Now, did your store, Benavides Implement and Hardware, did it actually rent a winch truck or dump truck to the county?

A No, sir.

Q Well, the \$1,018.00, that's about that invoice. Turn the page, Mr. Couling, to Page 844, you'll find the County check for \$1,018.00.

A Yes, sir.

Q What would you do with these County checks once you received them, these series of checks?

A These checks were deposited in the bank in Rio Grande City, sir.

Q And refer on the next page to Page 845 you see the E-98 invoice.

A Yes, sir.

Q Says, "Rent on tractors."

A Yes, sir.

Q Did your store rent any tractors to Duval County?

A No, sir.

Q And \$1,051.00 there, you see the claim jacket, for \$1,051.00. Turn the page and see the County check for \$1,051.00.

A Yes, sir.

Q Did you personally receive this check made out to Benavides Implement and Hardware?

A Yes, sir.

Q What would you do with this County check?

A Deposit in the bank in Rio Grande City, sir.

Q Across the page on Page 847, I'll refer you down to the E-101-2 in the corner. You see that?

A Yes.

Q What does that particular invoice state?

A Says, "Rent on D-8 tractor", sir.

Q Did your store, Benavides Implement and Hardware, actually rent a D-8 tractor to Duval County, Precinct Number 2?

A No, sir.

Q Precinct Number 2, who is the County Commissioner of Precinct Number 2?

A Juan Leal, Jr., sir.

Q I suppose that if your store had rented two D-8 tractors to Precinct Number 2, if that occurred, Mr. Juan Leal might have some knowledge of that?

A Yes, sir.

Q Is Mr. Juan Leal alive or is he dead?

A He's alive, sir.

Q He lives in Benavides, Texas?

A He lives in Concepcion, Texas.

Q Concepcion?

A Yes.

Q How much was the invoice to Duval County there, E-101-2?

A \$1,009.70.

Q And turn the page, and see the total amount of those invoices on Page 848, see the claim jacket?

A Yes, sir.

Q And on Page 849, you see the County check? Did you actually receive that County check for \$1,167.00? Page 849?

A Yes, sir.

Q You received that check?

A Yes, sir.

Q What would you do with that check?

A It was deposited.

Q In what bank account?

A I believe it was deposited -- is this endorsement right next to it on the same page?

Q Okay. So, this particular check was not deposited in the Rio Grande City account?

A No, sir.

Q Why did you open up an account in the Rio Grande City Bank?

A I believe, just before I opened the account O. P. came by and told me he wanted for me to open an account at the Rio Grande Bank Trust Company of Rio Grande City so that he could purchase some, I believe, at that time he purchased a Massey-Ferguson and then later on he purchased the D-8 tractors which were purchased by my store from Plains Machinery in Corpus.

Q And where -- and that the payment should be made out of that bank. Most of the payments should be made out of the Rio Grande Bank, sir.

The payments that you made from the Rio Grande City account, where were those payments made on the D-8 Cats?

A They were made in Corpus Christi to Plains Machinery and to B. D. Holt, which is also in Corpus Christi, sir.

Q And what were payments made to B. D. Holt for?

A For two D-8 Tractors?

Q Now, did you ever have a conversation with Judge Carrillo wherein you stated to him that you wanted a D-8 Caterpillar for your own use?

A No, sir, that's the first time I heard when -- when you mentioned it.

Q When the two D-8 Caterpillars -- there were two D-8 Caterpillars actually purchased?

A Yes, sir.

Q Did you or any personnel under your authority ever use one of those two D-8 Caterpillars?

A No, sir.

Q I will ask you to turn the page to Page 850. You see the invoice No. E-104 for \$1,189.00 there?

A Yes, sir.

Q And what is that stated to be for?

A Duval County Precinct 2, rent on two D-8 Tractors.

Q Did your store -- would these theoretically be for the two D-8 Caterpillars purchased at Plains Machinery?

A This bill was made so that I could pay the payments on the tractors that were purchased.

Q Now, did you have any conversation with Judge Carrillo about receiving the County money to make those payments for the Caterpillars?

A I believe it was Ramiro that came by and told me that he was going to -- either Cleofas was going to make bills or I was going to make bills for the payments of those Caterpillars that O. P. purchased through my store.

Q So, some of these bills that Mr. Gonzalez had testified, I think it's E-91 and 92, for example, he filled out. The rest of them were either filled out by you or who else?

A Lorenzo Garcia, sir.

Q And who is Lorenzo Garcia?

A He used to be my uncle that worked in the store in 1970 -- the latter part of '72 and '73, sir.

Q You don't deny that Judge Carrillo himself made some payments into your bank account to pay for some of this equipment?

A No, sir, he made some deposits.

Q So, part of it was county money that went into the Rio Grande City Account?

A Yes, sir.

Q Which is evidenced by these Duval County checks?

A Yes, sir.

Q Part of it, as evidenced by the checks that are here in this book?

A Yes.

Q From O. P. Carrillo?

A That's correct, sir.

Q Let me be sure that point is clear. Did you do any work to have received these series of County checks we're referring to right here?

A No, sir, there's no work done at all, sir.

Q Did you rent any D-8 Caterpillars to the County to have received that payment?

A No, sir.

Q I refer, for example, to Page 851, the check made out for \$998.00. Do you see that check?

A Yes, sir.

Q Do you see across the page the claim jacket that corresponds to it?

A Yes, sir.

Q Claim D-985?

A Yes, sir.

Q The same testimony there, did you do any work to obtain that check for \$998.00?

A No, sir, no work was performed, sir.

Q I turn the page to E-108, Page 852, the claim jacket you see?

A Yes, sir.

Q Do you see the invoice that was inside of it?

A Yes, sir.

Q The invoice to Duval County there, what is that stated to be?

A That's \$1,006.00 -- rental on truck or something.

Q Rent on winch truck?

A Yes.

Q Did you rent a winch truck to Duval County to have obtained that money?

A No, sir.

Q And the check for \$1,006.00 you got from Duval County. Let's compare those dates to be sure -- the date on that invoice looks like April of 1973, do you see that?

A Yes, sir.

Q What's the date of the check over there?

A June, 1973, June the 5th.

Q You got the check for \$1,006.00 and you deposited that into the Rio Grande City Account?

A Yes, sir.

Q Turn the page at 854, I will refer you down to the left-hand corner, E-110-B, do you see the invoice there?

A For \$1,006.00, sir?

Q Yes, sir.

A Yes, sir.

Q What is that stated to be for?

A Equipment rental.

Q Did you rent any equipment to Duval County to cause that?

A No, sir.

Q And then those two invoices were in the claim jackets for D-1328 and the check across the page for the total amount. You received this check, \$1,020.00?

A No, sir.

Q Did you receive the check for \$1,020.00 on page --

A No, sir.

Q You didn't receive the check?

A No, sir.

Q Who did receive the check?

A Well, it has a letter here -- initial L., Lorenzo Garcia, which was working at the store at the time.

Q That's what the L. on the back of the check means?

A Yes.

Q Now, with respect to the \$1,006.00, that portion of the check -- that amount of the money is evidenced by the check. Did you rent any equipment to cause that check to be issued for that amount of money?

A No, sir.

Q Turn the page to 856. I refer you down to the lower left-hand corner E-113-B.

A Yes, sir.

Q Will you read what is on that invoice to Duval County?

A Says rental equipment, \$1,006.00, again.

Q Did you rent any equipment for \$1,006.00 to Duval County?

A No, sir.

Q All of these pertain to the Caterpillar -- all of these pertain to the Caterpillar series of invoices. Is that right?

A Yes, sir.

Q The \$1,013.00 claim jacket, do you see that on E-114 there on Page 856?

A Yes, sir.

Q Now, I direct your attention across to the county check for \$1,013.00. Do you see that check?

A Yes, sir.

Q What did you do with that check?

A I received the check and deposited in the Rio Grande Account, sir.

Q Okay. And turn the page to 858.

PRESIDING OFFICER: Counsel, let me interrupt just a minute. These again are typical transactions, if you continue. Are they just typical of the transactions that are already in evidence?

MR. ODAM: Yes, sir. These are all of the invoices and all of the checks that went to make the payments for the Caterpillars. So, the County money -- yes, sir, that's correct.

PRESIDING OFFICER: Well, it would be repetitive and accumulative if you continue with these individual items.

MR. ODAM: If the Court would like for me to stop once having shown --

PRESIDING OFFICER: It's all in evidence, all in the records.

MR. ODAM: Yes, sir. I will take the advice of Senator Creighton and --

PRESIDING OFFICER: Why don't we try to move along and try to get through cross this afternoon, at least get started.

MR. MITCHELL: The only comment, Mr. President, that I would make is that certainly the Senate is aware that each and everyone of these checks went into Benavides Implement and Hardware, each and everyone of the invoices were on Benavides Implement and Hardware vouchers.

PRESIDING OFFICER: It's all in the record, Mr. Mitchell.

Q Now, I will refer, Mr. Couling, to Page 874. I would like for you to skim over there, if you would very quickly, Page 874. Do you have that page?

A Yes, sir.

Q It doesn't look like it's reproduced very well, does it?

A No, sir.

Q I will refer you to the index to Exhibits -- Examiner's Exhibits Admitted, E-140. Beginning there, could you just state what E-140 purports to be?

A Bank photostatic copy of checks from Benavides Implement and Hardware Company to Plains Machinery. And E-141, photostatic copies from the bank.

Q Speak in the mike.

A Photostatic copies from the bank of checks made from the Benavides Implement and Hardware Company.

Q Okay. We don't have to go through all of them. You see a series in the index which state that E-140, 141, 142, 143, 144, 145 down through 149 are photostatic copies -- bank copies of checks from Benavides Implement and Hardware to Plains. Now, again, who is Plains Machinery?

A That's a company that sells bulldozers out of Corpus, sir.

Q Now, once you received these County checks into the Rio Grande City Account could you explain for the benefit of the Court about writing the checks out to Plains Machinery, that process.

A At the same time I got another check from O. P. to make up the payment of \$1500.00 for the root plows and a thousand dollars for two -- I mean, for two root plows and \$1500.00 for the bulldozers.

Q And then you would write out the checks for the Plains Machinery. Is that right?

A That's correct, sir.

Q And part of the money that you would write out would be based upon money that you received from Judge Carrillo?

A That's correct.

Q And those would be the checks there E-140, for example, that series that doesn't appear too well. There's no question that you did receive money from Judge Carrillo to make the payment for the Caterpillars?

A Yes, sir.

Q You took his money?

A Yes, sir.

Q You took the money from the County and made the payments?

A Yes, sir.

Q Let me ask you now -- and I'm sure Mr. Mitchell will correct me if it does not accurately reflect. Judge Carrillo testifies here about George Parr coming to him and having a conversation about George Parr would be willing to get County money to pay for Caterpillars while the Cats were out on his ranch. Now, he said he had had the same type transaction as he had had previously with you. Now, I know you haven't heard that before and it's all in evidence and if it's not correct then Mr. Mitchell will correct me. My question to you, did you ever have a discussion with George Parr about obtaining money from Duval County, particularly this money here to pay for those Caterpillars?

A No, sir, I never had no conversation with Mr. George Parr regarding those Caterpillars.

Q Did Mr. George Parr ever talk with you about one or more of the Caterpillars being out on his ranch?

A No, sir.

Q Did you have any deal with George Parr whereby the county was going to pay rent on the Caterpillars while they were out on his ranch?

A I never made no deal with Mr. Parr, sir.

Q Your conversations with the Caterpillars pertained only to who?

A To O. P. Carrillo, sir.

Q Now, how about the root plows. There are a couple of root plows and the contracts are in there, verbal by O. P. Carrillo and a verbal by Ramiro Carrillo, did you ever use one of the root plows referred to that's in evidence?

A No, sir.

Q How about the Massey-Ferguson tractor, did you ever use the Massey-Ferguson tractor?

A I used Ramiro's Massey-Ferguson once.

Q Now, the checks from Judge Carrillo, they are all in evidence that went into the bank account. Is that correct?

A That's correct, sir.

Q And you don't deny that at one point, Judge Carrillo picked up and started making the payments himself on the Caterpillars?

A Yes, he did.

Q And from thereafter he made payments directly to Plains Machinery?

A That's correct, sir.

Q And all those checks are in evidence?

A Sir?

Q All those checks that Judge Carrillo made directly to Plains Machinery are there, aren't they?

A Yes, sir.

Q Why did you stop making the payments to Plains Machinery?

A Well, I quit the same time that I had quit doing business from the County when we -- on account Ramiro didn't want to help me with income tax, sir.

Q Did you ever have a conversation with Judge Carrillo about wanting -- I covered this earlier, but it is a critical point -- with Judge Carrillo that you wanted to use one of the Caterpillars?

A No, sir.

Q You never had personal use, yourself, of one of the two Caterpillars?

A Neither one of the two cats, no, sir.

Q And those Caterpillars were never, to your knowledge rented to Duval County?

A Not to my knowledge, sir.

Q And if they were rented to Duval County, who would know?

A O. P. Carrillo would know, sir.

Q I suppose if they were rented, Commissioner Juan Leal might know, if they were rented?

A I wouldn't know about it because I --

Q Did you ever see either one of those two D-8 Caterpillars off of Judge O. P. Carrillo's ranch?

A No, sir. I saw them at O. P. Carrillo's ranch only.

Q That was my next question. Did you ever, in fact, see them -- the Caterpillars on his ranch?

A Yes, sir.

Q Were you aware of operators of those Caterpillars?

A Yes, sir.

Q Who were the operators of the Caterpillars?

A One of them was Fidel Saenz and Juan Adel Ruiz and the other is Almaraz -- I don't know his first name.

Q And all those gentlemen, you are aware, testified at the Judicial Qualifications Proceedings and their testimony is in here?

A I saw them in Corpus.

Q You saw them at Corpus Christi?

A Yes, sir.

MR. ODAM: I pass the witness.

THE PRESIDING OFFICER: Okay, Mr. Mitchell.

MR. MITCHELL: Mr. President, I think the record reflects that this witness testified twelve days, half of which I had him on cross. I will attempt to expedite the cross-examination and don't intend to impose on the Senate.

THE PRESIDING OFFICER: It's wide open, Mr. Mitchell. This is your day and your time.

MR. MITCHELL: Yes, sir. Thank you, sir.

CROSS-EXAMINATION

(Questions by Mr. Mitchell:)

Q You are the same Rudolfo Couling who made a deal with the Attorney General of the State of Texas to testify any place at any time, anywhere the occasion called for?

A If I had only information, yes, sir.

Q All right. And you are also the same Rudolfo Couling that made a deal to testify, I believe, as far as the District Attorney is concerned. Is that right, Rudolfo?

A Under the agreement, that's correct, Mr. Mitchell.

Q That's right. And you have been quite a busy testifier under that agreement. You have testified -- let me see if we can get this down. You testified at the Judicial Qualifications Commission trial, didn't you?

A Yes, sir.

Q Against O. P. Carrillo. Am I correct?

A That's correct, sir.

Q You testified, I believe, up here. You were called up here before you made your deal, and so the record reflects --

MR. MITCHELL: I call the Court's attention, that on Page 646 of Respondent's Exhibits, is a contract and agreement.

Q You have that in front of you, don't you, Mr. Couling?

A Yes, sir.

Q The agreement was signed by you and by a representative of the State of Texas -- that is, Arnulfo Guerra, the District Attorney, and the Attorney General. Am I correct?

A Yes, sir.

Q All right. And, I believe, in the first part of last year, you came up here before the House Select Sub-Committee pursuant to -- that had been convened in connection with House Resolution 161 and pled on advice of Counsel -- and of course, I am not faulting you -- your Fifth Amendment right not to testify at that time.

A That is correct, sir.

Q All right. And thereafter, I assume, that you made a deal with the gentlemen whose names are reflected there on Exhibit appearing Page 646, the memorandum of understanding that you would make a full, complete and truthful disclosure of all knowledge of any criminal conduct whatsoever by any individual within your knowledge. Am I correct?

A That's correct, sir.

Q All right. And I believe that the first -- and you have been, I suppose, in constant contact with the task force composed of the Attorney General, and composed of Rudolfo -- I mean, Arnulfo Guerra's office plus the Internal Revenue, have you not?

A I have not been in touch with the Internal Revenue, sir.

Q All right. Well, as a matter of fact, the Internal Revenue, back in the middle of 1974, assessed you a deficiency of over \$69,000.00, didn't it, sir?

A That's correct, sir.

Q And the income figures that you have told us about and totaled up that you got out of the Benavides Implement and Hardware, '71, '72 and '73, do not include -- or '74 and '75 -- do not include income that resulted in the deficiency assessment of over \$69,000.00, do they, Rudolfo?

A Would you repeat the question again, Mr. Mitchell?

Q Well, now, the deficiency assessment comes by reason of the fact that your tax returns were not truthful. Isn't that correct?

A No, sir. They were -- they refused to allow some deductions I had in there, sir.

Q To the tune of \$69,000.00 in taxes?

A I don't know how much it was, sir.

Q You have paid \$20,000.00?

A Yes.

Q And you still owed them \$49,000.00. Is that correct?

A That's correct.

Q All right. At any rate, you did testify in the U.S. v. Ramiro and O. P. Carrillo trial in September in Corpus Christi in the Southern District Federal District Court, did you not?

A Yes, sir.

Q And you testified at the Judicial Qualifications Commission Hearing, did you not?

A Yes, sir.

Q And of course, you are testifying here? Am I correct?

A Yes, sir.

Q And you have testified in the State v. Marvin Foster, did you not?

A Yes, sir.

Q And you testified in the State v. Powell, did you not?

A No, sir.

Q What other state criminal cases have you been called on to testify in, under the agreement, now. I am not interested in any others.

A That's the only one that I have testified in, sir.

Q All right. The Marvin Foster case? Correct?

A Correct.

Q And you testified in that case by reason of the fact that, I believe, at one time you were the Secretary of the Benavides Independent School District. Is that correct?

A I was the Tax Collector, sir.

Q For the Benavides Independent School District?

A Yes, sir.

Q All right. At any rate, this agreement -- now, I am referring to 646 of the Respondent's Exhibits.

This agreement requires you to make a full and truthful disclosure, does it not, Rudolfo?

A Yes, sir.

Q So that you are not given any -- and in exchange for that, so that the Senate is aware of what we are talking -- of what I am going to question the witness about -- is that following that Exhibit, we have the five indictments. Am I correct, Mr. Couling?

A Yes, sir.

MR. MITCHELL: That's appearing, if it please the Court, at Pages 654, 657, 660, 663, 666 and 6 -- I believe that's all of them.

Q That's all five of them, aren't they, Mr. Couling, and they are presently pending. Is that correct?

A That's correct, sir.

Q And your agreement is -- I don't want to belabor it, but you are to enter a plea of guilty to one felony criminal indictment. That's the five that are pending, when you perform your obligation, and that the State of Texas will immediately make a recommendation for probation to the Court in connection with any sentence assessed by the State -- or the Judge against you? Is that correct?

A That's what the agreement reads, sir.

Q All right. And in addition, the agreement further states that no further criminal offense up to the date of this agreement for any offense against property, or any offense -- see if I am reading it correctly, on Paragraph 8 -- will be prosecuted by the State of Texas. Am I correct?

That's the last paragraph of it. Did you read it there?

MR. JAWORSKI: You obviously mean Paragraph 7.

MR. MITCHELL: I'm sorry. I stand corrected. Yes, sir. Paragraph 7, Page 647.

A Yes, sir.

Q All right. So that the Senate and the Court that passes on your credibility will understand, then, you have been indicted five times. Correct?

A Correct.

Q You were under investigation by the IRS with the end result that you were assessed a \$69,000.00 deficiency, and you have paid \$20,000.00 against that. Correct?

A Yes, sir.

Q You are also given immunity from any offense reflected by the record and disclosed by you carrying out your agreement of understanding. And that's what you understand, don't you, Rudolfo? That is, anything that might be reflected here that is a criminal violation, you have got immunity from prosecution under Paragraph 7. Isn't that correct?

A That is my understanding of the agreement, sir.

Q Sure. Now, so that, if you stole -- let's take a for instance. Let's take a look, now, at the Examiner's Exhibit Volume Three which we have been going through, and let's just pick a number.

When you gave your daughter, Rosario Vaello, \$500.00 --

MR. MITCHELL: And I am looking, if it please the Court, at 1558 of Examiner's Exhibit Volume Three.

Q You were asked about this, and you told the Court that you gave that Christmas present to your daughter in October, \$500.00. If you stole that money pursuant to a scheme to defraud the County, and that was theft, you would not be indicted and convicted, based on your understanding of the deal that was made in that memorandum of understanding in August. Am I correct, Rudolfo?

A That is my understanding, sir.

Q Sure. And you would be sorely disappointed if the Grand Jury down there would indict you for that theft of that \$500.00 in face of the deal that you think you've got? Correct?

A Would you repeat the question?

Q I say you would be certainly upset --

A Sure would, sir.

Q -- if Mr. Arnulfo Guerra, or the Attorney General, or that Task Force got an indictment against you for, let's say, that \$500.00. Am I correct?

A Yes, sir.

Q Because -- and I am not being critical of you -- because it is your understanding that your deal is that you are going to have nothing brought against you by way of indictment or charges on anything you might testify to before this Honorable Court. Correct?

A Well, that's what it states here, sir.

Q All right. So that -- now, I am going to ask you to turn with me -- you were talking about adding up figures. Will you turn with me to Page 832 of that same Volume --

MR. MITCHELL: And this, for the Court's purposes, is Respondent's Exhibit.

Q -- so, if the figures reflect that, for the period of 1971, '72, '73, '74 and '75, that you -- your store -- Benavides Implement and Hardware -- got \$391,000.00, and

you paid O. P. Carrillo \$12,000.00, and you appropriated, let's say, each and every dime of that remainder. You assume that with me. Will you do that, please?

You could not, and you would not, of course, feel that you would be indicted for taking a dime of it. Am I correct, Rudolfo?

MR. ODAM: What page are you referring to?

MR. MITCHELL: Page 832 of Respondent's Exhibit, and that is R-100 in the Judicial Qualifications Commission trial, if it please the Court.

Q I say, assuming that those figures are correct, the total amount of money going to Benavides Implement and Hardware. You would not expect to be indicted for the stealing or the embezzlement of one single dime, would you?

A Mr. Mitchell, I didn't steal none of that money.

Q I know you didn't. I am just saying but if you did?

A I just didn't. That's all.

Q Yes. Well, now, let's see. You say you didn't steal it. Let's go back -- let's go back to Page 1555 of the Respondent's -- Examiner's Exhibit. Get the green one. Let's see how much of it you did steal.

A What number is that, sir?

Q Well --

A Is that Volume Two or Volume Three?

Q That's Volume Three.

A I haven't got that Volume, sir.

MR. MITCHELL: First, I want to point out to the Court that there are -- and follow me so that I won't waste a lot of time.

A Mr. Mitchell, I have got Volume Two only.

MR. MITCHELL: Do we have that Volume that you could let him have, Mr. Odam? Volume Three. That's the one that he has been testifying out of -- that's the chart.

THE WITNESS: No; this is Two.

MR. MITCHELL: No. I see. You have been using the wrong Exhibit. You have got 192 in front of you there, haven't you?

A Yes, sir.

Q Well, take it. It has the same -- it is the same thing, isn't it? Am I correct? It's the same thing as the Exhibit 1555? Am I correct?

A Yes, sir.

Q Well, let's take the first entry. The first entry is a check to you in the amount of 200 and -- no -- in the amount of \$780.00. Rudolfo Couling, Special Account. Am I correct?

A That's correct, sir.

Q All right. Incidentally, so that the Senate understands, this account and this record does not include your farm account or ranch account, does it?

A No, sir.

Q It does not include your special account, does it?

A No, sir.

Q And it does not include all of your other bank accounts, does it?

A That's all I had just a ranch account and a special account, sir.

Q That's right. And this one includes only what accounts?

A Just the Benavides Implement and Hardware Company, sir.

Q Right. In what bank?

A San Diego.

Q And that does not include the Benavides Implement and Hardware account at Alice, does it?

A I don't have one in Alice.

Q Well, where did you have the other Benavides --

A In Rio Grande City, sir.

Q All right, sir. So, there are two Benavides Implement and Hardware accounts, one in Rio Grande City and one in Alice. Correct?

A In San Diego and Rio Grande City, sir.

Q And this Exhibit that Counsel has been asking you about involves which one?

A San Diego Bank, sir.

Q All right. So we're not telling the Senate under oath anything that has transpired in the Rio Grande City Bank account, am I correct?

A Not on this chart, sir.

Q Because there are transfers from this account, that is, the one appearing at 1555 into your other accounts, aren't there, Mr. Couling?

A And they are transferred from my account to this chart, too, sir.

Q Right. There are transfers into your other account, am I correct?

A Yes, sir.

Q Sure. And to the extent they would be transfers to the other account and to the extent that you knew or you participated in a fraudulent execution of a Benavides Implement and Hardware invoice that was turned into Duval County and to the extent that a check would come out of Duval County to Benavides Implement and Hardware, that would be a theft of the county's money, by you, correct?

A Not by me, sir. By the individuals that were made at the Farm and Ranch first.

Q Just a minute, Rudolfo. Hold on. I'm talking about -- well, let's take that Rufoldo Couling, \$780.00. That's a theft by you, ain't it?

A That came out from the County, sir?

Q It's your chart, isn't it?

A Yes, sir.

Q All right. Don't ask me. Ya'll -- didn't Ms. Levatino and you and Mr. Max Flusche and all you folks sat down there down at Corpus Christi one night and drew all this up? Isn't that what you --

A Yes.

A All right. To the extent you got \$780.00, and to the extent questions that had been put to you by Counsel that the invoices were fraudulent on Benavides Implement and Hardware and the checks were issued on the basis of those fraudulent invoices, and to the extent that you knew it, it would be theft by you of \$780.00, correct?

MR. ODAM: Your Honor, before the witness answers, I would object to that question. It makes the presumption, if you'll look at the chart on the left-hand side, it states \$780.00 deposit we did indicate, nor was it in prior testimony that that is money that came from the county. So, it would be false to ask this witness a question as to whether or not he stole it when the evidence is not that it even came from the County, water district or school district.

MR. MITCHELL: I thought you represented to this Court they all came from the County, the water district or the --

MR. ODAM: It was represented here as it did before where they were specifically identified on the source on the left as to water district or County or school district. It is so indicated.

PRESIDING OFFICER: Counsel, this is cross-examination.

MR. ODAM: I'm sorry.

PRESIDING OFFICER: It is wide open. But I'm going to ask you both to confine yourself to the record.

MR. MITCHELL: Yes, sir. Mr. President, I think if I can head him on in and get him started, we'll go real fast.

PRESIDING OFFICER: Let him answer, Mr. Mitchell. Ask him the question

--

Q Can you answer that question and answer the instruction by the President?

A The check -- the deposit doesn't show that it came from the County or the water district or school so it could have been individual sales made by the store.

Q Oh, the sales? They all had some sales that were made individually that were not to the County or to the water district or the school district, is that your testimony, now?

A You have some here down the list where it says "individuals," sir.

Q Yes, I understood you testified under oath that each and every sale into the Benavides Implement and Hardware was from the County or the water district or the school district.

A No, I stated some individual sales too, sir.

Q All right. But, there is no doubt that it was a legitimate business, that you did a business in addition to the business reflected in the County, the water district and the school district, am I right, Rudolfo?

A Yes.

Q Now, Mr. Couling, I want to be sure before I go any further that we understand who owns Benavides Implement and Hardware. Will you look at the last page of that Respondent's Exhibit? And I'm going to hurry through this, because I want the Senate to have this background.

You testified in Corpus Christi that there was a partnership between you and Ramiro Carrillo in May of 1972 on Benavides Implement and Hardware, correct? That's what you testified?

A 1971 and '72.

Q Right. Well, you didn't know when you entered the partnership, but you testified at least on five occasions that I recall, under oath, that you had a partnership with Ramiro Carrillo, didn't you?

A That is correct, sir.

Q All right. Now, follow me. But, that Partnership Return -- you never did file a 1066 Form with your income tax either '71, '72, '73, '74, '75 reflecting it, did you?

A No, sir.

Q All right. And, looking at the Exhibit, if it please the Court, the last page of Respondent's Exhibit, you swore in an application for sales tax application to the State of Texas that the Benavides Implement and Hardware was what, a sole proprietorship, correct?

A That's correct, sir.

A You didn't check the block "partnership?"

A No, sir.

Q All right. And, in addition, when you sold the business of Benavides Implement and Hardware to your friend and our friend, Cleofas Gonzalez, the gentleman that just preceded you on the witness stand, you did not bother to give any partnership accounting to your so-called partner, did you?

A No, sir, I did not, sir.

Q As a matter of fact, the only testimony in this entire record that there was a partnership between O. P. -- between Ramiro Carrillo and you is your verbal testimony?

A That's correct, sir.

Q But the documentary, now I'm talking about the tax return. We don't need to go into what the tax returns say about it being perjury if you misstate the business form. Your tax returns never do reflect that?

A No, sir.

Q As a matter of fact, your tax returns all have Schedule C's Income, Sole Proprietorship, don't they?

A That's correct, sir.

Q And, in addition, not only do you have Schedule C's Income for Sole Proprietorship, Benavides Implement and Hardware, but you make your Social Security calculations on the basis of a C-1 Schedule on the same theory that the Benavides Implement and Hardware was a sole proprietorship owned by you, right?

A Yes, sir.

MR. ODAM: Your Honor, if I might, I don't want to object because of repetition because Mr. Mitchell has allowed me to go into some, but when I asked the witness here today whether or not it reflected being a sole proprietorship and asked about all the records so indicated, he so testified. I do think it's repetitious --

PRESIDING OFFICER: This is cross-examination, Counsel, and Counsel has the right to test the witness.

MR. MITCHELL: I thank you, Mr. President. I will move on.

Q Now, in addition to that deal, that is that there was a partnership which you speak, and doesn't reflect, in addition to that, you have testified that there was a secret

arrangement as regards the \$750.00 coming from the water district, didn't you?

A That's correct, sir.

Q Now, sir, so that the Senate understands what we're talking about, we're looking back now on Exhibit number -- Examiner's Number 3, if it please the Court, Page number 1555. This is the second deal. The second deal was that you had to deal with Ramiro Carrillo, I believe you said. There wasn't a -- when the water district coughed up \$750.00, \$500.00 of it would go to Oscar Carrillo, I believe, and \$250.00 would go to Farm and -- no, Ramiro Carrillo and Brothers, right?

A That's correct, sir.

Q All right. Now, that's a second contracting agreement, and tell us, please, when that occurred. When did the deal -- was it hatched? When was it hatched?

A Somewhere early 1971, sir.

Q All right. And was the agreement, Mr. Couling, that that money would be paid every month into the Benavides Implement and Hardware and from Benavides Implement and Hardware to Oscar Carrillo and to the Ramiro Carrillo and Brothers?

A As long as checks came in from the water district of the County, I made checks out payable to those individuals, sir.

Q But, as a matter of fact, that's not what occurred. If you'll look with me on Page 1580, which is your nineteen -- well, now, you don't have that Exhibit. The deal to pay the \$500.00 and the \$250.00 a month, if my calculation and yours is correct, goes down to page -- to 3/28/72 and no further, correct?

MR. ODAM: What page are you referring to?

MR. MITCHELL: Well, I'm asking him why doesn't his Exhibit reflect those continued payments into 1972, '73, and '74 as per his testimony. And if he has an explanation, I'll move to the next one.

A What's that next month you have there?

Q Well, I'm having trouble following your lines. First of all, your lines disappear completely on Page 1562 of that Exhibit, don't they, Exhibit Number -- Volume Number Three. My question is, if there was a contract or agreement as to the \$750.00, I want to know is that contract agreement either the disbursements reflected in 1562, '63 on through, and 1581, and if so, point them out to us and I'll move on.

A There is one in May of fiscal 1972, sir.

Q All right. Well, did you all have an agreement to rescind the agreement sometime in '72 that you testified to?

A There is one on the next one, seventh month for 1972 for \$750.00, sir. There is one from the ninth month for \$750.00. There is one in the tenth month for \$750.00 of '72, sir.

Q What date?

A 10/24 -- \$500.00. 10/16 --

Q To Oscar Carrillo?

A D. H. Carrillo, sir.

Q Well, no, I'm talking about Oscar Carrillo. Why, didn't you testify that the deal was \$500.00 --

A Those were D. H. Carrillo, sir.

Q Oh, it included D. H. Carrillo?

A Yes, sir.

Q All right. So, you changed your testimony, then, the deal included D. H. Carrillo?

A No, sir, I didn't change it from the first time I stated it.

Q All right. Well, go on.

MR. ODAM: Give him the Volume so he can follow along with you in the chart, page numbers.

MR. MITCHELL: I just wanted him to point it out, John, and I'll move on.

A 12/18/72.

Q All right.

A Which is the last one -- that's made payable to Oscar Carrillo, sir.

Q You say that's the last one?

A I didn't say it's the last one. Let me look. There is another one in January the 11th, 1973, sir.

MR. ODAM: What page are you referring to?

A 1568.

Q Well, let me see if I can help. None in February, right, of '73? None in March?

A There is one for D. H. Carrillo, sir, on February 22nd for \$550.00.

Q Well, that's parts for resale.

A There was no parts purchased from D. H. Carrillo --

Q Oh, you say that just wasn't -- that didn't happen that way?

A D. H. Carrillo he had nothing to sell, sir.

Q Well, you drew the Exhibit, didn't you? You've got, "\$550.00, parts for resale, D. H. Carrillo," that you say, though, was not five hundred -- that's part of the \$500.00?

A Yes, sir.

Q And the recital there in the Exhibit and the recital on the check is just not true?

A There was no -- there were no parts purchased.

Q I understand. I understand. Just not true. Is that correct?

A There was no purchase made from D. H. Carrillo, sir.

Q None in April of '73, correct?

A No, sir.

Q May of 1973, correct? By quick scan, June, July or August. Of course, the Court can read it itself and can from there on in up until 1960 -- '74, am I correct, Mr. Couling?

A Yes, sir.

Q All right. Now, let me -- before I leave this Exhibit, you also testified at Judicial Qualifications Commission there was still another deal. You remember that one? Now, we're talking about the partnership deal, which is not documented except through your lips on the witness stand. This deal of \$500.00 and the \$250.00 which was not documented or demonstrated past the time that your evidence -- that you just testified to reflects, and you had another -- remember the other deal you testified to down there?

A Yes, sir.

Q What was it? You didn't testify to it today. I want you to testify to it.

A That was from the County?

Q Yes.

A Checks made payable to my store for \$308.00 -- \$310.00 or \$320.00.

Q That's right. Now, let's speak slow on that. You said that when a check came out of the County?

A From the countywide fund.

Q Right. For three hundred --

A And some dollars.

Q Or \$310.00 or \$350.00 the money was to be dispersed how?

A The check made payable to Ramiro Carrillo and Brothers.

Q That's right. And that as a matter of fact occurred only about twice, didn't it, in this exhibit?

A I didn't check, sir.

Q At any rate, Mr. Couling, you will admit -- let's go back now to Page 1555, you will admit that on that -- strike that. Let's go to Page 1581 -- let's go to 1581 and start with your friend Cleofas Gonzalez. You will admit that Mr. Cleofas Gonzalez got \$400.00 12/31/74 out of that account, didn't he?

A Fifteen what, sir?

Q 1581, the last page. Let's start there and come forward.

A Yes, sir.

Q All right. And, so the Senate understands this is the same Cleofas Gonzalez that testified that he made the vouchers on Benavides Implement and Hardware -- printed vouchers -- while he was working for Farm and Ranch to trigger all this business, isn't that correct?

A That was 1971, '72 and --

Q Right. It's his handwriting that's on the printed invoices that say Benavides Implement and Hardware across the top that are in this testimony. Correct?

A Correct, sir.

Q And those are the ones that are turned in from which the checks are issued by the county or the water district or the school district that go to Benavides Implement and Hardware, which is you?

A Yes, sir.

Q And that's the same Cleofas Gonzalez that just got off the stand today. Correct?

A Yes, sir.

Q Now, if there was -- and he testified there was no equipment to rent, if he testified that the transaction was fraudulent and if he testified that you knew that it was fraudulent and if it were fraudulent that \$400.00 is stolen money, isn't it?

A This one here?

Q Yes, sir.

A No, sir. When he went to work with me -- when he went to work for the county in 1974 and he used my office there and I told him that I would pay him commission for taking care of the business, sir.

Q I understand that, but I say if that money came from the county and pursuant to the scheme that you have detailed and questions put to you by Counsel for the Board of Managers, if that is stolen money he stole it and you stole it?

A If it came from the county, but we had individual sales, sir.

Q All right. You're telling the Court that you put the county money and the water district money over here in a separate pile and you took the other money and you kept it separate?

A No, sir, but you're assuming that all the money was stolen, which it was not, Mr. Mitchell.

Q Oh, no, I thought that was the test -- the thrust of your testimony.

A No, sir.

Q Is it now that all the money was not stolen?

A I didn't say all of it, I said we had some individual sales.

Q All right, then, so that the Benavides Implement and Hardware did a legitimate business?

A Some of it was legitimate, yes, sir.

Q And it's only when you get down to my people that -- I say my people, the Carrillo family, because there wasn't but about -- well, according to your testimony, no checks to O. P. in '74, was there?

A No, sir.

Q I want that understood, there's no checks in '74 to O. P. and no checks in '75 to O. P., am I correct?

A That's correct.

Q And then in 1972 there were \$3,974.00 in checks to O. P.?

A That's correct, sir.

Q Twelve hundred of which was a loan that you say didn't exist, even though the check said a loan and I'm going to get to that before I'm through with you -- am I right?

A The loan never existed, sir.

Q That's right. And rental equipment which never existed?

A No, sir.

Q And purchase of tubing which you never sold?

A No, sir.

Q And the purchase of a counter which you never sold?

A No, sir.

Q That's right. And the checks say that, don't they, Rudolfo?

A They do, yes, sir.

Q And it's in your handwriting in each and every instance that you gave that \$3,924.72 to O. P. Carrillo, it says "tubing", "counter", a "loan" -- and you put that on there in your handwriting and yet you're telling this Court that just did not exist?

A I never bought anything from him, sir.

Q All right. Now, let me ask you, how about the rest of this money. Let's look on 1581. Come on up with me, \$300.00 to R. M. Couling. That's you, isn't it?

A That's me, sir.

Q \$545.00 to R. M. Couling, that's you, isn't it?

A That's me, sir.

Q \$100.00 to Couling, that's you, isn't it?

A That's me, sir.

Q \$100.00 to Couling, that's you, isn't it?

A Yes.

Q \$175.00 to Couling, that's you --

A That's me, sir.

Q \$600.00 to Couling, that's you, isn't it?

A Yes, sir.

Q And I'm reading from 1581 and beginning in December 31st, '74 and I have moved up now to December the 10, 1974. The source for those deposits, \$802.00 from the water district, am I correct; \$1,972.00 from the school district, am I correct?

A Yes, sir.

\$102.20 from the school district, am I correct?

A Yes, sir.

Q And \$249.27 from the school district, am I correct?

A Correct.

Q And from individuals a total of forty, for a hundred and adding your deposits, there's roughly about \$250.00, \$300.00, right?

A Close to \$300.00 in currency.

Q So, that appears -- it does appear then that in December you got some money that came out of the school district, just looking at that very hurriedly on 1581, correct?

A Got some from the school district, yes, and water district, too, sir.

Q Sure. And, if, now -- just assume with me -- I know you don't want to, but assume with me that those checks were cranked out of the water district or the school district based on a fraudulent invoice executed by you or Cleofas Gonzalez, upon which the county or the water district issued that check to you and you took the money, you would have stole that money, wouldn't you?

A If there had not been legitimate sales -- I didn't say there were or were not so, Mr. Mitchell.

Q That's right. I say, if the facts that I have asked you to assume --

A "If" is a big word, sir.

Q I say "if" those facts are correct that money would have been --

A "If" they were correct, sir.

Q Right. Stolen money and you would not expect to be prosecuted by the District Attorney of the 229th District, would you, for those thefts?

A No, sir.

Q That's right, because you got a deal going in, that if your testimony revealed thefts by you or other crimes you certainly, as long as you tell the truth, you certainly are not going to be prosecuted, correct?

A Correct, sir.

Q All right. Now, if you will look at Page 1580 -- and incidentally, if my assumption is correct -- and I know it's terribly difficult for you to make it -- but if my assumption is correct on just Page 1581, if it please the Court, the -- incidentally, the \$900.00 to Alamo Iron Works -- that's a personal bill Benavides Implement and Hardware owed to Alamo Iron Works, doesn't it?

A That was merchandise bought from Alamo Iron Works.

Q And your testimony is -- that didn't go to my client O. P. Carrillo, did it?

A No, sir.

Q And it didn't go to none of them other Carrillos, did it?

A No, sir.

Q In fact, you all weren't even talking to each other then?

A We were greeting each other only.

Q That's right. You all had busted up because you had a split back there in '74 and you went on one side, you went on the Parr side and they went, of course, on the Carrillo side, correct?

A Correct, sir.

Q All right. And the reason for that was, of course, I will touch on it later on, some of your duties as regards to the caretaking of the books of the school district. But, now let me get back to this 1581, Mr. Couling. The \$900.00 was for your benefit, right? That is the Alamo Iron Works? Correct?

A That was for the store's benefit.

Q Assuming, making those same assumptions, that was for the store, that also would have been stolen money, would it not?

A No, sir.

Q Well, I mean, if the invoice was false and the water district or the school district issued a check on the basis of it to the Benavides Implement & Hardware Store that certainly would be false, fraudulently obtained money, wouldn't it?

A Well, we had some original sales to the school district, sir.

Q I say, assuming what you have testified to Mr. Odam that all those invoices in the sixty series were false and all those invoices back here were false and you all were cranking this money out of those districts down there, assuming that that's where that money came from, it would, of course, be theft on your part to take the money.

A If you assume, yes, sir.

Q Sure. And, so that the Senate is aware, you weren't charged in your 605 indictments, but with one theft, were you? You haven't been charged for any of these thefts, but only one. Look, if you would, at that indictment. You are charged with --

MR. MITCHELL: Your Honor, this is Page 654, if it please the Court, in Respondent's Exhibit.

Q There's only one of those five indictments that charges you with theft and that's \$989.79 that you took with check No. 1727 from the Benavides Independent School District Tax Office. And, of course, you did do that, didn't you? That's the only time you're charged with theft in these indictments, so that you haven't been charged with any thefts, have you?

A No, sir.

Q And the rest of the indictments are for the illegal and improper use of a Texaco credit card, the Exxon credit card belonging to the school district and other sundry credit cards, right?

A Texaco and Exxon, sir.

Q Right. That's the other indictments, correct?

A Yes, sir.

Q So the indictments we're talking about that you have freely admitted to, and I thank you for your candor, don't involve the theft of any money from Duval County or from the school district other than that one \$989.79; correct?

A That's correct, sir.

Q All right. So that if -- now, we say "if" is a big word. "If" those checks going to Rudolfo O. Couling are to your account, such as the Alamo Iron Works or to your daughter or to the First State Bank -- if those checks were drawn by you for your account and for your benefit and if the money was generated on false and fraudulent invoices on Benavides Implement and Hardware invoices, Mr. Couling, each and every one of them would constitute a theft, wouldn't they?

A If.

Q Right. And you're not going to be prosecuted and don't intend to be, do you?

A If, sir, if they were.

Q And if I have totaled it up during the course of visiting with you over the past few months to show that there's three hundred and ninety-two--three hundred and some seventy thousand dollars --

MR. MITCHELL: And, Mr. Odam, so that you will know where I'm talking from, 832, Respondent's Exhibit.

Q \$370,382 paid from '71 to '75 by the County, school district and water district to you, that is Benavides Implement and Hardware, then the price paid for your immunity has been an awful high price, hasn't it, Rudolfo, or do you consider it a fair bargain?

A Most of the money went to the Carrillos --

Q I understand your testimony, that most of the money -- well, let's say the fifteen -- I think you gave us the figure for '71, '72, '73, '74 and '75, did you not?

A Yes, sir.

Q And, of course, it stopped in April of '74 when -- in 1974 when you all had a breakup. Is that correct?

A Yes, that's correct, sir.

Q At any rate the Senate's going to pass on your credibility, they, of course, know the facts. But really that's not where the trouble started, is it? Let me direct your attention back to the time that you all had the squabble, in April of '74, actually wasn't what it was, Mr. Couling, that you, as the employee of Benavides Independent School District, got ahold of the records of the district and shredded them?

A Which year was that, sir?

Q '74. Oh, you can't remember when you shredded the school district's --

A The '74 records are still there, sir.

Q Which records did you shred?

A That was the 1953-54 -- 54-55, sir.

Q Oh, I'm sorry. You did shred the records that was -- I believe you had a big shredder and a little shredder and as custodian of the official records you shredded the official records, didn't you?

A There were not shredded, sir.

Q All right. As a matter of fact, Rudolfo, you hid the records down there from the investigating authorities didn't you?

A Sir?

Q I say you hid the records, hid them up in the men's bathroom, up in your office?

A No, sir, I took them to the Grand Jury, sir.

Q You hid them and secreted them from the law enforcement agency, didn't you?

A I wasn't there no more when they were looking for them, sir?

Q Sir?

A I wasn't there when they were looking for them no more, sir?

Q Well, but they did come out, we know that?

A I wasn't working when they came looking for those records.

Q And you went and got them and gave them to the folks?

A No, I didn't get them for them, sir.

Q Well, you did secrete the official records, didn't you?

A They were in the tax office all the time, sir?

Q Right. And you were charged with theft of school funds, weren't you?

A On one account, yes, sir.

Q And you were fired by the school board?

A Yes, sir.

Q And that's what started the problem, isn't that correct?

A Not about being fired, no, sir.

Q Now, you didn't --

A I expected to be fired as soon as the Carrillo board lost and was defeated by the elections.

(President in Chair)

Q And then you jumped the fence and thereon in it's been a downhill relationship with you and the Carrillos?

A I didn't jump the fence, sir. I stick with the Old Party.

Q All right. You stuck with the Old Party and the Carrillos jumped the fence. Is that your testimony? Is that what your testimony is?

A I didn't say that, Mr. Mitchell.

Q All right. So that we can have the proper background for the entire case; there was a definite split, a political split between the Old Party and the Carrillo Party in mid-'74, wasn't there, Mr. Couling?

A Yes, sir.

Q And, I believe the Chapas and you and Cleofas Gonzalez and Ruiz and all these folks that testified went to Parr -- to Archie Parr's side of the fence, did they not? And Roberto Elizondo -- Tomas Elizondo, the folks named in these Articles of Impeachment and O. P. Carrillo -- and, of course, the Carrillos were on the other side along with D. C. Chapa. Am I correct?

A I believe it was Mr. George Parr then, sir.

Q Okay. At any rate, when Cleofas left the Farm and Ranch he did come to you and went to work with you, I believe the record reflects.

A Sir, he went to work for the County. I wasn't paying him anything, just whatever he sold, I gave him a commission, sir.

Q But, at any rate, he went to work over at the Benavides Implement and Hardware Store, the location?

A Yes, sir. At the location, yes, sir.

Q Now, that brings me to the next question.

MR. MITCHELL: Mr. President, I -- this would be a good time for a break. I want to take up, now, specific questions as to Article I. If I might request a break. I didn't get a midafternoon break. You folks have got pretty tough kidneys in this Senate.

THE PRESIDENT: Mr. Mitchell, it's a quarter of 5:00 at this time. I wouldn't consider it appropriate to take a break at this time. If this is a logical breaking point, perhaps the Senate might wish to adjourn for the day.

MR. MITCHELL: Yes, I would like to have some opportunity to bring together my -- the balance of my evidence for the continued examination, for the information of the Court I am going to start on Article I on the welfare and the cash receipts, which is an entirely new subject matter.

THE PRESIDENT: Can you estimate about how much more cross-examination time on this witness?

MR. MITCHELL: Mr. President, I have, on Article I -- oh, I would say, thirty minutes. I have, of necessity, to go back into the equipment rental, the Volume -- that is, Page 1555, Volume Three material. I have, of necessity, to go back into the Caterpillar tractor material which is Page 832 of our exhibit.

I think it would be probably a couple or three -- a couple or three hours will cover it. Perhaps by noon tomorrow, Mr. President, I will be through with cross-examination.

THE PRESIDENT: I'm sorry. I misunderstood. I thought you said about thirty minutes.

MR. MITCHELL: Oh, no. I was talking only about Article I. This was one of those witnesses, Mr. President, that when the -- when I was asked earlier from the floor if I had called witnesses on Article I, I stated Mr. Rudolfo Couling, Judge Carrillo and Terry Canales. I thought what I would do, now that I have gotten the general background and hopefully placed them in a proper reference, that I would start in Article I.

THE PRESIDENT: All right, sir. If it's agreeable with the Senate, why don't we take a ten minute break and allow you to conclude this portion of the testimony that you --

MR. MITCHELL: On the Article I?

THE PRESIDENT: -- estimated about thirty minutes.

MR. MITCHELL: All right. Well, if we are going to do that, Mr. President, I just might as well go on. I am warmed up now and there ain't no need in cooling me down. If it's all right with the pleasure of the Court.

THE PRESIDENT: Proceed, Mr. Mitchell.

MR. MITCHELL: All right, sir.

Q Mr. Couling, let me now move, if I might, please, sir, to another matter of inquiry. I am going to go back into the '60's with you.

I do this solely and only because there is a question that is raised in one of these Articles of Impeachment as regards the administration of the welfare program of Duval County, and specifically, as relates to groceries.

Now --

MR. MITCHELL: Excuse me. John, do you have the unit that we introduced down at the Judicial Qualifications Commission, please?

MR. ODAM: The actual Exhibit -- I mean, the books themselves --

MR. MITCHELL: Mr. President, we had introduced -- we have brought before the Senate, I think, forty-two items which we have -- we are not going through each and every one of them. They deal with the Duval County Welfare Department, and I represent to this Court that Mr. Couling is aware of and he has personal knowledge of them.

Now, the way I handled it before, and I would like to proceed at this time, if I might be permitted to, is to take one as a sort of a prototype, and ask the witness some questions about how the program worked and how it operated, if I might. And, with the understanding that we make them available to the Senate to examine each and every one of the books.

THE PRESIDENT: Are these Exhibits included in the Judicial Qualifications Commission material?

MR. MITCHELL: Not the one I am going to ask about, no sir. The one -- there is one in there we used as a prototype, and what I thought I would do is proceed on this one.

THE PRESIDENT: Mr. Odam.

MR. ODAM: The prototypes are R-99, and R-104, I believe. At least, R-99.

I ask the Senate to reproduce just a few pages for a prototype of R-99, which are in the books rather than reproduce this entire book. So, it is up here for examination.

MR. MITCHELL: And, I might make a statement to the Senate that it appears by Article I that the business -- may I make a statement of the purpose of this testimony?

That the welfare program, particularly the groceries, was a helter-skelter, catch-as-catch-can, let's-steal-what-we-can-type operation. I don't intend to burden the Senate unnecessarily. However, I would like to at least illustrate for the Senate, the actual form used and employed in the administration of the welfare program.

MR. ODAM: Your Honor, I would object to this testimony as to Mr. Couling. There is no evidence that I am aware of in the Judicial Qualification Commission by Mr. Couling with respect to the Cash Store allegation, and I would submit that Mr. Couling does not have personal knowledge with respect to the Cash Store and would not be the best witness.

MR. MITCHELL: Counsel, I represent to you that he does, and if he doesn't, I will shut up. I will represent to this body --

Q Mr. Couling, pursuant to that question, let's get on with it. You recognize these books, don't you? The fact of the matter is, you recognize your signature -- your initials, at least?

A Yes, sir.

Q All right.

MR. MITCHELL: With that, may I proceed, Mr. President?

THE PRESIDENT: Yes, Mr. Mitchell.

Q Mr. Couling, hurriedly, let me run through it. These units and these books that I am putting in front of you here are actually the small books that were used and are continued to be used by Duval County for the purpose of administering the welfare program. Am I correct?

MR. ODAM: My question, Mr. Mitchell -- what years do these books pertain to?

MR. MITCHELL: Counsel, you --

THE WITNESS: 1964.

MR. MITCHELL: I am going to cover them. John, if I leave any out, I am sure you would catch me.

May I proceed?

Q These books go back from '64, '65, '66, '67, '68, '69, right on up to '70, do they not?

A I have just got '64 here.

Q All right. Well, your lawyer made an objection so I will have to ask you to take a look at them and give us the spectrum of time covered.

Well, you've participated personally in it for how many years?

A About two to three years.

MR. MITCHELL: Can the Senate hear him?

A I don't know if it was before, but I know it was in '64, sir. I know it was '64, sir.

Q All right. Now --

MR. ODAM: I would object to the year, 1964, that Mr. Couling used the books, if he, in fact, used the books because it is not relevant in point of time to the allegations on the Cash Store to go back--my gosh--thirteen years ago with these books. They are not relevant to the time in question or to the allegations.

MR. MITCHELL: May I represent to the Court that I will offer the testimony and subject to connecting and showing that it's relevant and showing it right on down to the time included in that Article.

THE PRESIDENT: Despite the fact that this goes beyond the present term of Judge Carrillo?

MR. MITCHELL: Yes, sir. I, of course, Mr. President, don't think that he could be impeached for anything that goes beyond the present term, and that includes that Article because I think they will stipulate that there is not a misact -- any conduct charged past January 1st, '75. But notwithstanding that, I am forced to try to establish the legitimacy of the program and that's what I am trying to do, Mr. President. I think I have that laboring oar, and I think that part of my burden requires me to do it. There is some doubt in the folk's mind and I want to dispel it if I can.

THE PRESIDENT: Mr. Mitchell, it's a little -- kind of hard to see right now how going back to '64 serves that purpose, but go ahead and proceed.

MR. MITCHELL: Well, let me see if I can move it on up.

Q Mr. Couling, when, as a matter of fact -- well, I will just ask you point blank. You can tell the truth about this, I am sure.

These books are used right up to today, ain't they?

A I believe they are still using the same books, yes, sir.

Q And today is the 13th day of January, 1976?

A I haven't seen one for the last four or five years, but I assume they are still the same.

Q Right. And they have a white copy, a pink copy, and a yellow copy, don't they?

A Yes, sir.

Q And when the official makes out that form, which is the official form, he makes out the white copy and that goes by transposition on the yellow copy and by transposition to the pink copy, and that's what we have left in the book. Right?

A Yes, sir.

Q All right. Now, so that a person -- excuse me, Mr. Couling. Thank you. So that a person desiring welfare assistance -- and certainly, we are not making light of the folks' needs -- whether it be medicine, food, groceries, or what, would go to persons in the County -- and I am talking, now, for a customary period beginning in the '60's and continuing forward, without regard to any specific individual -- would go to a person authorized by the Commissioners Court to administer the program and make known their needs. Am I correct?

A Yes, sir.

Q And the one Exhibit that I showed you, for example -- I picked at random -- I believe you initialed. "Person receiving the order". That's "R. M. Couling"; that's you?

A Yes, sir. That's for a doctor's order.

Q Sure.

MR. ODAM: What is the date on that one?

THE WITNESS: March 16, 1964.

MR. MITCHELL: Picked it at random, Mr. Odam, and if you desire, I will go through each and every one. We will bring them right on up to date, but I am trying to avoid your objection that they are remote.

MR. ODAM: Can you get the most -- closest one in point of time?

MR. MITCHELL: I will, but I've got forty-two items composed of something like 2,000 pages each. I will be glad to bring them on up. I think I can do it with this witness' testimony.

MR. ODAM: Your Honor, I think I would -- if I could, with all respect to Mr. Mitchell, I will pose the objection as to taking something thirteen years ago and trying to make -- bring it up through Mr. Couling's testimony. I hate, Mr. President, to take the time of the Senate to go back through thirteen years.

MR. MITCHELL: I think he has testified it's used right on up to date, and I have put it in the record because I knew you were going to be hurt and holler.

MR. ODAM: He says he has not seen it in five years. Now, if there is someone else that can testify --

MR. MITCHELL: He has testified, Mr. Odam, that they are used up to this date, and I said, "The 13th day of January, 1976?" And he said, "Yes."

MR. ODAM: May I take the witness on voir dire examination to clarify these questions as to relevancy?

THE PRESIDENT: Proceed, Mr. Odam.

VOIR DIRE EXAMINATION

(Questions by Mr. Odam:)

Q Mr. Couling, at one time, I take it, you did have something to do with the welfare program?

A Yes, sir.

Q And what was that?

A That was in 1964. I don't know for how many years, sir. That's when O. P. Carrillo was in charge of part of the welfare in the county, sir.

Q In 1964?

A Yes, sir, when he was County Attorney.

Q While Judge Carrillo was the County Attorney?

A Yes, sir.

Q And how long did you continue with those responsibilities?

A I don't know if it was for a year or two or three years, sir. I don't know, sir.

Q What would be the last time, to the best of your recollection, as to when you had any connection with the welfare program in Duval County? This is 1976, and you started in 1964.

A I didn't have it in '69 or '68 or '60 --

Q Did you have it in 1965?

A I don't know, sir. I don't remember, sir.

Q Or '66?

A I was making some welfare orders later on for Mr. Atlee Parr. I wasn't making them for O. P. Carrillo later on, sir. Strictly for hospitals or doctors only.

Q And when did you make them for Atlee Parr?

A It was just before he died, sir. I don't know what year he passed away -- in '60 -- I don't know whether he died in '67 or '68.

Q All right. He died in the last couple of years?

A No, sir.

Q Did -- you stated earlier on the question as to the use of these booklets. Have you been personally connected with the welfare program, say, in 1971 or 1972?

A No, sir.

MR. MITCHELL: Pardon me. I want to remind Counsel that he is bound by the same rules I am. Those books are in evidence in that Judicial Qualifications Commission, Mr. Odam, and you know they are; every one of them. Now, every time I did that, you said, "Wait a minute. They are in."

Now, these are in; every one of them.

MR. ODAM: I am sorry. Which ones of them are in evidence?

MR. MITCHELL: 104, if it please the Court, and R-99.

Now, if you want to go back on that, it's fine with me, but I want you to be honest with this Court.

MR. ODAM: Well, I don't mind you using the R-99 which is in evidence, nor the 104. Both of them are in 1963, and one in 1963.

My objection, again, is the relevancy. This witness did not testify at that time as to these booklets -- in the Judicial Qualifications Commission. What I am saying is, this witness can't even recall when he left the program, but it was clearly several years

ago and it is -- the witness cannot give relevant testimony as to the welfare program on the Cash Store in the years that have anything to do with our allegations in the Articles of Impeachment.

MR. MITCHELL: Mr. President --

THE PRESIDENT: The Chair would like to ask the witness a question. Mr. Couling, when was the latest date at which you had personal connection with or knowledge of the welfare program in Duval County?

THE WITNESS: If I can remember what year Mr. Atlee Parr passed away, that was the last year, sir. I imagine it was --

THE PRESIDENT: Was it before 1970?

THE WITNESS: Yes, sir. It was either in '67 or '68, sir.

MR. MITCHELL: May I, Mr. President, state to the Court the reason why this witness' testimony is relevant?

THE PRESIDENT: Please do so.

MR. MITCHELL: Those chits that were introduced were not, as I tried to establish by Mr. Cleofas Gonzalez, ever used past 1970. Those chits that are in H-1 -- that "1" series. And what I am trying to do and I am by force -- of necessity, having to go back prior to 1970 to show that this system -- that is, the chits now, that have been introduced before this Court as representing the methodology employed by my client in the '70's -- '71, 2, 3, and 4, are just impossible because they were not used past 1970. And, that's the reason that I want to go into the system used. And, this witness has the personal knowledge. He has testified. Those are not new to this attorney. He has seen forty-two of them. They were on the court's bench down at Corpus for a period of two days -- three days. I left them there on purpose for him to examine. I am somewhat taken aback that he is going to object to them at this point.

MR. ODAM: Mr. Mitchell, my only objection is with respect to Mr. Rudolfo Couling, that his testimony was not elicited with respect to those booklets down there. We didn't go into that at all with this witness. And, I am simply saying that Mr. Couling does not have relevant testimony with respect to those books. Any proof that you are talking about with the chits could come in through a witness, if at all, that has relevancy.

MR. MITCHELL: Well, if I put another witness on, I would trust that you would object on the grounds, Mr. Odam, that his man right here, the man that wrote the book I am asking about them. It's his name. How could I put another man on when it's this man's signature I'm after.

Q Mr. Couling, is this your signature, please, sir?

THE PRESIDENT: Mr. Mitchell, this witness has testified that he has not had personal knowledge or connection with this program since the mid 1960's.

MR. MITCHELL: I am not going to beat my head, Mr. President.

THE PRESIDENT: The Chair needs to understand the relevancy.

MR. MITCHELL: I am going to withdraw it and I am just going to simply let the record reflect on how I have been treated in connection with the documentation that has gone into that Judicial Qualifications Commission trial. My lips are sealed to object, and if that's the rule we are going to abide by, then, fine. The record will contain a vacuum in it. I am not going to dignify it any further.

THE PRESIDENT: Mr. Mitchell, the objection is not to the use of any material that's in the Judicial Qualifications Commission records, and it's not to the use of those materials which are not in the record. But, you failed to establish to the satisfaction of the Chair, at least, that testimony from a witness who has said that he has no knowledge of the program since 1967 or '68.

MR. MITCHELL: I have been taken back to 1970 in these Articles of Impeachment. I have been taken back to the '60's. The last Exhibit was 1/1/67. I have been taken back to the date I have been born in this case.

I submit, if it please the Court, that this system has been established in the '60's. It's the same way in the '60's, and it does not support the allegations in these Articles of Impeachment, period. It just wasn't done that way.

And, I want to state to this Court, these were introduced down there in that hearing.

MR. ODAM: Were they introduced through Mr. Couling's testimony?

MR. MITCHELL: Well, Mr. Couling, is that your signature on that --

MR. ODAM: I didn't ask that.

Well, I don't want to argue about it. It's just that this witness did not testify in the Judicial Qualifications about that. Now, if he did testify about it, it's in there. It's not in here, because he didn't testify about it.

MR. MITCHELL: Mr. Odam, you have been going since 9:00 o'clock this morning on material that's been in evidence. Now, are you going to object to me going back over it?

MR. ODAM: You didn't object to it.

MR. MITCHELL: I haven't objected. I let you go over and over it and over it and over it. Now, you are trying to get -- I am trying to establish by this witness, Mr. President, that this program -- he's got personal knowledge. As a matter of fact, administered it.

MR. ODAM: Back in 1964.

MR. MITCHELL: That's right, and that's what we don't want this group to know. He was the man that administered it.

THE PRESIDENT: Mr. Mitchell, would you and Mr. Odam come to the rostrum, please?

MR. MITCHELL: Sir?

THE PRESIDENT: Would you and Mr. Odam come to the rostrum, please?

SENATOR PATMAN: Mr. President.

THE PRESIDENT: Senator from Jackson.

SENATOR PATMAN: Would the chair entertain a motion to adjourn until tomorrow morning at 9:00 o'clock?

THE PRESIDENT: The Senator from Jackson moves the Senate stands adjourned until 9:00 o'clock tomorrow morning.

All in favor say "aye", the opposed, "no".

The "ayes" have it. The Senate stands adjourned.

Accordingly, the Senate, sitting as a Court of Impeachment, at 5:03 o'clock p.m. adjourned until 9:00 o'clock a.m. tomorrow.

SIXTEENTH DAY (Wednesday, January 14, 1976)

The Senate, sitting as a Court of Impeachment, met at 9:00 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present: Adams, Aikin, Andujar, Braecklein, Brooks, Creighton, Doggett, Farabee, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Mengden, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: Clower, Gammage, Meier and Moore.

A quorum was announced present.

Mr. Lanny Henninger, University Avenue Church of Christ, Austin, Texas, offered the invocation.

LEAVES OF ABSENCE

Senator Clower was granted leave of absence for today on account of important business on motion of Senator Aikin.

Senator Gammage was granted leave of absence for today on account of important business on motion of Senator Schwartz.

Senator Moore was granted leave of absence for today on account of important business on motion of Senator McKnight.

Senator Meier was granted leave of absence for today on account of important business on motion of Senator Farabee.

APPEARANCES

Judge O. P. Carrillo, Respondent; Honorable Arthur Mitchell, Attorney for Respondent.

Board of House Managers; Honorable Terry Doyle, Counsel; Honorable John Odam and Honorable Liz Levatino, Assistant Attorneys General on behalf of the Board of Managers.

MR. MITCHELL: May I proceed? Thank you, Mr. President.

Mr. President, in answer to a question put to Counsel by Special Counsel during the evening recess and this morning, we examined the units. We denominated 42 units and were not able to find any beyond the year 1970. With that stipulation and with reference to what has already been previously introduced into evidence, I believe I can proceed with this witness based on strictly his personal knowledge, if I might be permitted to proceed on the basis of R-99 and R-104.

CROSS EXAMINATION RESUMED

(Questions by Mr. Mitchell:)

Q Mr. Couling, I'd asked you yesterday prior to the afternoon break as regards the Duval County Welfare forms, I had showed you certain Exhibits, R-99 and R-104. Do you recall that, those questions?

A Yes.

Q I asked you further in connection whether or not you had -- or you had personal knowledge of the system that was used in the period of time reflected by those Exhibits. And I believe your testimony was that you did and that you personally participated in that system. I asked you further whether or not that system, to your personal knowledge, still exists to-date, that is of yesterday, and you testified it did. Is that a fair summary of your testimony?

A The last time I did any welfare order was around 1967 or '68, Mr. Mitchell.

Q Yes, I understood your personal involvement terminated the latter part of the '60's, but that you testified that you had personal knowledge of the system after you -- although you did not have any personal involvement in the system after that date. Is that correct?

A I know for a fact that they had welfare all the way up through now, I believe, in Duval County.

Q Right. Okay. Now, the Exhibits that are in evidence, R-99, and, so that the Court will be informed of the purpose of this line of questioning, this deals with Article I as regards the grocery Article. It is our position, and it is Judge Carrillo's position that Judge Carrillo did not have any active part in the welfare program after he became County Attorney, as a matter of fact, and consequently could not have participated in a conspiracy as alleged in Article I. Mr. Couling, in connection with that preliminary statement, I'm going to show you -- and for the Members of the Court, these Exhibits

are H-1, 2, H-1(4), and they appear in Volume -- for the seventh day October 4th, page 351. And specifically these chits that I'm going to ask the witness about, Members of the Court, appear at three -- actually at 406. They're not reproduced, of course, in color. They're reproduced here in black-and-white.

I'll ask you, Mr. Couling, to look, if you would, at Exhibit -- let me take H-1(2), which appear to be small, yellow chits, and there are about one, two, three, four yellow chits and some checks that are written on the back. And it appears to be instructions, "Cash Store. Please give," -- for example, I'm reading one -- "Mrs. Hinojosa, twenty dollars, groceries." And initials appear "O. P." Do you see those?

A Yes, sir.

Q And I'll ask you the same questions as regard H-1(4), looking at the long yellow sheets, Tete Chapa, Rosa Garza and those names appearing on those chits, do you see those, please, sir?

A Yes, sir, Mr. Mitchell.

Q All right. Now, I'll ask you also to look at the Exhibit, and, gentlemen of the Court and lady, the next Exhibit that I'm going to ask the witness about appear in the same volume, and they appear at Page 3, the first one appears at 351, the Duval County Welfare form.

You notice too, Mr. Couling, that there is attached let's say to H-1(4), that official white form with a printed portion at the top, Duval County Welfare Department. Am I correct?

A Yes, sir.

Q All right. Now, looking at 104 and 99 which are the little booklets, I'll ask you if the white form that appears on H-1(4) is the white form that comes out of the booklet, R-99, in that system that you're acquainted with. You can take the two and compare them, please.

A Yes, sir.

Q All right. Now, I think the evidence establishes that in the booklet, that is such as R-99, there are three forms, the white, the yellow and the pink.

A Yes, sir.

Q All right. Now, while you were acquainted with the system, do you recall what part was played by the little yellow chits? I'm going to look at H-1(4). Would that chit be given to you by the recipient with O. P.'s signature on them?

A I don't recall if I received any of these, Mr. Mitchell.

Q Well, without regard to those specifically, would the chits be originated from the people who were authorized by the Commissioners Court to receive applications for welfare relief?

A I don't remember, Mr. Mitchell, if I did receive any chits or not.

Q All right. Do you recall whether or not -- well, let me ask you this: There is in evidence some of these pink slips with your initials on them. Tell us to that extent

what part you played in the system.

A I believe some of those chits, I believe the persons came in person for the welfare orders.

Q They would come in personally to you?

A Yes, sir.

Q As long as you were connected with the system, of course, the people would come to you, would file an application with you, and then you would fill out the yellow -- the white form, is that correct?

A I would fill out the white form which would be transmitted to the yellow and to the pink form at the same time.

MR. MITCHELL: Did the Senate -- did the Court hear him? He said, "fill out the white form which would be transmitted to the yellow and pink form."

Q Am I correct?

A That's correct.

Q And what we have in a permanent record is the pink form in these booklets?

A Yes, sir.

Q All right. And what would go to the Commissioner's Court would be the white form?

A Yes, sir.

Q And the pink form which is a permanent record would contain the name of the recipient -- no, the name of the person giving out the welfare, and if it's a doctor, his name, and if it's a grocery store, that grocer's name, am I correct?

A Yes, sir.

Q The date?

A The date and the person who was --

Q Right. And the person who was qualified to receive the welfare assistance. Am I correct?

A Yes, sir.

Q And in the lower left-hand corner, if the Court will look now to 351, the lower left-hand corner would be the person authorized to issue that official order. And in all events I suppose Mrs. Elvira de Leon has been the Welfare Officer, the County Welfare Officer through the '60's and through the '70's in Duval County?

A Yes, sir.

Q Can you tell this Court how long she served as the Welfare Officer?

A No, sir, I cannot tell you.

Q I notice these forms going back to the '60's have Mrs. Elvira de Leon and those coming on up into the '70's have Mrs. Elvira de Leon. She's still the Welfare Officer?

A I didn't see no '70's, sir.

Q Well, the ones that we have in the record, these appearing at Page -- well, let me ask you this, look at Page 350 here in the record, here in the record and you can examine those -- those are the forms that are in evidence H-1 (1) to (38), are those the forms used in the '60's or the '70's?

A Well, when I was there in the '60's they were using the same forms.

Q All right, sir. There's no way to tell, these could possibly have been issued in the '60's, is that correct?

A No, sir, I don't know, sir.

Q Could you tell the Court whether or not the forms that are in evidence were issued in the '60's, as a matter of fact? I will be glad to get the originals, if it will help you, it's very important.

A Just 1970, sir.

Q Well, look at the ones here in evidence, this is 0 -- here's an 0830, this is in evidence, that's 19 -- January, 1964, isn't it?

A This one, yes, sir.

Q And 0826, that's '63, isn't it?

A Yes, sir.

Q All appear to be the very same type of forms and Mrs. Elvira de Leon's name is printed on them under the name County -- Duval County Welfare Department, County Welfare Officer, correct?

A Yes, sir.

Q And then on the right-hand side of the form there's a place provided for the person receiving the order.

A Yes, sir.

Q And that would be the person authorized by the Commissioner's Court, am I correct?

A Yes, sir.

Q Now, I'm going to pick at random out of the Exhibit H-1 series, which I understand the Board of Managers has used as relates to Article I. And I will hand you H-1(16), which appears to be the very same form -- now that's in evidence, so you can comment on them. That appears to be the very same form that was used back in '64 and '63. And if you have to examine and compare with H-2(7) that I just showed you, you can. That appears to be the very same form, doesn't it?

A Yes, sir.

Q Same persons printed on there, the same headings, etc., am I correct?

A Yes, sir.

Q All right. So, there does not appear to be a change, at least in the printed form of the Duval County Welfare Department voucher from the '60's to the '70's, if the evidence can be believed, am I correct?

A Yes, sir.

Q All right. Now, I will ask you one more question about these chits. Isn't it a fact, Mr. Couling, that the chits that bear O. P.'s signature -- not signature, but what appear to be his initials. And I'm talking about the H-1(4) series that are in front of you here and H-1(2), were those that were used at the time that he left the program in the late '60's and delegated his responsibilities under the welfare program to you.

A I don't remember if I received any chits, Mr. Mitchell, or not.

Q All right. Well, tell us, though, as a matter of fact, he did authorize you to receive the applications for welfare assistance after he became County Attorney, didn't he?

A Some of them, yes, sir.

Q Yes.

A Not all of them, some of them.

Q And some of these Exhibits reflect without going into them specifically, because I have been restricted as regards an objection and the order of the President, these contain your initials indicating that you were the issuing officer?

A Yes, sir.

Q Judge Carrillo was County Attorney through the '60's and up to, I believe, January of '71 when he took office as District Judge under his first term, wasn't he, Mr. Couling? Do you recall? I'll ask you that preliminary question.

A I believe he was County Judge -- I mean District Judge in 1971, I believe.

Q That's right. January '71, I think the record reflects. As a matter of fact, your involvement in the welfare program was in the late '60's when he was County Attorney. Correct?

A For a while. And then I wasn't all the way through and George Zertuche, Jr. took over afterwards.

Q I understand. For a while you were delegated the right to deal with the applicants and then when you left it George Zertuche, Jr. took over.

A Yes, sir.

Q And you and he worked under Judge Carrillo's authority that was given by the Commissioner's Court.

A When he took over he took over himself completely, I didn't do no more work for Mr. O. P. Carrillo. I kept doing welfare orders for Atlee Parr then, who was County Commissioner.

Q Right. Atlee Parr died in 1967? When did Atlee die?

A I don't know if it was '67 or '68, sir, I can't tell you the exact date.

Q But you moved over to assist Atlee Parr who was at that time County Commissioner during his lifetime?

A Yes, sir.

Q And you had the same duties there, that is that persons would come to you or would be sent to you and applications would be made to you for assistance and you would either approve or disapprove and issue an order accordingly, wouldn't you, Mr. Couling?

A The only order that I was authorized to approve was for medicine and hospital bills only. No groceries, none whatsoever, sir.

Q All right. Now, isn't it a matter of fact, that once Judge Carrillo took the bench in January of 1971 as Judge of the 229th District Court, under his first term, that he was completely withdrawn from that welfare program?

A I cannot state to that, Mr. Mitchell, because I don't know, sir.

Q All right, well, as to your personal knowledge you acted under his authority for what year? Did you say '67 and '68?

A I didn't say, I don't remember.

Q Do you remember what years it was?

A No, sir.

Q But you are quite sure that following you there was George Zertuche, Jr., that took over his responsibilities?

A Yes, sir.

Q And so that the record is now complete, you cannot tell this Court, as a matter of fact, that these chits, these yellow chits, these ones that are on the back of the

checks were in fact employed, each and everyone prior to 1970.

A The only time that -- when I had them I don't remember if I did receive the chits or not, because to my best recollection the only welfare that I filled was when a person came in person or called that they wanted help, sir.

Q All right. So that you never did receive one of them from Judge Carrillo during the time that you were assisting in the administration of the welfare program?

A I cannot truly say if I did or not, sir, because I don't remember if I received any chits or not, sir.

Q All right. You're not telling this Court under oath that that was not the way that it was done back in those days?

A No, sir.

Q All right. Now, let me ask you two or three final questions on Article I and then I will move to something else, Mr. Couling. Now the system -- and I understand your limitations of personal knowledge, but the system, as it operated would actually work two ways, would it not, the people would go to, say, the grocery store or to the doctor or the druggist and request assistance, in which event the merchant would initiate the request to the welfare officer.

A Well, to the best of my recollection before -- when I was in charge of it, the doctor would call me and ask for an order before he attended the patient, sir. The same way with the grocery store.

Q Right.

A They would call before and then I would issue an order and then they would pick it up and take it to the store, sir.

Q So, the people who desired the welfare assistance would go to the doctor or to the druggist or here to the groceryman and request it, the merchants, that is the doctor, the druggist, the groceryman or whoever the welfare recipient had presented themselves to would call you or the person authorized, there were many people authorized there in the County, and that order would then be filled out by you or whoever they called on?

A Yes.

Q All right. And then that order would be turned back to the merchant, the druggist, the doctor or the groceryman and they in turn would perform the service, deliver the groceries and execute themselves a little sales slip such as appears in the record, right?

A I guess so, because I never did follow through, sir.

Q All right. At any rate if the evidence reveals or indicates that's what occurred and that the order, plus the little sales slips, such as we have here attached to H-1(4) -- and for the Court's purposes these sales slips appear, for example, on Page 353 for the Cash Store, these would go to the Commissioner's Court and it's there that I believe Mr. Meeks and Mr. Hinojosa testified that the matter would be presented to the Court and acted upon by the Court.

A I don't know.

Q Correct?

A I didn't follow them all the way through the County, sir.

Q And then the testimony shows that if the claim was approved the check would be issued directly to the merchant, to the groceryman, to the doctor or whoever furnished the service.

A I imagine so, sir.

Q Now, the other method by which it appears that the system operated would be that the applicant would go to a person like yourself or to other persons authorized by the Commissioner's Court to receive the application, such as in these cases indicating the chits signed O. P. And the procedure would begin that way, that is that chit would be sent to the person authorized, who in turn would fill out the form, who in turn would send a person back to the merchant or the groceryman and the procedure would commence that way.

A I still don't remember if I received any chits or not, Mr. Mitchell.

Q All right. You don't have any personal knowledge of how that one works?

A No, sir.

Q All right. Mr. Couling, the cross check -- and again, I'm calling attention of the Court, if I might be permitted, to that series in Page 351 -- if I went into Mrs. Yzaguirre's store and asked for groceries, Mrs. Yzaguirre would fill in what appears to be a list -- which appears in the series H-1(1), may it please the Court -- with my name and the amount of groceries, correct?

A I don't know, sir, because the only times that I remember I just gave specified orders, one of these blanks stating \$10.00 for so and so and that's all I saw.

Q In other words, what you're telling the Court, you can't by looking at this evidence tell whether the recipient was going to the merchant first or go to the officer authorized first to begin the procedure?

A No, sir.

Q Right. Okay. So that if Mr. Gonzalez testified that Mrs. Yzaguirre would come over to him and request authority or approval it would apparently be that the recipient had gone to her first and requested groceries and she in turn in order to receive authority would go to him, who was authorized to execute the official forms for authority to give them the groceries.

A I only know one way to do it, Mr. Mitchell.

MR. MITCHELL: I would like, if I might be permitted by the Court to move to the bulldozer testimony.

THE PRESIDENT: Mr. Mitchell, would you and Mr. Doyle come to the rostrum, please?

MR. MITCHELL: May it please the Court, I would like at this point to make a preparatory statement as regards the bulldozer transaction, and as relates to the checks and the claims appearing 839, Volume Two, Examiner's Exhibits. This consumed a considerable amount of testimony as to some character of relationship that was a conspiracy involving the use of equipment by my client through the vehicle of Benavides Implement and Hardware Store. I suppose it would be relevant. I asked Counsel what the relevancy would be, because, as the Court recalls, I objected to the relevancy of the Caterpillar. And I believe Counsel told me -- what? VII?

Article VII and what, Counsel? V and VII? VII? All right.

Article VII, being that Judge Carrillo conspired with others to charge and collect money from governmental entities for rental of equipment. Of course, I suppose that's the only one you offered that testimony on, Mr. Odam.

MR. ODAM: I believe I made the statement yesterday that it would pertain in part to Article V -- VII and V. The allegation was not intended to be tendered for the limited purpose of VII, but I believe that's where Mr. Couling's testimony would be.

MR. MITCHELL: All right. That would be the allegation that the conduct of Judge Carrillo, while he was a Judge, the sale of goods and services and the rental of equipment directly or indirectly from the Farm and Ranch and Zertuche General Store. Is that correct? Article VII?

MR. ODAM: VII, "conspired with others to collect money from governmental entities for rental of equipment that did not exist and for rental of equipment that the governmental entities did not use." That's VII.

MR. MITCHELL: All right. And, as I understand it, the evidence that was offered at -- the invoices on Benavides Implement and Hardware, beginning at 839, checks in re the Caterpillar, am I correct?

With that preparatory statement in mind, I don't intend to bind you, Mr. Odam. I just -- so that the Court is aware of what the relevancy of the Caterpillar is, because I don't think it's relevant, I objected.

But I'm going to proceed to examine, with the Court's permission and the President's permission on the Caterpillar tractor. O.K.?

Q Mr. Couling, the first thing I want to establish is that without a doubt, you are the owner and have been the owner of Benavides Implement and Hardware continuously since 1971, and I show you, and this is the last page of Volume -- of Respondent's Exhibits, Pages 1872, which is a certification that I received from the Comptroller of Public Accounts reflecting your application for a sales tax permit dated 2/22/71 signed by you, am I correct?

A You're correct. And to Ramiro Carrillo, '74, sir.

Q I understand. You claimed a partnership, but there is no written evidence of that partnership in this form, in your schedule C's, of '71, '72, '73, '74, '75 taxes, correct?

A Yes, sir.

Q All right. And if the Senate, as the Court, chooses to disbelieve that you were a partner and chooses to believe your written hand -- back in '71 when you didn't have that contract of immunity and the compulsion that the Court can determine, to testify, if the Senate chooses to believe the written document, you were the sole owner

when you represented to the Comptroller of the State of Texas back in 1971 for this application in connection with the sales tax application, am I correct?

A In connection with the sales tax, yes, sir.

Q All right. And, if it is a violation of the State law to misrepresent the character of your business, when you filed for a State tax number, and if there had been a partnership, then, of course, your application to the Comptroller back in 1971 would have violated the State law, wouldn't it?

A Yes, sir.

Q All right. So that, however, now that you've testified there was a partnership, if that was a crime, that would be one that you would not expect to be prosecuted for under the deal that you've made under your contract which appears in the record at Page 456, correct? If it were.

A If it was.

Q All right. Now, how about though -- how about the misrepresentations in your tax returns when you filed a Schedule C on sole proprietorship and also a Schedule C-1 calculating your Social Security tax in '72, '73, '74 and '75? Do you expect the Federal government is not going to prosecute you?

A I don't know, sir.

Q All right. But the Federal government was a party to that deal too, wasn't it?

A I don't know, sir.

Q In fact, you and I had a long, long discussion in Federal Court about your involvement in that kind of deal, didn't we?

A Yes, sir.

Q All right. At any rate, if the written evidence, that is, the written document is to be believed, the Benavides Implement and Hardware Store was a sole proprietorship as of '71, correct? If we're going to believe this --

A Yes, sir, but I always stated that it was a partnership.

Q I understand. But, if you're going to believe what you wrote in your hand back in '71, Mr. Couling, would you agree with me that if you were -- and I'm going to believe what's in writing, your representation to the State of Texas, Comptroller at that time, Page 871, Respondent's Exhibit, was that you, the Benavides Implement and Hardware, were a sole proprietor?

A I don't know, Mr. Mitchell. You have your own belief, I have mine.

Q Of course, the Court's the important -- our belief, yours and mine, thank God, is immaterial. But, at any rate, that's what the record reflects, right? Am I right?

A Yes, sir.

Q All right. Now, may I turn and direct the Court's attention, please, to Page 887, Examiner's Exhibits, Volume Two, and this is E-160, the Judicial Qualifications Commission. Now, you've seen that document before, haven't you? That is a -- that is the purchase contract of two tractors, isn't it?

A Yes, sir.

Q And that contract was executed by the Benavides Implement and Hardware Company as the buyer -- read over my shoulder. December 14, 1972. Am I correct?

A Yes, sir.

Q And you signed that agreement, "Benavides Implement and Hardware, R. M. Couling, Owner?"

A Yes, sir.

Q And the seller was the Plains Machinery Company, signed by, whatever that gentleman's name is there, as president, correct?

A Yes, sir.

MR. MITCHELL: And, if you Members of the Court who are following would just continue with Page 889, we'll see the financing statement that was prepared.

Q Am I correct, as 889 reflects that you gave a mortgage on those two tractors, correct?

A Yes, sir.

Q 887, that is, the first Exhibit, is a -- is an equipment lease agreement, actually -- it's a lease purchase agreement whereby the Benavides Implement and Hardware Company bought two Caterpillars, D826A470 and D8368143, correct?

A Yes, sir.

Q And both tractors were equipped with cable operating straight blades and double drum control units, correct?

A Yes, sir.

Q And the total purchase price was \$39,186.00, roughly \$40,000.00?

A Yes, sir.

Q Your payment commenced at \$1,500.00 a month, did it not?

A Yes.

Q In January of '73, and was to continue through and including March of '75 and the last payment was to be made?

A Yes, sir.

Q And you were to return that tractor at the end of the rental period, or those tractors, to the Plains Machinery unless you exercised your rental purchase option in the agreement, correct?

A Correct, sir.

Q And the rest of the documentation, appearing at 890, 891 relate to the purchase and the financing of that equipment, am I correct?

A Yes, sir.

Q Now, Mr. Couling, -- the Benavides Implement and Hardware, assuming that the documentation that you filed with the Comptroller in 1971 is correct, the Benavides -- and assuming that the contract that's 887, Benavides Implement and Hardware -- which was you -- was buying two tractors?

A I bought them without seeing the tractors. O. P. Carrillo made the arrangements to buy them --

Q Now, wait a minute. I don't know what -- why you and I can't -- everytime I touch you, you just go on and on and on. Why can't you just answer the question?

A Because you said that I bought them.

Q I said, when you bought them, the written agreement reflects that Benavides Implement and Hardware was buying two tractors. Yes or no?

A I was buying them because --

Q Just a minute. Yes or no, please.

A I can't answer yes or no.

Q Mr. President, may I have him instructed?

THE PRESIDENT: The witness has a right to explain his testimony, Mr. Mitchell.

MR. MITCHELL: Well, I understood he would on cross-examination, but also I understand I have a right, if it please the President, to have him answer my question direct.

THE PRESIDENT: He's on cross-examination now, Mr. Mitchell.

MR. MITCHELL: I mean on redirect. We want to rehabilitate him.

Q At any rate, the written contract shows an agreement from you, the Benavides Implement and Hardware, with the Plains Machinery to buy two tractors, correct?

A I have to explain to you that answer, Mr. Mitchell.

Q Explain it.

A Okay. When O. P. came by and said that he had made arrangements to buy two tractors through my store, sir, and later on they brought me the agreement which I signed, as sole owner, but the tractors were delivered to O. P., and I never did have no use of them, sir.

Q Mr. Couling, O. P. Carrillo's signature or name does not appear on the written document, does it?

A No, it doesn't appear, sir.

Q And you in your desire to explain have reached out again and put his name on a written agreement, and that man's name does not appear on that written agreement, does it?

A O. P. Carrillo went to Corpus and made arrangements to buy it on my store name, sir.

Q I want to know, are you going to get a bonus for hanging something on his neck?

A No, sir.

Q Is that part of your deal with the Attorney General and with Mr. Arnulfo Guerra?

A No, sir, I'm just stating just what is facts.

Q That the written agreement doesn't say, "O. P. Carrillo," does it, Rudolfo?

A No, sir.

Q All right. Now, you also collected a rent from O. P. Carrillo on these tractors, didn't you?

A He made up the balance for the payment due on the tractors, rental every month, sir.

Q That's what you testified yesterday, but that's not exactly right, is it?

A It is right, sir.

MR. MITCHELL: May I call the Court's attention to 831, Respondent's Exhibits -

Q Oh, incidentally, before I go to that Exhibit, you carried those two tractors on your tax return for depreciation purposes, didn't you?

A I don't remember that --

Q Well, we're going to -- we'll refresh your recollection about that.

Look at 843 of the same Exhibit. Two bulldozers, \$32,630.00. That was a deduction for rent paid, Plains Machinery. You took that on the tax return, didn't you? You see it?

A I took the rent that ran into the depreciation --

Q Wait a minute. Now, we're going to get to that. That's on your Schedule C for your '73 return. You took the deduction, didn't you?

MR. ODAM: What page is this?

Q 843. I'm sorry.

A I reported it as rent income, sir.

Q Oh, no. That's the deduction.

A Here is the deduction right here. The depreciation on the bottom, sir.

Q You chose to treat -- you chose to treat the rental payment as a deduction, and you deducted \$32,630.00 on your tax return, didn't you?

A I didn't get no benefit from it, sir.

Q Now, you're going around in a circle again. You employed and you used what -- in whatever way you or your accountant chose to, the advantages to you in your tax return for nineteen -- I don't have your '71. You never have got that form, have you?

A No, sir.

Q I have been asking you for that for how long?

A Oh, about four or five weeks, sir.

Q That's right. You still haven't produced it, have you? I notice you explained to Mr. Odam again something crippled about not being able to do it. You could go out here to South Austin, Interstate 35, and go in there and ask Miss Gibson to give it to you, couldn't you?

A Yes.

Q And you've known that for at least since September, haven't you?

A Well, I wrote them, and haven't got them back, sir.

Q At any rate we can't tell the Court anything about your '71 return, but you did take advantage of the DC Tractor purchases, '72, on your tax return. Whatever way it was, it's there, isn't it?

A I took deductions, which I get no benefit out of it, sir.

Q Sure. You deducted the amount of those payments --

A The money was coming in, and I was getting no benefit from it, sir.

Q Now, Mr. Couling, as a matter of fact, all of the money -- now, you listen to me. All of the money that you have testified to here and down at Corpus that came to

you -- and I'm talking about the Exhibits now beginning 824, if it please the Court. Incidentally, so the Court understands, the checks are there; the bank account is there; all that money from the county on account of this 'dozer, these two 'dozers, went to Benavides Implement and Hardware, didn't it?

A Yes, sir.

Q In addition -- now, you listen to me. In addition, you were paid by my client, O. P. Carrillo \$20,744.00 in addition, weren't you?

A To pay the tractor payments, sir.

Q All right. Now, you're telling this Court that you got something like what, \$45,000.00 from the county, \$20,000.00 from O. P., so that you could pay for tractors that didn't cost you \$30,000.00?

A Those included the root plows in there, Mr. Mitchell.

Q But your arithmetic didn't come out right, did it? You've had this group conned long enough, Mr. Couling. Now, we're going to get to the bottom of it. Now how much did the tractors cost?

A About \$35,000.00, \$40,000.00, sir.

Q You don't have to guess. We got the agreement. I just showed it to you. Going back to Page 887, 88, right on, let's go back. What was the price again? I asked you for a reason. \$39,164.00, right?

A Yes.

MR. MITCHELL: May I have the Exhibits that relate to checks given by my client to Benavides Implement and Hardware, Mr. Secretary?

May I have a minute, Mr. President, to get the originals? The reproductions in the record are not clear.

Q I'm going to show you what's been introduced, Mr. Couling. I think you recall these. These were a series of checks given by O. P. Carrillo to the Benavides Implement and Hardware for Caterpillar rental and equipment. Am I correct? Do you recall those? 58-1, 2, 3, 4, right on up to 58-11. At any rate, for the Members of the Court, those specific checks are totaled up and summarized for your benefit. First of all, they appear at Page 617 of the yellow volume, and we have taken and summarized the payments based on the evidence, if it please the Court. Those are -- 669, I'm sorry, the checks from O. P. Carrillo to -- I mean -- let me strike that. Checks from O. P. Carrillo to Benavides Implement and Hardware. That's 648, the 58 series. I wanted you to have that background for the chart that I'll show you now on Page 831 and 832, gentlemen. On the back of Page 832 we have a summary of those payments. This is a composite taken from R-90, 91, 92, introduced into evidence. Do the members of the Court have Page 832 in front of them in the yellow volume? And down at the bottom, total O. P. paid Benavides Implement \$20,744.10. That's about what the total is. I believe you and I have been over these figures, haven't we, once or twice before, Mr. Couling? And R-58-1. Correct?

A We have been over them, yes, Mr. Mitchell.

Q All right. That's \$20,000.00 that you received from my client, round numbers. And then, Mr. Couling, and pay attention to me now, you defaulted on that contract, did you not? You defaulted on it?

A I --

Q On the purchase of those two tractors, you did not completely perform the agreement --

A No, sir.

Q -- am I correct?

A No, sir. I did not pay the -- up only to 1974, I believe.

Q All right. And then I want the Court to look to the record for the execution of the contract by Judge Carrillo for the purchase of those same dozers for the sum of -- for the sum of approximately twenty thousand more dollars.

MR. MITCHELL: May it please the Court now. On Page 614 is the copy of the contract between my client, O. P. Carrillo, and the Plains Machinery for the purchase of these very same tractors for \$19,689.00, and that contract was in May of '74. Then if you will look, please, to Page 617, you will find the checks that Judge Carrillo gave Plains Machinery--617 now -- for the final and full payment of the tractor.

Q Now, with those in the background, let me ask you some questions, Mr. Couling. You received -- first of all, you agreed, according to the documentary evidence, you agreed to pay \$39,000.00 for the tractors, correct, or roughly \$39,000.00?

A More or less, yes.

Q You received from Judge Carrillo approximately \$20,000.00 as shown by the R-58 series, the checks. Correct?

A Yes, according to the previous year, yes.

Q All right. And you received from the County, according to the summary Exhibit, on account of these tractors, from -- well, from '71 to '75, and that incidentally appears on 832, a total of \$370,000.00. Correct?

A That includes the water district, the school district, and the County, sir.

Q Right. And you defaulted on the payment of the tractors in May of '74, and Judge Carrillo took over the balance of the payment of \$19,689.00, correct?

A Yes.

Q So that you actually didn't pay Plains about \$10,000.00, did you?

A I cannot know until I look at the figures, sir. I can't tell you --

Q Okay. The balance -- now, this is R-50, which is a contract between O. P. Carrillo and Plains when he took it over. What does that amount to? About nineteen

grand, doesn't it, \$19,000.00?

A Yes, sir.

Q Your contract to Plains was about what?

A \$39,000.00.

Q Right. Assuming that this figure of \$19,000.00 when Judge Carrillo took the contract over in May of 1974 and bought them, after your defaulted, is correct, that would mean that you have paid Plains roughly about \$10,000.00. Correct?

A About \$20,000.00.

Q \$20,000.00. Correct?

A More or less.

Q The difference between the \$19,000.00 and the total purchase price of \$39,000.00, right?

A Yes.

Q And you had received from Judge Carrillo \$20,000.00, that is, Benavides Implement and Hardware had, as rent payment on those very same tractors?

A Including the root plows, sir.

Q Right.

A The root plows are not included in that contract there, sir.

Q That's the R-58 series that we talked about. Correct?

A I don't know, sir. The roots plows are different contracts, sir.

Q I'm going to get to those root plows. Let's talk about these tractors.

A Right.

Q But you don't deny receiving the \$20,000.00 on account of the tractors and the root plows, right?

A No, sir, I don't deny it.

Q All right. And then you received how much from the county on account of it? Part of this scheme that you're charging my client with being a party of. And I'm referring specifically to the checks that appear -- you testified on Page 824. And all that money we've talked about appears in tomorrow's paper, and I want to know how much did you receive from the County pursuant to this scheme on account of the very same tractors my client's --

A I can't tell you exactly how much it was for the tractors. It was for different members of the family --

Q And I thought you testified specifically yesterday that you had a scheme whereby you were getting all the money from the County that would cover the rent payment.

A No, sir.

Q Oh, you didn't?

A Not for the rent payment on the tractors, sir. No, sir.

Q None of that money that you talked about here was taken from the County to cover the rent payment of the tractors?

A Part of it wasn't.

Q As a matter of fact, if we look at 839 -- and I want you to look at 839. That's in the -- that's the green Exhibit, 839, Volume Two. Now, Mr. Couling, 839, this is the invoice on Benavides Implement and Hardware for \$1,006.00, right?

A Yes, sir.

Q And it is an invoice from your business, your company, to Duval County, Precinct 2, Juan Leal, for \$1,006.00. Am I correct?

A Yes.

Q And what does it say, rental equipment, doesn't it?

A That's right.

Q And in December you had equipment to rent, didn't you?

A I didn't have no bulldozers to rent, sir.

Q The two tractors were purchased in December from Plains Machinery, if the written exhibits are going to speak the truth.

A And they were delivered to O. P.'s ranch and he used them himself.

Q But the legal title to those two tractors was in Benavides Implement and Hardware, a sole proprietorship owned by you.

A That's correct, sir.

Q Now, the invoice, Benavides Implement and Hardware, was on your company's stationery, wasn't it?

A Yes, sir.

Q And it states on it specifically to Mr. Juan Leal, not Ramiro Carrillo or David Carrillo or O. P. Carrillo. Juan Leal from Concepcion. You wanted a \$1,006.00 paid to you by Duval County, Precinct 2, because of rental equipment. Doesn't it say that?

A On instruction by O. P. and Ramiro, sir.

Q I know what you -- it don't say anything about instructions on this Benavides

--
A No, it doesn't say it, no, sir. But you want to know how that bill was made out to --

Q I'm going to want you to tell us a lot of things before we're through, Mr. Couling, because you turn to 830, 840, there's a statement also in your handwriting for the very same thing, isn't it?

A That's not my handwriting.

Q Well, is that Cleofas, your buddy? That's Cleofas', ain't it?

A It looks like his writing, yes.

Q Sure. In other words, the statement or the invoice for either your handwriting on your printed stationery or Cleofas, the man who went to work for you after that political split with Judge Carrillo and his family and the man who you testified bought your business last year for nothing. Correct?

A Yes.

Q And although you will say that just didn't mean what it said and when you put rental equipment on that invoice, Benavides Implement and Hardware, it had no connection with the two tractors that you just bought at Plains Machinery.

A No, sir.

Q I submit to you that was part of a device and scheme, Mr. Couling, to crank the County out of money to pay for those two tractors. And if we believe the written document -- that pretty well squares with what the written documents say, don't they?

A No, sir.

Q It squares with the fact that you owned the business, don't it?

A Yes, sir.

Q And it squares with the fact that you bought the tractors, don't it?

A I didn't -- the tractors I bought them just in my name, but I never had possession of them, sir.

Q I'm talking about the contract. I know you're talking a lot. I'm talking about the written agreement.

A The agreement is one thing, and who had the use of the bulldozers is another deal, sir.

Q And this Court's going to have to pass on whether or not the written word in '72 bespeaks the truth over what you're talking about now, trying to protect your hide,

swapping and skipping and jumping ahead of the Federal government and the State. I know that and we all know that. But I say, if the written agreement speaks the truth, Mr. Couling, that tractor was in your Benavides Implement and Hardware name, right?

A I never denied it was in my name, sir.

Q All right. And the invoice was in your name?

A Yes, sir.

Q And your crony executed the -- now, I'm looking at Page 840 -- he executed the statement, right?

A Right.

Q And those two documents went into Mr. Walter Meek's office and were presented to the Court and the Court paid the check. And now let's tell the Court where the check went. Where does the check go?

A That particular check you're talking about?

Q Yes.

A That particular check went to a note payment on the Rio Grande Bank for a note that was issued at the Rio Grande Bank.

Q Now, Mr. Couling, that's the check that appears at 843. The check was made payable to whom?

A Benavides Implement and Hardware Company.

Q Right. And as a matter of fact, from that page and forward each and every check was payable to the Benavides Implement and Hardware, wasn't it?

A That's right, sir.

Q And each and every check went into an account that you and only you had control over, am I right?

A I was the only one that signed checks on that account, sir.

Q Right. O. P. Carrillo didn't have no control over it?

A No, sir.

Q And Ramiro didn't have no control over it?

A No, sir.

Q And all them others didn't have no control?

A No.

Q Just you?

A Yes, sir.

Q So that, and incidentally for the Court's purpose, we have included the bank ledger sheets in the record, the complete ledger sheets of just that one account are in the record. And they appear -- that's the First State Bank?

A First State Bank & Trust Company.

Q And they appear on Page 903, a very poor reproduction. The originals are here showing income into those accounts, if it please the Court.

Now, Mr. Couling, the account, the Benavides Implement and Hardware account, into which those checks went for the bulldozer account, where was that account located?

A The majority of them went to Rio Grande City, one or two of them went to San Diego.

Q All right. And so the Court understands there are no checks out of Benavides Implement and Hardware account in the Rio Grande City Bank to anybody that's related to Judge Carrillo, is there?

A They're made out to the Plains Machinery and B. D. Holt, sir.

Q Right. For the purchase of those two tractors and the root plow, correct?

A Yes, sir.

Q The legal title of which was in the name of Benavides Implement and Hardware, correct?

A Just the title, we never had any use for them, sir.

Q And if your written statement back in '72 is going to be proved -- believed, you were the sole owner, right?

A I was the sole owner on paper, sir.

Q All right. Do you have any quarrel with the fact that you defaulted on that rental agreement, Mr. Couling, and that Judge Carrillo, in fact -- you heard the testimony of the folks down at Corpus testify how they went in and negotiated the rent, default and his purchase or did you hear, were you privileged to hear that testimony?

A No, sir.

Q You don't have any quarrel with the fact that he bought -- he took over after the default and made the payments to Plains Machinery, do you?

A No, sir.

Q All right. You didn't have anything to do with the contract after May of '74 when Judge Carrillo went in and took over the contract, paid the \$20,000.00 -- roughly, the \$19,000.00, plus the \$20,000.00 to Plains Machinery, am I correct?

A Not after he took over, sir.

MR. MITCHELL: All right. And for the purpose now of Court, we have all the checks to Plains Machinery from Judge Carrillo on the contract, we have all the checks from Judge Carrillo to Benavides Implement and Hardware for the rental, we have the original contract and we have the contract of purchase made by Judge Carrillo. And we have the ledger sheet of that bank account.

Now, I'm going to move, if it pleases the Court, to the final matter, I think that I -- this would be now the Benavides Implement and Hardware account, First State Bank of San Diego.

MR. ODAM: I'm sorry, could you restate, Arthur, what that was?

MR. MITCHELL: I am going to move -- I have now, I think, gotten Article I and I have covered, I think, the bulldozer. And now I want to move to the one for the First State Bank of San Diego. And I would like for this questioning to have, if I might, the check series in their original form going to Judge Carrillo. And that would be the E Series. Might I have the originals, please, Mr. Secretary? That would be E -- there are just a few, E-51, 53, 55, 57. And then, Counsel, at the tail end of that procedure I think you had three or four more. Could you give me those numbers, I would like to have them all. They're the originals.

Mr. President, this would be a good time for the morning break, if I might request it, and give me a chance to pull those checks together, I could perhaps expedite it and save -- it would be on the last page, if it please the Court. It gives me a chance to get the originals, I have a reason for wanting the originals.

SENATOR AIKIN: How much time does Counsel need?

MR. MITCHELL: Oh, Senator, I imagine 15 minutes will be enough.

SENATOR AIKIN: I move the Senate take recess until 10:30.

THE PRESIDENT: Senator from Lamar moves the Senate take recess until 10:30. Is there objection? The Chair hears none.

Accordingly, the Senate, sitting as a Court of Impeachment, at 10:16 o'clock a.m. took recess until 10:30 o'clock a.m.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 10:30 o'clock a.m.

THE PRESIDENT: The Senate will come to order.

Mr. Couling, will you resume the stand.

Mr. Mitchell.

CROSS EXAMINATION RESUMED

(Questions by Mr. Mitchell:)

Q Mr. Couling, I'm going to ask you some questions, now, that relate to Exhibit E-192, if it please the Court, which has been reproduced in -- before this Court in Examiner's Exhibits, Volume 3, Page 1555.

Before I do, Mr. Couling, would you characterize your relationship with the late George Parr as being one of a very close one?

A No, sir, we didn't have a close one.

Q You never had anything to do with him?

A I talked to him several times, sir.

Q You never were on his political side of the fence?

A We were all together in one party, sir, at one time.

Q Well, you were his political ally up until the time of his death, were you not?

A Yes, sir.

Q And you were the political ally of Mr. Archer Parr, were you not?

A Yes.

Q And you are still a political ally of Mr. Archer Parr, are you not?

A Not right now, sir.

Q I know. He's in the penitentiary. To the extent you could be, you are, am I correct?

A We're all with the Old Party, sir.

Q And to the extent the Old Party and the Parrs are aligned against Judge Carrillo if that be the case, you would be aligned politically against Judge Carrillo, my client, would you not?

A No, sir.

Q You would not? You don't -- in other words, you're on his side?

A No, sir.

Q Well, you're just neutral?

A Right now, there is no party involved in the County, sir, so, at the present time, I am neutral.

Q You would characterize yourself as being on the Parr side up until the middle of last year, wouldn't you?

A I guess.

Q And would you characterize yourself as being aligned with the Parr faction at the time you testified in the Federal District Court in the Southern District in September of 1975, wouldn't you?

A Yes, sir.

Q And you would have characterized yourself as being on the Parr side when you testified before the Judicial Qualifications Commission in November and December of 1975, would you not?

A All this time, we've stuck to the Old Party, even if it includes the Parr family, sir.

Q All right. Now, setting aside the political considerations and political motivations, if any, that the Court wants to conclude, it drew you up here in Austin, Texas to testify, and I'm now going to move your testimony as regards to San Diego bank account. Okay?

A Yes, sir.

Q Now, I have tried, and may it please the Court, I have pulled out of the record -- so the Court can follow, I am now talking about the document appearing on 1555, Volume Three, and the same document being Exhibit 192, the Judicial Qualifications Commission. For example, so that the Court will understand the purpose of my questions, the testimony has been as regards payments made to Judge Carrillo out of this account. Now, the testimony is that, if I summarize correctly, no payments coming out of the Benavides Implement and Hardware account, the First State Bank of San Diego for 1973?

A I would have to look at the chart, sir.

Q Well, look at your yellow sheets of summary, Rudolfo. Take the yellow sheets out.

A These?

Q No, the ones you worked up. Where are they?

A Nineteen what, sir?

Q Take them out of your pocket. I want to see if we can't agree on some things.

All right, for 1973, there were no checks coming out of the Benavides Implement and Hardware account, First State Bank of San Diego to my client, O. P. Carrillo?

A No, sir.

Q And in 1974, there were no checks coming out of the Benavides Implement and Hardware to my client, O. P. Carrillo?

A Not directly to him, sir, no, sir.

Q Sir?

A Not to Mr. O. P. Carrillo directly, sir.

Q Well, now, I -- you may have given them to me and I gave them to him. But I'm saying, the question is, you did not pay any checks to O. P. Carrillo out of the

Benavides Implement and Hardware account, First State Bank of San Diego, to O. P. Carrillo for '74. Can we agree on that?

A Yes.

Q All right. So, '73 and '74, no checks to O. P. Carrillo out of that account. How about '75?

A No, sir.

Q How about '76?

A We just went into '76, Mr. Mitchell.

Q No payments, am I correct?

A No, sir.

Q So, without a doubt and without question, you and I can agree there have been no checks coming out of the Benavides Implement and Hardware account at the First State Bank of San Diego, '73, '74, '75, '76 to O. P. Carrillo?

A '76, I don't own the store, Mr. Mitchell, so --

Q Well, say of '75. Right?

A Just up through June, sir.

Q All right. And there are none going out of that account in Rio Grande City to him? I think we established that.

A No, sir.

Q All right. But, there appears to be some checks paid from Benavides Implement and Hardware, 1972 and 1971, am I correct?

A Yes, sir.

MR. MITCHELL: Now, for the purpose of the Court and the record, it is our contention that any matter which occurred or transpired prior to January 1st, '75 is irrelevant and immaterial to the impeachment trial, this Judge's current term. However, because I've been put to the task of going into the matter, I will now go into the year '71, '72 with the indulgence of the President.

However, I do not intend to waive our position that if Judge Carrillo is guilty of some act of misconduct or related to a non-judicial function in 1969 it cannot be made the grounds of impeachment in 1975. I do not want the questions, if it please the Court, to be interpreted as waiving that position by Judge O. P. Carrillo. It would be tantamount, if it please the Court, if he were not in office this year. If he had not won his election January 1st, '75. Guilty of misconduct, 1973 or '71, he could not, of course, be impeached or removed from office today. Our position is he cannot be impeached after November of '74 with his election certificate as dated for an act which occurred at a prior date. And I do not mean by that statement, if it please the Court, to imply that there is official misconduct. I'm just simply saying, admitting it, admitting judicial misconduct, our position is clearly he cannot be impeached for an act occurring in '70,

'71, '72, '73 or '74. Now, with that background, may I proceed?

Q Mr. Couling, I'm going to hand you --

MR. MITCHELL: And, gentlemen of the Court and ladies, these checks appear in the record in two ways. First, there is the E-155 series in the Judicial Qualifications Commission, and there is E-175-76-77 Series in the Judicial Qualifications Commission. They appear, if it please the Court, in summary form on the page on the graph, 1555. They appear in E-192 before the Judicial Qualifications Commission, and they should appear in the Journal that was duplicated to the extent that you have on your desks and before you, the record of the Judicial Qualifications Commission. So, we have them in the record five times.

Q Mr. Couling, I now refer to the original checks from Benavides Implement and Hardware to O. P. Carrillo. Are you following me?

A Yes, sir.

Q And those are the ones that we're going to talk about now, '71, '72, because I believe we have agreed there is nothing in '73, '74, '75, '76 of this account or any other account to O. P. Carrillo, right?

A Yes, sir.

Q I first hand you check dated June 21st, 1971, in the amount of \$1,200.00 that you have previously identified as a check from Benavides Implement and Hardware to O. P. Carrillo. Is that correct?

A Yes, sir.

MR. ODAM: What was the E Exhibit on that, Mr. Mitchell?

MR. MITCHELL: E-1 --

Q What is it, Mr. Couling?

A E-155.

Q And that check is dated June --

A 21st, 1971.

MR. MITCHELL: Now, if the Court desires to follow that check on the draft, if you will look, please, on Page 1551 down at the bottom of the page, O. P. Carrillo, Check 131, 6-21-71.

Q That's the same check, is it not, Mr. Couling?

A Yes, sir.

Q So that we don't get confused now. We don't have -- all we have is the ones that were going into originally. That's in Volume Three. That check, that is, now, the check we're going to talk about. That check is in the amount of \$1,200.00, R. M. Couling to O. P. Carrillo, and it's endorsed how?

A O. P. Carrillo and then on the last bottom line I imagine it says Saenz.

Q Jose Saenz, right? It appears to have been negotiated from O. P. Carrillo to Jose Saenz, am I correct?

A Yes.

Q And turn it over and tell the Court in whose handwriting is that check?

A That check is in my handwriting, sir.

Q It's in your handwriting, and you were an adult male, possessed of your faculties and faculties on the date the check was executed, I assume, were you not?

A Yes, sir.

Q And what did you put in the lower left-hand corner of the check?

A I put loan, sir.

Q Say it again -- loan?

A Yes, sir.

Q Right. It appeared at that time now, if we're going to take the documentary evidence, that you made O. P. Carrillo a loan of \$1,200.00, correct?

A Yes, sir, but I didn't make him no loan, sir.

Q I'm saying -- if we're going -- I know what your testimony is today. In order to believe you, this Court's going to have to disbelieve the written document on the application for your State Comptroller's license. It's going to have to disbelieve all of your tax returns, all of your Schedule C's, and all of your Schedule C-1's, and it's going to have to disbelieve the contract with Benavides Implement and Hardware. It's going to have to disbelieve the financing statement of Benavides Implement and Hardware, the mortgage of Benavides Implement and Hardware. I am just talking about the documentary, and if I have to disbelieve all these other checks, then I'm just going to put it to the Court direct. That's what they're going to have to do to believe -- you're saying that that loan is in your handwriting on that check, but it just ain't true.

A It's not true, sir. I didn't lend no money.

Q All right. I understand. But it is in your handwriting?

A Yes, sir.

Q And you executed it freely and voluntarily at that time?

A Yes.

Q Now, your testimony is it's part of the rip-off scheme that was instituted by Benavides Implement and Hardware invoice executed by your friend and my friend, Cleofas Gonzalez, for the amount of \$1,200.00 or thereabouts. Correct?

A It was instructions of Ramiro Carrillo and O. P. Carrillo.

Q Right. And if that be the case, and you knew the facts and the circumstances you, of course, would be guilty of theft of \$1,200.00 from Duval County, wouldn't you?

A Which O. P. Carrillo took benefit --

Q I know, but you would have been guilty in principal in a conspiracy to steal from Duval County \$1,200.00.

A In conspiracy with O. P. Carrillo and Ramiro Carrillo, yes.

Q Right. And you got a written contract and agreement which calls for your testimony up here that if there is any crime that is indicated by your testimony you will not be prosecuted. That would be another one you wouldn't be prosecuted for, wouldn't it?

A I imagine so, sir.

Q That's right. Well, you hope the State sticks to the deal, don't you? The Attorney General signed it and the District Attorney -- don't you hope they stick to their deal?

A (No response)

Q Sir?

A Yes.

Q All right. That's the first one in that charge. That one hundred thousand dollars we're talking about in the morning paper. It's a check from you to O. P. that says loan on it, right?

A Yes.

Q Now, let's look at E-153, October 5th, '71.

MR. MITCHELL: Now for the Court -- I am going to -- if I'm allowed a little latitude, I'd like to direct the Court's attention to this check. This is October 5th, 1971, which would appear on Page 1558, if it please the Court. Check number 179. That's at the top of the page.

MR. ODAM: What is the E Exhibit?

MR. MITCHELL: E-153.

MR. ODAM: And in the volume of testimony the check itself, E-153 is in --

MR. MITCHELL: E-153 appears, John, at 1558 at the top of the page.

MR. ODAM: Well, that's on the chart. The check itself is on Page 880.

MR. MITCHELL: 880 is the copy of the check itself, but I felt like using the original because it speaks a little louder. And it appears in the E-192, right in the same

sequence.

Q All right. I hand you now October 5th, 1971 check, Rudolfo Couling, O. P. Carrillo, \$306.00, correct?

A Correct, sir.

Q Now, that is a check -- that's the second one that we've talked about, and that appears to be a check -- again, is it in your handwriting?

A Yes.

Q And is it without a doubt the way you executed -- it hasn't been altered. Hasn't been altered or anything. It's the way you executed it, right?

A Sir?

Q It's the way you wrote out the check, isn't it?

A Yes, sir.

Q And what does it say in the lower left-hand corner it's for?

A Rent, sir.

Q Rent.

A Yes.

Q But now if we believe the original document, that is the payment of a check by you to Judge Carrillo in the amount of \$306.00 for rent, correct?

A Yes.

Q But your testimony is before this Senate under oath that that is not true.

A That's not true. I testified to that yesterday, sir.

Q And your testimony is that that was a part of the proceeds of a fraudulent scheme by you and who -- who was in that, Ramiro Carrillo and you? Who was in that scheme to rip-off the County for \$306.00?

A Well, I mentioned a while ago -- I don't know on this particular one, but all the originals were made with the understanding by Ramiro and O. P. and myself, sir.

Q You mean to tell me you can't tell this Senate who you agreed to steal that chicken with?

A On this one, no, sir.

Q But you're willing to sit up here and point your finger to a Judge of a District Court in Texas and accuse him of theft and not be able to tell this Body who stole it, who you agreed to steal it with? Is that your testimony?

A I told you my agreement was with Ramiro Carrillo and probably him, too, sir.

Q You said you didn't know, Mr. Couling.

A I didn't say -- not the particular check, but all the money that was taken from the county was the understanding -- was the Carrillo family, sir.

Q I understand that. But you didn't have a conversation with Judge Carrillo about this check, did you?

A No, sir.

Q And you didn't have a conversation with Judge Carrillo about the check on 6/21/71, either, did you?

A The conversation was with Ramiro Carrillo --

Q That's right.

A -- and he stated it was going to O. P. Carrillo, sir.

Q I know what you're putting in the mouth of Ramiro. I'm saying you can't point even on this one check of \$306.00 that you have charged was the result of an embezzlement and a theft, you can't tell this Senate when, where and how and with whom you agreed to steal it, can you?

A I told you it was Ramiro, sir.

Q And not only that, you're going a step further and saying, "Senators, you all are going to have to disbelieve that I put rent on it because that ain't so either."

A There was nothing to rent from him, sir.

Q I understand. \$306.00 was just part of something you wanted to give him, is that right?

A That's money that he wanted, sir.

Q Now, I'm going to hand you another one. This one -- for the purpose of the Court, is September 22nd, '71, amount of \$700.00, and it appears on Page 1557 at the bottom of the page.

MR. ODAM: The check itself is on Page 879.

MR. MITCHELL: Thank you. And it appears in its original form as E-152 in the Judicial Qualifications Commission.

Q Now, that's the third one we've looked at, isn't it? And it's dated in '71, because we know there are none in '73, '74, '75. Correct?

A Yes, sir.

Q It is a check payable to O. P. Carrillo by -- from the Benavides Implement and Hardware, R. M. Couling, and is in your handwriting, is it not?

A Yes.

Q And what did you put in the lower left-hand corner of that?

A I had written legal service and scratched that out and put rent on trucks, sir.

Q Rent on trucks. And now your testimony is that that just wasn't so.

A No, sir, it wasn't so.

Q All right. So that if that check were part of a scheme or device by you and Ramiro Carrillo and/or O. P. Carrillo to steal from the County and you knew it, that would constitute a theft of \$700.00 by you, would it not?

A Somebody would benefit from it, sir.

Q That's right. I say it would constitute a theft, though, wouldn't it?

A I imagine so.

Q Sure. And you would not expect to be prosecuted under the contract that you made with the Attorney General and the District Attorney. Correct?

A No, sir, correct.

Q But the check as written in your handwriting states rent on trucks. Am I correct?

A Yes.

Q So that up to now, a brief summary of your testimony is that the written hand, as it commenced writing in '71 and in '70, insofar as we dealt with the Comptroller of the State of Texas, insofar as we dealt with Uncle Sam on all our tax returns and on all our schedules, insofar as we dealt with Uncle Sam on our deductions and our depreciations, and insofar as we dealt with the oath, and insofar as we dealt with these written agreements, then the written agreements -- or the written document simply is not true.

A Not the written agreement, sir.

Q All right.

MR. ODAM: Your Honor, if I might pose the objection of relevancy -- correction, not the objection of relevancy -- but of repetition. If the Court will recall, yesterday on these particular checks, on these particular recitals, I took the witness through what it said on the check, what it was for, and why he put it on there. It appears to me that Mr. Mitchell is going back through the same footsteps. I asked the very same questions, and I think it is up to the Court as to what it states on the check and why the check was written out. Mr. Mitchell is asking the same questions I asked yesterday, and we've been going for 30 minutes doing what I did yesterday. It is repetitious in my judgment, and I object for that reason.

MR. MITCHELL: Mr. President, may I speak to that objection?

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: I think it is highly relevant that this Court understands the scope of credibility of this witness. That's the first thing. Secondly, I think the questions bear directly and specifically on the only point that was made that bears rebuttal.

MR. ODAM: Your Honor --

MR. MITCHELL: They're going to have to disbelieve an awful lot of writing in order to believe this witness' story, and I implore the Court to allow me to proceed. I only have, incidentally, if it please the Court, about five or six more.

MR. ODAM: Your Honor --

THE PRESIDENT: This is cross-examination, Mr. Odam. Mr. Mitchell has wide latitude. The objection is respectfully overruled.

MR. MITCHELL: Thank you. May I direct the Court's attention now to 5/20/71? That would appear on Page 1555. That's Exhibit E-156, and that would be in -- John, do you have the number in the volume it appears now for the Court's benefit?

MR. ODAM: I'm sorry. What E Exhibit is this?

MR. MITCHELL: This is E-156, and it appears on 1555 on the Exhibits, if it please the Court.

MR. ODAM: The check itself is -- E-156 is on Page 888.

MR. MITCHELL: I'm dealing with the original.

MR. ODAM: Excuse me. 883 is the copy of the check. 883 is the E-156 check for --

MR. MITCHELL: Thank you.

MR. ODAM: \$1,000.00.

Q I'm dealing with the original. I hand you now what has been marked -- what is identified in this record as a check from Benavides Implement and Hardware, O. P. Carrillo, \$1,000.00, 5/20/71, and I hand that to you and ask if you wrote that check?

A Yes.

Q And you wrote it at the time and places in question and to Judge O. P. Carrillo?

A Yes, sir.

Q And the date of the check?

A May 20th, 1971.

Q And what did you put in the lower left-hand corner as the purpose of the check in '71, please, sir?

A Store counter from O. P. Carrillo Drug Store, sir.

Q And that's in your handwriting?

A Yes.

Q And is it your testimony under oath today that that ain't so?

A That ain't so, sir. I didn't have no use for no counter.

Q That's right. Now, up to now you've testified under oath that you've executed these documents in your handwriting at the time and places in question and that you introduced the recitals, loan, rent, rent on truck, and store counter from O. P. Carrillo Drug Store, that just ain't true.

A It's not true, sir.

Q All right. And of course, it ain't true that you were the sole proprietor when you filed the application with the State Comptroller for store license. That ain't true either.

A Mr. Mitchell, I already stated that it was in my name but it was silent partnership with Ramiro and O. P. Carrillo.

Q That's right. You didn't check partnerships on that form?

A No, sir.

Q And you didn't file a 1066 form with Uncle Sam, did you?

A No, sir.

Q In '71, '72, '73, '74, or '75, did you?

A No, sir.

Q And you certainly didn't file any papers dissolving the partnership when you sold it --

A No.

Q -- to Cleofas? And you certainly didn't account to my client for the proceeds of that \$398,000.00 that he took into that partnership --

A He took some money out of it, or some of his family did, sir.

Q You never did give any formal accounting to any of your so-called secret partners, did you?

A I didn't have to give no account, sir, because they were taking only money out of it, sir.

SENATOR ANNOUNCED PRESENT

Senator Clower who had previously been recorded as "Absent-excused" was announced present.

Q That's right. Well, we're going to get down to who's taking the money before it's over with. You know I'm going there, don't you?

A Yes, sir.

Q Look at E-157. And if it please the Court that's a check of July the 2nd, 1971. And that appears at 15 -- in the Exhibit at 1556, if it please the Court.

MR. MITCHELL: Mr. Odam.

MR. ODAM: The check itself is on Page 884 of the Examiner's Exhibits.

MR. MITCHELL: Thank you.

Q This check is -- I hand it to you, it's in your handwriting, is it not?

A Yes, sir.

Q And it's dated in July of '71?

A Yes, sir.

Q And it is in the amount, please, sir?

A \$982.00.

Q And that is in your handwriting?

A Yes, sir.

Q And the entire check is in your handwriting?

A Yes, sir.

Q Except the endorsement "For Deposit Only O. P. Carrillo"?

A Yes, sir.

Q And you put in the lower left-hand corner in '71, when the memory of the transaction was fresh on your mind, what?

A Tubing, sir.

Q Tubing?

A Yes, sir.

Q Do you know what tubing is?

A Yes, sir.

Q Didn't have no need for no tubing?

A Not in 1971.

Q Don't even know what it was, do you?

A I know what it is, sir.

Q You were the sole owner of the Benavides Implement and Hardware Store in '71, weren't you?

A I was sole owner as far as the records were concerned, but it was a "silent partner" with Ramiro and O. P. Carrillo.

Q And you bought and sold merchandise, didn't you, in the County in '71?

A Not to a great extent in amount of money, sir.

Q But your testimony under oath today, is that Exhibit and that recital and your statement on that Exhibit is just not so?

A Just not so, sir.

Q All right. There was evidence in this record that you ran through that account from all sources \$370,382.20 from '71 to '75. Do you remember that?

A Sir?

Q I said, the evidence is that you ran \$370,382.20 through that account?

A If those figures are correct.

Q Right. And we have agreed that nothing went to O. P. Carrillo '73, '74 and '75. And if you --

MR. MITCHELL: And, ladies and gentlemen of the Court I am looking at Page 832 of the Respondent's Exhibit for a recap and a summary.

Q You paid and the record reflects -- and I'm going to read one of these items to O. P. Carrillo through Benavides Implement and Hardware for the years '71, '72, \$12,939.00. If that's what the record reflects at that time you wouldn't quarrel with that?

A I won't quarrel with that, Mr. Mitchell.

Q And yet, for the same period of time he paid you over \$20,000.00, didn't he?

A Yes, sir.

Q In other words, you come out \$8,000.00 ahead on that deal with him, didn't you?

A On what, sir?

Q On the shift or transfer of funds. We're talking about '71 and '70 -- '72 and '72, right?

A His money went to the Rio Grande bank account and you're not talking about the Rio Grande bank account and that account, sir.

Q Well, let me go through all the rest of them, because when I get through I want to have covered every item that went from the Benavides Implement and Hardware to him. Okay?

A Yes, sir.

Q Okay. I will hand you the next check, November 8, 1971. This check appears on Page 8 -- 1559, if it please the Court. It's check number 195.

MR. ODAM: This is in our Examiner's Exhibits on Page 885.

MR. MITCHELL: 885. Thank you.

Q Now, this check appears to be written by you and filled in by Judge Carrillo, does it not? Take a look at it.

A Yes, sir.

Q And it's dated in November of '71, am I correct?

A Yes, sir.

Q And if you will turn it over you will see it's endorsed O. P. Carrillo, is it not?

A Yes, sir.

Q Cash Store, Abel Yzaguirre?

A Yes, sir.

Q Right. You see that?

A Yes, sir.

Q It appears to have been negotiated by Judge Carrillo, if we're going to look to the written word, to the Cash Store, Mr. Abel Yzaguirre, correct?

A Yes, sir.

Q Now, do you recall -- and I want you to tell this Court that when you fellows would get together and go on hunting trips that you all would go down and buy the

groceries and beer and whatever you took hunting with you and that you would split up the cost of those hunting trips and that happened to be your share to the Cash Store in 1971 and you were giving Judge Carrillo your share and he gave it to Mr. Yzaguirre in your presence?

A Mr. Mitchell, between sixteen hunters the amount of \$267.00 will amount to \$400.00 and something thousand dollars worth of groceries which is impossible for hunters to eat that much in a hunting season.

Q Well, that's what we call in the business being dumped on.

Let me back up and ask that question and start all over again. Do you remember -- just a minute -- you just don't remember that transaction?

A I remember the transaction, yes, sir. I just gave him a blank check, but it was not for groceries, sir.

Q And that was part one of those colossal rip-off deals where \$398,000.00 was moving to him in the dribbles and drabbles of \$267.00 through poor old Abel Yzaguirre?

A I don't know.

Q That's what you want this Court to believe, isn't it?

A No, sir, I don't know what Mr. O. P. bought with that check, sir.

Q But you don't agree with Judge Carrillo's recollection of the transaction that that was your share of what was purchased for that hunting trip that year?

A No, sir, it wasn't.

Q But you would have the Court believe that on November 8, '71 the \$267.00 was given to O. P. Carrillo and if we can believe the endorsement of Abel Yzaguirre -- that is his signature on there, ain't it?

A It looks like his signature, sir.

Q Sure. But that was part of taking some of this \$300 to \$400,000 and giving it to O. P. Carrillo?

A I don't know what he did with his, sir, I don't know what he bought.

Q Why didn't you give him a check for \$300,000.00?

A I didn't have that amount in the store, sir.

Q Or \$200,000.00?

A I didn't have it in the store.

Q Or \$100,000.00?

A I didn't have it in the store.

Q Or \$50,000.00?

A He asked for a blank -

Q Or \$25,000.00. You don't deny that you ran through that account \$400,000.00, do you?

A No, sir.

Q Well, if he were part of the conspiracy to steal, why didn't you give him \$400,000.00, \$200,000.00, \$25,000.00, \$267.00 -- \$267.00 went to Abel Yzaguirre, is what you gave him?

A He took the check in blank and he filled it out for the money that was --

Q And that like these others -- that's all we have been able to find so far, one, two, three, four, five, six of them, all of which are labeled by you "tubing" or "store counter sale" or "rent on truck" or "rent" alone, is all that you can produce today to substantiate the preposterous theory that he participated in a rip-off scheme of \$400,000.00 to him. Am I correct?

A I believe there was some more --

Q All right. Well, we're going to get to them.

Now, in Corpus Christi at the time we went through this very same testimony these checks that I have already talked to you about, plus these last two, E-151 and E-154 is all that could be produced. You remember, I asked you about the same ones, didn't I?

A Yes, sir.

Q All right. Now, let me ask you about them again, so the Court here knows what we're doing. July -- this is one check, E-151, if it please the Court, July 27, 1971. It's for \$1,018.00 and it appears at 1556, if it please the Court. It's check number 146.

MR. MITCHELL: And, Mr. Odam, do you have the number, please, of the Exhibit that I could refer --

MR. ODAM: E-151 is on Page 878.

MR. MITCHELL: Thank you.

Q Now, let's look at E-151. It's a check to O. P. Carrillo for \$200.00 -- no, \$100.00 -- correction, \$1,018.00, correct?

A Yes, sir.

Q You got me talking in them big figures. It's a check -- is that in your handwriting, Rudolfo?

A Yes, sir.

Q Now, turn it over and you will be able to determine that it was not endorsed by Judge Carrillo, was it?

A No, sir.

Q So you're not telling this Court that it went to Judge Carrillo, did it?

A Sir?

Q You're not telling the Court that the check, the \$1,018.00 went to O. P. Carrillo?

A It states on the back that it was deposited to the account of the bearer or the name of the check, sir.

Q It is a bank endorsement, isn't it?

A Yes, sir.

Q So that the check could have been delivered directly from you or someone to the bank direct, am I correct?

A I never took the checks to the bank, sir.

Q But we will agree that it does not bear an endorsement or order of Judge Carrillo, does it?

A Yes, sir, we agree on that, sir.

Q Now, there's no recital on that check, is there?

A No, sir.

Q And can you tell from your independent recollection what the purpose of the check was for?

A I believe I got a check from the county for that amount, sir, and I just made in turn to O. P. Carrillo, sir.

Q Okay. And that's the only one -- that, of course, doesn't bear his endorsement, does it?

A No, sir.

Q And that one's dated July, 1971, right?

A Yes, sir.

Q And that's during the first term of Judge Carrillo as a Judge, correct?

A I believe it was, sir.

Q And that term ended December 31st of 1974, am I correct?

A Sir?

Q That term ended December 31st, 1974 and he was reelected again and took office in January of '75, correct?

A Yes.

Q And I hand you one more, November 15, 1971, \$995.00.

MR. MITCHELL: And for the purposes of the Court, that appears, if it please the Court --

MR. ODAM: E-154.

MR. MITCHELL: It's E-154, November 15, 1971.

MR. ODAM: The check is on Page 881.

MR. MITCHELL: And it appears on the draft at 1559, does it not?

MR. ODAM: I will take your word that it does.

Q Now, these last two checks -- this last check I will ask you, November 15, 1971 is from you to O. P. Carrillo in your handwriting, isn't it, Rudolfo?

A Yes, sir.

Q And it's endorsed how?

A It says, "For deposit, O. P. Carrillo."

Q And it's in Judge Carrillo's handwriting, "For Deposit Only," correct?

A Yes, sir.

Q And if he was stealing it and if he was dumbo and he wanted to leave tracks about where it went he couldn't have done it any clearer, because he just set his name out in full on it and said, "For Deposit Only, O. P. Carrillo," didn't he?

A He just endorsed the check, sir.

Q Sure. And he didn't go in there and get the cash from the teller and let the teller put the little stamp on it?

A It doesn't look like that, sir.

Q All right.

MR. ODAM: Mr. Mitchell, just for my benefit. Is it your position that Mr. Couling deposited the checks in Judge Carrillo's bank account?

MR. MITCHELL: I'm not taking any position except my client didn't steal it.

MR. ODAM: Okay.

MR. MITCHELL: It's your position, Counselor.

Q Now, do you have any independent recollection of the check for \$995.00?

A I believe I got a check from the county for the same amount, sir.

Q Well, I didn't ask you that. I asked you do you have any independent recollection of the transaction insofar as as it involves my client as relates to the check for \$995.00?

A I got the money from the County and I made a check to O. P. Carrillo, sir.

Q Well, did he tell you to go get the money from the County?

A I don't know, I believe Ramiro did, sir.

Q Did you have any conversation with O. P. Carrillo about the \$995.00?

A I very seldom had conversations with O. P. Carrillo regarding those transactions, sir.

Q All right. So, the answer to the question would be no, you did not have any conversation with him about the check for \$995.00. Is that correct?

A No, sir.

Q Your testimony under oath is that you had a conversation with Ramiro Carrillo about the \$995.00?

A I had a conversation with Ramiro practically every month when checks were drawn from the County, sir.

Q Now, Ramiro Carrillo at that time in '71 was a Commissioner, wasn't he?

A Yes, sir.

Q And there were four Commissioners, weren't there?

A Yes, sir.

Q And those four Commissioners were presided -- constituted the Commissioners Court, didn't they?

A Yes, sir.

Q And you agree with me one vote against three is in the minority, isn't it?

A I don't know how they conducted their business, sir.

Q I know, but I'm saying it's three to one, isn't it. Ramiro would vote for the payment of this and them other three would vote against it that would be the end of it?

A I don't know --

Q Or are you accusing all of the Commissioners --

A I don't know how they conducted their business, Mr. Mitchell.

Q But old Archie Parr hated that Commissioners Court, didn't he?

A He was County Judge, yes, sir.

Q Right. And he also presided at the meetings, didn't he?

A Yes, sir.

Q So, let's assume that Ramiro Carrillo talked to you about executing a fraudulent invoice for \$995.00 on the Benavides Implement and Hardware Company. Mr. Couling, you're not telling this Court that you could guarantee production of the \$995.00 against the four people that sat on the Commissioners Court, are you?

A I did what Ramiro told me to do and I don't know what he did, whether it would approve it, or not, sir.

Q I'm saying did you -- did you lay any money off on Juan Leal?

A No, sir.

Q He was a Commissioner, wasn't he?

A Yes, sir.

Q Did you lay any money off -- who were the other two?

A Dan Tobin and --

Q Did you lay any money off on Dan Tobin?

A No, sir.

Q Did you lay any money off on the other one?

A No, sir.

Q And you want this Court to believe, this body, that it governs and its very life blood, vote a majority, five to four, three to one, that it's questionable that Ramiro Carrillo could control a Commissioners Court?

A I don't know how they ran their business in the Court, sir.

Q All right. But as far as O. P. Carrillo is concerned you're not going to testify you had any conversation with him about that \$995.00, are you?

A No, sir.

Q All right. Now, at the time we went through this very same testimony in Corpus Christi that was all the checks that you could produce that went to O. P. Carrillo, isn't it?

A If you look at the testimony you will find out, sir.

Q And that was all the checks the Attorney General could produce, that was all the checks the I.R.S. could produce, that was all the checks that Mr. Woods, Mr. Martinez, Mr. Powell the rangers could produce, that was all the checks that everybody could produce, except when I got through they came up and gave me two more at the tail end. Do you remember that?

A Yes, sir.

Q All right. I'm going to ask you about that. But these two, if it please the Court, were produced only at the examination of this witness. Isn't that the way you reflect it?

A I don't remember, Mr. Mitchell.

Q Now, if I might call the Court's attention to E-176. It appears to be a check September 5th of '72.

MR. MITCHELL: John, did that get on this chart?

MR. ODAM: It should be if run down the dates -- what is the date of it?

MR. MITCHELL: September 5th, '72.

MR. ODAM: Would be on the chart '72 --

MR. MITCHELL: Yes, it appears at Page 1565, if it please the Court. And the original of the exhibit appears where, please? Do you know that, Mr. Odam?

MR. ODAM: I will find out for you, Mr. Mitchell.

MR. MITCHELL: All right.

Q At any rate, here is a Xerox copy, and again this check is -- is that in your handwriting?

MR. MITCHELL: And I hand him now the Exhibit.

A Yes, sir.

Q And it is dated when?

A September 5, 1972.

Q 1972. And it's in the amount of what?

A \$2,640.00.

Q And, at that time, you wrote that amount in there, didn't you?

A Yes, sir.

Q And you wrote the date in there?

A Yes, sir.

Q And you wrote the -- your signature, of course, under Benavides Implement and Hardware?

A Yes, sir.

Q And you wrote it on an account over which you had absolute control?

A Yes, sir.

Q And you wrote the payee's name in there, right?

A Yes, sir.

Q And you wrote in the lower left-hand corner what?

A "Loan".

Q And is that true that you made a loan to Judge Carrillo of that \$2,640.00 in 1972 as reflected by the check?

A No, sir.

Q All right, sir.

MR. ODAM: The check, Mr. Mitchell --

MR. MITCHELL: September 5th, '72.

MR. ODAM: It's on Page 1041, Examiners' Exhibits.

MR. MITCHELL: 1041.

MR. ODAM: Page 1041, Examiners' Exhibits.

MR. MITCHELL: It appears in the chart, if it please the Court, as I previously noted. I don't want the Court to get confused. At 1565. It appears in this large exhibit, which is Exhibit 192, and it appears in the record itself at 1041.

MR. ODAM: I might say, if you're going into the checks, the 174 Series, they all are around that Page 10 E-176, E-177, E-178 or right there in that Series on Page 1041.

MR. MITCHELL: Nevertheless, for the benefit of the Court, because handwriting is very important and what not, we have gone through the trouble of pulling out the original for the Court's examination.

Q Now, I am going to hand you -- I was given this as the last check, and this is the check that's dated January of '72, if it please the Court. January 17th in the amount of \$900.00. It appears 1560, Page 1560 of Volume Three. And the original would--and the Exhibit itself would appear --

MR. ODAM: What's the Exhibit? E one seventy --

MR. MITCHELL: E-178, Mr. Odam.

MR. ODAM: E-178 is on Page 1045.

MR. MITCHELL: Thank you.

Q So, it appears at Page 1045, reproduced, it appears in the chart at 1560, and it also appears on the chart E-192.

I hand it to you. And it is a poor Xerox copy of what appears to be a check, doesn't it -- isn't it, Mr. Couling?

A Yes, sir.

Q All right. And it appears -- it's a check dated January 17, 1972 for the amount of \$900.00 payable to O. P. Carrillo, Benavides Implement and Hardware, R. M. Couling, correct?

A Yes, sir.

Q And you wrote that?

A Yes, sir.

Q You wrote the date, the payee, and you, of course, signed it?

A Yes, sir.

Q And you wrote the notation in the lower left-hand corner, correct?

A Yes, sir.

Q And what did you say at that time?

A Hay for resale.

Q And?

A There was no hay for resale.

Q And on the items, then, that we have, and we don't have any more, of all the items that we have, and I am going to go through them again -- I'm going to set aside E-154 and E-151. Each and every item, and I'm talking about, now, E-157, 158, 156, 152, 153, 150 --

A Five.

Q No, 176, each and every one were checks to you on different occasions, all prior to January 1st, 1973, and each and every one were completed by you, and each and every one has a notation on them?

A Yes, sir.

Q All of which notations are false?

A Yes, sir.

Q But your signature is true and authentic?

A Yes, sir.

Q The date is true and authentic?

A Yes, sir.

Q The payee is true and authentic?

A Yes, sir.

Q The written material on the amount of the check is true and authentic, right?

A The written -- yes, sir.

Q The same is true as regards E-178. That check, in your handwriting, has a notation for the purpose, but it's just simply not true, correct?

A Correct.

Q The check E-155, the same. It has a notation of a loan for twelve hundred, your handwriting, and the date is your handwriting, and, correct, the amount is your handwriting and correct, the drawee signature is you, and that's correct? The amount, \$1,200.00, is correct? But the loan is not correct?

A There was no loan mentioned.

Q All right. But, of these checks that my client is alleged to have ripped off by these Articles of Impeachment, you will concede to only two that do not have notations put in there by you are the ones for \$995.00 and \$1,018.00. One in November 15th of '71, and the other July 27, '71, am I correct?

A Repeat the question, Mr. Mitchell.

Q Those are the only two that do not have notations in the lower left-hand corner?

A That's correct, sir.

Q And all of them are written in 1971 or '72?

A Yes, sir.

Q And the total amount of all of them, any and all of them that all these people could come up as shown on 832 is \$12,939.68, correct?

A According to those figures, yes, sir.

Q But while the same period of time, beginning in January of 1973, a month after you bought the DC tractors from Plains Equipment in December of '72, he commenced paying you, and did pay you over \$20,000.00?

A Yes, sir.

Q Now, don't you think my client is an idiot if he undertook to rip-off the county for three or four hundred thousand dollars and ended up in the hole from this gigantic scheme of \$8,000.00?

A Mr. Mitchell, you're not including the Rio Grande Bank account in that figure.

Q The Rio Grande Bank account you and I agreed a long time ago, was the money that went to Plains Equipment.

A Yes, sir, the money that came from the County.

Q Just a minute, Mr. Couling. I did remember that account. And when I pinned you down, you testified there wasn't a dime out of it that went to O. P. Carrillo, didn't you?

A Sir?

Q You testified there wasn't a dime of it to O. P. Carrillo?

A Of which one?

Q Out of that account. It went to the Plains Equipment, and we've got the checks, don't we?

A For a tractor that belonged to O. P. Carrillo, sir.

Q Right. I've got you cornered. You have got the ledger sheet and you've got the checks, and every one of those checks went to Plains Equipment, didn't they?

A Went to Plains Equipment for --

Q Right?

A -- on the O. P. Carrillo voucher.

Q Just a minute. You say it went to Plains Equipment for a payment of a tractor that O. P. Carrillo bought, but that's not what this document shows. The document shows you bought it, doesn't it?

A I bought it and never had the use of it. He kept it, sir.

Q All right. Now, if you can get out of that maze, you're a better man than I am. You bought the equipment in your name, didn't you?

A He's the one that made the arrangement --

Q Mr. Couling, the documents show you bought the tractors in your name.

A After the contract was brought to me on the instructions of O. P. Carrillo.

Q You bought the equipment in your name.

A On the instructions of O. P. Carrillo, sir.

Q You bought the equipment in your name.

A At the instructions of O. P. Carrillo, sir.

Q I can do it as long as you can. You bought the equipment in your name, didn't you?

A I'm still going to give you the same answer.

MR. ODAM: Mr. Mitchell, I'll stipulate that it is in the name of Benavides Implement and Hardware if you will stipulate to the testimony of the tractor drivers as to where those tractors were. If you'll stipulate --

MR. MITCHELL: I'm not going to bargain with you, Mr. Odam, over this witness. I'm not going to bargain, and I'm not going to be a part of that act.

THE PRESIDENT: Please avoid repetitious testimony, Mr. Mitchell.

MR. MITCHELL: The witness -- Mr. President, I'm sorry to have to put on that display, but the witness attempted -- he knows what the documents show, and he knows what the questions have been and the answers have been. There was not a dime went to O. P. Carrillo out of that other account. And the money that went to O. P. Carrillo out of this account, and everybody made a fuss about, the First State Bank of San Diego, is the twelve thousand dollars offset by over \$20,000.00 that my client paid him, and that's the facts. And the charge by the State of Texas and the House is that he was a party to a scheme to rip-off the county of a half a million dollars, and I say that his bargain was poor, because he came out \$8,000.00 in the --

MR. ODAM: I object to that characterization of \$300,000.00. There's nowhere you can find anywhere in the Judicial Qualifications or in this case he has been alleged to have taken \$300,000.00. I don't know how much you want him to be alleged to have taken.

MR. MITCHELL: Mr. Odam --

MR. ODAM: Is there something wrong with just alleging that he took \$12,000.00?

MR. MITCHELL: Well, you look to Page 832 where it appears that the total amount of money paid to the Benavides Implement and Hardware was \$370,382.23.

MR. ODAM: That's correct. Because it's stated there that that's why we got into Chart E-192 to show where that money went. Some of it went to him, some of it went to other people.

Q I'm not concerned about other gentlemen. The only person on trial here is Judge O. P. Carrillo.

THE PRESIDENT: Mr. Odam, your objection is sustained. Mr. Mitchell, please confine yourself to eliciting testimony from this witness, not to making argument for characterizations to this Court.

MR. MITCHELL: I'm sorry, Mr. President.

Q Now, Mr. Couling, when we got around to reporting all this business to the income tax people --

MR. MITCHELL: I would like, if I could, Mr. President, to keep these segregated, because I do want -- I'm going to have these forms in connection with a later witness, if I can deliver them to the Secretary in this order.

Incidentally, may it please the Court, I would like to call the Court's attention to the Exhibits showing the monies from Duval County to Benavides Implement and Hardware, that's R number 91. It's 776, in the good old yellow hornet, Respondents' Exhibits. Also, 778, 781, 783, 784, 786, 788. And I represent to the Court that these were -- these sheets were furnished to me by the Attorney General at the trial of the Judicial Qualifications being the result of the Task Force input of the amount of money that went into Benavides Implement and Hardware. And our summary sheet of those sheets, if it please the Court, appear on Page 831, if it please the Court. Page 831 is a summary of those Exhibits.

Q Now, Mr. Couling --

MR. MITCHELL: And may I state to the Court further that the Exhibits are in the record which reflect the signature card of this gentleman on all these bank accounts? The ledger sheets are in evidence which reflect all the business in these various accounts. All of the checks are in the evidence. All of the deposit slips are in the evidence, so that the Court has ample documentary underlying the testimony.

Q When you got around to reporting the transactions -- we do not have, of course, your '71 tax return, but if you will look for me on Page 833 of the yellow Exhibits, there appears to be your 1972 tax return, correct? I'm not interested in any of it except the -- if you would, turn to the Schedule C. Of course, we do not have the benefit of your '71 return, do we, Mr. Couling?

A No, sir.

Q And that would be the report of your income from January 1st to December 31st of '71, correct?

A Yes, sir.

Q So, then, I am not in a position to assist the Court in determining what or how you handled the 1971 figures that you gave us. We just don't have that. Now let's look at '72. I'm not interested in '73, because I believe you testified that no money went out of the Benavides Implement and Hardware to Judge Carrillo in '73 or '74. So, let's look at '72. And that's the one you have before you, am I correct?

A Yes, sir.

MR. MITCHELL: Now, if it please the Court, Page 835 reflects the Schedule C reporting. And I would want to also call the Court's attention to Schedule C-1, which is a social security tax computation based upon an individual proprietorship.

Q On your tax return for '72, you carried a gross receipts for the Benavides Implement and Hardware -- now, follow me, please, Rudolfo -- of \$109,882.32, am I correct?

A Yes, sir.

Q With the cost of goods of \$65,203.00 for that year, showing an income of over \$44,000.00?

A Yes, sir.

Q Correct? And that's what you reported to Uncle Sam, with an inventory beginning, on the next page, beginning inventory of \$500.00 increased by acquisition during that year of \$65,000.00 as reflected on Schedule C?

A Yes, sir.

Q Correct? Now, and you paid a tax on the basis of that income, didn't you?

A Paid part of it, sir.

Q Right. But, Uncle Sam in 1974 said you didn't record enough and assessed you an additional \$69,000.00 taxes including that year?

A Not for that year of '72 and '73, sir, I believe.

Q Oh, so the \$69,000.00 deficiency assessment was for what year?

A I believe it was part of '72 and part of '73 and part of '71. I'm not sure, Mr. Mitchell.

Q Well, would it -- my question is, do you recall -- and I don't want to embarrass you over it -- I just want to know do you recall whether or not part of that deficiency assessment was for '72, or can we rely on your tax return for '72 as accurately reflecting your income?

A That's the way I reported it, Mr. Mitchell.

Q There was a deficiency assessment that included '72?

A On the \$69,000 it includes '72 and '71 and '73, I believe.

Q So actually when the audit turned out, there was an adjustment on the income figure or the deduction figure in your Schedule C. Correct?

A On the three years, sir.

Q All right. And that was settled, and you are now paying on that, are you not?

A I'm paying on it now, sir.

Q All right. But you also -- you did, of course, obviously treat the Benavides Implement and Hardware as a sole proprietorship for that calculation, correct?

A Yes.

Q And you treated it for the purpose of the settlement in the audit as a sole proprietorship, did you not?

A On what, sir?

Q For the audit purpose. The readjustment for the \$69,000.00. You treated it --

A I was the only one paying the income tax, so I had to do it by myself.

Q Sure. And then likewise you treated it for social security computation on page -- that is your C-1 Schedule, as a sole proprietorship. Am I correct? I believe your tax returns show that you computed that right on up to '74 and '75 for your social security tax computation, do they not, Mr. --

A I haven't made my '75, Mr. Mitchell.

Q Or your '74 return.

A (No response.)

Q Can you tell us so we can move on?

A No, I can't find it, Mr. Mitchell.

Q Look on Page 839. I said C-1. I was -- computation social security self-employment tax. Isn't that what that is?

A Yes.

Q All right. So that the material that is on Schedule C, the sole proprietorship profit or loss, also is used as a basis for the social security computation on Schedule SE. I probably misquoted. I said C-1. I meant SE, which is the social security self-employment. Correct?

A Yes.

Q All right. And, of course, the income, your tax return reflects a two-ton truck and a one-ton truck. Correct?

A Yes.

Q And which of those is the one that -- that check to Continental Oil Company?

A The two-ton truck, Mr. Mitchell.

Q Which one of those is that acquisition you made by that check, Continental Oil Company, back in '71, Check No. 110.

A The two-ton truck.

Q And you told your lawyer under oath yesterday that you bought that at the instance of Ramiro Carrillo and you issued a check for it and Ramiro took it off, and you ain't seen hide nor hair of it since.

A That's correct. The only thing I have is the title is still in the name of the store, sir.

Q And the deduction for depreciation.

A Yes, sir.

Q It is on that tax return, isn't it?

A Yeah, it is, sir.

Q Is that tax return true or ain't it true?

A The truck is still in the store name, sir.

Q And you're treating it as yours because you depreciated it, don't you?

A I didn't get no benefit from it, sir.

Q Mr. Couling, is your tax return true or --

A To the best of my knowledge, it is, sir.

Q I would agree with you. I believe the less of the two courses, I would say the tax return was true, too, Mr. Couling, the federal government not being a part of this proceeding.

At any rate, your testimony yesterday that the Continental Oil Company check was for the purpose of acquiring a truck for Ramiro Carrillo does not square with your tax return, does it?

A Well, he took it. He picked it up himself, and he still has it, sir.

Q But you're carrying it on your tax return, aren't you?

A Yes.

Q You carried it at least in 1972, didn't you?

A Yes, sir.
And I believe I carried it in '73.

Q That's right. You're ahead of me. You carried it in '73, too, didn't you?

A Yes, sir.

Q And how about '74?

A I believe too. I don't know.

Q That's right. You made mistakes in three years. You carried it in '72, '73, and '74. Or it's a correct reflection of a transaction that you bought the truck with a check out of the Benavides Implement & Hardware contrary to your sworn testimony before this Court, put it on your books as such, and depreciated it.

A The truck is still in the store name, and the store never had no use for it, sir.

Q All right, but you will agree with that. That's the same truck that you testified to under oath yesterday that didn't belong to you.

A It don't belong to me. O. P. had the benefit -- I mean Ramiro had use of the truck from the day it was purchased, sir.

Q All right.

A It's still in the store name.

Q And, of course, that's also true with the payments concerning these tractors, isn't it?

A What?

Q The deductions are included in these tax returns aren't they?

A Well, show me where they are, sir.

Q Well, what about 843? Maybe I'm reading it wrong. Aside from the two trucks.

A It says rental on top, sir.

Q Yeah.

A Paid to Plains Machinery.

Q Right. It's the rental paid under that purchase agreement with Plains Machinery that you executed for Benavides Implement & Hardware in December of 1972. Isn't it?

A Yes, sir.

Q But you're telling this Court that them tractors didn't belong to you and the contract just wasn't so, and you all played Kings-X.

A In other words, you don't want me to report it as deductions for after the money went to the store?

Q You took advantage of the deduction, didn't you, on your tax return --

A It was going to my store, so I had to deduct it. I couldn't -- I couldn't pay income tax from checks that I didn't take -- didn't get no benefit from.

Q Well, as a matter of fact, the tax return is consistent with the fact that you purchased the two trucks under a lease purchase agreement, which is in evidence, and you paid that rental, didn't you?

A On instruction from O. P. Carrillo and Ramiro, sir.

Q Oh, I know -- now wait a minute. O. P. didn't say nothing to you about this.

A O. P. said that he was going to buy two trucks on my store name, sir.

Q Well, we can see that his name doesn't appear anywhere --

A No, I agree to that, sir.

Q Now, in your '75 return, you say you have not filed it yet?

A No, sir.

Q It was, of course, due April of '75. I mean, for '74. Have you filed your return for '75? I'm sorry. That's so garbled. Let me withdraw that. Have you filed your return that reflects the sale of the partnership to Mr. --

A No, sir. It's going to be reported this year, sir.

Q And -- Well, if I understood, the sale occurred last year, '74 -- '75.

A '75, sir.

Q Uh-huh.

A I have not made my income until -- until April 6th of '76.

Q All right. You are going to transfer -- you are going to reflect on your return the transfer of that business to Mr. Cleofas Gonzalez?

A I'm going to report what I made up through May of 1975, sir, on my income. And then he will report his part from that date on up.

Q All right. And he's going to report the acquisition of that business, Benavides Implement & Hardware, as of May of '75.

A He's going to report the inventory he had and the outstanding debts that were due from the store to individuals.

Q That's right. And each and every one of these returns says at the bottom -- Lord knows we all know it -- it's like the oath you took when you took the stand. It says, "Under the pain and penalties of perjury I declare that I have examined this return, and including accompanying schedules and the statement, to the best of my knowledge and belief, complete, true" et cetera, et cetera. Right?

A To the best of my knowledge, yes.

Q Fine. And, of course, there will be no accounting to my client or Mr. Ramiro Carrillo about any partnership, will there?

A Sir?

Q I said there won't be any accounting to either Ramiro Carrillo or O. P. Carrillo concerning any alleged partnership, will there?

A If they want it, sir, they can get one, sir.

MR. MITCHELL: May I have just a minute, please, Mr. President, to review?

Q Now, Mr. Couling, let me refer you to this Exhibit 192, and it is the Exhibit that we've been talking about, appearing at Page 1555, if it please the Court. Can you get that for me in front of you, please, sir. I can have one of the officials hand you a copy.

(Whereupon, the witness was handed a copy of same.)

Q Page 1555, please, sir.

Now, Mr. Couling, let me ask you, please, sir. I think now in order to summarize testimony that you've previously given, we know that there are no checks from 1973, '74, or '75 reflected on 1555 to my client, O. P. Carrillo. Correct? For '73, '74, and '75, I think you've already testified to that. The ones that are reflected in '71 and '72 are the ones that we have previously examined you about.

A Yes, sir.

Q All right. Now, in 1972, as I recall, -- '71, you took \$8,500.00 out of the Benavides Implement and Hardware Account, correct?

A More or less, yes.

Q And -- '71, that was. And '72 you took right at \$14,000.00 plus \$4,700.00 in cash. That's about \$19,000.00, correct?

A Yes, sir, more or less.

Q And in '73 I recall your testimony was you took out \$3,763.00 and \$8,000.00 in cash, for roughly about \$11,000.00

A Yes, sir.

Q And \$5,000.00 in '74, am I correct? And a little over \$8,000.00 in '75. Correct?

A More or less.

Q All right. Now, there were no funds going, as I understand the chart and your testimony, to Farm and Ranch in 1975.

A I don't remember, Mr. Mitchell.

Q Four thousand in '74.

A What year was that?

Q 1974. About \$4,039.30, I think.

A More or less, yes.

Q But none to Oscar Carrillo in '75, D. H. Carrillo in '75, Farm and Ranch in '75, O. P. Carrillo in '75. Guajardo in '75. Correct?

A Yes, sir.

Q And in '73, I believe, your testimony was that there was none to O. P., but \$16,000.00 to Farm and Ranch. Sixteen thousand nine, I believe. Is that your testimony?

A I testified yesterday. That's what it is.

Q And none, I believe your testimony is in the R. Carrillo and Brothers for the year '73 or '74 or '75 or, of course, '76. Correct?

MR. ODAM: The figure that was given yesterday, \$6,200.00 figure was a combination of others. He didn't go into who it went to on that one. I don't know if he --

MR. MITCHELL: That's as I recall it, Mr. Odam, but in view of the possibility of a misunderstanding, I'd like for the -- I'm sure the Court is curious about the disbursement. I thought he might be able to shed a little light upon it. That's in '73, of course.

MR. ODAM: Well, you took it from the Exhibit, which --

MR. MITCHELL: None to Judge Carrillo in '73. And \$6,219.80 was his testimony to, he says, a Carrillo. Well, what I want to know, if that's the figure, then I want to know who he's talking about. He's not talking about O. P. Carrillo.

MR. ODAM: Are you asking him to go through the chart and identify --

MR. MITCHELL: I thought he had a summary that you asked him to make, Mr. Odam.

I didn't want --

A Mr. Mitchell, I didn't mention O. P. Carrillo in that. I said others. And they didn't include O. P. Carrillo.

MR. ODAM: He said others and not O. P. Carrillo yesterday.

MR. MITCHELL: All right.

Q Well, let's take, for example, a check -- going back to '71, Mr. Couling. I think you testified that you gave checks to Mr. Rogelio Guajardo in the amount of \$2,650.00. You recall that?

A Yes, sir.

Q Were those checks given to Rogelio Guajardo in person?

A Yes, sir.

Q And were those checks transmitted through the bank in the ordinary course of business?

A I don't know, sir. I just gave them to him, sir.

Q Yeah, but you've got the data that you got the two thousand six fifty from your cancelled checks that show his endorsement on.

A Yes.

Q And is that true as regards to D. H. Carrillo or Oscar Carrillo or Farm and Ranch or even Judge Carrillo as per the testimony you've given for 1971?

A No, I gave the checks to Ramiro and to O. P. Carrillo and to individuals that the checks were made out to.

Q That was the reason for my question. They were given to the specific individual. Am I correct?

A Yes, sir.

Q You didn't hand a hundred thousand dollars worth of checks to O. P. Carrillo, did you?

A I didn't say that, Mr. Mitchell.

Q I know, the morning paper did, I'm wondering where I've failed in my examination.

All right. You continued to do business, then, with the school district and the water district and the County after April of '74, the date of the school board election, didn't you?

A Yes, sir.

Q And that's the date that I believe you have told us that there was a definite split between the Parr faction and the Carrillo faction.

A That's right.

Q And it sticks out in your mind, I believe you testified yesterday, as being the date of that school board election of April, 1974, correct?

A Yes, sir.

Q But, Mr. Couling, even in 1973, that's a full year and a half before the April, '74 split there was no money paid to O. P. Carrillo out of the Benavides Implement and Hardware Account?

A I believe he had taken over the tractors by then, sir, I'm not sure though.

Q I understand. I'm saying now what your testimony was yesterday, there was no money paid in '73 to O. P. Carrillo?

A I don't see any here, sir.

Q All right. Now, as to the checks payable to R. M. Couling, Alamo Iron Works, First State Bank of San Diego to your account, to your daughter, to Charlie's Truck Parts, these were items that were paid for obligations which you owed and in your behalf?

A No, not Charlie's Truck Parts, sir.

Q Well, exclude that one, how about the other ones that I named off?

A They were for the benefit of the store, sir.

Q Yes. And for the account of Rudolfo Couling, correct?

A I stated that the bank made inter-bank transfer from my account, personal account to the store and back and forth, sir.

Q Sure, that's your own personal account, though, wasn't it?

A From personal account to the store and back to my personal account, sir.

Q And, also, payments made to young Carrillo for working for you were for real, weren't they?

A He worked one month, sir.

Q And you paid him, didn't you?

A Yes, sir.

Q And what was that young man's name?

A Ramiro D. Carrillo, Jr.

Q Right. You gave him several checks for work that he actually did, didn't --

A One month, he worked only one month, sir.

Q How about Eloy Carrillo, didn't you testify -- and I might be wrong, recollecting your testimony, didn't you testify that Eloy worked for you and you paid him for working?

A Yes, sir.

Q That's what I thought you said. And Eloy got checks dated 5/18/71, he got checks dated 6/5/71, didn't he?

A Yes, sir.

Q And those are for real, aren't they?

A Yes, sir.

Q You're not saying that young man was a part of any deal, are you?

A No, he was working -- I don't know if he had any deals -- he was working.

Q He worked for you?

A Yes, sir.

Q And so the checks to Mr. -- What was the gentleman that worked for you?

A Lorenzo Garcia.

Q Sure.

And those checks are for real and for your benefit, am I correct?

A He was running the store, sir.

Q Sure he was. The checks for oil and gas were for real, real debts of Benavides Implement and Hardware, am I correct?

A Yes, sir.

Q The bottling company were real debts of Benavides Implement and Hardware, am I correct?

A Yes, sir.

Q Now, you mentioned an item \$12,000.00 -- let me talk to you about that. You gave Alamo Iron Works a check for \$12,038.40 for barbed wire, do you remember that?

A Yes, sir.

Q And you have to give some money to some folks, to A. Garcia, Juan Garcia to swing that?

A Yes, sir.

Q That's page 1559, if the Court wants to go back through this with this witness.

All right. Let me ask you about that transaction. What did you have a deal with the Commissioners Court -- who did you have a deal with?

A Ramiro Carrillo came and proposed me the deal, sir.

Q To tell you that you could lay off \$500.00?

A He said if I could sell some wire -- purchase some wire for the county and that they wanted in turn \$500.00 apiece, the four County Commissioners and the County Judge.

Q And you paid the County Commissioners?

A Yes, sir.

Q And, of course, that's a bribe, isn't it?

A Yes, sir.

Q And you knew it was a bribe?

A Yes, sir.

Q And if that's one of those crimes you're going to get excused for, you certainly want excused for that, right?

A Yes, sir.

Q And who did you pay the \$500.00 to?

A I gave all the money to Ramiro Carrillo, I don't know what he did with it, sir.

Q Well, now, you told this Court yesterday that you made out --

A Checks to --

Q Right, Juan Garcia?

A Right. And I gave those checks to Ramiro.

Q A. Garcia?

A And --

Q Wait a minute now, let me finish. And A. Garcia?

A Yes, sir.

Q And you knew what it was for?

A Yes, sir.

Q And you and Ramiro and the Commissioners cooked that up?

A I only made the deal with Ramiro, sir.

Q What did that have to do with the barbed wire?

A The county didn't purchase that much amount of barbed wire, they purchased a thousand rolls.

Q I see. And the Alamo Iron Works, were they in on the deal?

A I just bought the wire from them, sir.

Q And was my Judge O. P. Carrillo in on the deal?

A Not at all, sir.

Q And what did the Benavides Implement and Hardware make out of the deal?

A They made a profit out of it, sir.

Q How much?

A I don't know, sir.

MR. MITCHELL: Great day is dawning in Austin, Texas, he's telling the truth.

MR. ODAM: I'm sorry, are you talking to me?

MR. MITCHELL: I say, a great day is dawning in Austin, Texas, he's telling the truth.

MR. ODAM: I'm sorry, I can't hear you.

Q He made a profit out of it, isn't that what you're testifying?

A Yes, sir.

MR. ODAM: Who are you talking about made a profit?

MR. MITCHELL: Benavides Implement and Hardware.

Q And if that was a crime then you committed it, didn't you?

A What, sir?

Q The crime of embezzlement, along with the crime of bribery. You would have committed a crime if that's a crime, wouldn't you?

A I don't know, Mr. Mitchell.

Q But you certainly don't want to be prosecuted, because you do have a contract that says you ain't going to be on any facts or circumstances which reveal the commission of any other crime while you're testifying up here. Am I right?

A According to the agreement, yes, sir.

Q You have got five of them now and these include others that we don't even know about, right?

A I don't know, Mr. Mitchell.

Q All right. Mr. Couling, I did not quite understand yesterday about the destruction of those records, weren't you investigated by Mr. Arnulfo Guerra for the destruction of the records of the Benavides Independent School District?

A No, sir, the only time it was brought up was when Corpus Christi called and wanted to see the records, sir.

Q Had your picture on the front page?

A When I took the records up to the Grand Jury, yes, sir.

Q With a big shredder and a little shredder?

A No, sir, I never had a picture with shredders, sir.

Q Well, you were on a page of the Corpus Christi Caller-Times, weren't you?

A No, I had some records that I took to the courthouse.

Q Yes, because the Corpus Christi Caller-Times sued you for the records?

A Yes, sir.

Q You weren't going to deliver them, were you? So, they brought a suit against you, didn't they?

A Yes, sir.

Q And the records were destroyed or some of them were by you, weren't they?

A Not those ordered records, no, sir.

Q How many were destroyed?

A It was not only me that destroyed the records, sir, I had an accomplice.

Q I know you had an accomplice in the destruction of them. Those that you didn't destroy were hidden. Some of them were hidden and some of them were destroyed, weren't they?

A The main records that -- the records that were destroyed were prior to 1970, sir, I believe.

Q Right. And you as a public official destroyed public records and if that is a crime that's one that you hope you ain't going to be prosecuted for under your deal with the Attorney General or Mr. Guerra, right?

A The records were about ten years old, sir.

Q I understand. You had a reason to secrete them and destroy them, though, they weren't that old, were they?

A They were old, sir.

Q But if that's a crime you would have committed it and you don't want to be prosecuted under your contract?

A Mr. Mitchell, on those records that I did destroy our distinguished Judge was involved more than anybody else, sir.

Q All right. But you did destroy them?

A Yes, sir.

SENATOR AIKIN: Mr. President, if we're to a breaking point I want to move the Court stand recessed until 1:30.

THE PRESIDENT: Senator from Lamar moves the Senate stand recessed until 1:30 this afternoon. All in favor say aye, those opposed no. The ayes have it, the Court stands recessed.

Accordingly, the Senate, sitting as a Court of Impeachment, at 11:55 o'clock a.m. took recess until 1:30 o'clock p.m. today.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 1:30 o'clock p.m.

THE PRESIDENT: Mr. Mitchell, please proceed.

MR. MITCHELL: Thank you, Mr. President.

Q Mr. Couling, I saw a television program along about Sunday, I think, two weeks ago called Sixty Minutes with Mr. Mike Wallace. Was that you on that television program?

A Yes, sir.

Q And Mr. Blanton of the Attorney General's office?

A I didn't see it, sir.

Q You didn't see the program?

A No, sir.

Q Well, that's terrible. You do remember when it was made, though, don't you?

A Yes, sir.

Q Do you recall what you told the cameras, what you told the interviewer on that program about \$40,000.00 to \$45,000.00 coming out of the County to you?

A Yes, sir.

Q I thought I had heard you correctly. The first thing I would like to ask you is when was that television program taped?

A I don't recall the exact date, Mr. Mitchell. It was sometime in August, I believe.

Q In 1975?

A Yes, sir.

Q And if the -- your memory serves that it was before you testified in the Federal Court in Corpus Christi?

A I imagine so, yes, sir.

Q All right. So that would be, you say, sometime in August of '75?

A Yes.

Q Now, I believe in that show, and there was a Mr. John Blanton, the gentleman who signed this contract, the Memorandum of Understanding for your immunity?

A Yes, sir.

Q With the Attorney General's office. And then there was who else? Some of the Task Force investigators, I believe?

A Yes, sir.

Q And what did you have reference to when you testified or told the folks there on the national television show that you had taken \$40,000.00 to \$45,000.00 from the County?

A I believe you have the records there with you, Mr. Mitchell, more or less.

Q What records do you have reference to -- you mean the records I have that are in this trial?

A I don't know, sir. It looked like the -- those charts that were prepared by Don Lee or somebody way before that.

Q I see. For the purpose of clarity and so the Court understands, is that \$40,000.00 to \$45,000.00 that came from the school district or the County or the water district?

A I can't state -- I believe it was from all three of them, sir. I'm not sure, sir. I can't say --

Q Did you have when you told the television folks and the national audience you told them about it, did you have reference to the fact you had taken the \$40,000.00 to \$45,000.00 --

A In the five year period, I believe was stated, sir.

Q All right. And, of course, you were quite confident and comfortable making that statement on that program, because along your left hand, on your left-hand side was Mr. Blanton with the Attorney General, and if that revealed a commission of a crime, you certainly felt like you weren't going to be prosecuted because, of course, you had already executed the agreement we've talked about for your immunity, correct?

A The agreement had already been signed.

Q All right. That was going to be my next question. Do you recall that the agreement had been signed and if that agreement, which is in evidence here, is dated in August, it would have been at the television program sometime -- was sometime after the date of that agreement?

A After the 28th, sir, I believe.

Q All right. Now, that \$40,000.00 --

MR. MITCHELL: Strike that fragmentary.

Q For the record, if it please the Court, at Page 647, the agreement is dated August 28, 1975. So it would be prior to August 28, '75, is that correct, Mr. Couling?

A I believe it was after the 28th, if I'm not mistaken, sir.

Q All right. So, the agreement that the television program was about would have had to be in the last couple of days in August or in September of '75?

A Yes, sir.

Q Were there any federal agents or representatives of the federal government present for the Sixty Minute show?

A I don't know, sir.

Q Out of fairness to the record and to the Senate sitting as the Judge of the Court, during the noon break, I discovered that there were three items that I had inadvertently overlooked that were on my desk dealing with checks that I would like to clear up to be sure that we have the record complete.

MR. MITCHELL: These are the ones, Mr. Odam, that I had mentioned to you that I discovered in that stack in the junk on my desk.

Q These are checks 1/4/72 in the amount of \$77.00. I am going to hand that to you. 1/4/72. And this appears -- this item appears on Page 1560, check for \$77.00, O. P. Carrillo, and found in the record at page --

MR. MITCHELL: What, Mr. Odam?

MR. ODAM: E Exhibit is it?

MR. MITCHELL: This is E -- this is the \$77.00 check.

THE WITNESS: E-177.

MR. ODAM: E-177?

THE WITNESS: Yes, sir.

MR. MITCHELL: No, no, E-177 is the one to Ramiro Carrillo. The one I am talking about is a \$77.00 item to O. P. Carrillo.

THE WITNESS: Mr. Mitchell, this is what it says here -- E-177.

MR. MITCHELL: All right. The exhibit says E-177, but I think the 1560 is misstated. E-177. At any rate --

MR. ODAM: That is check number 230, Mr. Couling?

THE WITNESS: Yes, sir.

MR. ODAM: In the Index to the Exhibits, E-177 is on Page 1043.

MR. MITCHELL: Thank you.

Q Now, so that the Court understands, we are still dealing in the year '71 and '72, there being no checks to Judge Carrillo in '73, '74 and '75, and we're trying to get your rendition of the facts and circumstances concerning the issuance of all of them, and this is one we all overlooked inadvertently prior to the noon break. It is a \$77.00 check executed by you, filled in by you, and that is your signature?

A Yes, sir.

Q All right. Excuse me a minute. Now, the check appears to be endorsed, "O. P. Carrillo." Am I reading it correctly?

A Yes.

Q "Cash Store, Abel Yzaguirre." Correct?

A Yes, sir.

Q It appears to be one of the checks of a similar type that I previously asked you, a check in the amount of \$267.00, being a check from you to O. P. Carrillo and endorsed, "O. P. Carrillo, Cash Store, Abel Yzaguirre."

A That's correct, sir.

Q All right. And you don't recollect, I suppose, if you're going to be consistent in your testimony, the question I put to you, you don't recollect that check also -- now, by that check, I mean the one for \$77.00, was your share of the hunting supplies, that was given actually to Abel Yzaguirre of the Cash Store?

A No, sir.

Q And finally, we have a -- well, no, two checks, one for \$997.00, February 18, 1972, February 18, 1972. Those checks appear at 1560, and it's E-175. It would

appear again at page -- in complete form, page --

MR. ODAM: 1039.

MR. MITCHELL: Thank you, Mr. Odam.

Q That check is in your handwriting, is it not, Mr. Couling?

A Yes, sir.

Q And may I have it, please. And it appears that there is no endorsement on this check?

A No, sir.

Q As a matter of fact, looking at the face of the check and the reverse side of the check it appears that the "For Deposit" written on that check, that is the check E-175 dated February 18th, 1972, \$997.00 is in your handwriting?

A Yes, sir.

Q So that it is clear from the record that you wrote the check, you filled in the amount, you filled in the date, you filled in the drawer's signature and you put the "For Deposit Only" on the back, correct?

A Yes, sir.

Q And then there appears to be a bank stamp "First State Bank of San Diego." No where on that item is O. P.'s signature.

A No, sir, it says "Credit to the account of the payee", sir.

Q That's right. The fact of the matter is you wrote the "For Deposit" on there?

A Yes, sir.

Q So, I suppose it's your testimony you do not recall giving that check to Judge Carrillo?

A No, sir.

Q And, finally I think I can represent honestly to this Court that this is all I have been able to discover in the record, appears another check 4/14/72 in the amount of \$1,000.00, O. P. Carrillo, R. M. Couling. And I hand that to you. That's 4/14/72?

A Yes, sir.

MR. MITCHELL: That appears, for the benefit of the Court at 1562, it's E-174 and the Exhibit is reproduced in the record at page -- Mr. Odam.

MR. ODAM: Mutt and Jeff. E-174 is on the Examiner's Exhibit I introduced as E-174 and it is on Page 1037.

MR. MITCHELL: Thank you, sir.

Q And, I believe that that's all of the checks that the record reflects went from the Benavides Implement and Hardware account with the First State Bank of San Diego for the year 1971 and '72, there being none in '73, '74 and '75. I think I can represent that to the Court. You do recognize that Exhibit, that is E-174, a check in the amount of \$1,000.00 to O. P. Carrillo?

A Yes.

Q And you also recognize that on the reverse side the "For Deposit" is in your handwriting?

A Yes, sir.

Q Judge Carrillo -- the check obviously was not deposited by Judge Carrillo or was not endorsed by Judge Carrillo?

A No, sir.

Q Mr. Couling, at the time that you came to Austin first, which was the first part of last year, you came, I believe, by subpoena to appear before the House Select Committee making an investigation into whether or not the Articles of Impeachment would be returned under House Bill, I believe HSR 161. Do you recall that?

A That was in May, yes, sir.

Q Now, prior to the time -- and you did appear, I believe, with your attorneys, Mr. Marvin Foster and Mr. Mays out of Houston. Is that correct?

A Mr. Orr, sir, Charlie Orr.

Q I mean Mr. Charlie Orr, I'm sorry. And at that time the Committee put certain questions to you, the record will reflect those questions, and you availed yourself of your constitutional right to plead the Fifth Amendment, which you did?

A Yes, sir.

Q Now, prior to the time that you came to Austin did you have any conversation with Mr. Terry Canales?

A No, sir. I had it in Austin here only, sir.

Q All right. That was my next question. Prior to the time that you appeared in Austin you did not have any conversation with Mr. Terry Canales?

A No, sir.

Q Did you know Mr. Terry Canales?

A Yes, sir.

Q All right. Now, following -- at the time that you came to Austin you suggested -- your answer to my previous question suggested that you had a

conversation with him. Did you have one here with him?

A I talked to him in his office, sir.

Q All right. And did he summon you to his office?

A When we got here from Benavides -- we got to Austin from Benavides, I went to his office, sir.

Q All right, sir. And what was the nature of the visit and please tell this Court what the conversation was?

A I came in answer to a subpoena, sir.

Q And you talked to Mr. Canales about your testimony before the Committee?

A No, sir.

Q Well, I thought you told this Court that you went to see Mr. Canales?

A Well, but I didn't say I talked to him about the investigation, sir.

Q You did or did not?

A I didn't say I did, sir.

Q Did you talk to him about his affiliation or alignment with the Parr faction, particularly Archie Parr or George Parr?

A No, sir.

Q You knew, of course, he was the lawyer for Archie Parr and George Parr?

A I read it on the papers, sir.

Q Well, you knew that, didn't you?

A I read it on the papers, Mr. Mitchell. I very seldom visit the courthouse, so I don't know what's going on there.

Q You didn't know that he had filed motions for continuance in two suits pending against Archie Parr and George Parr in December of 1970 --

A I read it on the papers, sir.

Q All right, that's the extent of your personal knowledge?

A Yes, sir.

Q Thereafter -- were you there after contacted by Mr. Canales or anyone representing him as regards your testimony where Judge O. P. Carrillo is concerned?

A No, sir.

Q How about Marvin Foster?

A Marvin Foster talked several times about it, sir.

Q All right. Asking you to go ahead and testify against Judge Carrillo?

A No, sir.

Q Well, when did you decide to testify against him and forego your plea of immunity under the Fifth Amendment? At the time that you executed the August 28, 1975 agreement?

A It was in August sometime, sir.

Q And not prior to that time.

A No, sir.

Q Did you have a conversation with Mr. Canales prior to the time you signed that immunity agreement about your testimony, in the event that this case will come to trial before the Senate on those Articles of Impeachment returned by the House in June of 1975?

A I never talked to Mr. Canales from the day I left here in May up to date.

Q All right. Did you talk to anybody representing the Board of Managers?

A No, sir.

Q Who have you talked to about -- you have talked to, of course, the attorneys that represent the Board of Managers. You have been in their constant custody and care, haven't you, as a matter of fact?

A Yes.

Q They have been feeding you, clothing you, putting you to bed and taking care of you, haven't they, for the last month or two or three.

A It may be five months, Mr. Mitchell.

Q Five months. You have been paid your expenses to come up here and your board and room, haven't you?

A No, sir, I'm staying with my brother-in-law here in Austin, sir.

Q Who is that?

A Ramiro Salinas.

Q You have been paid your travel?

A Yes.

Q I'm not suggesting any wrong --

A I've just applied for my travel, yes, sir.

Q All right. Now, your in-law today -- one of your in-laws is the Secretary of the school board?

A No, sir.

Q Well, I meant the Tax Collector and Treasurer. Your in-law is a public official today in Duval County?

A My sister-in-law is Tax Collector for the County, sir.

Q That's right. And prior to the time your sister-in-law was tax collector --

A My brother-in-law.

Q It was your brother-in-law?

A Yes, sir. And then I have a brother-in-law that is County Treasurer right now, sir.

Q Yes, your brother-in-law is the County Treasurer now and your sister-in-law is -- Tax Collector and Assessor for Duval County?

A Right.

Q And your brother-in-law preceded her. That is --

A No, sir. When the County Treasurer was removed my brother-in-law was appointed to act as County Treasurer.

Q All right. And that is -- of course, your in-laws are the Olivares family?

A Yes.

(Senator Jones in Chair)

MR. MITCHELL: I have no further questions of this witness. Pass him.

REDIRECT EXAMINATION

(Questions by Mr. Odam:)

Q Mr. Couling, Mr. Mitchell asked you before lunch about destruction of some material, I believe?

A Yes, sir.

Q I missed part of that and I don't know how deeply we went into that, but I would like to first start on what was it that you destroyed? What records were they that you destroyed?

A I believe it was some checks and invoices as far back as 1953, sir.

Q Now, when did you do this destruction?

A It was sometime in 19 -- the latter part of 1974, I believe.

Q And --

A Or earlier, I don't remember, sometime in '74, I believe.

Q In 1974. And you mentioned to Mr. Mitchell something about an accomplice, someone assisted you in the destruction of whatever this was?

A Yes, sir.

Q And who was that that assisted you in the destruction?

A Rogelio Guajardo, Jr.

Q This is Judge Carrillo's nephew?

A Yes, sir.

Q In 1974 what was it that you destroyed?

A Most of the records were concerned way back -- all the way up to 1953 and especially from '62 to '68 -- I believe that was the year that so little money was spent that was not used by the school, but it was used by officials from the school board, sir.

Q These were papers that pertained to --

A Payments of material bought for their own personal use.

Q Payments -- were the payments made by the school board?

A Made by the school, sir.

Q Made by the school?

A Yes, sir.

Q Did any of these payments -- you say they involve -- for materials for official's personal use?

A Yes.

Q Did any of those materials go to Judge O. P. Carrillo?

MR. MITCHELL: Of course, that's going to be hearsay and we're going to object.

MR. ODAM: I asked if he has personal knowledge of whether or not any of the materials went to Judge O. P. Carrillo.

MR. MITCHELL: I wouldn't have any objection, Your Honor, if he asked him if he had any personal knowledge. That's the difference between the invoices, now. If he's got personal knowledge I withdraw the objection.

PRESIDING OFFICER: Restate your question.

Q Let me rephrase the question. At this time what was your position with respect to the school board?

A I was a Tax Collector in the school district, sir.

Q And what was Judge O. P. Carrillo's position with respect to the school board at this time?

A He was President of the school board, sir.

Q Now, of your own personal knowledge were any of the checks that were destroyed -- strike that -- were any checks destroyed?

A Yes, sir.

Q Were they canceled checks?

A Yes, sir.

Q And these were what, school district checks?

A Yes.

Q For the what, Benavides Independent School District?

A Yes, sir.

Q At that time you were the Tax Assessor?

A I was Tax Collector, sir.

Q Tax Collector. And Judge Carrillo was President of the school board?

A Yes, sir.

Q Now any of these canceled checks, of your own personal knowledge -- I want to ask of your own personal knowledge did any of those checks go for payment of material that was used for Judge Carrillo's personal benefit? Do you know of your own personal knowledge whether or not the material went for his personal benefit?

A Yes, sir.

Q So, it did go for his personal benefit?

A Yes, sir.

Q And who instructed you to destroy these checks?

A At the time the President of the board was Mr. D. C. Chapa who is O. P. Carrillo's daddy, sir.

Q And the President of the school board instructed you to destroy the checks?

A Yes, sir.

Q Of your own personal knowledge did Mr. D. C. Chapa receive any personal material from payments of these checks?

A I don't -- I can't recall that, I don't believe he was on the board in 1965, sir.

Q Let me skip back to the destruction themselves. How did you destroy the canceled checks?

A We took them out in the pickup from the school to Borjas, which is D. C. Chapa's ranch, Rogelio and I and burned them one night over there.

Q You and Rogelio burned all of these checks?

A Yes.

Q On the Borjas Ranch?

A Yes, sir.

Q Now, with respect to the material, you say you have personal knowledge the checks went for payment of material that Judge O. P. Carrillo received the benefit of?

A Yes, sir.

Q What, for example -- and, again, relying on your own personal knowledge would these checks be for? What type of material are we talking about?

A There was a lot of tile purchased for the school.

Q A lot of what?

A Floor tile.

Q Tile?

A And the same floor tile was delivered to O. P.'s ranch -- at the ranch and he was paid from the school, sir.

Q Have you ever been to the ranch?

A Yes, sir.

Q Have you ever seen the actual tile that you're talking about?

A Yes, sir.

Q Have you -- was there similar tile -- obviously not the same squares of tile, but similar tile purchased by the school?

A The same was, sir.

Q Have you seen the tile that was actually purchased?

A Yes.

Q Have you seen it at the school?

A Yes.

Q Do you recall from whom that tile was purchased?

A It was bought across -- either at Laredo, Mexico or Monterrey, sir.

Q Laredo, Texas?

A Mexico.

Q Laredo, Mexico?

A Or Monterrey.

Q Monterrey, Mexico?

A Yes, sir.

Q Of your own personal knowledge do you know whether or not that tile was actually delivered to Judge O. P. Carrillo's ranch house?

A Yes, sir.

MR. MITCHELL: That would be the rankest of hearsay, we would object to that, unless he was a participant in the defrauding of the scheme.

PRESIDING OFFICER: Mr. Odam, repeat the question. Did it relate to his personal knowledge?

MR. ODAM: Yes, sir. Let me rephrase the question.

Q The particular tile that I'm talking about, did you actually see the tile?

MR. MITCHELL: Excuse me, may I ask another question. Are we talking about 1952 or '53?

MR. ODAM: We're talking about these papers that you brought up that were shredded.

MR. MITCHELL: No, we're talking about some other stuff going on behind. I want to know are we talking about '52 or '53. If we are it's obviously remote.

MR. ODAM: Well, let me be specific as to the years.

Q When were these checks written out that we're talking about, if you recall?

A They were written in 1965 and '66, sir.

Q 1965 and 1966.

MR. MITCHELL: All I can do is repeat the same objection that Counsel repeated -- leveled yesterday when I tried to introduce those books in '68 and '69, it's remote, irrelevant and immaterial.

PRESIDING OFFICER: Counsel, I'm going to overrule that objection. I believe it's a subject that you initiated.

Q Was there anything else to your personal -- if you know, was there any other material that was purchased with school district money that went to Judge O. P. Carrillo's personal benefit?

A Not personal, no, sir. I can't recall personal.

Q So it would only be the tile?

A That I saw, yes.

Q And if you know, state, and if you don't know, so state. Do you know how much money in checks there were destroyed that went to pay for that tile?

A Not exact amount, but I know that it was over -- superintendent and I got together, and that we added up over an excess of \$380,000.00 that was spent in that particular year, which was '65 and '66, sir.

Q That \$380,000.00, that was expended totally. That's not \$380,000.00 worth of tile?

A No, sir. Totally.

Q Okay.

A That was not used for the school operations, sir.

Q Oh, \$380,000.00 worth of material that was not used by the school.

A Correct, sir.

Q Who else got the benefit of this material that was not used by the school?

A Well, I can't be -- specify, Mr. Odam, because I cannot be sure what person participated, but O. P. was one of them, sir.

Q Did D. C. Chapa personally instruct you to go out and destroy these checks?

A Yes, sir.

Q Now, Mr. Mitchell asked you about this Sixty Minute show with Mike Wallace that was on a couple of weeks ago. Do you recall the questions just awhile ago?

A Yes.

Q I take it you did not see the show?

A No, sir.

Q There was a segment in the show that was on the entire Sixty Minute program where there was a film shot of you with Mr. Blanton that he was asking you about. Do you recall when that was shot?

A Yes.

Q And Mr. Blanton was there, and they had some live testimony where you were making some statements.

A Yes.

Q I believe that was the statement Mr. Mitchell asked you about, \$45,000.00.

A Yes.

Q Do you remember the context in which you made that statement Mr. Mitchell brought up about the \$45,000.00? What was the entire sentence about that \$45,000.00?

A That was the money that I claimed that I -- that I -- I figured that I had got use between the year of 1971 to 1974 or '75.

Q Now, the Respondent's Exhibit -- and I refer the Court to the Respondent's Exhibits, the first one I refer to is R-91, 92, and 93. R-91, 92, and 93 began on Page 10 -- or correction -- on Page 776. And these are in the gold volumes. 776 are the documents that I'll be referring to with questions. And, Mr. Couling, if you would, turn to Page 776.

MR. MITCHELL: Are those that --

MR. ODAM: Don Lee's.

MR. MITCHELL: Yes, those are R-91 of the Judicial Qualifications Commission?

MR. ODAM: Yes.

MR. MITCHELL: I just wondered if it would be appropriate to make a statement to the Court that they were drawn up by the --

MR. MITCHELL: Yes, go ahead. Or do you want me to make it, or do you --

MR. MITCHELL: I think you can, John.

MR. ODAM: R-91, 92, and 93 were introduced by the Respondent or Judge Carrillo. What took place to bring this about was that Mr. Mitchell had asked Mr. Couling about the business that Benavides Implement and Hardware had done with the County and water district and school district and all the books and records, all the paper documentation. And there was a discussion about whether or not to subpoena all the supporting data. Rather than do that I, on behalf of the Attorney General's Office, turned over, rather than subpoena, these papers here, R-91, 92, and 93. And I represent, as I did at that time, that this is a summary indicating the dates, claim numbers, amounts of money, particular fund and budget codes. For example, R-91 deals with the County, for example, in the first line, April 12, 1971, there's a claim -- that's a claim jacket number B-889. The amount was \$308.00. R. B. is Road and Bridge Fund, as is explained down in the right-hand corner. The budget code number is 23. So what you have here is County of Duval, the money that came from the County of Duval into Benavides Implement and Hardware. It's the same type of explanation with respect to the second page, third, and the fourth. And R-92, which is on Page 784, was also turned over to Mr. Mitchell and Judge Carrillo at that time. R-92, payments from Benavides Independent School District to Benavides Implement and Hardware. It shows the date of the payments, check number, the amount of the check, etc., what building repairs. These sheets were prepared, as the testimony at the Judicial Qualifications indicates, by Mr. Don Lee, at that time a Department of Public Safety intelligence officer. R-93 is Duval County Conservation and Reclamation District, or the water district payments to Benavides Implement and Hardware. The dates of the payments and the check number of the payments, the amount of money. That's R-91, 92, and 93.

Q Now, Mr. Couling, at the time that you were being filmed there by Sixty Minute show -- and I believe that Mr. Mitchell had asked you some questions, and I think your answer was something about Don Lee. At that time were you discussing, when that film segment was shot, were you discussing these particular papers?

A We just took the totals of it, Mr. Odam.

Q You took the totals of it. Now, I don't know if you've seen it or not.

MR. ODAM: And I would refer the Court at this time to R-100. R-100 begins on Page 831. That's in the Respondent's Exhibits. And I'm sure Mr. Mitchell will correct me if I'm mistaken about this. This was obviously a Respondent, Judge Carrillo's, Exhibit. And the way this came about was Judge Carrillo had prepared, or under his instructions, Judge Carrillo had prepared R-100, which intended to be and which I'm sure is, a total of R-91, 92, and 93. There've been some questions that Mr. Mitchell has asked, for example, on Page 832 about a certain amount of money, \$370,000.00. You see on Page 832, total paid, 1971 through 1975 by county, school district and water district, \$370,000.00 paid to Benavides Implement and Hardware. The total Judge Carrillo paid was \$20,000.00 of that total amount of money.

Q Now, at the time of that Sixty Minute show that Mr. Mitchell asked you about, you said that you had totaled up the sheets from Mr. Don Lee?

A Yes.

Q Now, again, to put in context then, the \$45,000.00 that you were talking about on the Sixty Minute show that Mr. Mitchell asked you about, the \$45,000.00 he said you took, now, what was the entire context of what you stated on that Sixty Minute show on CBS?

A Well, I just remember that I said that we figured out that it was \$45,000.00 that -- my part -- and they didn't tape the rest of where I said how much the other people had taken.

Q Would that be the \$45,000.00 out of this \$370,000.00?

A Yes.

Q So out of the -- in other words, out of R-91, 92 and 93, which Judge Carrillo summarized in R-100, you got \$45,000.00 out of this total amount of \$370,000.00?

A Yes.

Q And I take it as to whatever happened to the rest of it was attempted to be explained through the breakdown of the San Diego School -- San Diego Bank Account.

A Yes.

Q You got \$45,000.00?

A Well, more or less around that in five years -- four years and a half.

Q So that means someone else got the other \$330,000.00?

A Some supplies were actually bought by the stores.

Q Now, while we're with R-91, 92, and 93, I would refer you, Mr. Couling, and I refer the Court to Page 781. This is a portion of R-91. This would be the sixth page. This is Page 781. I refer you down to the January the 8th, 1973. You see that --

A Yes.

Q -- check for \$1,018.00?

A And ten cents.

Q And out beside it, what is the statement there?

A "Rent on O. P., two D-8 Tractors -- dozers."

Q I refer you down to where there's the second star on 2/14/73. You see that amount, \$1,051.00?

A Yes, the rent on tractors.

Q Down 3/12/73, the check for \$1,167.70. You see that one?

A That's "Rent on two D-8 Tractors."

Q One down with the star by it 4/18/73. What is the amount of money and the notation there?

A \$998.00. "Rent on O. P., two D-8 Tractors."

Q One down on May 14th of 1973, what is the amount of that check?

A May the what?

Q May 14th, 1973, check number 672.

A That's \$1,006.00, sir.

Q And what is the notation?

A "Rent on O. P.'s two D-8 dozers."

Q And down on check number 6810, the next to the last entry on that page, 6/12/73.

A \$1,200.85, "Rent on O. P.'s two D-8 dozers."

Q And if you turn the page to Page 782, the second entry there on 7/17/73, check number 784.

A For \$1,013.80, "Rent on O. P.'s two D-8 dozers."

Q And what about the one, check number 7509, on 8/29/73, has a star beside it.

A Check for \$1,095.00, "Rent on O. P.'s two D-8 dozers."

Q And going down to one on October 4th, 1973, the check number 353.

A For \$1,086.50, "Rent on O. P., two D-8 dozers."

Q Next one down on 11/2/73, check number 1150.

A For \$1,500.00, "Rent to O. P., two D-8 dozers."

Q Entry on 11/19/73?

A \$1,550.00, "Rent on O. P., two D-8 dozers."

Q Down the entry on 12/18/73, check number 1546.

A \$1,000.00. "Rent on O.P., two D-8 dozers."

Q If you turn to Page 783, the first entry on there on January 18, 1974?

A \$307.00

Q No, I'm sorry. January the 18th of 1974, Page 783.

A '74?

Q Page 783.

A 783.

Q Maybe you turned the wrong direction.

A Yes.

Q Page 783.

A Right.

Q \$1,500.00. "Rent to O. P. two D-8 dozers." How about the one with the star beside it, 2/28/74.

A \$1,500.00. "Rent on O. P.'s two D-8 dozers."

Q One on 3/18/74, with the star beside it?

A \$1,500.00. "Rent on O. P.'s two D-8 dozers."

Q Now, Mr. Couling, we know that we have in evidence the Benavides Implement and Hardware account, and I know Mr. Mitchell wanted to pin you down as to who made the contract we're talking about, I think, was R-160. We're talking about between Plains Machinery and Benavides Implement and Hardware Company.

A Yes, sir.

Q Now, my question to you, those two Caterpillars that were purchased from Plains Machinery in Corpus Christi, did your store ever rent those two Caterpillars to Duval County?

A No, sir.

Q Did Duval County, to your own personal knowledge, did they ever use those Caterpillars?

A Not to my personal knowledge, sir. They never did.

MR. ODAM: I would refer the Senate at this time to the testimony and I made reference the other day in passing. In the Senate Journal at Page 1439 -- that's at Page 1439 of the Senate Journal -- is the testimony of Mr. Red Kurtz with Plains Machinery wherein Mr. Red Kurtz testifies about his discussions, if any, with Judge O. P. Carrillo. The page reference I make there, Page 1439, is where both the direct examination and the cross examination of Mr. Red Kurtz of Plains Machinery, his testimony before the Judicial Qualifications as to what his conversations were with Judge O. P. Carrillo about the dealings there. Right after that, beginning at Page 1840 -- and these are Senate -- excuse me, Judicial Qualifications pages. And right after Mr. Kurtz, there was a series of other witnesses. The next witness after him was the testimony of Mr. Red Craig who was with the hauling company, who testified about taking the two D-8 dozers out to Judge O. P. Carrillo's ranch at the Borjas -- that's Mr. Red Craig, and the reference I make -- Page 1840 is the numbers in the middle of the page as to the Judicial Qualification pages.

MR. MITCHELL: That was --

MR. ODAM: Red Craig.

MR. MITCHELL: Are you sure, Counsel?

MR. ODAM: Positive. I'm sorry. Mr. Red Craig was the mechanic who went out to work on it. I'm sorry.

MR. MITCHELL: He was the mechanic --

MR. ODAM: He was the mechanic that went out to Borjas to work on the Caterpillars. That's right.

MR. MITCHELL: I just wanted to be sure you didn't misstate the fact.

MR. ODAM: That's right. I'm sorry. The next witness who testified was Mr. Crisoforo Chapa, his testimony is at Page 1857 of the Judicial Qualifications testimony. And these are one right after another, both direct and cross examination. Mr. Crisoforo Chapa was a welder who went out to the Borjas Ranch to work on the two Caterpillars.

The Borjas Ranch is the ranch belonging to Judge O. P. Carrillo. The next witness after that was Mr. Arnaldo Amaraz, who is a Caterpillar operator, who testified about his operation of the Caterpillars out on the Borjas Ranch. That testimony of the Judicial Qualifications, Page 1866. Next witness on both direct and cross-examination was a Mr. Abel Ruiz, who was a Caterpillar operator who testified about operating these two Caterpillars out on the Borjas Ranch. Next one was an employee of Judge O. P. Carrillo, Mr. Fidel Saenz. His testimony, Judicial Qualifications, Page 1884. And again, those pages are in the middle of the Senate Journal. Mr. Fidel Saenz testified about the operation of the Caterpillars out on the Borjas Ranch and I also -- I'm sure Mr. Mitchell would point out, and the record speaks for itself, that these Caterpillars operators talk about in their testimony about the Caterpillars, one or more of them, being operated on Mr. George Parr's ranch. All that testimony is in there, and I don't mean to misquote that they were only on Judge O. P. Carrillo's ranch. They were also on Mr. George Parr's ranch.

MR. MITCHELL: Thank you, Mr. Odam, for that fair statement. And maybe at this point I can interject, with your permission, the Rangers' testimony, Mr. Gene Powell, who testified he found them on George Parr's Ranch, and we'll complete that picture.

MR. ODAM: That's right. Mr. Gene Powell -- we had no objection to his testimony before the House Committee, which in extract form told of having found -- was it one or two Cats out there on Mr. -- two Cats on Mr. George Parr's Ranch.

MR. MITCHELL: Two Cats. One was in a state of disrepair, and the other one was in working condition. But they were on George Parr's ranch.

Q And that's a very fine time to ask again the question that Mr. -- or Judge Carrillo's testimony in the Judicial Qualifications, Mr. Couling, was that Judge Carrillo had a conversation with Mr. George Parr about Mr. George Parr having made a deal with you for the County to have paid rent on those Caterpillars while they were out on Mr. George Parr's ranch. My question to you, did you ever have a conversation with Mr. George Parr about the County making payments for those two Caterpillars while they were out on Mr. George Parr's ranch?

A No, sir.

Q With whom did you ever have a conversation about the making of the payments on the two Caterpillars?

A The only one I had a conversation with was O. P. and Ramiro, sir.

Q Did you ever use one of those Caterpillars?

A No, sir.

Q Did you ever have a conversation with Judge O. P. Carrillo to the effect you wanted to buy a Caterpillar so you could use it?

A No, sir.

Q Did you ever make any payments to anyone else to run Caterpillars on your ranch?

A Yes, sir, I did, sir.

Q Who was that?

A One man was Mr. Mahan out of Corpus, and the other from Freer, Diego Saenz.

Q What years did Mr. Mahan operate that Caterpillar?

A 1974, sir.

Q Is that one of these two Caterpillars we're talking about?

A No, sir, he's got his own equipment, sir.

Q Who was the second Caterpillar operator?

A Diego Saenz out of Freer.

Q Did he use one of these two Caterpillars we're talking about?

A No, sir.

Q Now, the bank account that's over in Rio Grande City, I believe you earlier testified that -- about the setting up of the bank account. Again, I make the point, what was the purpose of setting up that Rio Grande City bank account?

A That was at the time that he had purchased the Massey-Ferguson. And we had -- I initiated a loan on the instructions of O. P. Carrillo to open an account up there, and then that I was going to deposit all the money coming in from Precinct 2 to make payments to the bulldozer to Plains Machinery, sir.

Q Now, I'm skipping just a little bit, but Mr. Mitchell had asked you some questions about payments that you had made to the Farm and Ranch Supply, or he put it in this context. He asked about certain years and whether or not any payments have

been made directly to Judge Carrillo. I refer you, and I refer the Senate, to the third volume of Examiner's Exhibits, Volume Three in the green cover, they begin on Page 1047. Do you have Volume Three there?

A Yes, sir.

Q Volume Three, can you explain, just describe for the benefit of the Court on Page 1047 what the first item is there? That's the very first page of Volume Three. Have you got Three?

A The very first one?

Q Yes.

A Farm and Ranch Supply, \$628.78.

Q Do you know who owned Farm and Ranch Supply of your own personal knowledge?

A Yes, sir.

Q Who?

A Ramiro Carrillo and O. P. Carrillo, sir.

Q What is the basis for that knowledge?

A I saw the store license once on the counter over there at the store, sir.

Q Now, the check there to Farm and Ranch Supply is E-179. Would you agree with me that E-179, that check, is that your signature?

A Yes, sir.

Q Made out to Farm and Ranch Supply in November of 1971?

A Yes, sir.

Q Turn the page. All the rest of that page is Farm and Ranch Supply checks?

A Yes, sir.

Q Senator Clower asked, how did you know who owned the Farm and Ranch Supply -

A I saw the store license in 1970 or '71. So, I remember there was -- I remember the name, yes, sir.

Q Store license of the Farm and Ranch Supply?

A Yes, sir.

Q The checks on the next page, 1051, they were made out to Farm and Ranch Supply?

A Yes, sir.

Q Once these checks were made out, what did you actually do with these checks?

A All the Farm and Ranch checks I gave to Ramiro Carrillo.

Q The next page, all Farm and Ranch Supply checks?

A Yes, sir.

Q Could you explain for the benefit of the Court why it would be that you made out this series of checks, E-179-1 through E-179-34 which keeps running over to Page 1063?

A They were all invoices that were made out to my store from the Farm and Ranch Supply, so no merchandise or material was involved, sir.

Q You were making payments out to Farm and Ranch Supply?

A Yes, sir.

Q Did you -- Mr. Mitchell asked you earlier about your income tax return, and there was a \$65,000.00 deduction he talked about in the first line. I don't know if we got to the second line. Do you remember the income tax return I'm referring to had a \$65,000.00 reduction?

A Yes, sir.

Q What was that deduction for?

A That was for, as I stated earlier, supplies that were, materials that were purchased by the store, sir.

Q And from whom did you purchase those supplies?

A Very little was purchased. Alamo Iron Works and all the rest was just dummy bills furnished by the Farm and Ranch to my store so I could bill the County.

Q And the payments that you made out to purchase that dummy equipment or dummy supplies, would that be evidenced by some of those checks?

A Yes, sir.

Q Now, I show you, and for the benefit of the Court, I'm referring to the Senate Journal, Page 2193. This begins the testimony from December 16 in the Judicial Qualifications. December 16th. I refer specifically to Page 2229.

MR. MITCHELL: What?

MR. ODAM: Page 2229.

MR. MITCHELL: Yes, John. Go ahead. Is that the JQC hearing on that --

MR. ODAM: It's the Judicial Qualifications Commission hearing. The Senate Journal page is 2229. I'm referring specifically to Judicial Qualifications Page 3952 where it starts off where the Master says, "You may proceed, Mr. Odam."

Q My question, for the benefit of the Court, and maybe for the Senators who do not have a copy, it says, "Question by Mr. Odam: 'Judge Carrillo, I show you what has been marked E-170-1 through E-179-34, series of checks from Benavides Implement and Hardware to Farm and Ranch. I believe, prior to the break, you had looked at those. I believe it is your previous testimony that you were a partner in Farm and Ranch Store, is that correct?'" and there is some discussion here as to whether or not he had previously testified. And then Judge Carrillo began at the bottom at that page, Page 2229, and started at the top of Page 2230, begins to invoke the Fifth Amendment privilege, which obviously, I know, Mr. Mitchell, he certainly has a right to. The question asked was, "Did you receive partnership income from the Farm and Ranch Store?"

"Answer: I'm going to refuse to answer. I claim this right under the Fifth Amendment." The next question --

MR. MITCHELL: Who are you talking about, John?

MR. ODAM: Judge O. P.

MR. MITCHELL: Judge O. P. Carrillo? When did he invoke the privilege?

MR. ODAM: Right here.

MR. MITCHELL: He testified freely, as I recall. I'm having a little difficulty following where you are. Would you mind --

MR. ODAM: All right, let me go over it again. It's page --

MR. MITCHELL: Are you talking about his testimony down in Corpus Christi?

MR. ODAM: Yeah.

MR. MITCHELL: He never invoked the privilege.

MR. ODAM: Well, then, this reads -- it's misdome.

MR. MITCHELL: Would you kindly point out the reference, the page?

MR. ODAM: Page 2229.

MR. MITCHELL: All right. Now, that is in the Senate or is in that in a --

MR. ODAM: Senate Journal, Page 2229.

MR. MITCHELL: All right. Okay.

MR. ODAM: And the page for the Judicial Qualifications is Page 3952. That's in the middle of the page. This is on -- we were down there on December the 16th, three days back from the 19th, that would have been on a Wednesday.

I'll refresh your memory, Mr. Mitchell. On Page 2226 at the bottom of the Page 3942, I made the statement to the Master, "I believe and I have not researched it, but the logic of this and the constitutional rights would lead me to the conclusion that the logic of this statute is it's doubtful in my mind the Master has the authority to ask the Court to instruct the Judge to answer and hold a witness in contempt of Court." Remember, earlier he had instructed him to answer on Roberto Elizondo, and the earlier testimony about Roberto Elizondo by Judge Carrillo and then I'm not sure if Judge Meyers had instructed him to answer and if he had to answer. So, beginning at Page 2229, I had asked Judge --

MR. MITCHELL: You're not faulting the Judge for taking the Fifth Amendment, are you?

MR. ODAM: No, I'm just trying to point where it is so I can ask some questions and continue with this witness. Heavens, I would never do that, Mr. Mitchell.

The Master said, "He has testified that he is a partner in the Farm and Ranch Store." That's where you said, "Yes, I didn't mean to indicate in my discussion." And my question at the top of Page 2230, "Do you recall the previous testimony that the Farm and Ranch was a partnership of you and your brother, Ramiro Carrillo?" "I invoke the privilege." "I hand you a series of checks, E-179, signed by Judge Carrillo."

MR. MITCHELL: Wait a minute. Counsel, let me see. Out of fairness to the record, that was at the first offer of that series, and you have to, I believe, be square with the record and the Court that thereafter, they were offered and introduced. No objection.

MR. ODAM: I don't -- I'm not quibbling about whether or not the checks were introduced into evidence. It's the question that I asked Judge Carrillo about the Farm and Ranch Supply and about the income from the Farm and Ranch Supply.

MR. MITCHELL: Yes. I understand. But I didn't want to leave the impression that those checks were not -- in fact, those are checks that you've already alluded to that came in at 1047.

MR. ODAM: Oh, yes. The checks were definitely -- certainly, the checks were in evidence, and that's why I was asking the question of Judge Carrillo about the checks that were in evidence about the income that he received from them.

MR. MITCHELL: Well, let me put you on notice you will have ample opportunity to examine him about them as far as you want before we're through here today. The point I want to make to this Court is that I invoked the privilege in his behalf, and thereafter you offered them, and they did come in after we got down the line, after, R-91, 92, 93 came in.

MR. ODAM: I agree. I'm not talking about the checks. I know the checks came into evidence. The point that I am attempting to highlight here is the questions that were asked, not about the checks. The checks were in evidence. Now, the --

THE PRESIDING OFFICER: Counselor.

MR. ODAM: Yes, sir.

THE PRESIDING OFFICER: Is it your contention that Judge Carrillo testified that he was a partner in the Farm and Ranch Store in this proceeding, earlier proceeding, then, are you, sir?

MR. MITCHELL: Yes, sir, Mr. President, we will admit that fact. Yes. I'm sorry that I have allowed that to be -- we will admit the partnership. We have been a partner -- Judge Carrillo has been a partner of Farm and Ranch since its very inception. I didn't know that was a problem.

THE PRESIDING OFFICER: So the Farm and Ranch partnership between --

MR. MITCHELL: Ramiro Carrillo and O. P. Carrillo, yes, sir. And I -- I want the stipulation to that effect and will enter that stipulation, and it's been reported as such on all the tax forms, 1065 -- 66 from the inception, Mr. President. I'm sorry. I didn't -- I'm sorry. I didn't know it was a problem. We will stipulate it.

MR. ODAM: Could I ask a question why the Fifth Amendment was invoked at that time?

MR. MITCHELL: At that particular point, I invoked the Fifth Amendment on behalf of my client because I felt that you were becoming irrelevant and immaterial going far afield on Judicial Qualifications. However, after R-91, 92 and 93 came into evidence, then I was aware of the fact that by my offering R-91, 92 and 93, being Exhibits prepared by the Attorney General, that I thereby waived my relevancy objection, and they came in, and I didn't object, and that's why they are in the record. But that's the reason I made the mention of the fact, Mr. Odam, because I felt it was unfair to my client and to the record to allow that plea to be made in the middle of that, because, subsequently, because I had chosen to bring in R-91, 92, and 93 to get the facts before the Master. Then, they showed the Farm and Ranch checks, and I felt thereafter that my plea to the Farm and Ranch checks would be improper, and I withdrew my objections, and they did come in at 1047, may it please the Court, through and including 1063. And we have no -- and at this point, we will stipulate that partnership.

THE PRESIDING OFFICER. Counselor, over what period of time did the Farm and Ranch Store operation exist as a partnership?

MR. MITCHELL: It was formed, if it please the Court, in 1962, and continued to and subsists to the State.

THE PRESIDING OFFICER: Thank you, sir.

MR. ODAM: Well, my purpose in asking the question at that time was to establish that the income, these checks, the income into Farm and Ranch Supply, not to get the checks in necessarily, my question is, as it was then, and is now, on income. Would you agree and stipulate that Judge Carrillo, as being a partner, received the income from these checks from Benavides Implement and Hardware into the store?

MR. MITCHELL: I will agree and stipulate that what the record reflects, that the checks went from Benavides Implement and Hardware and for the Exhibits appearing 1047 and 1063, Mr. Odam. And I will state to you that those checks went into Farm and Ranch and that was recorded on Schedule 1066 partnership return on Judge Carrillo's income tax, which appears, for the purpose of the Senate and the Court -- those tax returns appear at Volume -- and they reflect that income,

incidentally, Mr. President, and I won't take up the Court's time needlessly. They appear in the record -- I offered his tax return showing Farm and Ranch to income on Page 803, which is the '74 return. And that's of the Respondents Exhibits. Mr. President, the rest are in evidence. I believe I furnished back at the Committee level the '70, '71, '72, '73 and '74 -- I can't turn to them presently, but they were offered by me at the Judicial Qualifications Hearing and are a part of this record. The tax returns reflecting the Farm and Ranch income. They're not labeled Farm and Ranch, for the Court, however, they are labeled partnership under the 1066 form as distinct from the Schedule C, which is individual proprietorship attached to the return. I didn't know that was a problem I would have been pleased to stipulate that.

MR. ODAM: Well, I think that stipulation covers it then, because my concern was that Judge Carrillo had taken the Fifth Amendment about the income in Farm and Ranch Supply. And I think with that stipulation I will move on to another point.

Q I would like to go back, first of all, Mr. Couling -- I think it's pretty obvious from your testimony with respect to the Cash Store -- Mr. Mitchell asked you a series of questions beginning about 9:00 o'clock this morning about the Cash Store. Tell me again when it was that you were involved in the welfare program?

A It was early '60, sir, 1963 or '64, maybe as early as 1962, I can't say for sure.

Q And when did you cease being involved in the welfare program?

A More or less when Atlee Parr died, which was in '67.

Q And you no longer had any connection with the welfare program after that time?

A No, sir. I had it when Atlee Parr was in power -- the County Commissioner.

Q When Mr. Mitchell asked you the question I believe it was simply to establish how the welfare program or system operated. Do you remember him asking you that?

A Yes.

Q My question to you is, could you, if I asked you a series of questions now, could you explain to me how the welfare program operated in, say, 1971?

A No, sir.

Q Do you have personal knowledge -- could you answer questions if I posed them to you, how the welfare program operated in 1972?

A No, sir.

Q Or 1973?

A No, sir.

Q Did you have any familiarity with the program in those years?

A No, sir.

Q Did you have any contact with it at all?

A No, sir.

Q Didn't have any contact with it since 1967?

A '67, '68, I didn't have no more contact with them.

Q I'm not going to take you back through every one of those checks, but I just want to reestablish in my own mind and for the benefit of the Senate, for the Court, about all of these checks. Mr. Mitchell went through in great detail about what was stated to be on the check and what the check was actually for. Do you recall that series of questions?

A Yes, sir.

Q Now, my first question to you in very broad terms -- I am going to get to some of those -- did you ever make a loan -- and state on those checks a loan to Judge Carrillo, an advance for this water well drilling rig?

A No, sir.

Q Did you ever rent the water well drilling rig from him?

A No, sir.

Q The money that Judge Carrillo paid you, and it's on R-100, about \$20,000.00, what was that \$20,000.00 for? Was that only for the Caterpillars?

A For the Caterpillars and for two root plows, sir.

Q Two root plows?

A Yes, sir.

MR. ODAM: Now, at this time I would like to refer the Senate to Page 894 in the Respondents' -- correction, in the Examiners' Exhibits, Page 894. I believe it's Volume Two.

Q Do you have Volume Two up there, Mr. Couling?

A No, sir.

Q Again, I am referring to the Examiners' Exhibits, admitted Exhibits, Volume Two, Page 894. Do you see the item there?

A Yes, sir.

Q Can you describe generally for the benefit of the Court, for those Senators who might not have that Volume with them today what that piece of paper is?

A This is the purchase order to B. D. Holt Company in Corpus Christi for one root plow in the amount of \$5,780.00.

Q And would you turn over and describe what is on Page 896?

A That's another purchase order to B. D. Holt Company for another root plow and the price is \$5,630.00.

Q Now, these two root plows, were the payments from Judge Carrillo to you, that \$20,000.00, did any of that \$20,000.00 go to pay B. D. Holt?

A Yes, sir.

MR. ODAM: Mr. Mitchell, you don't -- do you agree with me that there are checks in evidence from the Rio Grande City account to B. D. Holt?

MR. MITCHELL: Yes. And I agree -- the reason I didn't call the Court's attention to the B. D. Holt, I will be quite frank with you, I didn't know how to find it in that Volume. \$500.00 a month, \$5,000.00 on one purchase, 2/6/73 and the other purchase 12/4/72, \$5,630.00, also a thousand a month. Mr. Odam, I will agree.

MR. ODAM: Okay.

Q Eight hundred and ninety-four -- Page 894, could you read for the benefit of the Court what is in the lower right-hand corner on the Exhibit E-161?

A Benavides Implement and Hardware Company, by verbal, by O. P. Carrillo.

Q This particular root plow that is described on this purchase order here, was this root plow for your benefit to use out on your ranch?

A No, sir.

Q Did you ever use this root plow?

A No, sir.

Q Did you ever rent this root plow to the County?

A No, sir.

Q I will turn over to the next page and if you will look down at the lower right-hand corner on E-161-A, would you read for the benefit of the Court what is in the lower right-hand corner?

A Benavides Implement and Hardware Company, verbal by phone by Ramiro Carrillo.

Q Now, this particular root plow, this one that's described on the second purchase order, did you ever use that root plow?

A No, sir.

Q And to refresh our recollection, did you ever have a conversation with Judge O. P. Carrillo about these root plows?

A I can't recall offhand. I know that I have talked to Ramiro.

Q Ramiro Carrillo?

A Yes, sir.

Q Did you ever use these root plows?

A No, sir.

Q Did the County ever use either one of these root plows?

A No, sir, not to my knowledge, no, sir.

Q But you're telling the Court that part of the money that Judge O. P. Carrillo paid you, the \$20,000.00 was to go partially for payment of these root plows?

A Yes, sir.

Q Now, were these -- do you know who prepared these purchase orders?

A No, sir. I believe it was --

MR. MITCHELL: Just a minute, now, that will be speculation, we're going to --

Q Let me ask the next question. If you do not know, does your signature appear on either one of these purchase orders?

A No, sir.

Q Did you fill them out in any way?

A No, sir.

Q Now, the contract which is E-60, if you will back up a few pages. This would be E-160, which is on Page 1887. The equipment lease agreement on the two Caterpillars, when you first had them in Benavides Implement and Hardware -- can you identify on the equipment lease agreement your signature?

A Yes, sir.

Q Now, did you go to Corpus Christi to fill out this equipment lease agreement?

A No, sir.

Q How did it come to be in your hands?

A It was brought to my office or at the store, I don't know where, but it was brought by one of the salesmen of Plains Machinery for me to sign. It was already filled out and everything.

Q Do you recall the testimony at Corpus Christi and the questions asked to you about where you had defaulted on making a payment?

A Yes, sir.

Q Could you describe to this Court about that default on the payment and how that was made up?

A I believe it was the payment on the last two payments -- for February and March, I believe, of that year, I sent a check for \$3,000.00 and it was sent -- I had a notice that it was -- I didn't have no money to cover that check, particular check, and it came back.

Q And did the check go back through?

A And afterwards I found out after it was -- that it did clear the bank and it was credited to the Plains Machinery Company.

Q Do you know the basis for why it cleared and it went back through?

A No, sir.

Q The testimony previously that you gave was with respect to a Massey-Ferguson tractor.

A Yes, sir.

Q I don't know if we went into detail with that before. Did you purchase for your store a Massey-Ferguson tractor?

A No, sir.

Q Did Judge Carrillo purchase a Massey-Ferguson tractor?

A Yes, sir.

Q Did you ever have a conversation with Judge Carrillo about purchasing a Massey-Ferguson tractor?

A Yes, sir.

Q And could you describe for the benefit of the Court what that conversation was?

MR. MITCHELL: Just for my information I would like to know where Counsel's fitting this in the Bills of Impeachment. It's his Massey-Ferguson and he bought it. I would like to know what Article it's relevant to, Mr. President.

MR. ODAM: This would also be relevant to Article VII. The reason that it is relevant is because certain payments were made out of the checking account at Rio Grande City Bank. One of the payments went to pay for a Massey-Ferguson tractor and I am simply trying --

MR. MITCHELL: Not by Judge O. P. Carrillo.

MR. ODAM: No, it was paid by this man for --

MR. MITCHELL: Well, I'm going to object on the introduction into this late stage of the ball game, payment to a Massey-Ferguson tractor that has had no part of this proceeding under Article VII up to this point. We object, it's a complete surprise.

MR. ODAM: Well, it is a part of the evidence that was in the Judicial Qualifications Commission and the whole record of the Commission is admitted, as are the documents, and it is relevant because the entire documentation is relevant.

MR. MITCHELL: But, Article VII, may it please the Court, as I read it, talks about charging and collecting money from governmental entities for rentals of equipment that did not exist and for rental of equipment that the government entities did not use. And we take the position there's absolutely no evidence as to a Massey-Ferguson tractor as fits into that Article VII.

THE PRESIDING OFFICER: John, are you -- why don't you tie it in to Article VII?

MR. ODAM: Yes, sir. And if I could explain it again. It is our position that Judge Carrillo and Mr. Couling had a very close relationship with respect to this bank account in the Rio Grande City bank. I do not state that the Massey-Ferguson tractor was rented to the county. What I'm attempting to prove is that the bank account that was established in Rio Grande City not only went for payment of the root plows and the Caterpillars, but also the bank account was established in part to make a payment for a tractor that Judge Carrillo received. It was not one that was rented to the County, we're simply trying to show the entire use of that bank account which is already in evidence; again, to rebut the evidence that the \$20,000.00 went totally to pay for the two D-8 Caterpillars.

MR. MITCHELL: I think we can say frankly, however, Your Honor, that this -- that the record is a complete vacuum as regards the date of the purchase of any Massey-Ferguson. There is a letter, a hearsay letter from A to X relating to O. P. Carrillo which Counsel succeeded in getting into evidence -- I think it was excluded -- but there is no direct evidence of probative value of the date of any purchase of any Massey-Ferguson as relates to the transaction. Now, if number VII is going to be a catch-all phrase, then I would like for Counsel for the House Board of Managers to at least give us some ample notice of what other charges were going to be required on. Now, he's had him back four times, he's talking about a Massey-Ferguson for the first time. I'm going to object.

MR. ODAM: For one thing, it is not A to X. It is on Page 145 which is in evidence. It is not A to X. It is a letter addressed to Mr. O. P. Carrillo.

Granted, it was not admitted at the Judicial Qualifications by Judge Meyers, but it is admitted as a part of this record.

MR. MITCHELL: I thought my memory served me correctly. It is not in evidence, and it is not admitted.

MR. ODAM: Well, it was agreed earlier, that admitted or not admitted, that everything down there in Corpus Christi came in. It was up to this Court to determine whether or not it was admissible or not admissible. It wasn't even that question any

longer. The whole thing came in. Everything is in evidence, irrespective of how Judge Meyers ruled on this.

Maybe we can just stipulate that Judge Carrillo purchased the Massey-Ferguson tractor.

MR. MITCHELL: I don't know whether he did. I would have to ask him.

MR. ODAM: Well, ask him.

MR. MITCHELL: He informs me that he bought three of them, and I will ask him about it when I put him on the stand.

THE PRESIDENT: Would you all come up to the Bench, please?

REDIRECT EXAMINATION RESUMED

(Questions by Mr. Odam:)

Q Mr. Couling, I will skip to another point, very briefly. I might come back to the Massey-Ferguson payment at a later point, after a break.

Mr. Mitchell asked you some questions before the break this morning about the Parr faction and about the Carrillo faction, political factions. My question to you is, is there a Parr faction in Duval County now?

A There is no Parrs in Duval County now with the exception of Mrs. Parr that is a school board member in the Benavides Independent School District.

Q Well, how would you describe the political make up of parties or factions in Duval County at the present time?

A Well, there only was one party in Duval County for a long time, which was the Old Party.

Q And then, what happened after that?

A Well, after the Old Party, after the elections in 1974 the Carrillos left the Old Party and went on their own, sir.

Q So that left what was the Old Party?

A Yes, sir.

Q Now, would you consider yourself to still be a member of the Old Party?

A Yes, sir.

Q But not of the Parr faction?

A There are no Parrs involved right now, sir.

Q Who is the head, if you can say there is such -- head of the Old Party at the present time?

A Well, right now, they have about six or eight men that are on the committee that is supposed to represent the Old Party, sir.

Q And who would that be?

A That would be the County Attorney, the Sheriff, and Mr. Canales out of Benavides, and Raymond -- Gabe Raymond, Alberto Garcia. I can't remember the rest of them.

Q That's the Old Party?

A Yes, sir.

Q Mr. Mitchell went back and asked you the questions about the money that went out in 1972 and 1973. Do you still have those notes with you?

A Yes, sir.

Q Could you pull those out, please sir? These are the notes that you made off of the chart, E-192?

A Yes, sir.

Q Now, he had asked you about particular years, and I believe we -- let's skip over to 1973. How much money was paid out in 1973 to the Farm and Ranch store?

A \$16,945.32.

Q I believe there has been previous testimony as to Judge Carrillo and Ramiro Carrillo being partners in that store?

A Yes, sir.

Q So, the \$16,000.00 was paid out in 1973, or nearly \$17,000.00 to Farm and Ranch Supply that year?

A Yes, sir.

Q How much was paid out in 1974 to Farm and Ranch Supply?

A \$4,039.30.

Q No money was paid out in 1975?

A No, sir.

Q Now, those payments in 1973 and 1974, was that -- had you actually made any legitimate purchases from the Farm and Ranch Supply?

A No, sir.

Q Could you explain again why it was that you made out those checks to Farm and Ranch Supply?

A Because I got bills that they had made in -- the Farm and Ranch supposedly sold equipment or materials to the County and they made the bills to my store. Then, I in turn, made some bills that were turned into the County and the County issued a check back to my store, and then I made a check back to the Farm and Ranch store.

Q Now, did you ever make out any checks to Ramiro Carrillo and Brothers?
R. Carrillo and Brothers?

A Yes, sir.

Q Now, those are all identified on the chart, are they not?

A Yes, sir.

Q I believe Mr. Mitchell corrected me yesterday that that is a trust.

A Yes, sir.

Q And can you run back through and just highlight where you made checks out to R. Carrillo and Brothers?

A In 1971, I made a total of -- made a bunch of checks in total of \$7,389.71.

Q How about payments to R. Carrillo and Brothers? Do you have any more that are specifically identified for them?

A That's in 1971. In 1972, I had a total of \$7,905.95.

MR. ODAM: For the benefit of the Court, let the record reflect -- Mr. Mitchell, correct me if I am wrong -- that Exhibit E-182 of the Examiner's Exhibits is the income tax return of Judge Carrillo, among other things, showing the income from the trust, R. Carrillo trust account. As Mr. Mitchell pointed out to me, it was a trust account. It was in E-182.

Specifically, the tax return indicates income from R. Carrillo and Brothers at Page 1072. I believe that's in Volume Three of the Examiners' Exhibits. Let me check and make sure.

Page 10 --

MR. MITCHELL: Volume Three contains the tax returns, if it please the Court, for '71 and '72. And Respondents' Volume -- and '73 -- and Respondents' Volume contains the tax returns of Judge Carrillo on Page 802 -- we offered it as R-96 -- for the year 1974. So, the Court has before it, his tax returns for the years '71, '72, '73 and '74.

MR. ODAM: The trust income that I am referring to from the R. Carrillo and Brothers trust is shown on Page 1072 under Estate or Trust, O. P. Carrillo, Trustee, and the amount of income that year. I have not gone through --

MR. MITCHELL: I think you, out of fairness, must point out to the Court that Judge Carrillo's interest in the trust is a beneficial interest and it's only one-sixth, so that the Court is not misled, and that the figure going from '73 in the amount of \$4,000.00 for '74, for example, went into Judge Carrillo's return in total. It is only one-sixth --

MR. ODAM: All right. I'll take that, Judge Carrillo only had a one-sixth interest in the R. Carrillo Brothers' trust.

THE PRESIDING OFFICER: Counsel, you made reference to the Old Party earlier. The bench has been requested to ask you to give us, or provide an explanation of what was meant by the "Old Party".

MR. ODAM: Yes, sir.

Q Could you do that, Mr. Couling? What do you mean -- could you explain --

A In 1953, I believe, there was another party that came into -that existed in Duval County. It was considered the Freedom Party. In other words, there were two parties in the county.

THE PRESIDING OFFICER: Could you speak up, please?

A Two parties in the County only, sir. One was the Freedom Party, or the New Party, and one was the Old Party, which was consisted of the Parrs and the Carrillos and the majority of the County, sir. It was the Democratic Party.

MR. MITCHELL: I am very pleased that he asked -- may I ask him, Mr. President, or urge him on? What is the Old Party? I am curious, too --

THE PRESIDING OFFICER: Sir, we are not clear as to what is meant by the term "The Old Party" Was this a particular faction -- what does that term refer to?

THE WITNESS: Sir, it just consisted of people that voted all the time one way. Or just on the -- there was no position in the county as far as the election was concerned every year, sir, so everybody voted one way and everybody was considered there was only one party and it was called the Old Party.

THE PRESIDING OFFICER: At the time the Old Party was in effect a one party county?

THE WITNESS: Yes, sir. This was a one party County. That's all there was.

THE PRESIDING OFFICER: During the period of time that the Old Party was in operation, it pretty well encompassed the power structure of Duval County?

THE WITNESS: Yes, sir. It did, sir.

THE PRESIDING OFFICER: So it involved what we are now referring to as the Parr faction and the Carrillo faction --

THE WITNESS: Yes, sir.

THE PRESIDING OFFICER: -- and the other faction into the one party?

THE WITNESS: Yes, sir.

THE PRESIDING OFFICER: Thank you.

Q Mr. Couling, do you have up at the stand the Examiners' Exhibits, Volume Two? Do you have Volume Two?

A Yes, sir.

Q Could you turn, please, sir, to -- I just want to run back through these very quickly and highlight a point I did not go into yesterday, but in light of Mr. Mitchell's questions about the money, I want to make this point clear.

MR. ODAM: It probably need not be done by question. I refer the Court to the Examiners' Exhibits, Volume Two. I refer and bring to the Court's attention on Page 797, a check made out to Judge O. P. Carrillo and signed by Mr. Couling for \$1,008.00. This was not explained the other day by question.

On the next page, which is Page 799, is the deposit slip showing a deposit of \$1,008.00 to Judge Carrillo's bank account.

On Page 700 and -- 703, there is a check for \$1,018.00 from R. M. Couling to O. P. Carrillo.

MR. MITCHELL: Counsel, you must be referring to 803.

MR. ODAM: 803; Page 803. A check made out to O. P. Carrillo for \$1,018.00, and on the next page, is the deposit slip depositing it into Judge O. P. Carrillo's account -- a photostatic copy of the deposit slip of \$1,018.00.

On Page 810, there is a check to Judge O. P. Carrillo from R. M. Couling for \$700.00. On the next page, a check for \$306.00. On Page 814 is a deposit slip showing the deposits into Judge Carrillo's bank account of \$700.00 and \$306.00

On Page 820 is a check from R. M. Couling to O. P. Carrillo for \$995.00, and right before that, is the claim jacket, and right before that is the County check. And, on Page 822 is the deposit slip for the deposit of \$995.00 in Judge O. P. Carrillo's bank account.

I think that's all. I don't need to cover that by questions.

THE PRESIDING OFFICER: Counsel, are you at a breaking point?

MR. ODAM: Yes, we are at a breaking point.

THE PRESIDING OFFICER: The Court will take a ten minute recess.

Accordingly, the Senate, sitting as a Court of Impeachment, at 3:03 o'clock p.m. took recess until 3:13 o'clock p.m. today.

AFTER RECESS

The Presiding Officer (Senator Jones in Chair) called the Senate, sitting as a Court of Impeachment, to order at 3:13 o'clock p.m.

ANNOUNCED PRESENT

Senator Gammage who had previously been recorded as "Absent-excused" was announced present.

REDIRECT EXAMINATION RESUMED

(Questions by Mr. Odam:)

Q Mr. Couling, I ask if you have before you Volume Two of the Examiner's Exhibits?

A Yes, sir.

Q And I ask if you would to turn with me in the volume to Page 839. Do you find that?

A Yes, sir.

Q Page 839?

A Yes.

Q And, also, I refer to the -- I hand you the bank photostatic copy of a check which is marked E-172 and ask you to hold it for a moment. And I refer also to the --

MR. MITCHELL: Excuse me, Mr. Odam. E-172, is that a part of the record here that's been admitted?

MR. ODAM: Yes, sir. What I just handed him was the bank photostatic copy, just a more legible copy.

THE PRESIDING OFFICER: John, where does that appear in the --

MR. ODAM: I was looking for my index, Senator. The E-172 is on page 939. I believe that will be in the same series. It's 939. It doesn't come out very clearly there. And, also, I would like to refer to Exhibit E-160 and E-160 on Page 887.

MR. MITCHELL: What was that last --

MR. ODAM: 887.

MR. MITCHELL: That's the contract for purchase of the tractor? Is that what you're referring to?

MR. ODAM: Yes, sir.

Q Let's first of all take -- we have got about three things there. Let's first of all take E-160 which is on Page 887. Do you have that?

A Yes, sir.

Q Explain again what is on Page 887.

A That's equipment for lease agreement with the Benavides Implement and Hardware Company and Plains Machinery out of Corpus, sir.

Q What is the date of that contract?

A December 14, 1972.

Q And can you describe for the Court what is the item that I gave you, the bank photostatic copy, E-172, what is that?

A That's a check from the First State Bank and Trust Company made payable to Massey-Ferguson Credit Corporation in the amount of \$2,975.25.

MR. MITCHELL: Dated?

Q What is the date on that?

A November of 1972.

MR. MITCHELL: And we object to it, because it's beyond the scope, if it please the Court, of the Article. It is irrelevant and immaterial going as it does even beyond the scope of the First State Bank and Trust Company's statement of account of the Benavides Implement and Hardware. It's irrelevant and immaterial, occurring as it does one month before the purchase of the D-C8.

THE PRESIDING OFFICER: Counsel, what's your purpose in doing this?

MR. ODAM: The purpose, Your Honor, is to show that the bank account was set up, the Rio Grande City Bank was not only to make a purchase of the two Caterpillars. Not only was it used to purchase the root plows, but also it was used to purchase the Massey-Ferguson tractors for Judge Carrillo's benefit.

MR. MITCHELL: If it please the Court, that's the reason for my objection. That bank account appears en toto on Page 902. It's opening entry is 11/16, a full month before the date of E-172. That is, the E-172 could not have found its way into the First State Bank and Trust Company account. If its date is correct.

MR. ODAM: Well, in the letter to Judge Carrillo, it explains that the check bounced. And, through this witness' testimony, all that could be explained. All I'm trying to do, Your Honor, is explain that the Rio Grande City Bank account which was set up at the instruction of Judge Carrillo, as this witness' testimony, was to pay for the Massey-Ferguson, to pay for the root plows and pay for Caterpillars. And also, I would like to ask him, perhaps to show the relevancy of it, to ask questions about the County money.

THE PRESIDING OFFICER: Counsel, I'm going to overrule your objection.

MR. MITCHELL: Note our exception.

Q Now, Mr. Couling, first of all, did you ever have any conversation with Judge Carrillo about payments for the Massey-Ferguson tractor?

A Yes, sir.

Q And at the time that you had the conversation with him, did you have any conversation at all with him pertaining to any county money with respect to the Massey-Ferguson tractor?

MR. MITCHELL: Of course, we're going to object. It's leading. And, again, we're going to plead surprise. He's going to hatch another conspiracy. And I'm going to have to ask for a postponement to go out and defend against a Massey-Ferguson tractor. This is beyond the explicit expressed scope of Article VII, of Article VII or any Article of Impeachment, for that matter, Mr. President. And I'm just trying to avoid being put in the position of having to defend on recross or redirect, rather, on re-redirect on a matter that's totally and completely outside the scope of impeachment.

THE PRESIDENT: Will Counsel approach the Bench?

THE PRESIDING OFFICER: Counsel, I'm going to overrule your objection insofar as he's trying to demonstrate other uses of that particular bank account.

MR. MITCHELL: I didn't mean to be disrespectful of the President. I'm trying to get my microphone on.

We will object, of course, Mr. President, on the grounds of the Massey-Ferguson transaction. It goes beyond the scope of the impeachment. We plead surprise and request a postponement to prepare a defense to it. And, the alternative request is that due process be served by giving us ample notice, both as to anything else we're going to be charged with under the broad general allegations of VII, that is, whether it's -- if we are supposed to beat the neighbor's wife and throw the cat through the window, or anything else, I would like to know at this stage of the game.

THE PRESIDING OFFICER: Counsel, your objection is overruled.

Q Mr. Couling, you have a check before you which is E-172. Can you explain again who the payee is on that 172-1?

A It was made payable to Massey-Ferguson Credit Corporation, sir.

Q And why did you make a check payable to Massey-Ferguson?

A O. P. said that he could purchase a Massey-Ferguson, and they was to make a payment of \$2,975.00. And we went and investigated a loan at the Rio Grande City, and that's when we opened the account at the Rio Grande City.

Q When you opened the account at the Rio Grande City Bank? Now, on the bank account itself, the -- what is the date of that check?

A November of 1972, sir.

Q And how much is the amount of the check?

A \$2,975.25.

Q I show you what has been marked E-162 in the Examiner's Exhibits, Volume Two?

A Yes, sir.

Q On Page 902?

A Yes, sir.

Q You identified the check drawn on the Rio Grande City account for \$2,975.25 there?

A Yes, sir.

Q Now, when you opened the bank account at Rio Grande City, the deposit, how much is the deposit there into the bank account to start it off?

A There was \$3,473.75 and then \$1,008.00 to it.

Q And what was the source of the money that you started the account with?

A There was a note that I got at Rio Grande Bank, sir.

Q So the bank account was started, and the first payment out was to pay for this Massey-Ferguson tractor?

A That's right, sir.

Q Then, the next --

MR. MITCHELL: Excuse me, Counsel. So I can understand the record, the proceeds of the loan paid for the Massey-Ferguson tractor, right? Not any other source of income?

MR. ODAM: That was my next question.

Q I notice that down here on -- you have a deposit of \$3,000.00, and then on 11/27, there is \$1,008.00. In answer to Mr. Mitchell's question, where did you get the money to pay for the Massey-Ferguson tractor?

A To pay the note with?

Q Well, to write out that check for two thousand --

A We borrowed the money at the Rio Grande Bank.

Q And there was no County money that went to pay for the Massey-Ferguson tractor?

A Not at this -- but later on, there is a check stating that it was paid -- it is a note payment, payment on the note of Rio Grande City.

Q So, later on, there was a note payment?

A Yes, sir.

Q And where did you get the money later on to pay on your note?

A From the County check, sir.

Q Can you identify where that is in the Exhibits?

A Yes, sir, Page 843, sir.

Q Page 843?

A Yes, sir. Starts at 842. Check issued for \$1,006.00, and on the endorsement, I put "For note payment, Benavides Implement and Hardware Company," and my signature on the bottom, sir.

Q Now, on Page 842, that's E-94, that's a County check for \$1,006.00?

A Yes, sir.

Q Now, turn it over. What did you say was on the back here?

A "For note payment, Benavides Implement and Hardware Company."

Q And what note are you talking about?

A The note that I borrowed from Rio Grande City to make the first payment on the -- to make the payment on the Massey-Ferguson, sir.

Q And the check for \$1,006.00, I take it, the check for \$1,006.00 on Page 842, if you look on 841, does that correspond to the claim jacket there?

A Yes, sir.

Q That corresponds to the invoices on Page 839 and 840?

A Yes, sir.

Q For \$1,006.00?

A Yes, sir.

Q So, the invoices that begin on Page 839 and the County check went to make the note payment for the Massey-Ferguson tractor that Judge Carrillo got?

A Yes, sir.

MR. ODAM: Pass the witness.

RE-CROSS-EXAMINATION

(Questions by Mr. Mitchell:)

Q Did you testify that the item on 938 is a copy of the notes, the proceeds of which went to pay that check for the amount of \$2,900.00, roughly, appearing at E-172 on Page 939?

A Nine what, sir?

Q 939, where E-172 appears and the note appears on 938. Or did I understand you correctly?

A 939 is an invoice made out to Duval County, Mr. Mitchell.

Q No, Page 938, I'm sorry, in Volume Two.

A 930 --

Q 938. I understood you to testify that that was the note the proceeds of which went into the Benavides Implement and Hardware account, against which check E-172 appears and 939 was drawn, did I understand you correctly?

A That was the check that was made to Plains Machinery, sir. That's what I stated.

Q Well, yeah, that's the question. The question was that the check to Massey-Ferguson wasn't made payable to Plains Machinery, was it?

A No, sir.

Q So that there could not be an interrelation between the note appearing on 938, which is a Plains Machinery Company item and the check appearing on 939 payable to the Massey-Ferguson people.

A Which page are you referring to?

Q 939.

A 939 is a check made payable to Massey-Ferguson.

Q Right. But the note -- that item appearing on 938 refers to a deposit by the Plains Machinery Company. You didn't have any business with Plains Machinery as related to a Massey-Ferguson tractor, did you?

MR. ODAM: Wait just -- let me explain. The item on 938 is that wire from the bank to cover on Plains Machinery, there was no connection between the two. If you recall the testimony was to make -- there's no connection between what is on 938, I didn't ask about 938.

Q Well, all right. Let me ask you. Do you agree with Mr. Odam's statement, Mr. Couling? That there's no connection between the document appearing on 938 and 939?

A No, sir, there's no connection.

Q No connection.

MR. ODAM: That's what Mrs. Driscoll brought over with her that day.

Q All right. Let me ask you this. Where is the note that you executed that you testified that you opened the account which was in the Rio Grande City Bank? Where is that note?

A I don't know, I haven't seen it, Mr. Mitchell.

Q All right. And that's the account that appears on Page 902, isn't it? It's E-162? That's the account, isn't it, the First State Bank and Trust Company, Rio Grande City?

A Yes, sir.

Q There is not a deposit of \$3,000.00 in that account, is there?

A I didn't say it was a \$3,000.00 note, Mr. Mitchell.

Q Well, what was the note?

A For the amount of \$3,473.75, sir.

Q So, the note was -- you borrowed from the bank a note in the amount of \$3,475.75?

A Yes, sir.

Q What was the date of the note?

A I don't remember, Mr. Mitchell. It was when the account was opened.

Q You borrowed \$3,473.75 to open the First State Bank and Trust Company account at Rio Grande City to cover a check that you gave to Massey-Ferguson in the amount of \$2,900.00?

A Yes, sir.

Q That's a bit of overkill, isn't it, wouldn't you say? Is that your testimony under oath, Mr. Couling?

A Mr. O. P. Carrillo made the arrangements for the loan, sir, I don't know.

Q I didn't ask you that. Your testimony under oath was that you borrowed the money to make the opening entry into that Rio Grande City account. And we have it here. There is no \$3,000.00, but you testified that wasn't a \$3,000.00 deposit. The deposit was \$3,473.75.

A That was the opening account -- that was the opening money in that account, sir.

Q Will you look with me on 902, your bank statement of the First State Bank and Trust Company, and see if I'm reading that -- according to your testimony that bank account was opened with the proceeds of that check.

A Yes, sir, it states a balance -- on the last statement there was no balance, it states \$3,000.00 and \$3,073.00 or \$3,473.75, I can't read the figure, here, Mr. Mitchell.

Q The total amount of the deposits reflected as the opening deposits of that account were \$4,481.75, composed of the \$3,473.75 item and \$1,008.00, am I correct?

A You're correct, Mr. Mitchell.

Q And can you tell the Senate where that note was made?

A It was made at Rio Grande, sir.

Q And do you have a copy of it?

A No, sir.

Q And can you tell us the date of it?

A No, sir.

Q Now, as a matter of fact the check that went to Massey-Ferguson was a check that was originally written in October wasn't it, of 1972?

A I don't remember when it was written, Mr. Mitchell.

Q As a matter of fact, Mr. Couling, it was written in October, it bounced and was returned. So, consequently the item that appears on this bank statement couldn't be the original check, it was a check that was originally written from the Benavides Implement and Hardware in the amount of \$2,975.25, October 18, 1972. I believe it was -- I believe we didn't even have an account in the Rio Grande Bank at that time.

Q Well, would you be surprised to learn that that check was written in October on the First State Bank and Trust Company, Rio Grande City?

A No, sir.

Q On the Benavides Implement and Hardware?

A No, sir.

Q In the amount of \$2,975.25?

A I stated a while ago that the check came back, sir. It was returned for insufficient funds.

Q Right. And that's the check that was written back in October, wasn't it?

A I don't know what date it was, sir, but it was the check --

Q All I'm really asking you is if you testified under oath that you opened this bank account in November of 1972 in time to write this check E-172, which is a check November of 1972, when in truth and in fact the E-172 check, which is November of 1972, was a take up check for one that was previously written for the same amount in October of '72.

A I am not disagreeing with you, Mr. Mitchell.

Q Consequently the proceeds of the loan could not have been the opening entry in the First State Bank and Trust Company of Rio Grande City. I'm not arguing with you either, I'm just trying to get the facts.

A All I know that the first check bounced, because we did not have an account at the Rio Grande City Bank, sir.

Q Were there any other checks to Massey-Ferguson out of that First State Bank and Trust Company?

A No, sir, just one check and it bounced and, I believe, this, as you stated, was reissued.

Q Who executed the note, if you recall?

A I did, sir.

Q So that the bank loan drew the money and it went into the First State Bank and Trust Company account against which you drew the check which has been E-172, am I correct?

A Yes, sir.

Q And I guess I have got to ask it, although it's dangerous with you. What is the reason why the note was \$3,473.75?

A I don't know, sir.

Q Now, then, you got it back -- your testimony is you got it back in the form of an Exhibit on Page 842 from Duval County in the form of a check to Benavides Implement and Hardware. Would you please turn to that Exhibit? Was that your testimony?

A I said that it was with this check that I made the first payment on the note, sir.

Q And that was the -- that's the reference for note payment Benavides Implement and Hardware, correct?

A Yes, sir.

Q Yet you have no recollection of when the original note was executed?

A I can't remember what date it said it was, Mr. Mitchell.

Q Well, if the note, if the check appearing on 842 for \$1,006.00 was paid on that note and that note was in the amount of \$3,473.75 and the check from Duval County is dated December 12, 1972, then it stands to reason that the note had to be executed either 90 days or six months prior to December 12, 1972.

A Or a month or two or 30 days or whatever it is.

Q Well, I know, I'm having to ask you what the terms of the note were and you have told me you don't remember, so I'm having to sort of speculate. You don't -- by looking at the December 12, 1972 date on the check on Page 842 you can't tell us and your memory is not served as to when that note was executed by you to get the \$3,473.75 to use as an opening deposit in November of 1972 in the First State Bank and Trust Company?

A I don't remember the exact date, Mr. Mitchell.

Q All right. You can't give us, was it 30 days, 60 days --

A No, sir, I can't give you the exact days, sir.

Q Well, I've got to ask you another question -- when you paid \$1,006.00 on that note that left a balance due of \$2,465.00, didn't it?

A Yes, sir.

Q Now, can you point to this record where that was paid?

A No, sir, I have to look all over, I don't know where -- it was paid, but I don't know exactly where it shows it in this record, sir.

Q Well, I notice when Mr. Odam asked you about repaying that note you turned almost automatically to the check and I thought, well, Lord, we have got the answer to that question and it turned out to be a check in the amount of \$1,006.00 dated in December of 1972 about the same time you bought the two DC-8's and about a month after you opened the account and I thought, well, you're bound to be able to turn for me real quick to the rest of the checks coming in from Duval County because of the conversation you had with Judge Carrillo and show me where the \$2,465.00 come from for the note payment.

Let me ask you this, Mr. Couling, while you are looking. Is it possible that the Exhibit appearing on 902, the First State Bank and Trust Company is not a full and complete Exhibit of the statement of that account down there of Benavides Implement and Hardware?

A I can't tell you if it was -- there's on the pages before or after that, I can't tell you, Mr. Mitchell.

Q It appears there might have been some entries before that, am I correct?

A I don't know, sir.

Q Well, the opening entry there is a balance of \$3,473.00 seems to be a carry over, doesn't it?

A It says balance from last month -- shows -0-, Mr. Mitchell.

Q Where is that, on the left?

A Yes, sir.

Q All right. So that appears to be the first account?

A I can't tell you for sure, but it looks like it's the first one.

Q Let me move to something else. At any rate there is no other check to Massey-Ferguson other than that \$2,900.00 --

A There's no check, Mr. Mitchell.

Q So that the exhibit -- I suppose all of this is for the purpose of reflecting on the \$20,000.00 that Judge Carrillo paid you that went into that account, that is 832, if it please the Court, in the yellow volume -- so, the sum and substance of all of this testimony is that O. P. paid Benavides Implement and Hardware \$20,744.10 and Benavides Implement and Hardware paid O. P. \$12,939.68 plus the \$2,900.00 on the Massey-Ferguson tractor, which was the proceeds of that loan. That's the sum and substance of what we're talking about, isn't it?

A If the figures are correct, that's right, sir.

Q All right. Now, did I understand you correctly to testify to a question put to you by Counsel that Mr. D. C. Chapa ordered you in 1974 as the President of the School Board to destroy some records?

A I don't know if it was '74 or earlier, sir, but he was President of the Board when the records were destroyed.

Q Well, now, let me -- you need to be more specific. Was it your testimony -- and I wrote it down while you were testifying -- you were instructed by D. C. Chapa in 1974 when he was President of the School Board to destroy the records.

A He was still President when he ordered me, Mr. Mitchell.

Q In 1974?

A I don't know whether it was the early part of '74 or the middle part of 1973, I can't -- I don't remember what time it was he stepped out of being President, Mr. Mitchell.

Q That's precisely the thrust of my question. You know, as a matter of fact he wasn't President of the School Board.

A I don't know if he was or wasn't, Mr. Mitchell. But he was President of the Board when he instructed me.

Q What was the -- how many records did you have in terms of pounds or boxes? Is there as much as appears on the Court's desk in the records of this case?

A In what period, Mr. Mitchell?

Q The one incident that you're telling us about, when D. C. Chapa ordered -- asked you and Mr. Rogelio Guajardo to go destroy the records. How much are we talking about?

A It was a pickup load, sir.

Q A pickup load?

A Yes, sir.

Q And you are able to tell this Court that what you picked out of that pickup load and documents that were destroyed were those tile invoices and checks?

A Sir?

Q You are telling us that out of that pickup load of documentation that you were able to pick out the tile purchases made by Judge Carrillo for use on the Borjas Ranch.

A Because it was purchased during the year 1965 and '66 or '67.

Q That's what I am saying. You went back, you were able to pick out of that pickup load in 1965, '66 and '67 those tile invoices?

A No, sir, I picked out every check that was there in the storeroom from 1953 up to 1966 or '67, sir.

Q Now, how many of them went for your benefit?

A I don't know, sir.

Q In dollars and cents?

A I don't remember, sir.

Q How much barbed wire did you purchase and fence post?

A I didn't purchase none that year, sir.

Q I'm talking about all of those years, tell us now, be square with us.

A I purchased --

Q Remember you have got immunity now, just be square, let it all hang out?

A I didn't buy no barbed wire by the school, sir.

Q How about tile, building material?

A I didn't get no tile.

Q Equipment, automobiles, trucks, gasoline.

A I got gasoline, but not trucks.

Q I thought I'd hit a sensitive vein. We did get some gasoline on the school board's account?

A Yes, sir, and everybody else was getting it, even the Judge.

Q I'm not talking about everybody, I'm talking about you. You did buy some gasoline on the school account.

A I had a credit card, sir.

Q Sure. In fact, you were indicted four times for the use of the credit cards issued by the school board, for Exxon, Texaco and other purchases --

A Twice -- three indictments.

Q All right. And how much money did you appropriate unlawfully from the years '53 through and including '67 that appeared in that carload of documentations that you all burned?

A I didn't start working until 1962, Mr. Mitchell.

Q Sir?

A I didn't start working until 1962.

Q But the records, you told us, go back to '53.

A Yes, sir.

Q And that you were quite well acquainted with what they contained, at least to the extent that they did contain some purchase orders for some tile for Judge Carrillo, and I want to ask you, did you get as well acquainted with those records back to '53 as they related to improper purchases made by you on the account of the school board?

A Not in 1953. I didn't even check the records, sir, in 1953.

Q What did you purchase incorrectly for that period of time, as reflected in those records that you destroyed?

A Gasoline, sir.

Q What else?

A I can't remember, sir.

Q Well, was there anything else? Clothing?

A No, sir.

Q Food?

A No, sir. No food.

Q What else beside gas? Lodging? How about money for gifts for Mrs. Minerva Casas, your mistress?

A Not before those years, sir.

Q Well, later on, though, you did --

A Yes, sir. That was in '69 or '68, sir.

Q Yes. So, we did have some of that. How about travel? Improper travel besides gasoline?

A I was -- I had the credit card to travel, sir.

Q Anything else you want to inform the Senate on about what you used the money out of that school account for? Anything else? Just think the truth.

A No, sir.

Q All right. Now, as a matter of fact, Mr. Couling, you knew that when Mr. Parr had those bulldozers -- and I believe it's established by Gene Powell's testimony that they were on there at least at the time of his death, which I think was April of last year, and at the time prior to that time. There was a deal and an arrangement whereby George Parr used those bulldozers and paid for those bulldozers in checks from Duval County that are reflected in this record which you are attributing to my client, O. P. Carrillo.

A No, sir. I never talked to Mr. Parr and I didn't even know the bulldozers were there until they were reported that they were found at Mr. Parr's ranch.

Q You knew Mr. Parr had the bulldozers?

A I found that out from the -- when it came out in the paper that they were there, sir.

Q And you were a Parr man and have always been a Parr man, haven't you?

A Everybody has been a Parr man.

Q Sure. And you knew that that was the way, when Mr. Parr had the bulldozers, he was using to pay for those bulldozers, to the Benavides Implement and Hardware?

A No, sir. I didn't say that. I never did know that Mr. Parr had the use of the bulldozers, Mr. Mitchell.

Q And you know as a matter of fact, that when Mr. Carrillo went over to Plains and negotiated for taking over that contract after it had been defaulted on by the Benavides Implement and Hardware, when Mr. Parr discontinued making those payments, that the deal that Mr. Parr -- and you and he discussed it, and he suggested that Mr. Carrillo pay for it the same way, and Mr. Carrillo said, "I will not."

A No, sir. I didn't have --

Q You don't know --

A I don't know anything about the conversations that Mr. Carrillo had or George Parr -- I never had no conversation with George Parr.

Q You didn't hear the conversation between Mr. Parr and Judge Carrillo when Mr. Parr suggested that Judge Carrillo use the same means that had been previously used by you and him to pay for that -- those dozers?

A No, sir. I never was present or had a conversation with those parties you mentioned, Mr. Mitchell.

Q Now, you were asked by Mr. Odam a question, I believe, in regard to a matter that I had put to you, or a question that I had put to you in connection with

Article I which was the welfare. I had asked you about the system that was being used in the '60's when you were personally involved, and you, I believe, testified -- I don't want to misstate your testimony -- that that system was used right on up to today, but that you did not have any more personal contact with it after -- in the late '60's.

A I didn't have any more to do with the welfare since 19, I will say '67 or '68 up to the present. I didn't even know if they were doing it the same way or not, Mr. Mitchell. I didn't see no papers at all.

Q I understood that to be your testimony. That's the reason I asked you first to be sure we understood that. As a matter of fact, when brother Cleofas Gonzalez left the Farm and Ranch in mid-1974 and bounced over to the Benavides Implement and Hardware location, he was Mr. Welfare, wasn't he?

A I heard that he was, but I never did --

Q Wait a minute, now. Let's be honest. He was Mr. Welfare and dispensed the welfare from the location of your store from May of '74 to the time that he quit and bought you out in '75?

A If he did, I never did see him issue orders, Mr. Mitchell.

Q You knew that he was Mr. Welfare in Duval County?

A I knew that he was handling the welfare, but I didn't know if he -- I never did see him fill any forms out.

Q All right.

MR. MITCHELL: Well, we did get an admission, Mr. Odam, and I will anticipate your --

Q You did know he was handling welfare?

A Yes, sir.

Q All right. Was he handling it in the same way that you handled it back in the late '60's?

A I don't know if he was or not, sir. I never did see him do any orders in my presence, sir.

Q Now, Mr. Couling, let's be square with the record. After there was a break with the Carrillo's, the Parr group moved over there and Mr. Archie Parr put all that welfare into Cleofas's hands, and he dispensed it right out of your store and you knew it and had absolute control over it since that time -- mid-May of '74 right on up to the day he bought your store, didn't he?

A I don't know what he did, sir.

Q And your testimony under oath that you are absolutely a closed door on the welfare programs from '68 is not really correct. You all have been using the welfare program since mid-'74 and dispensing it out of that location, Benavides Implement and Hardware, and using it for political purposes right up until today?

A I don't know which way Mr. Gonzalez uses it, sir.

Q You don't?

A And I know he didn't use it for political purposes.

Q Mr. Gonzalez did not use it for political purposes?

A No, sir.

Q As a matter of fact, Mr. Gonzalez had all those checks that were introduced by the Board of Managers -- the yellow ones and all them others that go back to 1968 and was able to just deliver those up immediately, didn't he? And you knew about those checks when I showed them to you this morning?

A I just saw them this time for the first time, Mr. Mitchell.

Q All right. But you are going to agree that Mr. Gonzalez did commence the welfare operation. He originated it and dispensed it in the Benavides Implement and Hardware Store location from mid-'74 up until the day he bought you out in '75?

A I believe he continued doing it since he was doing it at the Farm and Ranch, and continued doing it at the Benavides Implement and Hardware Store, sir.

Q Right. Which is your store?

A Yes, sir.

Q And which had a real location where you all could see each other every day?

A I very seldom visited the store, Mr. Mitchell.

Q All right. Oh, you didn't go into the store?

A Not very -- I went once a month, twice a month to the store. Just when I went to pick up feed for the cattle once in awhile.

Q You didn't -- well, was that -- are you suggesting that the Benavides Implement and Hardware Store was a part-time operation and wasn't open in '74?

A It was open, sir, but Mr. Gonzalez was there so I didn't have to go to the store, sir.

Q And he was there from mid-'74, right?

A Yes, sir; sometime in '74, sir.

Q Well, is it a fair statement to say that all the checks that were executed from mid-'74 that appear on E-192 were executed by your friend and my friend, Cleofas Gonzalez?

A He took the checkbook to my house and I signed the checks in blank and then he filled them out whenever he had to pay something out, sir.

Q Oh. So that from mid-'74, he would take the checks to you and you would sign them, and then he would fill out the blank checks to the payees. Right?

A Yes, sir. Sometimes he took the checks already made out and I just signed them, sir.

Q So, would it be a fair -- you have got this E-192 up there --

MR. MITCHELL: Incidentally, for the purpose, or the Court's purpose, I am not going to bear on this too long. I just want to -- this appears at 1555.

Q Let's say mid-'74 would take us to -- that would be on Page about 1570 -- would you say on Page 1577, beginning, say, about June of '74? Could you pinpoint that for me, now, when he started --

A What page are you on?

MR. MITCHELL: I am on Page 1577, incidentally, for the Court's purposes, and Volume Three of the Exhibits. That's the chart.

Q I wish you would give the Court some more specific time when Mr. Cleofas Gonzalez went to writing these checks?

A Well, you can take the check on Page 1578 that is made out to Snell Auto Supply.

Q Yes, sir, beginning there at the eighth month, '74?

A More or less beginning -- all right. I can't tell from this.

Q All right. We could say that those checks beginning from that time and forward -- that is, 1578 in the middle of that Page 871, and down through and including the one, 12/20/74, were written by him?

A No. Not all of them, sir. Some of them.

Q Most of them?

A No, sir. Some of them.

Q All right. I noticed, Mr. Couling, that in April -- that beginning even prior to that time, July -- that you all -- that is, Benavides Implement and Hardware continued to do business with the school district, the County and the water district?

A We were still doing business with the water district, and a little business with the school, sir.

Q And of course, without any doubt, you haven't done any business or had any contact with the Carrillo's since April of '74. Right?

A I can't tell.

Q Well, that is what your prior testimony --

A Well, I had some checks made out in May to Farm and Ranch, sir.

Q I understood that when you had -- you dated the split between you and the Carrillo's -- the Parr's and the Carrillo's in April, '74, the school board election?

A Well, there was two checks.

Q And you testified you didn't have any more business with them?

A There are two checks made out to Farm and Ranch. One for \$680.00 and one for \$1,500.00.

Q On what date?

A On May the 23rd, 1974.

Q When is the last time -- you can look at that record. There are no checks there after -- beginning in June of 1974, really, until the end of the Exhibit, is there?

MR. MITCHELL: Now, for the Court, we are looking at 1577.

Q That's right, isn't it?

A It appears that the last checks were in May, Mr. Mitchell.

Q Yes. It appears that the last checks to the Farm and Ranch were in May of 1974, appearing on Page 1577, and that thereafter beginning June 1st of '74, through and including December of '74 -- that is from 1577 of the Exhibits through Page 1581, there are no checks to Farm and Ranch?

A Yes, sir.

Q But -- and of course, in view of your testimony, it is significant to know that you continued to receive checks from the Duval County, am I right?

A Yes, sir.

Q And you continued to receive checks from the water district. Am I right?

A Yes, sir.

Q And you continued to receive checks from the school district?

A Yes, sir.

Q And we are in agreement that there was no connection between you and the Carrillo's, at least from June of 1974 forward, Right?

A Yes, sir.

Q Who did you have your conspiracy with from June of '74, Mr. Couling, to December of '74, to crank down the County and the school district?

A You will notice -- you will notice the county's checks start going down. They were just little. You can trace them down until you find some checks for \$100.00 and some dollars which are regular sales made to the County, sir.

Q The point is that you continued to do business with the same entities, didn't you?

A By a very small margin, sir.

Q Well, I asked you, did you have a conspiracy with anybody from June of 1974 until December of '74 to get the monies out of the County or the water district, for example, that check for \$717.83 appearing on Page 1577, 6/20/74, who did you have to crank down to get that check?

A On which page, Mr. Mitchell?

Q Page 1577.

A And which check are you talking about?

Q I'm talking about the check for \$717.83 from the water district?

A That could have been -- that was a legitimate sale, sir.

Q So, beginning -- and everything up to June 1st, '74 from the water district, from the County or from the school district was illegitimate, but in June of 1974, everything from there on was legitimate?

A Can you tell by the amount of the truck for sale, sir, by that time?

Q I can't tell by anything. All I'm looking to is your testimony that there was a conspiracy between Ramiro Carrillo and O. P. Carrillo to crank down the County and the school district and the water district, and I'm wondering if there was a continuing conspiracy in June of 1974?

A No, sir.

Q But you admit you continued to do business with the very same entities, didn't you, after you split with the Carrillos?

A Yes, sir.

Q As a matter of fact, you were doing business with them before you testified you had an agreement with Ramiro Carrillo in May of 1972, weren't you?

A Nineteen seventy what? I don't remember what year, Mr. Mitchell.

Q Well, you testified some kind of secret partnership went into effect in May of 1971, didn't you?

A In '71.

Q You were doing business with those districts, the school, the County and the water district prior to that time as well as doing business with them after that time, that

is after June of '74, am I correct? And this business about a conspiracy is a bunch of hogwash, isn't it, Mr. Couling?

A No, sir.

Q How did you pay for the use of the dozer, Mr. Diego Saenz?

A It was money from our cash sales, sir.

Q You knew that if I asked you that question you were going to have to point to a check from Duval County we'll get me some cash, you say -- you got cash and paid the --

A I paid it with sales from my cattle, Mr. Mitchell. I owned some cattle and I sold some calves, and I paid them with that money, sir.

Q All right. Can you point to your books and records where you got the cash in the books and records where you paid Diego Saenz? I believe Counsel asked you if you had ever used a bulldozer on your place, and you said, "Mr. Mahan out of Corpus Christi, Mr. Diego Saenz." Now, I want to know how you paid Mr. Diego Saenz.

A I paid him from my own account, sir.

Q How?

A I believe I paid Mr. Mahan with a check, sir. I'm not sure. And part of the money was paid by the federal grant that helped the farmers or the ranch owners to pay for part of the labor down on the ranch.

Q You paid them out of a Duval County check, didn't you?

A No, sir.

Q How about Diego Saenz? You paid him out of a Duval County --

A No, sir.

Q Are you sure?

A I'm sure, Mr. Mitchell.

Q You paid in cash? You paid him in cash?

A I paid him in cash in some part and in check, sir.

MR. MITCHELL: I believe that's all, Mr. President.

THE PRESIDING OFFICER: Mr. Odam, do you have further questions?

MR. ODAM: Just one moment, sir. We have no further questions of this witness.

THE PRESIDING OFFICER: Sir, you may be excused.

Now, do either of you anticipate having to recall this witness?

SENATOR MAUZY: Mr. President, I have a question of the witness.

THE PRESIDING OFFICER: Pass it up, Senator.

MR. ODAM: While this question is coming up, we would recall him on probably another Article at a later time.

MR. MITCHELL: Excuse me, Counsel. For the record, I didn't know you were limiting your testimony of this witness to any given Article. If you did, it's news to me. What Article did you limit it to?

MR. ODAM: We haven't limited it, but the testimony thus far today has primarily been on Article VII.

MR. MITCHELL: Well, I think that -- isn't that being a bit presumptuous? I haven't heard any limitation on any of this testimony on any specific Article. I haven't treated my cross examination with such limitation. And I don't want the record to reflect that I'm conceding to such a procedure.

THE PRESIDING OFFICER: Mr. Couling, Senator Mauzy poses a question and he probably will have further following questions based on this, but his basic question is, "Who compiled the information contained on R-91, R-92, R-93 and R-100?"

A Are those the charts he's talking about?

THE PRESIDING OFFICER: These are charts that were apparently compiled, I believe they were in typewritten form in the Exhibits --

SENATOR MAUZY: Mr. President, R-91, 92 and 93 are a compilation by hand. R-100 is typewritten.

THE PRESIDING OFFICER: Those are Respondent's book. What page?

SENATOR MAUZY: Respondent's Exhibits, 91, 92, 93 and 100.

THE PRESIDING OFFICER: What page are they on, Senator?

SENATOR MAUZY: They start on Page 776.

MR. MITCHELL: Mr. President, may I assist --

MR. MAUZY: I think if one of the lawyers would furnish the witness with Respondent's Exhibits Pages 1 through 872, the witness could more easily find what I'm trying to get.

MR. ODAM: I would like to respond to that, if you would like, Senator Mauzy.

MR. MITCHELL: And I can in part, Senator Mauzy. Might help us, because the witness does not have personal knowledge. May I be permitted to address the Senate?

THE PRESIDING OFFICER: Please.

MR. MITCHELL: Senator Mauzy, the compilation 831 which is R-100 about which your question relates was made up by Judge Carrillo and authenticated as such and introduced to the Judicial Qualifications Commission hearing, and the basis or input for 831, Senator Mauzy, is R-91 which appears on, as you pointed out, on 776.

SENATOR MAUZY: 92 and 93.

MR. MITCHELL: Right. And Mr. Odam can tell you where R-91, 92 and 93 come from because I got them from the Attorney General.

MR. ODAM: R-91, 92 and 93, compiled by the Department of Public Safety officer, Don Lee, he prepared it, and it's in his handwriting. And he prepared it from, in part, original documentation such as checks or claim jackets, or, copies of water district checks back in San Diego. He was part of the Task Force that was in San Diego. So, it is Mr. Don Lee, DPS officer.

SENATOR MAUZY: Then, Counsel, perhaps you can answer my follow-up question which is, I notice on Exhibit R-91 for the first five pages, it appears to be a handwritten compilation, which I have sought to cross-check.

THE PRESIDING OFFICER: Senator Mauzy, will you repeat the page numbers again, please, sir?

SENATOR MAUZY: Yes, it's Pages 776 through -- I'm referring now to Page 780. But it's --

MR. ODAM: Yes, sir.

SENATOR MAUZY: It appears to be a compilation of a series of checks issued by Duval County. In the first column is the date of the check, the next column is the check number, and the next column is the claim number, and the next column is the amount, and the next column is the fund, which is coded, and in the next column is the budget code. But, beginning on Page 781, I notice there is another column where information begins to be put down which says what it is for. And that does not correspond -- that information that's contained out there as to what it's for does not appear on the invoice supporting the checks, nor the check. My question is, who says that's what it's for when it does not appear on the invoice, the claim or the warrant?

MR. ODAM: Yes, sir. For example, your question like it says, "Rent on O. P.'s two D-8 dozers."

SENATOR MAUZY: Exactly.

MR. ODAM: It's my understanding the way that was compiled, Mr. Don Lee down in San Diego can answer this, was that he made that notation in I believe discussions with Mr. Couling when they made that notation. You're right. That notation did not come off of the invoice, and that is the notation Mr. Don Lee made as he was going through these trying to ascertain and link up these. But it -- where it says, "Rent on two D-8 dozers," that is what he determined to be where that check ultimately went, that is to pay for the dozers on -- Judge Carrillo got. But that is not what it states on the invoice, that's correct.

SENATOR MAUZY: Therefore, that then raises in my mind the question of the credibility of the individual who gave the information upon which that was written down, I would like that witness here under oath so we can have --

MR. ODAM: We certainly would produce him. He did not testify in the Judicial Qualifications. Certainly we can produce him. Be happy to do that.

SENATOR MAUZY: Thank you, Counsel.

THE PRESIDING OFFICER: Are there any further questions the Members of the Court would like to submit?

SENATOR MAUZY: Mr. President, in order that I may be clear, do I understand that we will have that witness available?

MR. ODAM: Yes, sir, I will contact him first chance I get, have him here tomorrow if possible. I believe he's back in McAllen.

SENATOR MAUZY: Thank you.

THE PRESIDING OFFICER: Mr. Couling, in view of the fact that the possibility exists that you might be recalled for further testimony in this case it is my duty to warn you that you are under The Rule, that you're not to converse with any other person except Counsel for the two parties concerning proceedings before this Court. Do not read any report of or comment on testimony before the Court. A person violating such instructions may be punished with contempt.

Do you understand that?

MR. COULING: Yes, sir.

THE PRESIDING OFFICER: You're excused.

MR. ODAM: May we approach the Bench, Your Honor.

THE PRESIDING OFFICER: Sir?

MR. ODAM: May we approach the Bench with Mr. Mitchell?

THE PRESIDING OFFICER: Please.

(President in Chair)

THE PRESIDENT: Senator from Wichita.

SENATOR FARABEE: Mr. President, I have a motion to present.

THE PRESIDENT: The Senator from Wichita has laid on the rostrum the Written Motion contemplated by the Rules amendment that the Senate adopted yesterday. The motion particularly is with respect to Article VII. Before laying that motion out the Chair will ask Mr. Doyle, Counsel for the House Board of Managers if he has completed the presentation of affirmative evidence relating to Article VII.

MR. DOYLE: Mr. President, at this time, I can see no further affirmative evidence that the prosecution has with respect to Article VII. I'm confident that we

will have some rebuttal evidence and I want the record to reflect clearly that we have not presented all of our evidence on any of the Articles, except Articles I and VII. We have not completed our evidence on any other Articles and we respectfully request that we be given the right to go forward with the prosecution of our case.

SENATOR ADAMS: Mr. President.

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: May I ask Mr. Doyle a question?

THE PRESIDENT: Yes, sir.

SENATOR ADAMS: Mr. Doyle, if this motion is adopted are you prepared to announce to this Court that you rest on Article VII. Not close, but rest.

MR. DOYLE: I haven't seen the motion.

SENATOR ADAMS: If the motion is adopted that Article VII be considered separate are you prepared at this time, if the motion is adopted to announce to this Court that you rest on Article VII?

MR. DOYLE: No, sir, I won't do that until after I have had an opportunity to cross-examine the defense witnesses and put on any rebuttal evidence that I may have to whatever testimony the defense witness has opened.

SENATOR ADAMS: I didn't say close, I said rest. You rest your case?

MR. DOYLE: Yes.

SENATOR ADAMS: Thank you.

SENATOR MAUZY: Mr. President.

THE PRESIDENT: Senator from Dallas.

SENATOR MAUZY: Is that the same thing true of Article I?

MR. DOYLE: Yes, sir, I made that announcement yesterday.

SENATOR MAUZY: In fact, you have rested on Article I?

MR. DOYLE: We have presented all of the affirmative evidence on Article I.

THE PRESIDENT: The following motion:

Senator Farabee submitted the following Written Motion:

Pursuant to Rule 19(a) of the special rules of impeachment for the trial of O. P. Carrillo, Judge of the 229th Judicial District, I move that the court proceed to deliberate and vote on Article VII of the Articles of Impeachment preferred by the Texas House of Representatives against Judge Carrillo after the parties and counsel are given an opportunity to conclude the presentation of evidence and argument relevant to that Article.

FARABEE
ADAMS
DOGGETT

The Motion was read.

THE PRESIDENT: Senator from Wichita.

SENATOR FARABEE: Mr. President and Members of the Senate, under our adoption of amendment to Rule 19(a), the Senate adopted a Rule whereby it might narrow its consideration of the various ten Articles that were presented to us. At this time and stage in the proceedings we have heard considerable evidence, some of it on Article I, some on Article V and some on Article VII. It seems to me that in reviewing this and also in reviewing the record, which has been made available and which has been put into evidence here we have opportunity to advise Counsel on both sides to proceed on a given Article. And in my judgment we're at a stage on Article VII where all of the evidence has been presented, where it is, I think, an Article of considerable gravity and seems to be wise at this stage to narrow our considerations to Article VII and that this Motion will allow us to do that.

Now, the Motion, the last phrase is most important. And both sides need to understand this and, I think, Members of the Senate. The Motion is made with the understanding that before we deliberate, before we take any vote, each side will have opportunity to conclude the presentation of evidence and also to make argument relevant to that Article. So, the adoption of this Motion doesn't mean that we move automatically or immediately to deliberation, but it does advise Counsel on both sides and advises the parties that we're moving if this is adopted on Article VII.

SENATOR MAUZY: Mr. President, will the Senator yield?

SENATOR FARABEE: Yes.

SENATOR MAUZY: Senator, would you be willing to amend your Motion to include Article I in view of the fact that Counsel advises he's also, as we lawyers say "rested" on Article I now, too? I think we're in the same state of the record on both Articles.

SENATOR FARABEE: Senator, it's my understanding and in reading the rule as we adopted it, it doesn't provide for a motion to include, say, two Articles. I think that the procedure as provided for in the amendment to the rule would be another motion that we proceed on Article I or Article V, whatever Article we choose.

SENATOR MAUZY: Let me raise a point of parliamentary inquiry then, Mr. President.

THE PRESIDENT: State your inquiry.

SENATOR MAUZY: Is it possible under the rules as amended to submit Article I and Article VII in the same motion?

THE PRESIDENT: Senator, Rule 19(a) as amended provides that the Senate may by adoption of such motion as now before it may decide on a vote of a majority of the Members present to proceed and deliberate and vote on an individual Article specified in the motion. And before deliberation, of course, each party has the opportunity to complete their case and argue.

It would be the Chair's view that a more appropriate way of accomplishing the end that you wish to accomplish would be to send up a separate motion with respect to Article I.

SENATOR MAUZY: May I be given time to do so, Mr. President?

SENATOR TRAEGER: Mr. President.

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: I believe the House Board of Managers were called on for their observation as to the status of their case and their reaction to the motion. I think the Defense should be called on the same way as to whether or not they feel this would prejudice their case and where they stand on the completion of their case and the two Articles we're attempting to discuss.

THE PRESIDENT: The Chair recognizes Mr. Mitchell for that purpose.

MR. MITCHELL: If the procedure continues, and it apparently is, to fracture the Articles of Impeachment into slices of a loaf of bread, it will be the first time in 25 years that I have been tried on an accusation as multiple faceted as this one on item for item, which is, of course, no moment to this body. The difficult problem, gentlemen, is and lady, that as the attorney representing Judge Carrillo it's most difficult for me to categorize in the neat compartmentalization that it appears in a record that one can the charges in Article I and Article VII and divorce those from the balance of the Articles.

I, of course, will be obedient to whatever is the will of this body and I would attempt every effort that I can to marshal whatever defensive testimony that I would have as regards I and VII. I have up to this point, of course, been defending the full spectrum of charges, Articles I through and including X. There again, as in jury trials, particularly where there are multiple counts in an indictment and the Court charges the jury on all counts the weakness of one, of course, spills over to the other and to the benefit -- and assists the Defendant. Here to allow the Prosecution to magnify as he in effect is doing under this procedure and has been for the last couple of days it's an open secret. Article I and Article VII testimony has been introduced for that reason, to permit an over-magnification of these two as to disjoint them it would appear and operate to the detriment of Judge Carrillo.

I am reluctant therefore to agree, mainly because I don't really know in examining all of these Articles and examining the general language of them as to whether or not I can conceivably be competent Counsel to Judge Carrillo. I have expressed my notions at the outset on the piecemeal trial concept and the possible due process involvement of the speedy public trial involvement on all issues and I don't think the Senate cares to be bored by a repeat of those contentions, but if I -- it reminds me of a man in the shooting gallery. Now, if I win on I and II or VII I can't go home. I have been put in jeopardy in a criminal case, though, if I go to trial on an eight-count indictment and I go to trial on only one I can go home, because the doctrine of jeopardy sends me home free and clear, but I'm not here. And it seems that jeopardy is attached here in all particulars, gentlemen. And double jeopardy would preclude -- or the doctrine of jeopardy would preclude our being put to trial on Articles I and VII and thereafter on II, III, IV, V, VI, VIII, IX and X. I think that's what the concept of jeopardy is intended to preclude, that I'm not be put to toil time and time again on different counts of the same indictment. And we would object to the procedure of carving out of the specifications one count at a time as it violates and does violence to the doctrine of carving, former jeopardy, former acquittal and double jeopardy.

MR. DOYLE: Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Might I have just a moment to reply since Mr. Mitchell raised several points that make specific reference to the position of the Board of Managers? Mr. President, might I --

THE PRESIDENT: You are recognized, Mr. Doyle.

MR. DOYLE: Mr. President, and Members of the Senate, I join Mr. Mitchell in his request that you not proceed in this manner. I made the same statement when you adopted the resolution whereby you changed the rules.

But, in fairness to the Board of Managers, I would like to point out to you some things that I do disagree with him on with respect to how the case has been presented.

If you will recall, when we started this thing back several months ago, we started presenting evidence on Article I. If you will remember, our first witness, Walter Meek, started testifying about the welfare system, and we went from there and proved up, right on up to the start of the proceedings last week on Article I. When we finished the last witness on Article I, I announced at that time that because of the availability of witnesses, that we would proceed to start presenting evidence on Article VII.

Now, contrary to what Mr. Mitchell just got through telling you, that we skipped all around, that's not the way it occurred. We started presenting evidence on Article VII, and we didn't stop presenting evidence on Article VII. What took place was that Mr. Mitchell made a tender of the entire transcript, the entire record of what took place in the Judicial Qualifications Commission. Now, the tender of that evidence, and obviously, that evidence dealt with almost every one -- in fact, almost every sub-part of every Article of Impeachment. Now, that's how Mr. Mitchell got himself in the position of having evidence and on Articles in other than an orderly fashion, because we have maintained from the beginning that we would do our best to present our evidence Article by Article. I would submit to you that that is exactly what we've done.

Mr. Mitchell raises one other point with respect to jeopardy, and I would respectfully request that you listen to me for just a moment on the question of jeopardy.

More than once in the last few days, the Senate has discussed the possibility of -- you know, could we go home after we vote on one or two of these things. I think the position or the question that Mr. Mitchell raised with respect to jeopardy is one that you really have to take a look at, because each of these Articles under the Constitution of the State of Texas is before this Senate, and disposing of one or two of them is going to put the Senate in a position of not having done what is set out in the Constitution as is required in an impeachment case. For that reason, and for the reasons I previously stated, and consistent with what I announced just a moment ago, we are prepared to go forward with the presentation of our case as we have up to this point, and will abide by whatever the Senate decides with respect to the motion on the floor at this time.

THE PRESIDENT: The question is on the motion of the Senator from Wichita. Further debate?

If not, as many as favor the motion of the Senator from Wichita vote "aye"; those opposed, vote "no" as your name is called.

Secretary, call the roll.

Yeas: Adams, Aikin, Andujar, Braecklein, Brooks, Doggett, Farabee, Gammage, Hance, Harris, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Ogg, Patman, Santiesteban, Schwartz, Sherman and Williams.

Nays: Clower, Harrington, Jones, Mengden, Snelson and Traeger.

Absent-excused: Creighton, Meier and Moore.

THE PRESIDENT: There being 22 "Yeas" and 6 "Nays", the motion prevails.

The following motion.

Senator Mauzy submitted the following Written Motion:

Pursuant to Rule 19(a) of the special rules of impeachment for the trial of O. P. Carrillo, Judge of the 229th Judicial District, I move that the Court proceed to deliberate and vote on Article I of the Articles of Impeachment preferred by the Texas House of Representatives against Judge Carrillo after the parties and counsel are given an opportunity to conclude the presentation of evidence and argument relevant to that article.

The Motion was read.

THE PRESIDENT: Senator from Dallas.

SENATOR MAUZY: Mr. President, here again, I think the same principle is involved as was in Senator Farabee's motion. As I understand it from Counsel, he has now rested on Article I.

I move the adoption of the motion.

THE PRESIDENT: Question on the motion of the Senator from Dallas, Senator Mauzy.

Further discussion? As many as favor the motion --

SENATOR TRAEGER: Mr. President.

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: I would like to inquire as to the chronological order in which we would vote if Senator Mauzy's motion is adopted. Would VII be voted on first because it was presented first?

THE PRESIDENT: Senator, I don't know if there is specific provision in the rule. But, it would seem a common sense approach to take up VII first since that was the first motion adopted by the Senate.

SENATOR TRAEGER: I would like to ask Counsel for the Defense a question.

THE PRESIDENT: Yes, sir.

SENATOR TRAEGER: Mr. Mitchell, do you feel there would be any difference in the Court passing the resolution now which would require you to sum up your defense and call what additional witnesses you plan to call on the two charges mentioned? Would it be any different if you were required at this time to sum up on only one charge, and then come back on the other, or would it change things at all to pass this second resolution since we have already passed the first one, in your opinion as Counsel for the Defense?

MR. MITCHELL: Thank you, Senator, for the opportunity to speak to that. The two Articles are, of course, divergent. One speaks to a specific. I feel that I could quite adequately handle the two at the same time if it is the Senate's desire. Thank you.

SENATOR TRAEGER: Well, having passed one, that there would be, as far as the Defense is concerned, no further weakening of your position or nothing more detrimental to your stand in passing the second one?

MR. MITCHELL: No. I feel, Senator, that we could present our closing argument and testimony on Article I and II -- and VII without serious impairment of our rights.

Thank you, sir.

SENATOR TRAEGER: Thank you.

SENATOR PATMAN: Parliamentary inquiry.

THE PRESIDENT: State your inquiry.

SENATOR PATMAN: If the vote will be, first, on Article VII, would it not?

THE PRESIDENT: Yes, Senator.

SENATOR PATMAN: Thank you.

THE PRESIDENT: Question is on the motion of the Senator from Dallas. As many as favor the motion, will vote "aye"; those opposed, vote "no", as your name is called.

Secretary, call the roll.

Yeas: Adams, Aikin, Andujar, Brooks, Doggett, Farabee, Gammage, Hance, Harris, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Ogg, Santiesteban, Schwartz, Sherman, Traeger and Williams.

Nays: Braecklein, Clower, Harrington, Jones, Mendgen, Patman and Snelson.

Absent-excused: Creighton, Meier and Moore.

THE PRESIDENT: There being 21 "Yeas" and 7 "Nays", the motion prevails.

SENATOR PATMAN: Mr. President.

THE PRESIDENT: Senator from Jackson.

SENATOR PATMAN: I have had difficulty in following the testimony with respect to Article I, and I wonder if Counsel Doyle and Mr. Odam will provide us with some sort of an aid in written form that will show how they have proven, beyond a reasonable doubt, the connection of the defendant, if you would call him that, O. P. Carrillo, with the conspiracy and also the facts that constitute the conspiracy. If they will also give us some aid in pointing out testimony that has been before this body and also in the record of the proceedings before the Master there in Corpus Christi.

THE PRESIDENT: Yes. Mr. Doyle, will you respond to Senator Patman's question?

MR. DOYLE: Senator Patman, it appears to me that the rules don't provide for that now --

SENATOR PATMAN: I am not asking about the rules providing for it. I am asking your aid in that.

MR. DOYLE: We can certainly -- I will be happy to do that. We will be more than happy to do that if so directed by the Senate.

I would further point out to you that we will make every effort to sum up as best we can in our closing argument.

SENATOR PATMAN: I know that, but that will be after the Defendant comes back with his effort to rebut your proof.

Right now, we are in the position where, possibly, something analogous to a summary judgment would be requested.

MR. DOYLE: Well, I understand, particularly with respect to I, since it was strung out over a period of several months. I will be happy to prepare a summary of the testimony of the witnesses that pertain to Article I, and will do it at whatever time and in whatever form the Senate wishes.

SENATOR PATMAN: Well, I ask unanimous consent that that be done, Mr. President.

THE PRESIDENT: Since the procedure that is under discussion here is not specifically provided for in the rules, the Chair would like to recognize Mr. Mitchell for his reactions and comments.

MR. MITCHELL: Well, I join with the Senator on I, and like to expand it to VII, because VII is so general. It states simply that we conspired with others at no time, no place, and no circumstances. I would like, before I am called on to defend VII, if I can ask them to do it with VII before I start my defense.

I don't want to be presumptuous, Mr. President, but it provides, and I am charged with the defense of it, "With others to charge and collect money from governmental entities for rentals of equipment that did not exist and for rentals of equipment that the governmental entity did not use."

That's so broad -- of course, it is set out in our answer and our special exceptions. I would like to join, if he would, not only do with that with Article I, to do it with VII and be more explicit before I even am required to discharge our burden of defense, which we do exercise. We do want to put on some defensive testimony, Mr. President.

SENATOR PATMAN: Mr. President, I don't have the same problem with VII that I have with Article I. If someone else wants to make the request for VII, that's fine with me. I don't personally feel the need for that particular aid for VII.

SENATOR JONES: Mr. President.

THE PRESIDENT: Senator from Taylor.

SENATOR JONES: Rather than preparing a separate extract, would it be possible for them simply to cite us to the particular pages in the Journal that they feel to be applicable, give us an index of what they feel to be the pertinent testimony because it is already transcribed and in the Journal.

THE PRESIDENT: I believe an index has been prepared, has it not, Mr. Odam or Mr. Doyle?

MR. ODAM: Are you talking about the Journal to the testimony produced at the Judicial Qualifications Board?

SENATOR JONES: No. As I understood it, he was asking for a resume of the testimony. I wondered if it would not be simpler just to cite us to the particular pages that you felt would be pertinent for each of these two Articles?

SENATOR FARABEE: Mr. President.

THE PRESIDENT: Senator from Wichita.

SENATOR FARABEE: I would like to raise a point of order. This is traditionally a function of argument, which the rules do provide for, and traditionally, these materials and summary and if they want to use a blackboard or some other Exhibit in the period of time allotted for argument, this thing can be done. But there is no need for any new rule on it. It would simply be a part of the argument of either side to present the facts that they felt relevant.

THE PRESIDENT: The Senator from Wichita raises the point of order that the procedure under discussion, the preparation of a written summary or extract, is not provided for in the rules and is therefore out of order.

The Chair will submit that point of order to a vote of the Court.

All in favor of sustaining the point of order raised by the Senator from Wichita will vote "aye"; those opposed will vote "no" as your name is called.

Secretary, call the roll.

Yeas: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Lombardino, Mauzy, McKinnon, McKnight, Mengden, Santiesteban, Sherman, Snelson, Traeger and Williams.

Nays: Kothmann, Longoria, Patman and Schwartz

Absent-excused: Creighton, Meier and Moore.

Absent: Ogg.

THE PRESIDENT: There being 23 "Yeas" and four "Nays", the point of order is sustained.

THE PRESIDENT: Senator from Lamar.

SENATOR AIKIN: Mr. President, it's 10 minutes until 5:00, and I've heard several Members complain that they were tired. I'm going to move the Court stand adjourned until 9:00 in the morning with the hope that all of us would be here at 9:00 o'clock and get started on time.

THE PRESIDENT: Senator from Lamar moves the Court stand adjourned until 9:00 o'clock tomorrow morning. All in favor say "aye". Opposed, "no". The "ayes" have it.

Accordingly, the Senate, sitting as a Court of Impeachment, at 4:52 o'clock p.m. stood adjourned until 9:00 o'clock a.m. tomorrow.

SEVENTEENTH DAY
(Thursday, January 15, 1976)

The Senate, sitting as a Court of Impeachment, met at 9:00 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Moore, Ogg, Patman, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: Meier, Mengden and Santiesteban.

A quorum was announced present.

The Reverend Shirley Hill, First United Methodist Church, Austin, Texas, offered the invocation.

LEAVES OF ABSENCE

Senator Mengden was granted leave of absence for today on account of important business on motion of Senator Traeger.

Senator Meier was granted leave of absence for today on account of important business on motion of Senator Farabee.

Senator Santiesteban was granted leave of absence for today on account of important business on motion of Senator Braecklein.

APPEARANCES

Judge O. P. Carrillo, Respondent; Honorable Arthur Mitchell, Attorney for Respondent.

Board of House Managers; Honorable Terry Doyle, Counsel; Honorable John Odam, Assistant Attorney General on behalf of the Board of Managers.

MR. DOYLE: Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President, in response to Senator Mauzy's inquiry yesterday, I have Mr. Lee available and would like to put him on for whatever -- and I will introduce him, and so forth, and let the Senate do whatever they see fit with him with respect to the Exhibits that Senator Mauzy inquired about yesterday.

It would seem to me, this would be an appropriate time to do that.

THE PRESIDENT: Call Mr. Lee.

Good morning, Mr. Lee. Would you raise your right hand, please sir.

"Do you solemnly swear or affirm that the evidence you give upon this hearing by the Senate of Texas of impeachment charges against O. P. Carrillo shall be the truth, the whole truth and nothing but the truth, so help you God."

MR. LEE: I do.

THE PRESIDENT: Please be seated.

DONALD L. LEE

was called as a witness by the prosecution, and having been first duly sworn, testified as follows, to-wit:

DIRECT EXAMINATION

(Questions by Mr. Doyle:)

Q Mr. Lee, for the record, would you state your name, please?

A Donald L. Lee.

Q Mr. Lee, pull that microphone closer to you so it will work real well. Now, would you repeat that, please?

A Donald L. Lee.

Q Now, how old are you, Mr. Lee?

A Forty years old.

Q And where do you live?

A I live in McAllen, Texas.

Q Where are you from.

A I was born and raised in Brownsville, Texas, and have resided in the Valley all of my life with the exception of the military service.

Q Okay. Where did you go to school?

A I graduated from Brownsville High School, and graduated from Pan American University.

Q Pan American University?

A Yes, sir.

Q And, who are you employed by now?

A I'm currently employed with the Attorney General's office.

Q In what capacity?

A I am an investigator with the Organized Crime Unit Force.

Q And previous to your employment as investigator for the Organized Crime Unit of the Attorney General's office, what did you do for a living?

A I was an agent with the Criminal Intelligence Service of the Texas Department of Public Safety.

Q For how long?

A For approximately twenty years.

Q Mr. Lee, did you have occasion to work with the Task Force that the Attorney General had down in Duval County for the past several months?

A Yes, sir.

Q Now, in connection with your work with the Task Force, did you participate in the preparation of what I'm going to show you here that's marked as R-91, R-92 and R-93?

A Yes, sir, I did.

Q All right. Now, I'm going to ask you to hold these copies.

MR. DOYLE: Now, for the benefit of the Members of the Senate, R-91 is on Page 776 in your yellow copy of Exhibits, which are the Exhibits of Judge Carrillo in the Judicial Qualifications Commission and the page number of the Senate Journal involved is 776.

Now, at the time of the introduction of these Exhibits in the Judicial Qualifications Commission there was a stipulation entered into between the Examiners and Defense in that hearing. And I'm going to read to you what that stipulation said so that you will have a somewhat better idea about the significance of these Exhibits. That it is stipulated that R-91, 92 and 93 reflect, Your Honor, the date of checks, check numbers, claim numbers, the amount and the funds. The budget code of monies going into R-91 from the County of Duval to Benavides Implement and Hardware and R-92 from Benavides Implement -- excuse me, from Benavides Independent School District to the Benavides Implement and Hardware. And R-93, the Duval County Conservation and Reclamation District into Benavides Implement and Hardware. Now, that was the stipulation that was entered into -- that was Mr. Mitchell who was reading or dictating the stipulation into the record. That's how R-91 and 92 got before the Court. It got before you here when it was tendered by the Defense on the motion of, I believe, Senator Traeger. It all came in with the volume of testimony and --

MR. MITCHELL: Excuse me, Mr. Doyle. I appreciate your monologue, but are you questioning the witness or are you tendering to the Senator who requested that he's here. If you're going to conduct a monologue and an argument I'm going to object, Mr. President. It's wholly improper.

THE PRESIDENT: Objection overruled.

MR. DOYLE: Mr. President and Members of the Senate, I certainly didn't mean to offend. I was simply attempting to put Mr. Lee in the proper perspective and to put the Exhibits in the proper perspective so you would know what his position was with respect to the Exhibits and what the position of the Exhibits are as they are now before you. Now, Mr. Lee --

SENATOR BROOKS: Mr. President.

THE PRESIDENT: Senator from Harris, Senator Brooks.

SENATOR BROOKS: I think it might be very helpful to expedite this matter if we can have the Clerk read the written questions submitted by Senator Mauzy. I don't recall what his specific question was from yesterday.

MR. DOYLE: I was just about to ask that question, Mr. President.

THE PRESIDENT: Senator Mauzy, do you have a copy of the --

SENATOR MAUZY: No, I hand wrote the question, Mr. President. My recollection is I merely asked who compiled R-91, R-92, R-93 and R-100. We were told yesterday that it was this gentleman, Mr. Lee, and that he would be here available today to testify as to specific questions which I would like to ask relating to those Exhibits.

THE PRESIDENT: Mr. Lee, could you respond to those questions from Senator Mauzy.

THE WITNESS: Yes, sir. I myself prepared R-91, R-92 and R-93. I am not familiar with R-100.

SENATOR MAUZY: Mr. President, if I may, by unanimous consent--I recognize the Rules require that members submit questions in writing, but --

THE PRESIDENT: Senator Mauzy asks unanimous consent to suspend the Rules in order to permit him to question the witness directly. Is there objection? The Chair hears none. The Rules are suspended.

Senator from Dallas, Senator Mauzy.

EXAMINATION

(Questions by Senator Mauzy:)

Q Mr. Lee, if you'll get there R-92, which begins on Page 776 of the yellow transcript, Respondent's Exhibits, and turn specifically to Page 781, if you will, please, sir?

A Yes, sir.

Q Am I correct in my understanding, Mr. Lee, that this Exhibit was compiled by you after examination of the official records of Duval County?

A Yes, sir.

Q And that what you attempted to do here was to compile in one instrument a list of all the checks that were issued by the Treasury of Duval County to the Benavides Implement and Hardware Company?

A Yes, sir.

Q And that in doing that, you worked your chart up to show the date of the check in the first column, the check number of the check issued by Duval County in the second column, am I correct?

A Yes, sir.

Q In the third column, the claim number?

A Yes, sir.

Q All right. Now, that claim is the written document or voucher which sets forth the amount of the claim and what it was for?

A Yes, sir.

Q It is then presented to the Commissioners Court of Duval County for approval?

A Yes, sir.

Q And subsequent to that, by order of the Court, the Treasurer of Duval County issues the check to pay the claim as supported by the voucher?

A Yes, sir.

Q All right, sir. Then, in the fourth column is the amount of the check?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q And the fifth column shows which of the County funds the check is drawn on?

A Yes, sir.

Q That is the various County funds, the Road and Bridge Fund, the General Fund, and five which are shown on the first page of Exhibit R-91, am I correct?

A Yes, sir.

Q All right, sir. And then the next column is the budget code which is the coding system that the County government uses in Duval County to key to these various funds?

A Yes, sir.

Q All right, sir. Now, all of those six, first six columns, on the Exhibit you gained from a physical examination of the official records of Duval County, am I correct?

A Yes, sir.

Q All right, sir. Now, I want to direct your attention specifically to the next column labeled "For" f-o-r.

A Yes, sir.

Q In which various explanations appear alongside each of these checks as -- which appear to be some explanation as to what the check was issued for?

A Yes, sir.

Q My specific question to you is, how did you go about ascertaining what the purpose of the check was?

A All right, sir. The information contained in the "For" column with regard to each specific check was an accumulation of information from a voucher from the Benavides Implement and Hardware Company that was sent to the County for payment in addition to information from Mr. Rudy Couling, in addition to information from Mrs. Zenida Montemayor, in addition to the transcribing of or the placing of information from payments to the Plains Company where two D-8 Caterpillars were purchased to coincide with dates of checks. It was from this information that this brief notation was made.

Q All right, sir. Now, if -- I've checked a couple of these exhibits that Counsel got into specifically yesterday, one of which shows that -- and I believe it's the first one there with the star by it dated January 8, 1973, check number 5829, claim number D102 in the amount of \$1,108.00 from the FMLR fund, budget code number 329. And the explanation shows, "Rent on O. P.'s two D-8 dozers".

A Yes, sir.

Q The voucher does not contain that information. So, my specific question to you is, do you have an independent recollection and can you tell us at this time upon what source of information you relied to put down that notation, "Rent on O. P.'s two D-8 dozers"?

A If I were able to look at it, I can tell you. This specific check number and claim number, I could tell you if I could see it.

SENATOR MAUZY: All right, Counsel, could we get the originals of those, please?

Q Do you have that voucher before you now?

A No, sir.

SENATOR MAUZY: While we're getting it, perhaps I could expedite matters.

Q As I understand it, then, you talked -- in addition to examining the records, you talked to Mr. Couling or Mrs. Montemayor?

A Yes, sir.

Q And the Plains Equipment Company?

A Not to Plains Equipment Company. Maybe I didn't clarify that. Texas Ranger Gene Powell had all the documentation from Plains Machinery with regard to payments made on the dozers. This is what I was referring to was from the documentation that Gene Powell had.

Q And, so, you then talked to Ranger Powell who informed you as to what he had found out by him talking to the Plains Equipment Company?

A Yes, sir.

Q And it was only then from those three sources that you -- those four sources, excuse me, the documentary sources, the vouchers and so forth, and from talking to three individuals, Ranger Powell, Mrs. Montemayor and Mr. Rudolfo Couling, is that correct?

A Yes, sir, that's correct.

Q Now, may I inquire as to why this column labeled "For" didn't have any entries in it up until January 1973?

A The vouchers and other information which was used in 1973 for this information was not available for the prior years that it was in the custody of the Internal Revenue Service.

Q I see. So, you used all the information that you had available to you in documentary form to explain the "For" column?

A Yes, sir.

Q All right, sir. And then can you tell us why some of the checks issued subsequent to January, 1973 do not have explanations? For example, on April 14, 1973, check number 442, claim D-951 in the amount of \$63.71 from FMLR fund, budget code number 23 and there's no explanation?

A All right, sir. The reason for that was because that particular voucher packet did not contain any vouchers inside.

Q And from that answer, may I assume that is the same answer you would give as to each of the other items for which there is no explanation out in the "For" column in 1973?

A That's correct.

Q And that, of course, continues down through '74 and into '75.

A That's correct.

Q Who is Mrs. Montemayor?

A Mrs. Montemayor is a former employee of Judge Carrillo in the capacity, I believe, as a secretary.

Q While he was serving as a Judge, she was his secretary?

A Yes, sir.

THE PRESIDENT: Senator Mauzy, Mr. Doyle now has the documents that you requested just a minute ago. The Secretary will mark this Exhibit as Court's Exhibit No. 1. The Exhibit contains three separate documents which will be referred to as Exhibits 1, 2 and 3.

(Court Exhibits Nos. 1, 2 and 3 were marked for identification, C-1, C-2, C-3)

Q Mr. Lee, I'm going to hand you an Exhibit that's been marked for identification in this record as Court Exhibit Number 1 and ask you to look at that and tell me if you can identify it, please, sir.

A Yes, sir, I can.

Q Would you tell the Court what it is?

A This would be one of the vouchers that would be submitted by the Benavides Implement and Hardware Company to Duval County for payment which in turn would be placed inside of a packet by the County.

Q All right, sir. And that's the document you relied on when you compiled R-91 specifically as to check number 5829?

A That's correct.

Q All right, sir. Now, I want to hand you what's been for identification in this record as Court's Exhibit Number 2, and ask you if you can identify that, please?

A Yes, sir.

Q Can you tell the Court what it is?

A This is the voucher, the claim voucher from Duval County in payment for the previous Exhibit.

Q All right. That's check number 5829, I believe, is it not?

A Yes, sir.

Q And now I hand you what's been marked for identification as Court's Exhibit Number 3 and ask you if you recognize that?

A Yes, sir.

Q Tell the Court what it is, please, sir?

A This is the claim packet that is compiled by Duval County upon receipt of payments for claim.

Q All right, sir. Now, I wish you would examine carefully Court's Exhibit Number 1, Court's Exhibit Number 2 and Court's Exhibit Number 3 and tell me if anywhere on any of those three Exhibits there appears information that this check was issued for rent on O. P.'s two D-8 dozers?

A Not in those words, no, sir.

Q Are there any words that could lead you to that conclusion contained on those Exhibits?

A This in addition to additional information.

Q I guess that's what I really want to get to. Do you have an independent recollection at this time as to what independent information you got outside those documents which lead you to that conclusion?

A You want me to explain step-by-step?

Q Yes, sir, if you would, please.

A All right, sir. I obtained each of the separate documents as contained in this Exhibit right here. And through each one of them, I made the itemized list. I would take, for example, this receipt sent in from Benavides Implement and Hardware Company where it did say that it was rental on D-8 tractors, a notation that is on this receipt. From that information, on the budget code, it said it was budget 329. Information from Zenida Montemayor said that the first couple of payments on two D-8 Caterpillars that were received by Judge O. P. Carrillo, the first two payments would come from budget code 329. The remaining payments would come from Commissioner Juan Leal's Precinct. Budget code 229. And from the information on this receipt and from information from Mr. Rudy Couling, who said that this was what the payments were for, were for these two bulldozers lead me to this summation of "For" on this Exhibit.

Q Therefore, you, in order to come to that conclusion, relied on and believed Mrs. Montemayor and Mr. Couling?

A Yes, sir, and additionally, the records of the Plains Machinery Company reflect dates of payments which would coincide with this check also.

Q Payments from whom?

A The payment to the Plains Machinery Company --

MR. MITCHELL: Now, wait a minute. The question was he said from whom.

Q Yes. Who paid the Plains Machinery Company?

A I don't know who paid them. All I can refer to is what Ranger Powell showed me there. He could probably answer it. I can't.

SENATOR MAUZY: Mr. President, what I would like to do is to go -- is to have that same character examination of this witness as to each of the items which has been marked as they relate to Judge Carrillo, and I think in the interest of time, if we could put somebody to work sorting those Exhibits out, we could do it much more rapidly and perhaps move on to something else and ask Mr. Lee to stand by to resume the stand. I think we can move a lot more quickly.

THE PRESIDENT: How many items are there, Senator?

SENATOR MAUZY: As I recall, there are twelve.

THE PRESIDENT: Mr. Doyle, do you object to that procedure?

MR. DOYLE: No, sir. I don't object.

MR. MITCHELL: I'd like, with permission of the Court, to ask a few questions of him before he is excused so that the Court is informed of the complete input into R-91, 92, Mr. President. If I might be permitted.

THE PRESIDENT: All right. While the Secretary is extracting the fifteen Exhibits requested by Senator Mauzy, the Chair will recognize Mr. Mitchell for the purpose of questioning this witness.

MR. DOYLE: Mr. President, before Mr. Mitchell starts, may I inquire of Senator Mauzy?

Senator, do you want us to do this on all of R-91, 92 and 93?

SENATOR MAUZY: If the ones which -- What I want is the one for which the notation ties directly to the Respondent in this case, where the indication, for example -- we can go through here right quick and check them off. I just counted them. There are fifteen on this Exhibit, R-91. If similar explanations appear on 92 and 93, yes, I would.

MR. DOYLE: Okay.

SENATOR MAUZY: I don't think it appears on the other two.

MR. DOYLE: Well, how -- Now, the ones where the notations indicate that money went to Ramiro Carrillo and Brothers, or to other persons -- Oscar Carrillo, or whoever they might have gone to. Do you want us to just do the ones that have notations which indicate the money was directly to the benefit of O. P. Carrillo, not the Farm and Ranch.

SENATOR MAUZY: Yes. The ones Mr. Odam examined Mr. Couling about yesterday, specifically. I can make a list of them very quickly. I just counted them. There are fifteen.

MR. DOYLE: Okay. You want to just mark the fifteen?

MR. ODAM: We have them marked.

MR. DOYLE: Okay. We've got them marked.

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: May I proceed, Mr. President?

THE PRESIDENT: Yes, sir.

CROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q Mr. Lee, so that the Court is informed, you were previously an employee with the DPS?

A Yes, sir.

Q And you were with the DPS up until a very short time ago?

A That is correct.

Q And what date did your employment with the DPS terminate?

A December the 31st, 1975.

Q Fine. And beginning January 1st of 1976, you have been moved over to the Attorney General's office?

A Yes, sir.

Q In what capacity, please, sir?

A As an investigator with the Organized Crime Unit.

Q All right. And while you were with the DPS, you were assigned, were you not, as a part of the Task Force in connection with the investigation of the affairs of Duval County?

A Yes, sir.

Q All right. And the charts, 91, 92, and 93, are products of that Task Force investigation, I suppose?

A Yes, sir.

Q And can you tell us when the chart was composed?

A Right offhand, I couldn't, Mr. Mitchell.

Q Well, was it -- well, it was prior to the time of the Judicial Qualifications Commission hearing in Corpus in November?

A That's right. Yes, it was.

Q Because you, of course, attended the Judicial Qualifications Commission hearing and assisted Mr. Odam and Mr. Flusche and Ms. Levatino in the prosecution of that action?

A Yes, sir.

Q And you have been attached one way or the other and interested in this case for how long?

A Approximately eight months.

Q All right. And when you sat down to make up the chart that Senator Mauzy asked you about, you picked Rudolfo Couling, a man whom you knew in August of 1975 had been given contractual immunity by the Attorney General's office and by Mr. Arnulfo Guerra, and who had previously testified in September of 1975 against Judge Carrillo in the Federal trial?

A Are you asking was I aware of this?

Q Yes.

A Yes, sir.

Q Sure. And you knew he was adverse politically, practically, and every other way to Judge O. P. Carrillo's position, didn't you, Don?

A Not necessarily.

Q Well, you knew that his position -- well, one of -- first of all, he had been indicted. You knew that?

A Yes, sir.

Q Had been indicted five times?

A Yes, sir.

Q And you knew that?

A I prepared the cases against him, yes, sir.

Q Sure. And you were taking the word of a man who had been indicted by a Grand Jury five times along with a lady by the name of Montemayor, weren't you?

A Yes, sir.

Q And Mrs. Montemayor was Judge Carrillo's secretary?

A Yes, sir.

Q And had been fired by Judge Carrillo in the middle of the year last year?

A Yes, sir.

Q And was antagonistic to Judge Carrillo, right?

A She didn't express antagonism to me, sir.

Q But at any rate, you knew she had been discharged by Judge Carrillo?

A Yes, sir.

Q So the second source of your information was a lady who had worked for him as a private secretary, answering the telephone?

A Yes, sir.

Q Who had left him under circumstances indicating that there was some character of rift between them. You knew that?

A Yes, sir.

Q All right. Now, I believe that's all of the personal information you had, if I understood your answer to Senator Mauzy's question -- from Montemayor and from Rudolfo Couling?

A And Ranger Gene Powell.

Q Right. I'm going to get to that. Ranger Gene Powell's information dealt with the terms of gathering data that formed an input into 91, 92, and so forth. Am I correct?

A Just to Exhibit 91, sir.

Q All right. Now, you did not have before you the contract of purchase of those dozers, did you, showing that Benavides Implement and Hardware had bought the dozers from the Plains Implement Company in December of 1972?

A This was a document that Ranger Powell would refer to while we were compiling this particular Exhibit.

Q All right. So that the Senate is aware, let's move to 91. That's Page 781. For example, there in 19 -- on Page 781, your entry there, "1/8/73", Budget Code 229 shows rent on O. P.'s two D-8 tractors in the sum of one thousand, eighteen ten. Correct?

A It says two D-8 dozers, sir.

Q Yes. And they are labeled as O. P.'s dozers?

A Yes, sir.

Q Well, would it -- did you have before you --

MR. MITCHELL: And I am now looking, if it please the Court, on Page 887, Volume Two, the document that was identified by Mr. Rudolfo Couling as a contract which he signed in December of '72 for the purchase of these dozers.

Q Would it surprise you, Mr. Lee, to know that on December 14, '72, Benavides Implement and Hardware bought those dozers from Plains Equipment -- Plains Machinery?

A I was aware that's what was on that contract, yes, sir.

Q All right. You did not, however, indicate on that Exhibit, this contract of purchase in the name of Benavides Implement and Hardware, did you?

A No, sir.

Q Discounted the document completely, didn't you?

A Not necessarily completely discounted, sir.

Q Well, you don't make any notations there that contract of sale or lease/purchase agreement existed in favor of Benavides Implement and Hardware, December, 1972, on it, do you?

A Sir, I had a limited amount of space to write in right here.

Q I know, but to the extent that you labeled it "two D-C 8 tractors, O. P.", it's misleading because the contract speaks for itself. Page 887 says it is a contract for the lease/purchase by Benavides Implement and Hardware. Isn't that right, Don?

A Yes, sir. That's what it says, yes, sir.

Q Sure. And the financing statement, which is a follow-up document signed by Benavides Implement and Hardware, R. M. Couling --

MR. MITCHELL: And if it please the Court, that's the document on 889 of this blue volume, Volume Two.

Q There is nothing about that document, the financing statement signed by Benavides Implement and Hardware, R. M. Couling, on R -- Exhibit R -- What is that? 91, Don?

A Yes, sir.

Q R-91, is there?

A No, sir. There is no notation on there.

Q So, you discounted that completely, didn't you, when you made that notation?

A I didn't necessarily discount it, sir.

Q Well, there isn't any reference to the financing statement in your documentation that a fellow by the name of Couling executed a financing statement claiming these as his in December of 1972, is there?

A There's no reference to that, no, sir.

Q And, out of fairness to you, there is no reference to the document on Page 890, either, is there? The breakdown of the purchase of the tractor?

A No, sir, there is not.

Q And the payment schedule? There is none of that, is there?

A No, sir.

Q And in addition, did you put in there, or did you have before you the checks that Benavides Implement and Hardware paid to Plains beginning in January for the purchase? Or, did you even know that they had paid for it?

A Are you talking about the checks from Benavides Implement and Hardware to Plains Machinery?

Q That's right.

A Did I have those documents?

Q Yes.

A No, sir, I did not.

Q Well, tell us, did you even know they existed?

Did you know that Benavides Implement and Hardware had given checks to the Plains under that contract, an agreement beginning in January, 1973?

A No, sir, I did not.

Q As a matter of fact, Don, when you look at your entry, 781, you say, "January '73, O. P.'s tractors" -- "rent on O. P.'s tractors". Did you know that on January -- in January of '73, that Plains Machinery received a check on that contract that I just got through showing you from Mr. Couling, the Benavides Implement and Hardware?

A With reference to the time that this was prepared, no, I did not know it.

Q Well, Mr. Couling told -- I am not being critical to you, Don. Mr. Couling was sitting at your side, and he chose just not to tell you, didn't he?

A I don't know what he chose to say. This was not mentioned, sir.

MR. MITCHELL: Now, for the purpose of the Senate's reference to that last question, I would like -- the checks appear in the record, the checks from Benavides Implement and Hardware to Plains Equipment, Page 648.

All those checks appear.

Q Did Mr. Couling tell you that he had received rental payments from O. P. Carrillo to the Benavides Implement and Hardware on these tractors?

A At the time of the preparation of this document, no, sir.

Q All right. So, Mr. Couling did not choose to inform you that he, Mr. Couling, had really paid every month as per that contract and agreement, the rental payment beginning in January '73, on those tractors, did he? He secreted that from you, didn't he, Don?

A He did not tell me this, no, sir.

Q He did not tell you he got rent for the same months from O. P. Carrillo on the same tractor.

MR. MITCHELL: For the purposes of the record, I want to show -- the Senate may be referred to Page 669, which are Judge Carrillo's checks.

Q Incidentally, did Mr. Couling tell you that he defaulted in 1974, in May, on the contract?

A All of the questions you are asking me, Mr. Mitchell, at the time of the preparation of this document, no, sir.

Q That's fine. Well, I am not being critical, but the Senate needs to know the input.

He didn't tell you he defaulted. Did he tell you that O. P. entered in another contract with Plains at that time, for the purchase of these tractors?

A At that particular time, no, sir.

Q And that was in May of 1974, that the title moved to Judge Carrillo on those tractors. He didn't tell you that either, did he, Don?

A At that time, no, sir.

Q So, to the extent that the Exhibit 91 reflects O. P. Carrillo's -- that is, income on O. P.'s tractors for '73, and down to -- and I am looking now at 781 and 782 -- O. P.'s tractors -- the Exhibit is based on incomplete knowledge that was secreted to you by Mr. Couling on the exact legal status of the title of those dozers, isn't it?

A It is based only on the information that he told me --

Q Right.

A -- at that time, yes, sir.

Q Did he tell you that O. P. Carrillo paid off --

MR. MITCHELL: And if the Senate cares -- the Court cares to look at these checks, they are also in the record, I believe at 669 -- Judge Carrillo's checks to the Benavides Implement and Hardware, paid after May of 1974.

Q Did he tell you that Judge Carrillo, out of his own pocket, paid for that contract -- the balance of the purchase of those two tractors after he repossessed them and contracted to buy them himself?

A At that time, no, sir.

Q Did he tell you that there was, in fact, a contractual transfer of title from Benavides Implement and Hardware to O. P. Carrillo, individually, in '74?

A At that time, no, sir.

Q Now, if we look at the vouchers -- now, let me talk about the vouchers just a minute, and Senator Mauzy has asked the Board of Managers to take a close look at those.

Those vouchers, the ones that were referred to by Senator Mauzy, are -- first of all, those are on Benavides Implement and Hardware stationery, aren't they? I mean, order blanks.

SENATOR JONES: Are these the documents that we will be furnished?

MR. MITCHELL: Yes. Senator, they are the ones, I believe, that Senator Mauzy has asked the witness about, and I wanted to ask a question.

SENATOR JONES: I know. But, I mean, do we have copies of them?

MR. DOYLE: Most of them. Almost all of them.

MR. MITCHELL: Yes.

SENATOR MAUZY: They are all here in the record, the supporting documents -- Xerox copies of them. The reason I wanted the originals is that they reproduced very badly. Frankly, I can't really make out some of them.

SENATOR JONES: But, we could find the photostats of the original documents?

SENATOR MAUZY: Yes, and I have asked Mr. Odam and he has asked his investigator to pull the originals out for us, which they are in the process of doing now, Senator. So, we will have the original documentation available.

MR. MITCHELL: May I continue, Mr. President?

THE PRESIDENT: Proceed.

Q Mr. Lee, those claim jackets we are talking about now -- they appear in the record, as pointed out by Senator Mauzy. They are -- all those claims are initiated by an order blank on Benavides Implement and Hardware order form, aren't they?

A Yes, sir.

Q Each and every one of them. Did Mr. Couling tell you that he wrote them, or that Cleofas Gonzalez wrote those?

A At the time of the preparation of this, he did not state who prepared that particular -- those particular slips.

Q All right. And did he tell you that the statement form that was prepared on the basis of that invoice on the Benavides Implement and Hardware was also prepared by him or by Cleofas Gonzalez?

A At that time, he did not mention this.

Q Were you aware that the check was issued from Duval County to Benavides Implement and Hardware based upon those vouchers printed on the Benavides Implement and Hardware statement?

A Was I told this?

Q Yes.

A I wasn't told by anybody that they were issued on the specific --

Q Would it surprise you that those checks were issued on the basis of those forged and false invoices executed by Cleofas Gonzalez or Rudolfo Couling to the Benavides Implement and Hardware?

A I didn't quite understand your question, sir.

Q I said would it surprise you at this point to know that fact?

A That they were issued on the basis of this?

Q To the Benavides Implement and Hardware and not Judge O. P. Carrillo?

A No, sir, because this was told to me by Mr. Couling later.

Q All right. And didn't he tell you that he had deposited them into the Benavides Implement and Hardware account?

A Yes, sir, he did.

Q All right. And didn't he tell you he wrote a check on that account to Plains -- that is the Benavides Implement and Hardware account?

A Mr. Mitchell, you're taking in a spectrum of time. You asked me a question first with regard to when this was prepared as to what knowledge I had that Mr. Couling told me -- we're looking at a spectrum of time later on. The question that you're asking me, Mr. Couling did make reference to some of the questions that you have asked. So, in the essence of which period of time you're talking about I need some sort of clarification.

Q Well, I think in sum and substance you had available to you Rudolfo Couling and Ms. Montemayor's testimony at the time that the Exhibit was executed. You did not have available the written contract and agreement of purchase between Benavides Implement and Hardware and Plains, nor the financing statement nor the collateral documentation, nor did you know that Benavides Implement and Hardware executed checks every month as payment of the DC-8 tractor contract to Plains, nor did you

know that Judge Carrillo paid rent to Benavides Implement and Hardware by his own personal check, nor did you know that Mr. Couling defaulted in May of 1974, nor did you know that Judge Carrillo entered into a written agreement with Plains at that time, bought them personally, nor did you know that thereafter he paid off those tractors by himself out of his personal account. Is that a summary about what --

A Well, there's some yes and some no in there.

Q Did you know and did Mr. Couling tell you that these tractors were on George Parr's ranch and -- strike that -- did Gene Powell tell you that the tractors were on George Parr's ranch? He found them, you know that?

A Yes, I knew this.

Q And did he tell you that he had found them on George Parr's ranch after Mr. Parr took his own life? Did you know that?

A There were several Caterpillars, these two specific ones I don't recall which ones Ranger Powell said were located at which specific location.

Q Would it surprise you that these two tractors were on Parr's ranch at the time of his death and Gene Powell so testified under oath before the House Select Subcommittee back in the early part of last year that he discovered them there?

(Senator Longoria in Chair)

A You asked me would this surprise me?

Q Yes.

A No, sir, it would not.

Q Did he just withhold or do you know whether it even came up where these two tractors were found? You said you talked to Gene Powell?

A Yes, sir.

Q And he was part of the input -- the information he furnished you was part of the input into the Exhibits that Senator Mauzy has asked about. Did he tell you that they were found on George Parr's ranch, these two dozers?

A May I make a clarification, sir?

Q Sure, anything you want.

A We were assigned to different areas of investigation. Now, Ranger Powell was working specifically with regard to equipment. I was not assigned to this specific type of investigation. In the process of our investigation we on many occasions talked about each other's areas of investigation. Ranger Powell had mentioned about equipment being found at various locations. So, if he mentioned to me about certain equipment found on a certain place I do not recall exactly which location or whose equipment he was talking about.

Q All right. You would have remembered had he said, "Say, wait a minute, Don, before you put that down as belonging to O. P., you better know this, I went out there and searched this stuff down and found it over there at George Parr's ranch." You would have remembered that certainly and made a notation on your official report, wouldn't you?

A Possibly I would have, Mr. Mitchell.

Q Now, one other point, did Rudolfo Couling tell you as he sat there with you and you were composing these that he had deducted these payments made to Plains Equipment on his income tax return for '73?

A There was no mention of this.

Q Did Mrs. Montemayor tell you -- strike that. He did not discuss whether or not he had used those two tractors for depreciation purpose on his tax return or used them for the purpose of deducting against gross income the \$32,000.00 that was paid?

A He did not mention this to me.

Q Didn't tell you it was on his tax report?

A No, sir.

Q Had you known that fact would you have questioned seriously the title?

A Well, I would have wanted to know more about it.

Q And, again, I'm not being critical of you, the man just withheld that from you?

A Yes, sir.

Q As you look back on it now isn't it obvious that he and Mrs. Montemayor were putting the make on -- or trying to put the make on Judge Carrillo and they were using your innocent ears to do it?

MR. DOYLE: Mr. President, in the first place the question that Mr. Mitchell just asked calls for a conclusion on the part of the witness. But my broader objection is that this gentleman has told the Court in response to the Court's question and again in response to Mr. Mitchell's question what he relied upon with respect to making out R-91, 92 and 93. And now Mr. Mitchell is attempting to just go through and retry his whole lawsuit with this one witness. And it amounts to badgering the witness and I object to that.

MR. MITCHELL: I don't intend to badger the witness, Mr. President and I certainly --

THE PRESIDING OFFICER: As long as it's proper cross-examination --

MR. MITCHELL: I don't intend to badger and I certainly will be careful. So the Senate understands, my only motive is not one way or the other to characterize this witness, but to inform the Senate as to the correct input to those Exhibits pursuant to the request of Senator Mauzy whose request I respect as being a part of this Court.

And if I indicated the contrary motive I apologize.

MR. DOYLE: Mr. President, that's exactly my objection. The witness has told the Court what he relied on when he made up the Exhibit. And I don't see any relevancy to the questions Mr. Mitchell is now asking with respect to all the -- I have allowed him to go as far afield as seems to be proper under the circumstances.

THE PRESIDING OFFICER: Insofar as it's not -- insofar as it's argumentative to the witness, of course, we're going to sustain your objection.

As far as cross-examination as to what was asked by you I think we will sustain the objection. I mean, overrule the objection.

MR. MITCHELL: Thank you, Mr. President.

Q One further question, Mr. Lee, did you talk to my client, Judge Carrillo, the Judge of the 229th District Court, about the input into that Exhibit?

A No, sir.

Q Chose not to talk to the very man about whom the Exhibit was being composed and who was a man who was a District Judge and duly elected as such of Duval County, the 229th Judicial District, did you, Don?

A You say I chose not to --

Q Not to, yes. Chose not to talk to him?

A For the purpose of investigation I chose not to talk to him.

Q But rather talk to a man whose character, at least by your own testimony, was in question by reason of the fact that he had been indicted five times largely on your investigation and was under investigation by the IRS and a lady who had been discharged by the Judge, you chose rather -- and I'm going to use the word "lean" to those folks in gathering your evidence where Judge Carrillo is concerned, rather than to the duly elected District Judge of that county, didn't you, Don?

A Their information in addition to Ranger Powell and to actual documentation, I chose this, yes, sir.

Q And that, of course, is very poor investigative procedure and you must admit that is correct, isn't it?

A Not in my opinion, sir.

Q You didn't talk to the very man about whom the inquiry was being made. And not only the very man, but a man who by reason of his office, who by reason of the fact that he had been elected, who by reason of his family background was there and available. Am I correct, Don?

A No, sir, at that time the Judge was suspended and was under investigation by the Internal Revenue Service himself.

Q You're telling us that that's the reason you didn't?

A No, sir, you mentioned the character of other people, I was referring to the character of Mr. O. P. Carrillo at the time I prepared this document.

Q He was suspended in June of 1975 by reason of the fact the House adopted the Articles of Impeachment, am I correct?

A Yes, sir.

Q Had not been tried until September on the IRS matter?

A That's right.

Q And Mr. Couling -- and the fact of the matter sat on the Bench, the Judge sat on the Bench right up to the day the Articles of Impeachment were handed down, am I correct?

A I did not personally observe this.

Q Had been a member -- his family had been a member of that community over two hundred years, am I correct?

A I assume this is true.

Q Had not been known to hop any freight trains or jump up under any kind of device to hide or to avoid investigation, am I correct?

A I assume this is correct.

Q And you are, of course, now aware that it was very, very poor investigative procedure not to talk to the District Judge who was the object of your inquiry and affection?

A No, sir, I do not agree with that.

Q But chose rather to talk to a man who was a condemned thief, thug, felon and perjurer over the District Judge of that community?

A I didn't know him to be a perjurer, sir.

Q Oh, you don't know that?

A I didn't know it at that time, sir, this is what you asked me.

Q Well, I understand. You do know now, don't you?

A No, sir, I don't know that.

Q He didn't tell you anything did he, Mr. Lee? Let you stick your neck in the noose, cause he didn't tell you about his written contract with Plains; he didn't tell you about checks to Plains; he didn't tell you about the contract with O. P. Carrillo and Plains; he didn't tell you about the fact he carried those dozers on his tax returns; he didn't tell you about payments Judge Carrillo made, did he? So, he put your neck in a noose and you are now feeling it at this very point, aren't you?

A No, sir, I'm not. And with regard to your spectrum of time of the questions you asked me, I was not aware of some of the questions you asked me at the time of the preparation of this document. Later on Mr. Couling made a full disclosure to us and did reveal information as to several of the questions that you asked me that I responded "no", because I was referring to the time of the preparation of this document, again, referring to the spectrum of time, sir.

Q Then, of course, the record will reflect I requested these documents to be delivered during the Judicial Qualifications trial in December of 1975 and they were delivered to me by Mr. Odam of the Attorney General's office who handled that. Why did you not make a follow-up notation on the documents and update them to reflect the additional input by Mr. Couling to you that would have changed 91, 92 and 90?

A Because at the time that this document was prepared it was not prepared for the purpose of a presentation against Mr. Carrillo. These documents were prepared at that time because I was continuing the investigation into the activities of Mr. Couling. I was not assigned to do any investigating on Judge Carrillo.

Q Oh, so that the documents were actually prepared to investigate Mr. Couling? Is that what you just got through saying?

A Well, when I first began the preparation of them, yes, sir.

Q Well, they were suspect on their face then, weren't they, Mr. Lee, and you knew it?

MR. DOYLE: Mr. President, I would object to that, it calls for a conclusion on the part of the witness.

MR. MITCHELL: Well, he's an expert, Mr. President.

MR. DOYLE: Mr. President, would you please instruct Counsel not to comment until after the Court has had an opportunity to rule?

MR. MITCHELL: You haven't been obeying that rule, you have been stepping all over me for the last week.

MR. DOYLE: I would renew my motion --

THE PRESIDING OFFICER: The motion is sustained, Mr. Mitchell.

Q You were investigating Mr. Couling and you took Mr. Couling's word for the truth and Mr. Couling's word for what was fact. Is that what you're telling us?

A Yes, sir.

Q And did not undertake to cross-check what the man who was the subject matter of your investigation was telling you as to the truth or falsity, Mr. Lee?

A No, sir, I did not.

Q But chose -- Let me ask you this: Were there any further indictments that were planned of Mr. Couling other than the five that have been secured against him as a result of this data?

MR. DOYLE: Mr. President, I would again object that calls for a conclusion on the part of a witness. It has not been shown that he had that knowledge.

THE PRESIDING OFFICER: Mr. Doyle and Mr. Mitchell, will you approach the Bench, please?

SENATOR MAUZY: Mr. President, I have a motion.

THE PRESIDING OFFICER: Mr. Doyle and Mr. Mitchell, will you approach the Bench, again, please, as regards to this motion?

MR. MITCHELL: Mr. President, may I ask a favor? I'm a coffee drinker, and I don't want to cut across any rules of the Senate. Are we going to have a break to have coffee? Or am I going to have to get up to have it?

THE PRESIDING OFFICER: Just a minute, Mr. Mitchell.

MR. MITCHELL: Mr. Odam wants a cup too.

THE PRESIDING OFFICER: We have a motion submitted by Senator Mauzy that we subpoena Ranger Gene Powell and Mrs. Zenida Montemayor. Is there any objection to said motion?

SENATOR MAUZY: As Court witnesses.

THE PRESIDING OFFICER: As Court witnesses, yes, sir.
Is there any objection to said motion? The Chair hears none. So ordered.

SENATOR AIKIN: Let's see just a minute. I don't know whether I do or not. I had thought maybe we might get through with this by Saturday by working all day. At the rate we're going, we'll be here week after next. And if we can get these witnesses in here, it's all right. But if it's going to take two or three weeks to do it, then it's not all right and I would object.

THE PRESIDING OFFICER: Well, we'll take a vote on it, then. We'll call the roll and --

SENATOR AIKIN: I want to get an answer to that question. How long are we going to take to get these witnesses? I'm sure getting tired of this, Mr. President. And I'm not the only one.

MR. DOYLE: Mr. President, they were our witnesses, they were the Examiner's witnesses and they were the witnesses in the impeachment for the House. If you would like me to answer that question, I will do so.

THE PRESIDING OFFICER: Will you -- ?

MR. DOYLE: Senator Aikin, both of these witnesses are available. Whether they will be here, you know, in the next day, I don't know. Both of the witnesses testified in the -- their testimony is complete in the record. We didn't bring them back up here to put before the Senate because of the suggestion by Mr. Mitchell and some Members of the Senate, that they wanted to try to use as much of this record as we could. But they are both available as far as I know.

SENATOR AIKIN: All right. In that case, I don't object. If they are available, I don't object.

MR. DOYLE: They are both in San Diego, Texas, as far as I know.

SENATOR DOGGETT: Mr. President.

THE PRESIDING OFFICER: Senator Doggett.

SENATOR DOGGETT: Senator Mauzy has the floor. Would he yield?

SENATOR MAUZY: Yes, I yield.

THE PRESIDING OFFICER: Senator Mauzy yields.

SENATOR DOGGETT: What is the purpose of having testimony to these witnesses?

SENATOR MAUZY: Senator, as I examine the record, neither of these witnesses testified as to conversations which they had with Mr. Lee to form the basis upon which he compiled Exhibit R-91. He has testified truthfully, I'm sure, and accurately that that document is based upon conversations which he had with three people, Mr. Couling, Mrs. Montemayor and Ranger Powell. Now, to satisfy myself as to where they got their information that caused that document to be made, the only way I know to get it is from those two witnesses. Mr. Couling is available. We can also get to him. That testimony has not been developed, to my knowledge, under oath anywhere. And I think it's pertinent to this inquiry.

SENATOR DOGGETT: So, you, as a Member of the Court, have questions to ask those two witnesses that are not contained in the records of the Judicial Qualifications Commission?

SENATOR MAUZY: Yes.

SENATOR DOGGETT: All right, thank you.

SENATOR OGG: Mr. President, will the Senator yield?

SENATOR MAUZY: Yes, I yield.

SENATOR OGG: Senator, prior to that, if I understand correctly what you're attempting to do, is to see what if any and where if any documentary evidence there is or if total reliance is made on what either Mr. -- Mrs. Montemayor or Mr. Couling has told Mr. Lee in compilations of the second --

SENATOR MAUZY: Or Ranger Powell.

SENATOR OGG: Or Ranger Powell. Before we vote on that motion, would it be possible for us to get into this budget coding and ask about the County Auditor, Mr. Meek, because it seems the same thing would apply to him to see how these codes were arrived at. There is nothing here that says how -- what a 229 or 329 is and why it's in Commissioner Leal's precinct or why it's Commissioner Carrillo's precinct, and at who's instructions those were given. To try again to see if there's any other evidence other than the swearing match between Witness A and Defendant B.

SENATOR MAUZY: Senator, to answer your question, I think the inquiry is pertinent as to how it was determined which budget code a particular check was to be credited to. Truthfully, I don't know who the proper witness would be to ask that question to. Perhaps the County Auditor, Mr. Meek.

SENATOR OGG: It would seem that way. And I would like to include Mr. Meek in your motion, if we could.

SENATOR MAUZY: Well, as I understand it, Mr. Meek has already testified and is still on call as a witness in this case. I believe I'm correct.

SENATOR OGG: I don't think he's testified to that fact from what I've read. That's the problem.

THE PRESIDING OFFICER: Mr. Doyle.

MR. DOYLE: Mr. President, with respect to Senator --

THE PRESIDING OFFICER: We can't hear you.

MR. DOYLE: Mr. President, and Members of the Senate, with respect to Senator Ogg's question, the information with respect to the budget code and where it came from the Exhibit, that's on the checks. It's on your desk. And --

SENATOR MAUZY: But the question is -- the question is who determines to put it in that budget code? And the question is what does budget code 229 mean?

MR. DOYLE: Well, that's in the transcript. That's in the record.

SENATOR MAUZY: During recess, I wish you would refer me to that.

MR. DOYLE: Might I just clear one more point for the Members of the Senate? Mrs. Montemayor testified in the Judicial Qualifications Commission. She did not testify with respect to this matter. Ranger Powell's testimony that's in this record was put into the JQC hearing by way of a stipulation and agreement to lift his testimony from the House Impeachment hearings and incorporate it into the Judicial Qualifications Commission hearings. Now --

SENATOR MAUZY: Well, obviously he didn't testify before the House Committee about a document that was compiled six months later, Mr. Doyle.

MR. DOYLE: No, sir, he didn't testify --

SENATOR MAUZY: That's what I want to inquire of him.

MR. DOYLE: We certainly have no objection. I would say that. If you want the witness here, the Board of Managers has absolutely no objection to that. We would have had them here, except for -- we would have a number of witnesses here obviously on this Article, except for the suggestion by the Court at numerous times while I was examining witnesses, "Well, isn't this in the record?" You know, "Can't we move on?" And I -- I will apologize to the Senate at this time for not having those witnesses here. I can assure you the reason they were not here was in an attempt to abide what appeared to me to be the wishes of this Court.

SENATOR MAUZY: Mr. Doyle, I'm not being critical, and you certainly don't owe me an apology, but by the same token, I didn't know this morning when Mr. Lee was produced who it was he talked to to rely on to compile this Exhibit. Therefore, I don't know how I can possibly have requested their attendance as a witness until I knew who they were.

MR. DOYLE: Well, with respect to the questions on that Exhibit, if you will look at the transcript of the testimony in connection with that Exhibit, there was a stipulation in the Court -- in the JQC hearing -- by both sides on everything that was in that Exhibit except for the notation at the end as to, you know, where the money went to. Everything else was agreed on. I would further point out to you that that Exhibit was introduced not by the Examiners. It was introduced into evidence by the Defense. Now, those two witnesses are certainly available. They are both, as far as I know, in San Diego, Texas, and we ought not have any difficulty getting a subpoena down there today. And, unless something has happened that I am not aware of, have them here tomorrow. However, I think if you're going to do that, you ought to take a look at what other witnesses you might want to hear on that same subject matter so we won't have, you know, a delay tomorrow. Because, if Ranger Powell, for instance, says, "I relied upon some twenty people", who he talked to in Duval County about this matter, if you want those twenty, then we're going to be -- we need to --

SENATOR MAUZY: How do we know that before we hear his testimony?

MR. DOYLE: The only thing I can suggest to you is you read his testimony. But I can assure you there were a number of people that were investigating, but obviously they worked together. Obviously they exchanged information. That's the way any investigation works. Those two witnesses are readily available. We should have no difficulty in getting them here tomorrow.

SENATOR OGG: Mr. Doyle, in connection with that, did you -- in your answer to my question awhile ago, are you telling me that in Mr. Meek's previous testimony in the document that -- contains information in each instance where he says it was budgeted -- it was put under budget code so-and-so because Commissioner A told me or Commissioner B or Judge C or --

MR. DOYLE: At Page 317 of the Journal. All right?

MR. MITCHELL: Pardon me just a minute, Senator. I'm going to disagree. Mr. Meek said he had nothing to do with the assignment of the budget code number. That was the prerogative of Mr. Hinojosa, his assistant. Mr. Hinojosa testified that he had a budget code system of his own making, that after the claim jacket was put together, it was given to Mr. Hinojosa who took out his own system, as I recall his testimony, and made that assignment. Mr. Meek disclaimed any knowledge whatsoever of the budget code system. I asked him that question here precisely, I believe, on about the second day after he took the stand. That's my recollection of the record.

SENATOR OGG: Mr. Doyle, again, and Mr. Mitchell, the whole purpose, I think, of what we're doing is certainly not to delay. I think everyone here wants to get with it. But this is the very crux of the conspiracy, and, if I understand both sides what you're saying is if this went on, then anything that we can find in the way of independent evidence to substantiate this, otherwise we're back to a swearing match, if it was not a conspiracy, if you've got one group of people ganging up on another, then we want to try to ferret that out, but to try to find someone or something that's

independent, that's not on one side or the other in Duval County, just isn't very easy. And that's the purpose of trying to find out what --

MR. DOYLE: Senator, in an effort to assist you, what you're concerned about is who made the determination out of which funds various checks would be drawn? Is that what concerns you?

SENATOR OGG: Yes, sir, and whose side they are on, whether they have immunity or whether they don't and where the players are.

MR. DOYLE: Well, I --

SENATOR OGG: And what their credibility is.

MR. DOYLE: The testimony, as I recall by Mr. Meek was that was a matter of discretion with respect to the Commissioners Court. I would point out to you that one of the conspirators herein, Ramiro Carrillo, was a member of that body. He has taken the Fifth Amendment throughout, however.

MR. MITCHELL: Counsel, if you're going to comment on it, I'll comment he can't out-vote four, including Archie Parr.

SENATOR OGG: We're aware there were different sides on the Commissioners Court.

THE PRESIDING OFFICER: The Chair is going to recognize Senator Traeger here for a motion that he had.

SENATOR TRAEGER: Parliamentary inquiry.

THE PRESIDING OFFICER: Parliamentary inquiry.

SENATOR TRAEGER: The only reason the Senate is being asked to vote on calling witnesses is because they would be Court witnesses, is that correct?

THE PRESIDING OFFICER: Yes, sir.

SENATOR TRAEGER: Neither the Defense or the Prosecution is precluded from calling either of the gentlemen regardless of how the Senate votes on calling the witnesses, is that correct?

THE PRESIDING OFFICER: That's correct, Senator.

SENATOR TRAEGER: So that if we decide to say, "No, we're not going to call him", and Mr. Mitchell feels like this -- or Mr. Doyle that the question had been raised here, either of them can call these witnesses, can't they?

THE PRESIDING OFFICER: Yes. That's correct.

SENATOR TRAEGER: Their right to call witnesses in no way curtails our vote the other day on voting on the proposition --

THE PRESIDING OFFICER: Yes, sir. We have a motion --

SENATOR AIKIN: Mr. President, as far as I'm concerned, I will give unanimous consent. We don't have to have a vote on it.

THE PRESIDING OFFICER: All right, sir.

SENATOR AIKIN: The only question that I raise is a matter of time which -- and this killing time is just about all I can take of it, the repetition, just one thing after another. If we're going to get these witnesses up here and hear their testimony and do it in the next -- in a reasonable time, fine. But I'm certainly not willing to sit here for three or four more weeks waiting on two witnesses. If he can get them here and you say you can, get them here or get them up here tomorrow if you can, and that'll be fine and I'll give unanimous consent and you won't have to have a vote.

SENATOR OGG: Will the Senator yield?

After reading this testimony both sides have referred to, if we would like to hear from Mr. Meek and Mr. Hinojosa, would the same thing be put to a motion as to those two, then I'll not try to include them in Senator Mauzy's motion.

SENATOR AIKIN: I'm not willing to sit here two or three weeks, I'll tell you that.

THE PRESIDING OFFICER: Well, Senator Aikin, the Chair might say that this is a High Court of Impeachment, and the Members of this Court can request them, and if somebody objects, if the Members of this Court want to subpoena or bring somebody here, we have got a job to do, and whatever time it takes.

SENATOR AIKIN: Well, I'll be the judge of that, Mr. President, as far as I'm concerned.

THE PRESIDING OFFICER: Well, the majority of the Members of the Court, I think, will decide that, Senator Aikin.

SENATOR MAUZY: Mr. President, maybe unanimous consent won't -- I don't know. I wish you would put the motion to ask if --

THE PRESIDING OFFICER: Is there any objection to the motion made by Senator Mauzy that Ranger Gene Powell and Mrs. Zenida Montemayor be subpoenaed as witnesses in this Court as Court witnesses?

SENATOR BROOKS: Parliamentary inquiry. Are these two people already on notice, already under subpoena? Then we'll have to start all over.

THE PRESIDING OFFICER: Counsel for the Court.

MR. JAWORSKI: I wanted to call your attention to the situation that the Secretary just mentioned to me, and it is correct. There is no provision in the Rules with respect to the Senate on its own motion subpoenaing any of these witnesses now. It doesn't mean that you can't do it. And perhaps by this motion, you should be suspending the Rule so as to let them be subpoenaed by the Senators, such as you put it, as Court witnesses. Now, that could be obviated if either side wanted to subpoena these witnesses as their witnesses. But, unless they do so, then it seems to me you're going to have to have some rule, either by your motion which would act as a suspension of the present Rules, something that would entitle the Senate sitting as a Court to subpoena these witnesses as such.

SENATOR MAUZY: Mr. Jaworski, the reason I suggested they be Court witnesses is I take it neither party wants to call them themselves. I think their testimony is important, and I think it's valid. By making them Court witnesses, neither side is bound by the witnesses' testimony.

MR. JAWORSKI: That's exactly correct. Then neither side can impeach the witness under those circumstances. I know what your purpose is, and I think it's entirely proper. But I believe that there is absence of any such provision in the Rules.

MR. MITCHELL: We volunteer, then, to subpoena them immediately for the Senate.

MR. JAWORSKI: I beg your pardon, Mr. Mitchell?

MR. MITCHELL: We would, Mr. Jaworski, undertake to issue subpoenas in standard for the --

SENATOR MAUZY: I think that solves the problem.

MR. MITCHELL: -- Mrs. Montemayor and Ranger Powell.

SENATOR MAUZY: Then, I will withdraw the motion.

THE PRESIDING OFFICER: Thank you, Mr. Mitchell.
We'll have a 15 minute recess.

Accordingly, the Senate, sitting as a Court of Impeachment, at 10:25 o'clock a.m. recessed until 10:40 o'clock a.m.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 10:40 o'clock a.m.

THE PRESIDENT: Mr. Mitchell, have you completed your questioning of this witness?

The Senate will come to order.

MR. MITCHELL: No, I have one or two more.

THE PRESIDENT: Please proceed.

MR. MITCHELL: All right, sir.

THE PRESIDENT: Please proceed, Mr. Mitchell.

Q Mr. Lee, do you know Mr. Gabe Raymond?

A I am acquainted with him, yes, sir.

Q Who is he? Tell us.

A I believe, at this time, that he is President of the Duval County Conservation and Water District, I believe that is his title.

Q How long has he been, if you know, the President of the Water District?

A I don't know for sure, Mr. Mitchell. I don't think it has been for too long a period of time.

Q Did he take over after D. C. Chapa resigned that position?

A I am not familiar with that, sir.

Q All right. Was Gabe Raymond a part of the conference procedure that you followed in compiling the Exhibits that Senator Mauzy has asked you about?

A I have not talked to Mr. Raymond about anything to do with these Exhibits.

Q All right. Did you talk to him, or did he talk to you about the possibility of immunity for Rudolfo Couling?

A He did not talk to me.

Q Do you know whether or not there exists a relationship, personal in nature, between him and Mrs. Montemayor?

A No, sir. I do not.

MR. MITCHELL: No further questions, Mr. President.

THE PRESIDENT: Mr. Doyle.

REDIRECT EXAMINATION

(Questions by Mr. Doyle:)

Q Mr. Lee, Mr. Mitchell asked you a number of questions concerning what you based your information on at the time you prepared the Exhibits in question. Do you remember that?

A Yes, sir.

Q Now, I am going to ask you a question, and I would very much hope that all the Senators are listening.

Was there a considerable lapse of time between the time you started preparing this Exhibit and the time Mr. Mitchell introduced it in the Judicial Qualifications Commission hearing?

A Yes, sir, there was.

Q Was the Exhibit complete and totally finished except for -- just a few days immediately prior to the time it was introduced?

A The document was complete and I have added nothing at all since its completion, several months ago.

Q All right. Now, between the time the document was completed and the time it was introduced into evidence, did your knowledge concerning what -- concerning the

conclusions that are listed in the last column on the documents -- did your knowledge concerning those conclusions increase substantially?

A Yes, sir. It did.

Q All right. Now, at either time, while you were preparing the document or during the interval between the time it was completed and the time it was introduced into evidence by Mr. Mitchell, did you know of the fact, which is now in this record, that Mr. O. P. Carrillo had made the deal with Plains Machinery for the two D-8 tractors?

A Of my own personal knowledge, no, sir.

Q No. I know that. You weren't there when the deal was made. But, did you know of the testimony of Mr. Red Kurtz who testified under oath that O. P. Carrillo had come down to his place and made the deal for the two D-8 tractors?

A I knew of that testimony, yes, sir.

Q All right. So you knew about all that before this was introduced into evidence at the JQC?

A That is correct.

Q Did you know that in that -- as a result of Mr. Kurtz' testimony, it was established that Judge Carrillo told Mr. Kurtz that these dozers were for his own use?

A I was aware of this testimony.

Q All right.

MR. MITCHELL: Excuse me, Counsel. Did you ask him at the time that Mr. Couling bought them, or at the time that Judge Carrillo bought them in May of 1974. I didn't --

MR. DOYLE: My question was, Mr. Mitchell, if he knew, prior to the time you introduced them into evidence, that O. P. Carrillo had made the deal with Plains Machinery for the two Cats. His answer was "Yes"

MR. MITCHELL: In May of 1974?

MR. DOYLE: No, no. That's not when the contract was entered into. That's not what Mr. Red Kurtz testified to, either, Mr. Mitchell. You are well aware of that. The record is quite clear on that.

MR. MITCHELL: Well now, wait a minute. The --

MR. DOYLE: Page 1873 of the Journal is where Mr. Kurtz testified about O. P. Carrillo coming down and cutting the deal --

MR. MITCHELL: I am talking about the contract with Plains Machinery and O. P. Carrillo, dated in May of 1974, Counsel.

MR. DOYLE: Well, you can talk about anything you want to, Mr. Mitchell, when you have the witness on examination. I am now questioning about the deal, the original deal that was cut with Plains Machinery which O. P. Carrillo went down and made with Red Kurtz, according to Mr. Kurtz' testimony, which is quite clear, which you introduced into this record.

Q Now, Mr. Lee --

MR. MITCHELL: Wait a minute. I am going to object to it. It would be in violation of the best evidence rule. The best evidence is the written contract between Benavides Implement and Hardware and Mr. Rudolfo Couling, Mr. Terry.

THE PRESIDENT: Mr. Mitchell, is this contract in the transcript which was introduced and accepted by the Senate at your acceptance?

MR. MITCHELL: Yes, sir. The written contract --

THE PRESIDENT: I consider that objection frivolous and insulting to this Senate, Mr. Mitchell.

MR. MITCHELL: Well now, I am going to take exception to that remark, Mr. President.

THE PRESIDENT: Sit down, Mr. Mitchell.
Proceed, Mr. Doyle.

MR. MITCHELL: I will not only sit down, but I will remove myself from the Chamber. You all can proceed to try him in absentia.

MR. DOYLE: Am I instructed to proceed, Mr. President?

THE PRESIDENT: Please, Mr. Doyle.

JUDGE CARRILLO: Mr. President, may I be heard?

THE PRESIDENT: Judge Carrillo, do you wish your Counsel present in the Chamber?

JUDGE CARRILLO: Well, I don't know exactly what just happened, but it seems to me that I have been left without an attorney, Mr. President. I don't want to be disrespectful to anyone here, but you all saw what happened. I wasn't even privy, or anything, to this. I don't know Mr. Mitchell's feelings, but if he is going to walk out on me, then it seems that I need someone to represent me. At least, I need time to go back and talk to him and see if I can't get him back in here, or get somebody in here.

I would appreciate that from the Senate.

SENATOR GAMMAGE: Mr. President.

THE PRESIDENT: Senator from Harris, Senator Gammage.

SENATOR GAMMAGE: Mr. President, I would like to move that Mr. Mitchell be instructed to return to the Chamber for the continuance of these proceedings under penalty of contempt if he violates those instructions.

THE PRESIDENT: You have heard the motion of the Senator from Harris, Senator Gammage, that Mr. Mitchell be instructed to return to the Chamber and resume the trial under pain of contempt. Is there objection to that motion?

SENATOR PATMAN: Mr. President, I would like to know what the Senate's Counsel has to say on that? Does he have advice for the Senate?

MR. JAWORSKI: Yes, I do. I don't believe that any attorney has the right to walk out on a hearing such as this, or walk out a Court proceeding. If he does, the Court wouldn't hesitate one moment in holding him in contempt.

But, inasmuch as Mr. Mitchell was upset, I would suggest he be given the opportunity of coming back in and continuing. If he wants a recess for a few minutes, that's something that you can consider. But I do not think that he has the right to remove himself from this proceeding as he has done.

SENATOR TRAEGER: Mr. President.

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: I would like to move that we stand in recess until 1:00 o'clock -- 1:30, Mr. President.

SENATOR AIKIN: No. Mr. President, we have just had a recess, and the motion that is before the Senate was made by Senator Gammage.

THE PRESIDENT: The motion to recess does take precedence. I don't believe we can hold that we are in a series of votes on a series of motions.

At this time, the Senator from Guadalupe moves the Senate stand in recess until -- what was your time?

SENATOR TRAEGER: 1:30, sir.

THE PRESIDENT: 1:30 this afternoon.

As many as favor that motion will vote "Aye"; those opposed vote "No" as your names are called.

Secretary, call the roll.

Yeas: Clower, Hance, Harrington, Harris, Kothmann, Lombardino, Longoria, Mauzy, McKnight, Ogg, Patman, Snelson, Traeger and Williams.

Nays: Adams, Aikin, Braecklein, Brooks, Creighton, Doggett, Farabee, Gammage, Jones, McKinnon, Schwartz and Sherman.

Present-Not Voting: Moore.

Absent-excused: Meier, Mengden and Santiesteban.

Absent: Andujar.

THE PRESIDENT: There being 12 "Yeas" and 14 "Nays", the motion to recess fails.

The question is now on the motion of the Senator from Harris, Senator Gammage, that the Sergeant-at-Arms be instructed to escort Mr. Mitchell back to the Chamber.

Is there further discussion or debate of that motion? If not, as many as favor that motion will vote "Aye"; those opposed, vote "No" as your name is called.
Secretary, call the roll.

THE PRESIDENT: The Chair apologizes to the Senate. The Chair is advised by the Secretary that the Chair misannounced -- erred in the announcement of the vote on the motion to recess. There being 14 "Yeas" and 12 "Nays" the motion to recess has prevailed. The Senate stands recessed until 1:30 this afternoon.

Accordingly the Senate, sitting as a Court of Impeachment, at 10:58 o'clock a.m. recessed until 1:30 o'clock p.m. today.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 1:30 o'clock p.m.

THE PRESIDENT: The Court will come to order.

SENATOR TRAEGER: Mr. President.

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: Mr. President, immediately before adjourning, a motion -- the count was in error on a motion to recess, and there was a subsequent vote taken later. And I wonder if that vote should not be stricken from the record since it was taken in error and after we were recessed.

THE PRESIDENT: It was taken in error, Senator, and the result not announced, so it is not in the record.

SENATOR TRAEGER: Thank you, sir.

THE PRESIDENT: Senator from Dallas, Senator Mauzy.

SENATOR MAUZY: Thank you, Mr. President.

EXAMINATION

(Questions by Senator Mauzy:)

Q Mr. Lee, during the noon recess, Counsel had furnished me with all the original Exhibits that we talked about this morning, that is, the Exhibits that were used by you to compile R-91 which is in the record here. And during the noon recess, I've also asked you to examine each of these original Exhibits, have I not?

A That's correct.

Q And you have done so, have you not?

A Yes, sir.

Q All right, sir. Now, in each instance, there are three documents that are used to support each of those entries, that is, an invoice on the letterhead of Benavides

Implement and Hardware Company, the voucher from or envelope which is used by the county to present the invoice to the Commissioners Court, for approval of payment, and the check issued by the Treasurer of Duval County to pay that invoice, is that correct?

A Yes, sir.

Q And now, specifically, we're referring to --

SENATOR TRAEGER: Mr. President.

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: I will rise to suggest the lack of quorum in the proceedings, which I think is not beneficial to either prosecution or the defendant.

THE PRESIDENT: Senator from Guadalupe suggests the absence of quorum. Secretary will call the roll in order to verify the presence of a quorum.

Present: Adams, Aikin, Brooks, Clower, Farabee, Gammage, Harrington, Kothmann, Lombardino, Longoria, Mauzy, Moore, Patman, Sherman, Traeger and Williams.

Absent-excused: Meier, Mengden and Santiesteban.

Absent: Andujar, Braecklein, Creighton, Doggett, Hance, Harris, Jones, McKinnon, McKnight, Ogg, Schwartz and Snelson.

THE PRESIDENT: The roll call reveals the presence of sixteen members of the Senate, five short of a quorum. The action the Senate may take in the absence of a quorum awaits the attendance of absent members or place a call on the Senate to adjourn or recess.

SENATOR PATMAN: Mr. President, may we inquire about the length of this fellow's testimony on the stand now?

SENATOR MAUZY: Without a quorum --

SENATOR PATMAN: If we've got more witnesses, coming tomorrow and this man is -- we might as well recess until tomorrow.

SENATOR ADAMS: Mr. President, I would like to move that the Senate Stand At Ease awaiting a quorum.

THE PRESIDENT: The Senator from Jasper moves that we Stand At Ease awaiting the attendance of a quorum. Are there objections? Chair hears none.

SENATOR ANNOUNCED PRESENT

Senator Andujar, who was shown as "Absent" on the previous roll call was announced "Present," noting that she was in her office at convening time but that the call bell failed to function in her office.

THE PRESIDENT: The Senate will come to order. Secretary, call the roll.

Present: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Farabee, Harrington, Jones, Kothmann, Lombardino, Longoria, Mauzy, Moore, Ogg, Patman, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: Gammage, Meier, Mengden and Santiesteban.

Absent: Creighton, Doggett, Hance, Harris, McKinnon and McKnight.

SENATORS ANNOUNCED PRESENT

Senator Hance, who was shown as "Absent" on the two previous roll calls was announced "Present," noting that his absence was caused by his appearance before the Coordinating Board, Texas College and University System on behalf of Texas Tech University.

Senator McKinnon, who was shown as "Absent" on the two previous roll calls was announced "Present," noting that his absence was caused by an appointment with Tom Keel of the Legislative Budget Board.

Senators Creighton and McKnight, who were shown as "Absent" on the two previous roll calls were announced "Present."

THE PRESIDENT: A quorum is now present. Please proceed, Mr. Mitchell.

Q Mr. Lee, I'm now going to hand you these Exhibits one at a time and ask you the same question as to each. For purposes of the record I will identify -- it's C-1, 2, and 3, which relate to the check issued January 8th, 1973. Does the name O. P. Carrillo appear anywhere on any of those documents?

A No, sir.

Q Now, I hand you what's been marked and identified and introduced into evidence in this record as Exhibits E-95, E-96, and E-97 which form the basis of the check issued January 8th, 1973. And I will ask you the same question, does the name O. P. Carrillo appear anywhere on any of those documents?

A No, sir.

Q All right, sir. Now, I will ask you the same question about the instruments I'm handing you which are marked for identification in this record as Exhibits E-97, 98 and 99, which form the basis for the check issued February 14th, 1973. Does the name O. P. Carrillo appear anywhere on any of those documents?

A No, sir.

Q Now, I hand you what's marked for identification in this record as Exhibits E-101, 101-1 and 101-2 and 101-3, 101-4, Exhibit E-102 and Exhibit 103 which form the basis for the check issued March 12th, 1973. And ask you if the name O. P. Carrillo appears anywhere on any of those Exhibits?

A No, sir.

Q I hand you now what has been marked and received into evidence in this record as Exhibits E-104, 105 and 106, which form the basis for the check issued April 18th, 1973 and ask you if the name O. P. Carrillo appears anywhere thereon.

A No, sir.

Q I hand you now what's marked and received into evidence in this record as Exhibits E-107, 108 and 109, which form the basis for the check issued May 14th, 1973 and ask you if the name O. P. Carrillo appears anywhere thereon?

A No, sir.

Q I will hand you now Exhibits which have been received in this record and marked as Exhibits E-110-A, 110-B, 110-C; E-111 and E-112, which form the basis for the check issued June 12th, 1973 and ask you if the name "O. P. Carrillo" appears anywhere thereon?

A No, sir.

Q I hand you what's been received into evidence in this record as Exhibits E-113-A, E-113-B, E-113-C, E-114 and E-115 which form the basis for the check issued July 17th, 1973 and ask you if the name "O. P. Carrillo" appears anywhere thereon?

A No, sir.

Q I hand you what's been received into evidence in this record as Exhibits E-116, 117 and 118, which form the basis for the check issued August 29th, 1973 and ask you if the name "O. P. Carrillo" appears anywhere thereon?

A No, sir.

Q I hand you what has been received into evidence in this record as Exhibits E-119-A, E-119-B, E-119-C, E-120 and 121, which forms the basis for the check issued October 4th, 1973 and ask you if the name "O. P. Carrillo" appears anywhere thereon?

A No, sir.

Q I hand you what's been received into evidence in this record as Exhibits E-122, E-123 and E-124, which form the basis for the check issued November 2nd, 1973 and ask you if the name "O. P. Carrillo" appears anywhere thereon.

A No, sir.

Q I hand you what's received into evidence in this record as Exhibits E-125, E-125-A, E-126 and E-127, which forms the basis for the check issued November 19th, 1973 and ask you if the name "O. P. Carrillo" appears anywhere thereon?

A No, sir.

Q I hand you what's been received into evidence in this record as Exhibit E-128, 129, E-130, which forms the basis for the check issued December 18, 1973, and ask you if the name, "O. P. Carrillo" appears anywhere on there?

A No, sir.

Q I hand you what's received into evidence in this record as Exhibits E-131, E-132 and E-133 which form the basis for the check issued January 18, 1974 and ask you if the name "O. P. Carrillo" appears anywhere thereon?

A No, sir.

Q I hand you what's received into evidence in this record as Exhibits E-134, 135 and 136, which form the basis for the check issued February 28, 1974 and ask you if the name "O. P. Carrillo" appears anywhere thereon?

A No, sir.

Q I hand you what's received into evidence in this record as Exhibits E-137, 138 and 139 and which form the basis for the check issued March 18, 1974 and ask you if the name "O. P. Carrillo" appears anywhere thereon?

A No, sir.

Q So that, Mr. Lee, as I understand it, in each of the instances which we've detailed here, some fifteen checks which were issued to Benavides Implement and Hardware Company, the name "O. P. Carrillo" does not appear in any of those instances?

A That's correct.

Q And the sole and exclusive basis for your conclusion which appears in Column 7 of Exhibit R-91, stating O. P.'s two dozer tractors was based on information which you received from Ranger Captain, Mr. Powell?

A Yes, sir. Ranger Gene Powell.

Q Mr. Powell, Mrs. Montemayor and Mr. Couling, is that correct?

A And based on this documentation right here.

Q Well, but the name "Carrillo" does not appear anywhere on this, so you couldn't --

A No, sir, I was combining what their information was with regard to the types of equipment referred and formed the basis on that.

Q I see. But, insofar as relating it to O. P. Carrillo, that conclusion on your part was drawn solely and exclusively from information furnished you by those three individuals?

A That is correct, yes, sir.

Q Thank you very much.

SENATOR MAUZY: Thank you, Your Honor.

REDIRECT EXAMINATION RESUMED

(Questions by Mr. Doyle:)

Q Mr. Lee, Senator Mauzy asked you about the individuals that you drew your conclusions about when you made up the last column on the Exhibit. That's just what he got through discussing with you, is that correct?

A Yes, sir.

Q Now, did you also have besides the information from those three specific individuals about those specific accounts independent knowledge that you had obtained as an investigator in this case?

A To create an air of suspicion?

Q Right.

A Yes, sir, I did question you had been assigned to investigate the disappearance of funds from Duval County, is that correct?

A Yes, sir.

Q And you had independent knowledge that you picked up yourself, is that accurate? In addition to what these three people had told you?

A Yes, sir.

Q All right. In the course of that investigation, Mr. Lee, did you talk to people who worked for Duval County?

A Yes, sir.

Q Did you attempt to find out whether or not Duval County had indeed leased equipment and used it from Benavides Implement and Hardware, or O. P. Carrillo or from Oscar Carrillo or from D. C. Chapa or from any of these persons who received these checks from Benavides Implement and Hardware?

A I didn't necessarily solicit the information. In talking with these people, it came about. I did not really solicit it.

Q Right. Well, did you ever find anybody that worked for the county who had operated any equipment so leased or worked with any equipment so leased or anything to indicate that the county actually received the benefit for these monies it was paying out?

MR. MITCHELL: Excuse me. We're going to object. It would be hearsay as to what people told this witness, he not having personal knowledge, Your Honor.

THE PRESIDENT: Objection sustained.

Q Okay. Mr. Powell, I want to show you some things. There has been much discussion or at least there was this morning about a certain contract entered into between Benavides Implement and Hardware and Plains Machinery. And that's been

marked and identified by -- and discussed by Mr. Mitchell this morning as E-160. Now, I'm going to hand you E-160 and ask you to take a look at it. Does that appear to be a contract between Benavides Implement and Hardware and Plains Machinery?

A Yes, sir.

Q Now, up on the top of that contract, would you tell us what Benavides' address, Benavides Implement and Hardware, what its address is?

A It says "Drawer S".

Q Benavides, Texas? Or just Drawer S?

A Benavides further on down.

Q Right.

A Yes, sir.

Q Okay. So, whoever prepared this contract thought Benavides Implement and Hardware was Drawer S. Would that be a logical conclusion?

A Apparently so, yes, sir.

Q Now, this is the contract that I was asking you the questions about this morning, that Mr. Red Kurtz testified about in the record.

MR. DOYLE: For the benefit of the Members of the Senate, this is the contract which Mr. Kurtz says he made the deal with O. P. Carrillo in -- January, 1973 is the date it actually took place, a few months prior to that -- For the benefit of the Senate, that's the one we're talking about.

MR. MITCHELL: I'm going to object to your characterization of that conversation, Counsel. And, again, Your Honor, I call the attention of the Court to the record. It's the best evidence of what transpired between Mr. Kurtz or the parties at the time the contract was entered into, if it please the Court.

SENATOR OGG: Mr. President.

THE PRESIDENT: Senator from Harris, Senator Ogg.

SENATOR OGG: As an observer here, it would be appreciated that if rather than both attorneys characterizing and telling us what the people said in their words, if they would maybe just report the page and what transcript they're referring to so we can refer to it, we might could move on unless they're going to be sworn in and both testify.

MR. DOYLE: Mr. President, this morning when I made reference to Mr. Kurtz's testimony, Senator Ogg, I did give you the page number. If you'll wait just a moment, I'll get it to you again. It's in the Senate Journal.

The Senate Journal Page number 1441.

THE PRESIDENT: Senator Ogg's observation is indeed well taken, and the Court would appreciate it if Counsel would follow the suggestion.

MR. DOYLE: Would you like me to read that portion I had reference to, Mr. President?

It wouldn't take a moment. This is the testimony of Mr. Kurtz. I'll start on the bottom of the Page 1440.

"Question: But there is a brand name --"

They were trying to establish what brand of tractor purchased.

"Question: But there is a brand name called a Caterpillar tractor?"

"Answer: Yes."

"Question: You stated earlier you know Judge O. P. Carrillo. Could you please state the basis for your knowledge of O. P. Carrillo?"

"Answer: Well, of course --"

"Question: Strike that. Let me be specific. Did Judge O. P. Carrillo, who you identified here as being in the courtroom, did he come into Plains Machinery to see you on business?"

"Answer: The only time was when he purchased these tractors."

"Question: At the time Judge O. P. Carrillo came into the store, was there anyone else with O. P. Carrillo at that time?"

"Answer: There may have been one or two others, sir. I think there was one or two others, but I could not identify them."

"Question: At the time he came into the store, this was in Corpus Christi?"

"Answer: Yes."

"Question: Can you recall generally what time -- give us a date as to what year that was, first of all?"

"Answer: '73."

"Question: Several years ago?"

"Answer: Well, approximately at the time of these contracts, the date of those contracts."

"Question: We will get into that in a minute, but around the contracts we will get into."

"Answer: Yes."

"Question: And Judge O. P. Carrillo came to see you at that time, do you recall the general nature of the conversation you had with him at that time?"

"Answer: It was pertaining to some equipment he wanted to purchase, some equipment for his own use."

"Question: Did he specifically say to you it was for his own use?"

"Answer: Yes."

"Question: Did he say it was for the use of the county?"

"Answer: No, sir."

"Question: Did he say --"

"MR. MITCHELL: Excuse me, objection as to leading."

"MR. ODAM: I will rephrase the question."

"Question: (BY MR. ODAM) 'When Judge O. P. Carrillo came to see you, at that time, could you state whether or not if he indicated it was for personal use or for county use?'

"Answer: Personal use."

"Question: And he made that statement to you?"

"Answer: Yes, he said he wanted to clear some land."

"Question: Now, the equipment -- you generally talk about what when you got down to the models and could you describe to me what you agreed upon with Judge Carrillo?"

"Answer: It was two dozers we had there in stock, and I think the Judge came in specifically talking about those two tractors."

"Question: Now, after he came in and talked to you about those dozers, are these Caterpillars?"

"Answer: Yes, sir."

"Question: What next took place with respect to those transactions?"

Well, I could go on and read, but I think I've read the pertinent part, Mr. President.

It's apparent, I would point out to the Senate, that at the time this conversation took place, the tractors were still obviously with Plains Machinery. So, it couldn't have been the second contract as Mr. Mitchell, I'm sure, is going to insist. But, with your permission, I'll proceed to ask questions of the witness. And I think I can establish that by other errors.

MR. MITCHELL: Mr. President, in view of his partial reading and his commentary, may I call the Court's attention to 1446 and 1447 on cross-examination where I attempted to establish the fact --

MR. DOYLE: Mr. President, Mr. Mitchell has had this witness and has had this opportunity and he will have this witness back again if I could -- I have been interrupted twice now, and I would like to proceed if --

THE PRESIDENT: Please proceed, Mr. Doyle.

MR. MITCHELL: Your Honor, may I have him instructed not to make those long monologue commentaries on the evidence? If he's going to call the Court's attention to the evidence, I would appreciate it if he would limit his comments just to what the evidence reflects.

MR. DOYLE: I will attempt to do so, Mr. President.

Q Now, Mr. Lee, you've shown that the address that whoever prepared that contract had was Drawer S, is that correct?

A That is what's on that document, yes, sir.

Q All right. Now, I'm going to hand you what's been marked as R-50, which is on Page 615 in Respondent's Exhibits R -- the Exhibits of Mr. Carrillo. Now, this is the contract wherein Judge Carrillo took over the payments on the two dozers we were talking about. For the benefit of the Members of the Senate, would you show what address is underneath the name of O. P. Carrillo where he signed it?

A It says, "P. O. Drawer S, Benavides, Texas."

Q So, now, we have the first contract and the second contract, both bearing the designation Drawer S, is that correct?

A That's correct.

Q Now, I'm going to show you another Exhibit that Judge Carrillo put in which is marked as R-96, which appears on Page 802 of the Defendant's Exhibits, which is a copy of Judge O. P. Carrillo's income tax return for the year 1971. Would you read what he alleges in his income tax return that his post office drawer is in Benavides, Texas?

A Says, "P. O. Box S, Benavides, Texas."

Q Now, I'm going to show you a bank statement. This is the first thing I found, which is addressed to Benavides Implement and Hardware. Where did that bank send Benavides Implement and Hardware's bank statements?

A It says, "Drawer M, Benavides, Texas."

Q So, Benavides Implement and Hardware used Drawer M and O. P. Carrillo's income tax shows Drawer S, doesn't it?

A Yes, sir.

Q Both of the contracts show Drawer S, don't they?

A Yes, sir.

Q Now, Mr. Mitchell asked you several questions concerning where the tractors were located, where somebody found on George Parr's ranch, is that correct?

A Yes, sir.

Q Those things were found out there one time in the middle of 1975, is that about accurate?

A This is what I was told.

Q All right. Now, we all know that Mr. George Parr is deceased at this time, is that accurate?

A Yes, sir.

Q Now, the contract that I just showed you, wherein O. P. Carrillo took over the payments on those two dozers, reflect that occurred in May of '74, is that correct?

A Yes, sir.

Q So, if those dozers were found on George Parr's property in May of '75, if the Carrillo position is accurate, then they were placed out there while he owned them, is that correct? Or would that be a logical conclusion? Let me ask you that.

A I would say a logical conclusion, yes, sir.

Q Now, Mr. Mitchell asked you a series of questions about your relying on other persons' credibility? Do you remember those questions?

A Yes, sir.

Q He asked you a series of questions about if you knew certain things about Mr. Couling -- indictments, charges and so forth. Do you remember those questions?

A Yes, sir.

Q Now, obviously, when you reached your conclusions to put your fourth column down, you knew certain things about Couling and other persons, didn't you?

A Are you referring to the seventh column rather than the fourth?

Q I said the last column. It's the last one on the right. Whatever that is.

A Yes, sir.

Q Where you assumed where those payments went. Is that correct?

A Yes, sir. An assumption on my part, yes, sir.

Q All right. Now, when you reached that assumption, you had certain evidence and certain knowledge in your own mind, didn't you?

A That is correct.

Q Did you know at that time, for instance, that there were a number of checks to other persons from Benavides Implement and Hardware for unexplained rentals?

A Yes, sir.

Q For instance, checks to D. C. Chapa. Have you seen some of those checks? Or did you have knowledge of their existence? Let me ask you that.

A I know the checks that you are referring to, but I don't know that I had knowledge of D. C. Chapa at that time.

Q All right. How about the Farm and Ranch Supply -- the thousands of dollars? You knew about those, didn't you?

A Yes, sir.

Q You knew that O. P. Carrillo was a partner in the Farm and Ranch, didn't you?

A Yes, sir.

Q You knew that Cleofas Gonzalez had testified and had said from the very beginning that Farm and Ranch didn't ever have any equipment to rent, didn't you?

A Yes, sir.

MR. MITCHELL: Excuse me. Let me interrupt Counsel just a minute. He hasn't ever testified regarding the input on R-90, 91 and 92 from Cleofas Gonzalez. That is an assumption of facts that are not in evidence and we object to the question, your Honor.

MR. DOYLE: Mr. President, it would appear to me that it is in evidence, that he has just made that statement and that it is a perfectly logical statement for him to make.

I just asked him the question, and he said "Yes, I had that knowledge." I don't see that's a basis for an objection.

THE PRESIDENT: Objection overruled.

Q Now, you knew at the time that there were Benavides Implement and Hardware --

MR. MITCHELL: At what time? If you don't mind --

MR. DOYLE: All right. I'm sorry. I thought I --

MR. MITCHELL: -- asking him within a time frame so that I know what you are talking about and can be intelligently informed to object, please.

MR. DOYLE: I'm sorry. I thought I had established that once and for all, Mr. Mitchell.

Q With respect to this series of questions, Mr. Lee, I am referring to a time immediately prior to the time these things were introduced at the JQC hearing in Corpus Christi, Texas, sometime in the last two months.

A Yes, sir.

Q All right. Now, at that time, you knew --

MR. MITCHELL: Well, pardon me, Mr. Terry. Your Honor, I am going to object. The time of the introduction at the JQC hearing is irrelevant and immaterial.

I submit that the time of relevancy is the time that this witness composed the documents. The input at the time of the Judicial Qualifications Commission Hearing, Your Honor, would be irrelevant and immaterial. We would object.

MR. DOYLE: Mr. President, if I might reply. I would submit to you that what is written on a piece of paper by an investigator in a criminal case, or civil case, or any other kind of case is of absolutely no relevancy until such time as it becomes evidence in a cause of action. I would submit that the first time these Exhibits had anything to do with the culpability of O. P. Carrillo was the time that they were introduced in evidence at the JQC hearing by his Counsel, and I would think that is indeed the critical time.

THE PRESIDENT: The Chair understands your point of view, Mr. Doyle, but believes nonetheless that Mr. Mitchell has a valid question, and the Chair would request you to identify for the benefit of the Court the specific time period of the events that are being discussed.

MR. DOYLE: All right. The time the Exhibit was completed?

THE PRESIDENT: The time of the events recorded in the Exhibits.

MR. DOYLE: Well, that's what I say. That's when -- okay.

MR. MITCHELL: Excuse me. Your Honor, while I am interrupting him, may I also request that the word culpability be stricken from his statement, and that there is nothing in the Exhibit which, in my opinion, demonstrates any culpability upon the part of my client. That is a false assumption on the part of Counsel, if it please the Court.

MR. DOYLE: Mr. President, I certainly didn't use it in that fashion. I used it just as another word in the English language. And, the way I used it, I don't believe, was in any derogatory manner. If it was, I apologize.

THE PRESIDENT: Please strike that word from the record. Objection sustained.

Q Okay. Now, at the time that you prepared the instrument, did you know then that Cleofas Gonzalez was saying that Farm and Ranch had never had any equipment to lease?

A Yes, sir.

Q All right. Now, at the time that you were drawing up this instrument, did you know that Benavides Implement and Hardware had issued similar checks to the -- you said you weren't sure about D. C. Chapa, but you were sure about Farm and Ranch. How about Oscar Carrillo? Were you aware of those checks?

A Yes, sir.

Q How about Ramiro Carrillo?

A Yes, sir.

Q Rogelio Guajardo?

A Yes, sir.

Q So, were you indeed involved in the investigation of monies mysteriously leaving Duval County, the water district and the school district's coffers?

A Yes, sir.

Q That was the general purpose of your investigation. Is that correct?

A Yes, sir.

Q Now, you had knowledge, not just of the Carrillo checks, but of all the other checks that B I and H was making out. Is that correct? The ones I have asked you about?

A Yes, sir; that's correct.

Q All right. Now, did that fact weigh on the way you made your conclusions about that money?

A It had a basis for --

Q Right.

A Yes, sir.

Q Now, were you also aware, in connection with the question of credibility, that -- at that time, O. P. Carrillo was looking at a multi-count indictment for federal income tax evasion?

A Yes, sir. I knew he was under indictment.

Q For federal income tax evasion?

A Yes, sir.

Q And that he had --

MR. MITCHELL: Pardon me. We are going to move to strike. It is not federal income tax evasion. It is a 7206 violation, Mr. Terry, which is quite different from an evasion.

And, we are also going to move to strike -- the question is entirely improper. It's hearsay, Your Honor.

MR. DOYLE: I will rephrase that.

MR. MITCHELL: This witness testified on cross-examination previously, if I am permitted, that he did not talk to O. P. Carrillo. Consequently, any knowledge he might have had of what Mr. O. P. Carrillo would have had in his subjective state of mind would be hearsay.

Q Well, do you know that O. P. Carrillo was convicted in the federal jurisdiction on a felony --

MR. MITCHELL: Of course, if this were before a jury, that would be a mistrial, and I would move -- and he knows that's a mistrial. It is on appeal. That's an improper question.

MR. DOYLE: Mr. President, again, this is in evidence, it is before the Body, it is here at the motion of Mr. Mitchell and, you know, not at anything that I had to do with it. It's in the record --

MR. MITCHELL: That's excluded, Mr. Doyle. That's been excluded. You're not representing that correctly to this Court.

MR. DOYLE: Not in this record, I don't believe.

MR. MITCHELL: That was offered before the Judicial Qualifications Commission and I objected on the same basis that I now object and Judge Meyers sustained the objection and it was excluded and you're representing to this Court incorrectly. It's excluded.

MR. DOYLE: Mr. President, I will just hand this to you and let you take a look at it. The document I hold in my hand was printed by the Senate print shop under the direction of this Court, it was among the materials tendered by Mr. Mitchell. It's marked as E-169 for purposes in the JQC and it appears to be in the same Volume that was tendered to us by the Clerk of this Court. And it's a copy of judgment --

MR. MITCHELL: Mr. Doyle, why don't you read the print on the front, it says, "Examiner's Exhibits, Not Admitted."

MR. DOYLE: Mr. Mitchell --

MR. MITCHELL: Isn't that what it says?

MR. DOYLE: I'm not going to argue with you, but you and I both know that the stuff that was kept out below was let in here and it was let in here on your motion.

MR. MITCHELL: You and I don't both know nothing. We know the Senate made a motion and we acted on that motion. I had nothing to do with the motion. This document was excluded, Mr. Odam will verify that, by the Court's ruling.

MR. DOYLE: I will just withdraw the question, Mr. President. I will just withdraw the question and that way we won't have to go through this.

THE PRESIDENT: Mr. Mitchell, to repeat again, this transcript was admitted at your very earnest instance, every document that is reproduced in documents on the desks of every Member of the Court were delivered to this Court by you, Mr. Mitchell.

MR. DOYLE: I will withdraw the question. It's really not that important, Mr. President.

Q Now, Mr. Lee, at the time you were reaching your conclusion, which you wrote down in the last column of that Exhibit, were you aware that O. P. Carrillo was under indictment in Jim Wells County in the State of Texas for a felony offense?

MR. MITCHELL: Same objection, if it please the Court.

MR. DOYLE: Mr. President, this is exactly the same kind of questions he asked this witness of Mr. Couling and I'm just doing what he did.

THE PRESIDENT: Objection overruled, please proceed.

Q Now, were you aware at the time you reached these conclusions, Mr. Lee, that the Judicial Qualifications Commission of the State of Texas had begun an inquiry into the Judge of the 229th District Court, Judge O. P. Carrillo?

A Yes, sir.

Q Well, I will ask you this now, Mr. Lee, when you were making your decision about what you were going to put down in that last column did you take all of these things into consideration; credibility of various persons, the existence of the checks made out to other persons that were unexplainable. Did you take all of these things into consideration when you reached your decision about what to put in that last column?

A Yes, sir, everything we have discussed was taken into consideration.

Q All right. Now, you specifically talked to the three persons that Senator Mauzy asked you about. Is that correct?

A You're referring to Ranger Powell, Mrs. Montemayor.

Q And Mr. Couling?

A Yes, sir.

Q Now, let me ask you this: during the course of your duties investigating with the Task Force of Duval County, did you have an opportunity to talk to a number of

witnesses down there?

A Yes, sir, I did.

MR. MITCHELL: Now, we have been through that, Your Honor, and I have previously objected and understood the objection was sustained on the grounds it would be hearsay.

MR. DOYLE: I haven't asked him what they said, Mr. President, not one word. I just asked him if he had an opportunity to talk to persons. He hasn't testified as to what any other person said at all.

THE PRESIDENT: Objection overruled.

Q Now, did you take statements from these persons, a number of them?

A I took a number of statements, yes, sir.

Q Now, did this activity take place prior to the time you completed your work on this Exhibit?

A There were some statements taken prior, during and afterwards. It would be kind of hard to isolate.

Q All right. Now, were any of these people that you talked to -- was that in an effort to find out if indeed any county -- any benefit had come to the county from this money it paid out?

A Some of the statements reflected that there was not a benefit received by the county.

Q Right.

MR. MITCHELL: Of course, that would be hearsay and we move to strike it, if it please the Court.

THE PRESIDENT: Would you repeat the question, Mr. Doyle.

MR. DOYLE: Yes, sir. I asked the witness if during the course of his investigation he made inquiries in an effort to determine whether or not any benefit had passed to the county in exchange for the monies the county was paying out for this equipment.

THE PRESIDENT: Objection is overruled. Mr. Mitchell, these are matters that you went into in examining this witness. Counsel for the Board of Managers is entitled to the same privileges. Mr. Doyle.

Q Okay. You have answered that question, is that right, Mr. Lee. You said yes and that you could find no evidence of the county obtaining any benefit for these monies. Is that correct?

A From some individuals that I have talked to and took statements from.

Q Right.

A Yes, sir.

Q Now, so, you had that knowledge when you wrote down the last column on that Exhibit, didn't you?

A Yes, sir.

Q Now, let me ask you just a couple more questions, Mr. Lee. The checks that Senator Mauzy showed you and any number of checks that are on that Exhibit, did you find corresponding deposits to the account of O. P. Carrillo which matched almost penny for penny the checks issued by Duval County?

MR. MITCHELL: Of course, that would be violating the best evidence rule, if it please the Court, this record speaks for itself on the checks that came out and the checks that went into the account. We object.

MR. DOYLE: Mr. President, the checks that I'm asking questions about are in the record, the checks from the county are in the record, the checks from Benavides Implement and Hardware to O. P. Carrillo are in the record. I'm not asking him about any mysterious checks. I'm asking him about checks that have been before this Senate for a week.

THE PRESIDENT: Mr. Mitchell, concerning this line of objection, the Chair is going to read from the Journal of this trial at Page 647, where your client at your request got up and before this Court stated that it was his wish and desire that this transcript be admitted.

First, quoting you, Mr. Mitchell, "Judge Carrillo, are you a judge -- you are a judge, are you not?"

Judge Carrillo, "Yes, I am. I have considered this thing thoroughly and I believe the Senate would save a lot of time, save the State a lot of time and save all of us a lot of time here in Austin and I have considered this privilege that I do have and I waive it and hereby and tender this record to the Senate for its consideration wholly and totally. I do not expect and will not use this as a vehicle for an appeal in any way shape or form."

Objection overruled.

MR. MITCHELL: Mr. President, may I be heard on that statement as regards my objection?

THE PRESIDENT: Yes, Mr. Mitchell.

MR. MITCHELL: Sir, the statement, Your Honor, that was read is a statement of relinquishment of any privilege that my client had from the Constitution of any defect in introduction of the Judicial Qualifications Commission record. I did not intend by that statement to waive any and every objection that comes to me by reason of the rules of evidence, such as the one that I previously lodged. The objection I previously made dealt with questions put by Counsel to the witness that related to a matter that is in the record. And our objection was that the record -- this very record that we waived any objection to speaks to that answer, not what -- therefore, this witness should be precluded from testifying as to matters which appear in a documentary form in the record. And consequently, the best evidence rule would be what's in the record, Your Honor, and that's why we objected.

THE PRESIDENT: Mr. Mitchell, is it your position that it would be improper for any witness in this trial to testify about any matter that appears in that record?

MR. MITCHELL: No, I do not -- as I understand the best evidence rule would be a verbalization of a documentary piece of evidence, Your Honor, that's in the record.

MR. DOYLE: Mr. President, might I just reply to that one point.

Mr. President, as I understand the law, the best evidence rule applies on the question of whether or not something is going to be admitted into evidence. Now, once it is determined that it is admissible into evidence, either because it is not violative of the best evidence rule or because it classifies under some exception to the best evidence rule -- once it's in evidence and before the Court the best evidence rule has nothing more to do with it. And I certainly don't intend to hold myself out any different than having the same law license that Mr. Mitchell does, but it seems to me that best evidence objections are completely superfluous with respect to something that is already before the Court.

MR. MITCHELL: I withdraw the objection.

THE PRESIDENT: So it seems to this Chair, Mr. Doyle. Please proceed.

Q Now, my question to you, Mr. Lee, was at the time you reached your conclusion and made the entry in the last column of the Exhibit, did you have knowledge that there existed corresponding deposits to the account of O. P. Carrillo almost to the penny for a number of the checks previously issued by the county?

A I had knowledge of a transaction such as you're referring to, but the entities were slightly different.

Q Well, if you care to explain that go ahead.

A All right, sir.

Q Because I don't know what --

A All right, sir. What I'm referring to would be subpoenaed bank records.

Q Oh, I see, you had instead of having deposit slips themselves you had the records from the bank?

A We had subpoenaed bank records.

Q That's fine. So, you did have the knowledge?

A Yes, sir.

Q And reached your conclusions?

A That is correct, sir.

Q You knew for instance that on the first day of May or whatever month it might be the county issued a check for \$1,006.00 and two days later O. P. Carrillo made a deposit for \$1,006.00. You knew those things?

A It was during the very first part of the operation of the Benavides Implement and Hardware Company where checks would come into the Benavides Implement and Hardware Company from the Benavides Independent School District, the Duval County Conservation and Water District or Duval County. These checks would be deposited into the Benavides Implement and Hardware Company, then checks were written out of that account for exact to the penny amounts to individuals previously named.

Q And some of those checks went to O. P. Carrillo? You had that knowledge when you reached your conclusions, that was my question, Mr. Lee.

A He was one of the persons, yes, sir.

Q Right; right.

MR. DOYLE: Mr. President, as I understand the purpose for which this witness is before the Court I have no further questions at this time.

RECROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q Would you please turn to Page 6 of Exhibit 91, Don. That's on page 781.

MR. MITCHELL: And may I call the Court's attention to Page 781.

Q You have previously testified this morning that at the time this Exhibit was composed by you, as I recall your testimony, that you had talked to Mr. Rudolfo Couling and Mrs. Montemayor and had some input slightly from Ranger Gene Powell. Do you recall that testimony, Mr. Lee?

A Yes, sir.

Q And this afternoon, after our noon break -- did you, first of all, discuss your testimony with the gentleman that's been putting these questions to you, Mr. Terry Doyle? Did you discuss your morning testimony with him?

A No, sir, I didn't see him until after lunch.

Q Did you discuss it with anybody, if so, tell us.

A No, sir, I might have discussed it with some people in the office.

Q All right. At any rate, this afternoon you testified that when you composed the Page 781 that you had in addition before you the checks to Benavides Implement and Hardware, am I correct?

A That is correct.

Q The checks -- the checks out of Benavides Implement and Hardware reflecting Oscar Carrillo, Ramiro Carrillo, Guajardo, et cetera?

A Yes, sir.

Q You had also the -- did you have the knowledge of the checks to Plains Implement Company of Corpus Christi? I think you have told us you did, I want to be sure now?

A If I said it was Ranger Powell that would have had, I myself did not have it.

Q You did not know that Benavides Implement and Hardware had been paying rent on that contract of '72 to Plains Implement and Hardware of Corpus?

A I believe I previously testified to that, sir, but I did not know.

Q All right. Then in addition you knew you had, I believe -- and your answer to Counsel was that you knew there was a proceeding pending against O. P. Carrillo in a Judicial Qualifications Commission at the time that you wrote that Exhibit?

A That I had knowledge that there was a proceeding?

Q Yes.

A Yes, sir, I believe I did.

Q And I believe he asked you if you didn't use that knowledge as part of the input into the conclusions drawn under the column four, Page 781?

A Are you referring to the knowledge of the Judicial Qualifications Commission and the -- I forget the other item you just mentioned.

Q Well, he asked you about several. I want to take them up one at a time. You have testified that at the time you composed this Exhibit R-91 --

A Yes, sir.

Q -- that you knew about the Judicial Qualifications Commission and that you used part of that knowledge as input into the Exhibit, as I understood your testimony?

A It was of consideration.

Q Because I'm going to ask you to look on Page 6 and tell us where on that page there is any input from the knowledge of the Judicial Qualifications Commission hearing pending against him and what answer -- or what statement, what sentence, what period would have been changed had you not known it or what did you change because of your knowledge of it?

A You're referring to Page 781, sir?

Q Yes, sir.

A All right, sir. The knowledge of the pending Judicial Qualifications Commission hearing -- the input from that would have been with regard to, as you mentioned earlier, credibility towards who would I believe. This was part of the input as towards credibility.

Q In other words, because a letter had gone out in May sometime from the Judicial Qualifications Commission Executive Secretary, you assume that that

destroyed any credibility in O. P. Carrillo's position in this matter?

A I would say that it was a consideration, sir.

Q But, you did not, of course, consider the fact Rudolfo Couling had been indicted six times by a state grand jury as affecting his credibility, did you?

A I had consideration of this, sir.

Q But the Exhibit reflects word-for-word Rudolfo Couling's position of the transaction, doesn't it?

A Not word-for-word his. His conclusion as well as other persons'. Not his solely, sir.

Q Well, certainly, Mr. Lee, you're not telling us that Rudolfo Couling doesn't appear almost 95 percent of this -- on these pages of 91, R-91?

A I'm not saying that he is appearing there almost 95 percent of the time, no, sir, I'm not saying that.

Q All right. You testified further you used as partial input in this Exhibit deposits into the Implement and Hardware account and checks written out to O. P. Carrillo, am I correct?

A This was a consideration.

Q All right. Did you -- may I have Exhibits, please, 155, 176 series of the original form? I'm going to hand you those checks, incidentally, from the Benavides Implement and Hardware to O. P. Carrillo. These are some that had recitals on them. I want to ask what you did with the recitals when you got to them, Mr. Lee?

I'm going to hand you what has been identified E-51 as a check from Rudolfo Couling to O. P. Carrillo for \$700.00, September 22nd, 1971. Did you use that as part of the input? In your testimony, you answered a question put to you by Mr. Terry that you considered the checks into Benavides Implement and Hardware from Duval County as well as those going out of Benavides Implement and Hardware to O. P. Carrillo. That's one of them going from Benavides Implement and Hardware to O. P. Carrillo, right?

A I did not use this specific document, because we did not have the originals at that time.

Q Well, also as a matter of fact, the document appears, that is the check September 22nd, '71 appears on your R-91, doesn't it?

A Yes, sir, but that was a Xerox copy from the subpoena from the bank --

Q But Mr. Lee, that check was on your R-91 and part of the input into it, right?

A The information on that check was on the instrument, sir.

Q All right. Tell the Court, then, did you give any credence to the recital in the lower left-hand corner in the hands of Mr. Couling who issued the check for the purpose for which the check was issued, that is, "rent on truck" or did you discount

that?

A It was taken in consideration on the checks we could read. Numerous checks were too small, and we could not read. Those that we could, I did take into consideration, yes, sir.

Q Do you mind if I step over and check you on this check? You can look at it on R-91, can't you, and locate it for the Court? The check, September 22nd, 1971?

A What was the date again on that, sir?

Q September 22nd, 1971?

A I don't have that one, Mr. Mitchell.

Q I don't see it over there either. Obviously you did not consider that check labeled "rent" from Rudolfo Couling to O. P. Carrillo, did you?

A Sir, these right here --

Q Well, let me just back off and withdraw my question. I think I can get to it with -- what did you do when you got to these checks that we recited, "rent", "rent", "loan", "sale of store counter", "tubing", from Benavides Implement and Hardware to O. P. Carrillo, how did you treat those?

A Mr. Mitchell, may I preface that, sir, just a second here?

Q First of all, I would like the answer. Does it show on the Exhibit at all? That's the first question. And, the second one, if it does, how did you treat them?

A Sir, those checks would not appear on here because those are checks going out of the Benavides Implement and Hardware. All of this Exhibit right here are checks that were being paid to Benavides. These are outgoing checks. These are all incoming checks.

Q Well, I thought you testified earlier that you were as part of the input to this Exhibit that you used the checks from Benavides Implement and Hardware out.

A Sir, these were --

MR. DOYLE: Mr. President, I would like to level an objection at this time. Mr. Mitchell is misquoting the record. The question I put to the witness on this subject was, "Did you take into consideration --" in addition to the facts that Mr. -- Senator Mauzy asked him about. First, I asked him, "Did you have knowledge of monies going from BI & H to O. P. Carrillo in amounts corresponding very closely with the amounts of money issued by the check." I didn't ask him if it had to do with the input in making up the instrument, you know, the Exhibit. What I asked him was if it had anything to do with the decision he reached in his own mind when he put down the seventh column, when he reached his conclusions. That was the question I asked him.

MR. MITCHELL: May I, Mr. President, ask the witness, and maybe I can clarify it.

Q I understood you answered this question that you considered part of the checks, the fact, the coincidence, I think the way Counsel said the fact that checks were coming from Duval County into the Benavides Implement and Hardware and checks going out for close to the same amounts or exactly the same amounts to O. P. Carrillo, and I thought you had answered "yes".

A That is correct, sir.

Q So, I'm testing your credibility by asking you, these are the checks going out, and I want to know what you did with the recitals that are on these checks, "rent", "store counter", "tubing", or if you considered these or if you were mistaken that you considered them. That's all I want to know, Mr. Lee.

A No, sir. The reason was because you will -- sometimes you will not find one single check to cover the exact amount of one deposit. Now, this happened on some occasions. However, sometimes there would be two checks that, when totaled, would come to the penny or very close to one of the deposits from one of the political entities.

Q All right. Would you disregard the recitals placed in the lower left-hand corner in favor of the addition of the numerical amount? How would you treat it? That's all I want to know.

A No, sir, I did not discard any of the information of the check. All the information was taken into consideration.

THE PRESIDENT: The Chair would like to ask the witness a question at this point.

In looking at R-91, Mr. Lee, Page 777, which is the page which reports the checks for September and October in '71, as you stated, all the checks recorded there are checks coming into Benavides Implement and Hardware. Is there another schedule or another part of this Exhibit that records the outgoing checks?

A No, sir, this Exhibit R-91 and 92 and 93 are all the incoming checks from the three political entities into the Benavides Implement and Hardware. There's no schedule of the outgoing checks that I prepared.

THE PRESIDENT: Thank you, Mr. Lee.

SENATOR JONES: Are these checks traced on that Exhibit?

THE PRESIDENT: Would you respond to that question, Mr. Lee?

THE WITNESS: Sir, are you referring to the Exhibit that was presented during the Judicial Qualification Commission hearing?

SENATOR JONES: Yes.

THE WITNESS: Yes, sir. These are checks that are traced on that particular Exhibit.

SENATOR JONES: Thank you.

Q Mr. Lee, in considering the checks going into Benavides Implement and Hardware and tracing those checks out of Benavides Implement and Hardware, did you

-- And I'm going to ask you those that Mr. Mauzy has already asked you about, did you in looking at E-136, 39, 30 and 33 ascertain that those checks went into Benavides Implement and Hardware in December of 1973 and January of 1974, but did not go out to the Plains Implement and Hardware of Corpus Christi?

A No, sir, I did not determine that.

Q Did you know that as a matter of fact that Mr. Couling did not pay any money to the claims on the contract that has been shown you for the year 1974?

A No, sir, I did not know that.

Q If those checks came from a county into Benavides Implement and Hardware and did not go to the Plains account, it would appear that Mr. Couling kept those in the Benavides Implement and Hardware account, am I correct?

A That could be a conclusion.

Q Is that fact recorded somewhere on your Exhibit; that is, that those checks, the ones that are in December of 1973 and January of '74 stayed with Mr. Couling in the Benavides Implement and Hardware?

A I didn't understand your question.

Q I said, is that fact recorded on your Exhibit?

A No, sir, it is not.

Q Now, I have one more question, and I'll ask the Senate, in order that I might be clear in my question, to look at Article VII, which is the Impeachment Article, and also -- and this is on Page 8 of the record, and I believe it's stipulated that the Articles of Impeachment were returned August 5, 1975. For the purpose of my question to you, Mr. Lee, Article VII, which seeks to impeach my client states that "while holding office as district judge for the 229th Judicial District of Texas, Judge Carrillo conspired with others to charge and collect money from governmental entities for rentals of equipment that did not exist." That's the first part of it. "For rental of equipment that did not exist." That Article -- and you can assume this for the purpose of answering my question, was returned by proclamation, August 5th, 1975. Are you with me?

A Yes, sir.

Q Your report, R-91, was composed in August of 1975. Am I correct?

A You're referring to R-91, sir?

Q Yes, sir.

A I don't know for sure if that was the period of time when it was composed. I don't think I've testified as to the exact time. I don't recall.

Q Well, I wrote down here this morning it was August. Tell us when it was. When was it? Do you recollect?

A No, sir.

Q Was it -- well, it was prior to the time we introduced it in Corpus Christi, which, let's say was in November of last year, '75, am I correct?

A Is that when we commenced in Corpus Christi, sir?

Q November the 3rd.

A Yes, sir, prior to that time.

Q Can you tell us was it in August of '75 that this report was complete?

A It could have been August, it could have been September, sir. I don't recall.

Q All right. But, you were investigating, as a member of the Executive Branch of the government -- that is, the Department of Public Safety -- at that time, the affairs of Judge Carrillo, were you not?

A Not necessarily Judge Carrillo. I had first performed my first investigation on one individual and was investigating several different people, sir.

Q Well, that wasn't a trick question. You were working for the DPS at that time.

A That is correct, sir.

Q All right. And you know that the House -- that is, the Legislative Branch -- undertook an inquiry into returning Articles of Impeachment in the early part of 1975 and returned those August the 5th, 1975. Can you make that assumption for me?

A I didn't know the exact date, but that is --

Q And of course, we are trying that before the Senate, which is the other branch of the legislative?

A Yes, sir.

Q All right. Now, I will ask you this. R-91, and specifically Page 781, and the lines that have already been referred to -- and I want the Court to note -- at 1-8-73, that the rent on O. P.'s two D-8 dozers. The ones with the little star up there beside them. Do you see them?

A Yes, sir.

Q All right. Now, R-91 -- I mean -- yes. R-91, Page 781, reflects that O. P. Carrillo owned two D-8 dozers and he rented them to the county and the check went to Benavides Implement and Hardware for rent on those tractors. Right? Isn't that the sum and substance of your report there?

A I don't quite understand your interpretation of that, Mr. Mitchell.

Q Well, what is the recital? You tell us.

What is the recital with the star -- let's say, the first one that was called here: "1-8-73; rent on O. P.'s two D-8 dozers; code 229." What does that mean?

A All right, sir. Now, there's two checks on 1-8-73. Which one are you referring to?

Q I am talking about the one on O. P.'s dozers. What does that mean? Does that mean that your investigation revealed that the Duval County paid the sum of \$1,018.10 to Benavides Implement and Hardware for rental on O. P.'s two D-8 dozers. Isn't that what that means?

A This was the notation on the slip from the Benavides Implement and Hardware Company that was submitted to Duval County.

Q Right. And we know that Judge Carrillo, at one time, had those two D-8 dozers, don't we?

A Yes, sir.

Q And it was your position because of what you told us, that in '73, that he had those two D-8 dozers. You were so convinced of it you included it and identified it in your report as his two D-8 dozers. Correct?

A This was -- this was my assumption.

Q Right.

A Yes, sir.

Q And you were working for the Department of Public Safety when you made that conclusion. Correct?

A Yes, sir.

Q Now -- but you know now, and I am going, out of fairness to you -- Article VIII of the Impeachment charges him -- that is, Judge Carrillo -- with the rental of non-existing equipment. See if I am reading it correctly.

He "conspired with others to charge and collect money from governmental entities for rental of equipment that did not exist." Am I reading that correctly?

A Yes, sir.

Q All right. Now, my question to you is, prior to the time that you wrote that report --

MR. DOYLE: Mr. President.

Q -- did you have --

MR. DOYLE: Mr. President, would you --

MR. MITCHELL: May I finish the question, Counsel?

MR. DOYLE: May I make an objection, first?

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President --

MR. MITCHELL: I don't see how you could object prior to the time I ask. I hate to be impertinent, Mr. Doyle, but it is like killing you before -- I don't know -- how did you know what I'm going to ask?

MR. DOYLE: Mr. President, Mr. Mitchell is phrasing a question concerning Article VII, and Mr. Mitchell has failed to read all of Article VII.

MR. MITCHELL: I will get to the rest of it, Mr. Doyle.

MR. DOYLE: I would respectfully request that if he is going to read Article VII and ask questions thereby which ask for conclusions on the part of this witness, that he read the entire Article and not leave off the part that directly affects what he is fixing to ask this witness.

MR. MITCHELL: I appreciate that, and I will promise this Court that I will take up the tail end of that sentence if I might be permitted to cross-examine this witness in my own inimitable, but perhaps, clumsy fashion.

May I proceed, Mr. President?

THE PRESIDENT: Proceed, Mr. Mitchell.

Q It is a very simple question and we might be -- I am going to ask you that prior to August -- that is, when 781 was written where you made a conclusion, working for the State government, that O. P. Carrillo owned, in fact, two D-8 dozer tractors, had you talked to anybody related to the House Managers, or the House of Representatives of the State of Texas?

A Had I talked to anybody?

Q Right. Anybody from the Board of Managers, anybody that had anything to do with the composition of these Articles of Impeachment? And, I am talking about general counsel; I am talking about employees; I am talking about anybody that -- and, if you want us to list them, we can list the sub-committee so we could be sure we got a correct answer.

A Sir, that would be very difficult to answer. There have been numerous people in and out of our office in San Diego. It would be real difficult to answer that question.

Q Well, let me tell you -- let me be very candid with the Court why I am asking.

A Yes, sir.

Q If you were investigating for the State of Texas and had concluded that he owned equipment, then my inquiry for this body is why would he be charged for renting equipment that he didn't own. That's the first inquiry.

And, in order to answer that, I have to ask you the question, did you put -- did you tell, did you impart to anybody representing the House Board of Managers or the House that brought these charges, these Articles of Impeachment against Judge

Carrillo, the fact that you had concluded that he did own two D-8 dozers, Caterpillar dozers.

A Sir, I did not conclude that he owned two D-8 dozers.

Q Well, what is the substance of your recital? Isn't that the effect of your recital on 781? "O. P.'s two D-8 dozers"?

It don't say "parenthesis, he didn't own them", or it don't say, "parenthesis, I don't think he didn't own them".

It said -- am I reading it correctly? That's your handwriting. It says, "two -- rent on O. P.'s two D-8 dozers". Isn't that what it says?

A That's right.

Q All right.

A And --

Q I think that the Court can conclude on whether you were drawing a conclusion.

MR. DOYLE: Mr. President, could I respectfully request that the witness be given an opportunity to answer the questions that are put to him? He obviously didn't get to answer the last question.

THE PRESIDENT: I'll sustain that, Mr. Mitchell. Please give the witness an opportunity to answer.

Q You may answer the question, in light of the objection and the Court's ruling.

A All right, sir. Mr. Mitchell, this is something that we discussed earlier this morning. The information contained in this seventh column, as I had said before, was a compiling of information from the people I talked to, and when it says "rent", if you will look on the vouchers that were submitted from Benavides Implement and Hardware to Duval County, there will be rent on there for equipment which would justify the rent. On the O. P.'s two D-8 dozers, this would have been what Ranger Powell had told me, which I stated this morning.

Q I understand that, but that's not really directed to my question. My question is, when you put down rent on O. P.'s two D-8 dozers, did you mean to characterize those two D-8 dozers as real and in existence? That's the first question.

A No, sir. I did not mean that.

Q You didn't even think he had any dozers at all.

A I seriously doubted it.

Q Well, you now know that there were two D-8 dozers, don't you?

A I know that two D-8 dozers existed.

Q Sure. So that if, when you put the recitals down on 781, that you did not believe he owned two D-8 dozers, those recitals would be incorrect because as a matter

of fact, and you can assume, that there were two D-8 dozers. So, your report would be wrong to that assumption. Isn't that correct?

A If you are going by the letter of each word that is written there, yes, sir.

Q All right. Then I will ask you, did you communicate the fact that, in your opinion, the tractors did not exist to a member of the House Board of Managers, and specifically if an inquiry was made to you as part of the input for Article VII. Maybe that's where they got the misconception.

A No, sir. I did not communicate this.

Q Well, now, let's be more specific. I want to ask you specifically. Did you talk to Representative Terry Canales at all prior to August 5th, 1975?

A I have never talked to him in my life.

Q Yes or no?

A No, sir.

Q DeWitt Hale?

A No, sir.

Q Robert Maloney?

A No, sir.

Q Mr. Chavez?

A No, sir.

Q I am talking about this report, now. That's all I'm interested in.

A Yes, sir.

Q Mr. Donaldson?

A No, sir.

Q Mr. Kaster?

A No, sir.

Q Mr. Hendricks?

A No, sir.

Q Mr. Laney?

A No, sir.

Q Mr. Nabers?

A No, sir.

Q Mr. Slack?

A No, sir.

Q Mr. Thompson -- Miss Thompson? I'm sorry.

A No, sir.

Q Ms. Weddington?

A No, sir.

Q Or their Counsel, or their staff, or persons representing them?

A I don't know who all those individuals are, but I did not talk to anybody.

Q Well, Mr. Johnson. Did you talk to Mr. Bob Johnson? Did you talk to him about it?

A No, sir.

Q Mr. Terry Doyle?

A No, sir, I did not.

Q How about Archie Parr or Marvin Foster?

A No, sir.

Q Did you talk to anybody about the contents of Article VII insofar as the charges, the rental of equipment that did not exist?

A I would think that there had been a discussion from the investigators for the Task Force in San Diego, but I did not talk to anybody that I can recall outside the Task Force.

Q And it was the Task Force's conclusion, and yours as a matter of fact up until recently, that no DC-8 Caterpillars existed?

A It was the conclusion that two D-8 Caterpillars did exist.

Q Well, I'm sorry if I appear to be going around in circles. I thought that you told me awhile ago that your conclusion was that none -- that your conclusion was that they did not exist at the time you wrote this report.

A No, sir. If I said that, I did not mean that, Mr. Mitchell. I certainly did not mean that.

Q All right, then. Your conclusion was that they did exist?

A That is correct.

Q And if the Articles of Impeachment, Article VII, which was published and handed down on August 5th, 1975, assumed that they didn't exist, there was no input, you're telling this Court, between your conclusion as an investigative arm of the State of Texas, and the House bringing these Articles of Impeachment which charge Judge Carrillo with the leasing of non-existent equipment. There is just no connection?

A You have lost me on that, Mr. Mitchell.

Q Well, obviously, one charge is he had no equipment. You concluded that he had the equipment.

A No, sir. What I said is, I -- it was my conclusion that there were two D-8 Caterpillars, and it was my conclusion that Judge Carrillo had them. However, the -- and then the conclusion which has not been asked me is for the payment. This has not been asked along this line, but it is my conclusion that there were two D-8 Caterpillars, and that they were in possession of and being used by O. P. Carrillo for his personal use.

Q All right.

A This was my conclusion, sir.

Q And did your investigation indicate that at the time they were in his possession and for his personal use that he had bought them. That is, in '74, himself.

A There was no indication in my investigation that he had purchased them.

Q You didn't see the contract between O. P. Carrillo and Plains Machinery of May of '74?

A All I -- I saw them at the time that Ranger Powell and I were working on this document right here. I studied the document. I knew that they existed and was vaguely familiar with it.

Q And you told us this morning that you didn't know the existence of the December, 1972 contract between Benavides Implement and Hardware and Plains when you wrote the document?

A I don't know which specific document you are referring to now. I know that you are referring -- there are two different contracts and I don't know which specific one you are referring to, Mr. Mitchell.

Q The one just showed you by Mr. Doyle. I can show it to you if you --

MR. DOYLE: Did you pass the witness, Mr. Mitchell?

MR. MITCHELL: No, I haven't passed him.

Q E-160, contract, Benavides Implement and Hardware, December 14. I say, did you have that document before you, or did you not, when you composed the report?

A If I did not have it before me, Ranger Powell had it before him, and he would in turn relate information as I was going down the list.

Q But insofar as you characterize the two D-8 tractors -- 36A470 and 36A4143 -- as owned by O. P. Carrillo, you would have discounted the written document because it, of course, indicates that the tractors were owned by Benavides Implement and Hardware, does it not?

A I didn't notice when I had it here.

Q Well, I thought Mr. Terry had asked you about the name and the address. Didn't you -- weren't you reading it?

A Yes, sir, but you have asked me several questions since then. I see -- yes, sir, it is on there. Yes, sir.

Q All right. So that the written document was discounted in making the conclusion that you did in your Exhibit, R-91, 781, specifically -- Page 781.

A No, sir, it was not discounted.

SENATOR OGG: Mr. President.

THE PRESIDENT: Senator from Harris, Senator Ogg.

SENATOR OGG: I would like to respectfully request from Mr. Mitchell that he not go back over the same questions with the same witness that he's getting the same answers on. This is -- these questions are almost identical to what he presented and the answers are almost identical as to what was presented on cross-examination. And, on re-rebuttal, it has always been kind of my understanding that you limit it to what was rebutted.

I think this is what is taking -- it's taking a lot of time, and it's just unnecessary and unneeded time. I hope we caught on to what was -- the first time around. If we missed it, we've got an opportunity to read it.

THE PRESIDENT: Senator Ogg's point is well taken, Mr. Mitchell. Please do not engage in further repetitive testimony.

Furthermore, the Chair will observe that the questions directed to this witness regarding the Articles of Impeachment regard matters of judgment that it is the function of this Court to make and not the function of this witness to testify to.

MR. MITCHELL: I will try, of course, not to be repetitive, Mr. President, and I'm not, I want to state, being repetitive on purpose. I'm hopefully discharging my duty as I see it, representing my client. I was finished with the witness, quite frankly until he was lead about on redirect, which opened a necessity, I thought, to further make the inquiry that I did. I'm certainly not doing it to waste the time of this body.

May I call attention, if it please the Court, to the rest of the record. The record was partially read by Mr. Doyle earlier. It would be Page 1444 of the Senate Journal, Mr. President, for the cross-examination of Mr. Kurtz. Mr. Doyle had introduced the direct examination and I would like to introduce the cross-examination. And if I might be permitted to characterize it as he did, the witness upon cross-examination it appeared to me and, of course, the Senate can read it -- appearing to recognize the fact that there were two contracts for the purchase of the dozers. The one dated December, '72 and the other dated May of 1974. And his testimony referred to the one in '74, that

is that Judge Carrillo came in and negotiated it, which, of course, is admitted fact.

MR. ODAM: I object to that characterization, because it's not true and the record does not so reflect. I will let the entire testimony speak for itself and that's not characterization.

SENATOR OGG: Mr. President.

THE PRESIDENT: Senator Ogg.

SENATOR OGG: I don't want to get into the objecting posture, but I raised the same point when Mr. Doyle did this. I think he can either read it or let us read it and let us put our own interpretation to it.

MR. MITCHELL: Well, I submit --

SENATOR OGG: Unless he's going to be sworn in.

THE PRESIDENT: Point well taken, Senator.

Q Now, the other one or two questions I have, Mr. Lee, is that you were asked by Mr. Doyle if you had independent knowledge. Of course, we lawyers talk in technical terms. You had no personal knowledge of any of the events that went into R -- your exhibits R-91 -- 91, 92, did you?

A No personal knowledge, no, sir.

Q And the knowledge that you gained when you answered the question Counsel put to you on independent knowledge -- you gained knowledge from talking to other people, which was knowledge that they had, that they imparted to you, that's what you meant by independent knowledge?

A Yes, sir, in the form of statements and talking with people, yes, sir.

Q All right. Now, you did answer in one question that you had talked to Cleofas Gonzalez. I did not understand you this morning to say that you did. Did you talk to him or did you not?

A I have talked to Cleofas Gonzalez on several occasions.

Q Prior to the composition of R-90, 91 and 92?

A Yes, sir, I had talked to him prior to that time.

Q All right. So, your testimony this morning was incomplete and you want to amend it to include that you had talked to Cleofas Gonzalez?

A Yes, sir, I have on several occasions.

Q Prior to the execution of these Exhibits?

A Yes, I have talked to him prior to that time.

MR. MITCHELL: No further questions, if it please the Court.

MR. DOYLE: We have no further questions, Mr. President. And I wish to advise the Chair that the witness Mrs. Montemayor is present in the Capitol.

SENATOR OGG: Mr. President.

THE PRESIDENT: Senator Ogg.

SENATOR OGG: If I might, in the interest of time, I have three or four questions to the witness, if I might ask for unanimous consent to ask these questions rather than submitting them in writing.

THE PRESIDENT: Senator from Harris asks unanimous consent to suspend the rules in order to permit him to question the witness direct. Is there objection. The Chair hears none, it is so ordered.

EXAMINATION

(Questions by Senator Ogg:)

Q Mr. Lee, in answering my questions, if you would confine them to your investigatory report or things of your own knowledge so we don't get into hearsay.

Was any effort ever made in your investigation by you or someone under your direction or to your knowledge to determine not whether the dozers existed, but to determine the time of alleged usage or whether there was any usage at all?

A To my knowledge there was an effort made, yes, sir.

Q Would you tell us -- would you tell us what you did in that effort?

A All right, sir. That particular part of the investigation was being handled by Ranger Powell. And he had brought to the office in San Diego, I believe, it was three bulldozer operators. There was also a welder. The three bulldozer operators had operated these bulldozers, the welder had welded on the bulldozers and could identify them.

Q Did you interrogate those people yourself or did you hear their answers?

A Yes, sir, I took their statements.

Q Was any effort made to determine, not whether the particular bulldozer was or was not on the premises, but if it was, what period of time it was there, in relation to these particular checks and the amount of dollars paid by the county?

A I don't specifically recall that. I know there was an effort made to pinpoint time when they were utilized and where they were utilized, to the best of my recollection.

Q Do you have any knowledge or --

MR. DOYLE: Mr. President, might I point out something in response to Senator Ogg's last question?

THE PRESIDENT: Yes, Mr. Doyle.

MR. DOYLE: Senator, that is in the Journal, the testimony of the operators, the dates they operated, the testimony of the welder is all in the Journal, it's been introduced in evidence, you will find it at around Page 1840. That's the Judicial Qualifications Commission number, I'm not sure what the Senate Journal number is.

SENATOR OGG: Mr. Doyle, I appreciate that and I'm sorry. We have only had this since Monday and Evelyn Wood and I have tried, --

MR. DOYLE: I understand.

SENATOR OGG: We just haven't read it all.

Q Do you have any knowledge or did you make any inquiries as to what the fair market return of a dozer of this nature would be for a date -- a one-day or two-day or week's usage?

A I did not pursue that area of investigation myself.

Q Did anyone under your direction pursue that and did you interrogate or ask them about that?

A I believe Ranger Powell worked in that area, but I do not recall -- if I had knowledge to it I don't recall.

Q Okay. In your investigation, in looking through documents that were -- either the records or the property or under the custody of Rudolfo Couling, was there ever any address other than Drawer M used by Mr. Couling for any other invoices other than the Benavides Implement?

A In my investigation of Mr. Couling, to the best of my recollection the only address utilized by Mr. Couling was Drawer M, to the best of my recollection. Is that your question, sir?

Q All right. Now, there is evidence and there's documentary evidence that Drawer S was used for Benavides Implement, at least in drawing the original security agreement in these lease contracts, the one of 12/14/72 and then later one of 5/2/74?

A Yes, sir.

Q That address was used?

A Yes, sir.

Q In going through all of the records, either owned by Mr. Couling or under his custody and care and control, did you ever find in any other instance where Mr. Couling used Drawer S, except in relation to this security agreement or lease agreement?

A To the best of my recollection, no. And the only reason I knew of the Drawer S was Ranger Powell had pointed this out to me. And it was again mentioned during the hearings here today.

Q All right, sir. Do you know of your own knowledge or in your conversations with Mr. Kurtz who prepared the lease and security -- the two lease and security agreements?

A I have no knowledge of that, sir.

Q All right. Do you have any knowledge in going through the records, if you have gone through any such records, of Judge O. P. Carrillo, if he had more than one address, either in his income tax returns, on any of his invoices, any correspondence, anything that you went through that belonged to Judge O. P. Carrillo or under his care, custody and control?

A Offhand, sir, I cannot recall, offhand.

Q All right, sir. Well, Mr. Doyle referred to two Exhibits that were alleged to be income tax returns, I think one was an extension -- a request for automatic extension?

A Right.

Q In 1974 and another return. And it shows two different addresses for Judge Carrillo there?

A Other than Box 61 or Drawer S I have no knowledge of any others other than these two addresses, no, sir.

Q Box 71, I believe.

A 71, excuse me, sir.

Q And you have no knowledge of any other addresses ever used?

A Not to my knowledge, sir.

THE PRESIDENT: Mr. Lee, this is a question submitted by Senator Traeger. Was the information you received from Mr. Couling given to you before or after he was given immunity by the State?

THE WITNESS: All right, sir. The information given by Mr. Couling prior to immunity was very broad in nature, nothing specifically referred to. It was after the immunity granting that details were brought about. They were just very vaguely touched upon prior to that time.

THE PRESIDENT: Question submitted by Senator Sherman. If your original investigation was of Mr. Couling and not of Judge Carrillo, why didn't you talk to Judge Carrillo about your investigation?

THE WITNESS: Sir, I answered that once this morning when I stated that the question of the reliability information that might be received from Judge Carrillo at that time due to his situation with regard to being under indictment, this was one of the reasons why he was not questioned.

THE PRESIDENT: Mr. Lee, in view of the fact that you may be recalled for further testimony in this case it's my duty to warn you that you are under The Rule,

that you are not to converse with any other person except Counsel for the parties and are not to read any report or comment on the testimony before this Court. A person violating such instructions may be punished with contempt. You understand that, sir?

THE WITNESS: Yes, sir.

THE PRESIDENT: Thank you very much, Mr. Lee. You're excused.

THE WITNESS: Yes, sir.

THE PRESIDENT: It's now 3:20, Mr. Doyle advises that Mrs. Montemayor is here. The Chair would suggest the Court take a 15 minute recess at this time.

Accordingly, the Senate, sitting as a Court of Impeachment, at 3:20 o'clock p.m. took recess until 3:35 p.m. today.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 3:35 o'clock p.m.

THE PRESIDENT: Please call Mrs. Montemayor.
Mrs. Montemayor, would you raise your right hand?

"Do you solemnly swear or affirm that the evidence you give upon this hearing by the Senate of Texas of impeachment charges against O. P. Carrillo shall be the truth, the whole truth and nothing but the truth so help you God?"

MRS. MONTEMAYOR: Yes.

THE PRESIDENT: Thank you.
Mr. Mitchell.

MR. ODAM: Mr. President.

THE PRESIDENT: Mr. Odam.

MR. ODAM: Mrs. Montemayor was a witness, as Mr. Mitchell knows, of the Judicial Qualifications Commission. She is here today pursuant to the request of the Court. She came up today -- as a matter of fact, I believe she was ill down in San Diego, and we flew her up. I can proceed with the questioning of this witness, or Senator Mauzy, who requested she be here, whatever the Court's desire is.

THE PRESIDENT: Mr. Odam, why don't you go ahead and present the witness.

ZENIDA MONTEMAYOR

was called as a witness of the Court, and having been first duly sworn, testified as follows, to-wit:

(Questions by Mr. Odam:)

Q Will you please state again your full name for the record?

A Zenida Montemayor.

Q Mrs. Montemayor, where do you reside at the present time?

A Sir?

Q Where do you live now?

A I live in San Diego, Texas, Duval County.

Q By whom are you presently employed?

A By Mrs. Oliveira, the Tax Collector.

Q You work in the Duval County Tax Collector's Office?

A Yes.

Q And how long have you held that position in the Tax Collector's office?

A I started working for Mrs. Oliveira in June.

Q You did testify in the Judicial Qualifications proceeding down in Corpus Christi?

A Yes, sir, I did.

Q Do you recall when you were there and I asked you a question, and Mr. Mitchell asked you questions?

A Yes, sir.

Q Now, the period of time prior to your employment at the Tax Collector's office, where did you work immediately before that?

A I worked for Judge Carrillo for about six years.

Q For six years?

A Right, sir.

(Senator Sherman in Chair)

Q Could you give us the year that you began working for Judge O. P. Carrillo?

A I think it was 19-- late part of '67, early part of '68. I'm not positive.

Q What was your job for Judge Carrillo at that time?

A I was a receptionist.

Q What was his position at that time in 1967, 1968?

A He was the County Attorney.

Q And Judge Carrillo was elected to District Judge in 1970, are you aware of that fact?

A Sir?

Q He became District Judge in an election in 1970, are you aware of that fact?

A Right, sir.

Q Once he became District Judge in 19 -- took office in 1971, did you continue to work for him?

A Yes, sir, I did.

Q And what was your position then with respect to Judge Carrillo, employment?

A A receptionist.

Q Still receptionist?

A Correct.

Q Now, prior to the time you worked for Judge Carrillo when he was County Attorney, by whom were you employed?

A Alberto Garcia, the County Clerk. I worked for Alberto for five years.

Q Were you ever employed by any County Commissioner?

A No, sir.

Q Now, have you ever had a conversation with Mr. Don Lee? At one time, he was an Investigator with the Department of Public Safety.

A Yes, sir.

Q Have you ever had a conversation with Mr. Don Lee regarding two D-8 Caterpillars?

A I had a conversation with him about some equipment, but I didn't know exactly what kind of equipment it was.

Q All right. Could you explain to the Court the statements that you made to Mr. Don Lee about the equipment?

A About the equipment that Mr. Leal was paying for out of the --

Q Okay. Let's stop right there. Who is Mr. Leal?

A Mr. Leal is the Commissioner from Concepcion.

Q What precinct number is that?

A Juan Leal, I think it's Precinct 3.

Q Precinct 3?

A Right. I think that's what it is.

Q I show you an invoice which is marked in evidence that's in the Examiner's Exhibits on Page 815, and it states, "Duval County Precinct No. 2 in care of Mr. Juan Leal." Could it be Juan Leal is Precinct Commissioner of Precinct 2?

A Well, there is a voting Precinct 2, I think, and the A and B precinct. Voting Precinct 2 must be -- I get them confused with the voting precincts. I think it's Benavides.

Q Whatever precinct number it is that Mr. Leal is precinct -- or --

A Well, there is only one Juan Leal.

Q Mr. Juan Leal. You had a discussion with Mr. Don Lee concerning Mr. Juan Leal and some equipment, is that correct?

A Correct.

Q When did you have this conversation with Mr. Lee, if you recall?

A I don't recall the exact date.

Q Is it -- this is 1976. Was it 1976?

A '75.

Q 1975?

A Correct.

Q Now, the conversation that you had with him, you related it had to do with Mr. Juan Leal, and I interrupted you. Could you explain what it was that you stated to Mr. Don Lee?

A Mr. Juan Leal was telling his secretary and myself one day that he was paying on some equipment that Judge Carrillo was using.

MR. MITCHELL: Excuse me, Your Honor. We're going to object. That conversation and the attempt to establish the ultimate fact would be hearsay, and we move to strike it.

MR. ODAM: May I respond to that? The way all of this, if it's relevant at all, came into being was an opinion or conclusion that was reached by Mr. Don Lee, "rent on two D-8 dozers," it was an opinion. The Court has asked Mr. Lee what his basis was, and he stated he found out from Mrs. Zenida Montemayor. The Court has now called Mrs. Montemayor as a witness. And if Mr. Mitchell's questions of Mr. Lee as to who he talked with, if he wants to set up the roadblock now on hearsay, that's fine.

We can take her off the stand and let her go home right now.

MR. MITCHELL: No, as a matter of fact, I'll stipulate with you, and if she were incorrect, you will agree with me that the entry indeed and your Exhibit as R-91 and 92 is incorrect. I'll go that far with you, Counsel.

MR. ODAM: I won't stipulate --

MR. MITCHELL: Well, then, I withdraw the objection.

MR. ODAM: May we proceed, then --

THE PRESIDING OFFICER: Please proceed, Mr. Odam.

Q Would you restate, before we were interrupted, Mrs. Montemayor, restate --

MR. MITCHELL: I'm going to move to strike that. I have a right under the law to make an objection, Counsel, and I object to the use of the word "interrupted," if it please the Court.

THE PRESIDING OFFICER: Mr. Odam, if you would please proceed. Mr. Mitchell, thank you.

Q Before the objection was made by Mr. Mitchell --

SENATOR SCHWARTZ: Mr. President.

THE PRESIDING OFFICER: Senator Schwartz.

SENATOR SCHWARTZ: Can I have an opinion from Counsel for the -- from Counsel Jaworski about the issue? Is hearsay admissible? Because can you compound hearsay and make it admissible because it justifies hearsay? And I understand the basis of Mr. Lee's testimony and I understand that we can judge the weight to be given Mr. Lee's testimony, he did certain things. And he did it on the basis of some conclusions that he arrived at. And we've permitted that testimony. Does that now justify the hearsay to be introduced upon which he based his testimony? That's my question, and --

MR. JAWORSKI: I think you're right, Senator. I don't think it does. What happened, however, and as I understood Mr. Odam, was he then said that the only reason that he was going into this is it seemed that the Senate or some Senators wanted this testimony developed by this witness.

SENATOR SCHWARTZ: All right. Now, that --

MR. JAWORSKI: As a part of the lead testimony.

SENATOR SCHWARTZ: I understand that some Senator may want the hearsay to be compounded by the production of the hearsay upon which the conclusion was reached. But that doesn't make it admissible over objection.

MR. JAWORSKI: I don't think it does either, but, as I understood Mr. Odam, he was willing to just leave the matter where it was, but was agreeable to developing it inasmuch as it had been asked this witness be produced.

Is this your position, Mr. Odam?

SENATOR SCHWARTZ: I want to hear all the admissible evidence or be able to read it in the record, that which I don't hear, that is admissible when it's not objected to under any circumstances, and when it's objected to, I guess we're still bound by the same rules of evidence that -- that I'm replying that -- that I at least related to. That's my problem. I know the witness is here. I know the Court called the witness. Now that the Court has the witness, if we can -- if the Court determines that the witness can't testify to a relevant issue without testifying under the hearsay rule over objection, that I don't think the Court is going to demand that we now disregard the rules of evidence.

Now, that's --

THE PRESIDENT: Senator Schwartz, if I understood the exchange between Counsel a moment ago, Mr. Mitchell withdrew his objection. So, at this point, that question is a moot question. It may arise again, but at this point, there's no objection before the Court.

MR. MITCHELL: I then reurge my objection, Mr. President.

SENATOR SCHWARTZ: I am not asking you to reurge it. I just -- I don't want us in the position here of having created that condition with any witness who is going to come before the Court. That's my only -- That's the only basis.

THE PRESIDING OFFICER: Mr. Odam asked the witness a question, and she said another man was telling her something.

The Chair will sustain the objection.

MR. DOYLE: Mr. President.

THE PRESIDING OFFICER: Mr. Doyle.

MR. DOYLE: Mr. President, the State made arrangements to fly this witness in here at the request of the Court. We are in the same position with respect to a witness who we're looking for now, that is Mr. Lee -- I mean, excuse me, Ranger Powell. It would appear to me that Ranger Powell's testimony is going to be in exactly the same posture, and I would suggest that if we're not going to elicit any more testimony from this witness that we at least save the money that it's going to take to fly out there and fly him in here and establish the same thing.

SENATOR OGG: Mr. President.

THE PRESIDENT: Let me ask, first, Senator Ogg, if any member of the Senate does have a question of Mrs. Montemayor.

SENATOR MAUZY: I do.

THE PRESIDING OFFICER: Senator Mauzy.

SENATOR MAUZY: Yes, sir.

PRESIDING OFFICER: Is there objection to Senator Mauzy asking his questions at this time?

Senator Mauzy.

SENATOR MAUZY: Mrs. Montemayor, when did you first talk to Mr. Lee regarding the investigation which he was conducting into the affairs of Judge Carrillo?

THE WITNESS: Sir, I don't remember the exact dates when I talked to Mr. Lee.

SENATOR MAUZY: Can you tell us what year it was?

THE WITNESS: '75.

SENATOR MAUZY: 1975? Would it have been in the first half of 1975 or the second half?

THE WITNESS: Should have been the second half when these -- that the committee started on the impeachment.

Q All right. Did your first conversation with Mr. Lee occur before or after the House of Representatives voted Articles of Impeachment against Judge Carrillo, which is in this record as having been August 5th, 1975?

A It was before August.

Q Before August? All right.

Now, at that time, did you tell Mr. Lee that you knew of your own personal knowledge that Judge Carrillo was receiving money from Duval County through the Benavides Implement and Hardware Store for the rental of equipment which he owned?

A It wasn't through the Benavides Independent --

Q No ma'am; no ma'am. I don't believe you understood my question. If you will listen, please, and then answer the question as I frame it. If you don't understand it, please tell me and I will try to rephrase it.

A Yes.

Q Did you tell Mr. Lee, the first time you talked to him, that Judge Carrillo was receiving money from the treasury of Duval County, Texas for renting equipment which he owned.

A He was renting equipment which he owned, but he was renting it, not through the Implement. He was renting it through the -- I think it was Plains Machinery in Corpus.

Q Let me rephrase my question. I don't think you understood me.

A I don't --

Q Did you tell Mr. Lee that Judge O. P. Carrillo was receiving money from the county treasury of Duval County, Texas for use of equipment which Judge Carrillo owned which was being used by the county?

A Sir, I would have to explain it to you --

Q All right.

A -- exactly how I told Mr. Lee.

Q If you will first answer my question yes or no, I think we will --

A Yes, I did.

Q All right. Now, what did you tell Mr. Lee at that time?

A Okay. I told Mr. Lee that Mr. Juan Leal was paying on some machinery that Judge Carrillo owned. Mr. Juan Leal told me himself --

Q No, no. No, ma'am.

A Okay.

Q I don't want you telling me any conversations between you and Mr. Leal, or anyone else, unless Judge Carrillo was present.

Was Judge Carrillo present at any conversation you had with any other person?

A No, sir.

Q All right. Then please don't volunteer or answer any question with what conversations you had outside Judge Carrillo's presence because that would be hearsay.

Now, did you tell Mr. Lee that you knew, of your own personal knowledge, that Judge Carrillo owned two dozers?

A Yes.

Q All right. When did you tell Mr. Lee that?

A I told you, sir, I don't remember the date.

Q All right. Did you have more than one conversation with Mr. Lee?

A Right; correct.

Q How many conversations, approximately, did you have with him?

A About two.

Q Two? And over what period of time did these conversations take place? You told us the first one was prior to August 5th, 1975.

A It was during the same time.

Q Would the second conversation have been before or after August 5th, the day the House of Representatives voted Articles of Impeachment against Judge Carrillo?

A It was after.

Q After?

A Right.

Q Can you tell us approximately how long after August 5th that second conversation occurred?

A No, sir. I could not tell you exactly.

Q No, ma'am. Approximately.

A I don't remember.

Q Thank you.

Now, did you tell -- Mrs. Montemayor, do you know of your own knowledge that Judge Carrillo, on January 8, 1973, owned two D-8 dozers?

A No, sir.

Q All right. Do you know, Mrs. Montemayor, of your own knowledge, if on February 14, 1973 Judge O. P. Carrillo owned two D-8 dozers?

A I know he owned some big machinery, but I couldn't tell you what they were.

Q All right. Can you describe to us the equipment that you know of your own knowledge Judge Carrillo owned?

A I never saw them, sir.

Q You never saw them?

A No, sir.

Q Then how do you know of your own knowledge that he owned this equipment?

A Because I used to send some payments for some machinery that he bought in Corpus. I made the payments from the office.

Q All right. Did you ever see a sales contract to Judge Carrillo by which he purchased that equipment?

A No, sir.

Q All right. You never saw the equipment?

A No, sir.

Q And therefore, you cannot describe it to us?

A Correct.

Q All right. Did you ever tell Mr. Lee that Judge Carrillo owned two D-8 dozers?

A I told him of some big machinery. That is about it. I could not know what kind of machinery it was.

Q All right. The checks which you would send to pay for equipment, to whom would you send those checks?

A Plains Machinery in Corpus.

Q Who would issue the check?

A Sir?

Q Who wrote the checks that you were sending?

A I would write them and Judge Carrillo would sign them.

Q Then were the checks drawn on Judge Carrillo's personal bank account?

A Correct, sir.

MR. DOYLE: Mr. President.

Q And at whose direction did you mail those checks?

THE PRESIDENT: Mr. Doyle. Excuse me, Senator Mauzy.

MR. DOYLE: Mr. President, I hate to level an objection at the Court, but could I request of Senator Mauzy that he establish a time frame with respect to when these checks bearing his signature were sent out?

SENATOR MAUZY: I am going to.

Q At whose direction did you mail those checks?

A Judge --

Q Who told you to do it?

A Judge Carrillo.

Q All right. Do you recall when you sent the first check? What month and year it was?

A No, I don't recall the month and the year.

Q All right. To whom would you mail the checks?

A Plains Machinery.

Q Plains Machinery Company?

A And B. D. Holt.

Q And whom, please, ma'am?

A B. D. Holt.

Q Holt? H-o-l-t?

A H-o-l-t.

Q Thank you.

SENATOR MAUZY: Perhaps Counsel could help me. Where do those --

MR. MITCHELL: Page 669, R-60, a check, O. P. Carrillo, Plains Machinery, June 19, 1975, and that Series.

SENATOR MAUZY: May I approach the witness, Your Honor?

THE PRESIDENT: Yes.

Q Mrs. Montemayor, I am handing you a set of Exhibits, and we are referring now to Page 669 of Respondent's Exhibits.

Do you recognize the check of which this is a photostatic copy, being check Number 426, drawn on the bank account of O. P. Carrillo, Box 71, San Diego, Texas.

A That's not mine. That's not my writing.

Q You do not recognize that? Do you recognize check Number 427, which appears on Page 669?

A No, sir. This isn't mine either.

Q Do you recognize check Number 428, which appears on Page 669?

A No.

Q All right. Do you recognize check Number 479 which appears on Page 669?

A That's Judge Carrillo's writing, not mine.

Q All right. Do you recognize Check 480 which appears on Page 671?

MR. DOYLE: That was after she quit.

SENATOR MAUZY: Well, I am trying to get to them.

A That's Judge Carrillo's writing, not mine.

Q Do you recognize Check 525 which appears on Page 671?

A No, sir, I don't.

Q Do you recognize Check 527 which appears on Page 671 -- excuse me just a minute.

A Yes, sir.

SENATOR MAUZY: Where else in the record do those checks appear, Counsel?

MR. DOYLE: Senator, the ones you asked her about were all checks that were sent after she no longer was employed by Judge Carrillo.

MR. MITCHELL: But she sent them, at any rate.

SENATOR MAUZY: But where do the checks appear in the record, if Counsel can help me find them so we can move along.

MR. MITCHELL: Excuse me just a minute, Senator Mauzy. Let me see if I can get those.

Let me see if I can get the originals of the checks -- yes, the checks from Judge Carrillo to Plains Machinery, Mr. President. If I might get the originals of those checks out of the file, please. They are the R-60 series. There is another series --

SENATOR OGG: We can't hear.

THE PRESIDENT: If Counsel would please turn their mikes on. Members of the Senate can't hear.

Q Mrs. Montemayor, I hand you a document which is identified in this record as appearing on Page 617 of the Respondent's Exhibits. First, I direct your attention to the check -- the photostatic copy at the top of the page, check Number 263, Exhibit R-51. I ask you if you recognize that check?

A No, sir, I don't.

Q All right. I direct your attention to what's marked for identification as Exhibit R-52, and ask you if you recognize that check?

A No, sir, I don't.

Q Now, I direct your attention to check Number 370, and it is marked for identification in this record as R-54, and ask you if you recognize that check?

A No.

Q And I direct your attention to check Number 319, bearing identification Number R-53, and ask you if you recognize that check?

A Yes, sir, I do.

Q All right.

A I made that one.

Q Tell us what Exhibit R-53, bearing check Number 319, is?

A It's a payment to Plains Machinery Company for \$1,500.00.

Q And who wrote that check?

A I wrote it.

Q And please read to the Court what appears on the check?

A The payment to the Plains Machinery --

Q No, ma'am. If you will just read everything that is on there.

A (Reading:) "O. P. Carrillo, Box 71, San Diego, Texas; paid to the order of Plains Machinery Company, March the 11th, 1975; \$1,500.00."

Q All right.

A And it's signed by O. P. Carrillo.

Q Do you recognize that as being the signature of Judge O. P. Carrillo?

A I am not an expert, but it looks like his signature.

Q All right. You have seen Judge Carrillo's signature many times, I assume.

A Correct.

Q And that does appear to be his signature.

A It is.

Q You filled out the rest of the check yourself? That is, the date, the payee, and the amount. Is that correct?

A Correct.

Q Thank you, ma'am.

Now, Mrs. Montemayor, I hand you what appears on Page 669 of this record in the Respondent's Exhibits, which has been marked for identification as Exhibit R-60-1, being check Number 476. Do you recognize that check? 426, excuse me.

A No, sir.

Q Next, check Number 427, being Exhibit R-60-2. Do you recognize that check?

A No, sir.

Q Check Number 428, being Exhibit R-60-3. Do you recognize that check?

A No, sir.

Q Check Number 479, being Exhibit R-60-4. Do you recognize that check?

A No, sir.

Q Check Number 480, being Exhibit R-60-5. Do you recognize that check?

A No, sir.

Q Check Number 525, being Exhibit R-60-6. Do you recognize that check?

A No, sir.

Q Check Number 527, being Exhibit R-60-7. Do you recognize that?

A No, sir.

Q Mrs. Montemayor, then when you told Mr. Lee that you knew that Judge Carrillo owned some equipment, it was based solely on your knowledge that he was having you make out checks which he would sign to mail to the Plains Equipment Company to pay for some equipment. Is that correct?

A No, sir, that's not what I told him.

Q No, ma'am. I say it was based -- your personal knowledge of the matter was based solely upon the fact that Judge Carrillo would direct you to write out checks on his account to the Plains Equipment Company which he would then sign and you would mail to them. Is that correct?

MR. DOYLE: Mr. President, again, I hate to object to the Court's questions, but he's neglecting to include in his question what she previously stated she based her opinion on and that is the conversation of Juan Leal.

THE PRESIDING OFFICER: Objection overruled.

Q Can you answer the question, please, ma'am?

A Sir, I did make some payments, but I did have that conversation with Mr. Leal that I have not been able to explain.

Q That's correct, and you're not going to be able to, because it's hearsay.

A No, it's not hearsay.

Q Yes, ma'am, it's hearsay as to this Respondent and the objection has been sustained and the Court is not going to permit you to testify to it. Now, if you will listen I think perhaps we can get to the one question I really want to know. And I want you to answer this question based solely on your own personal knowledge, not what somebody else told you, not something that you heard, but based solely upon your own personal knowledge. Okay?

A I understand.

Q Now, how did you know that Judge Carrillo owned some equipment based only upon your own personal knowledge?

A On the payments I was making for him.

Q And that's the sole basis upon which you knew that Judge Carrillo owned some equipment?

A Sir, you do not want me to explain otherwise, so that's about it, I guess.

Q Then, I take it, your answer to my question is yes.

A I guess so.

Q All right. Did Judge Carrillo ever tell you that he owned some equipment?

A No.

SENATOR MAUZY: I think that's all the witness can testify to.

THE PRESIDING OFFICER: Further questions. Mr. Mitchell?

SENATOR OGG: Mrs. Montemayor, can you hear me from here?

THE WITNESS: Yes, sir.

THE PRESIDING OFFICER: Is there objection to Senator Ogg asking questions from his seat?

SENATOR FARABEE: I object.

THE PRESIDING OFFICER: There is objection. The question is being sent up.

THE PRESIDING OFFICER: Mr. Mitchell, do you have questions?

MR. MITCHELL: Yes, thank you, Mr. President.

MR. ODAM: I'm sorry, before Mr. Mitchell takes her, may I proceed. I didn't pass the witness.

THE PRESIDING OFFICER: Would you please proceed, Mr. Odam. If we have other questions, we will ask all other questions from Members of the Court after Counsel has completed their questions.

DIRECT EXAMINATION RESUMED

(Questions by Mr. Odam:)

Q Mrs. Montemayor, can you state whether or not you knew when you told Mr. Lee about the ownership of the D-8 tractors -- can you state whether or not you knew that Judge Carrillo owned the tractor, D-8 tractors or equipment?

A Well, I didn't know if he owned them or not. They were being paid for and so he was using them.

Q Your basis for your statement to Mr. Lee, was that basis other than the making out of these particular checks?

MR. MITCHELL: I am going to object, I thought we had been across that bridge, Mr. President. It would be hearsay, other than the fact of the payment of the checks. We're not going to waive that objection.

THE PRESIDING OFFICER: If I understand the question, the question is whether or not she had personal knowledge and the witness can answer that question of her own personal knowledge.

Q I will restate the question, Mrs. Montemayor.

A Please.

Q Of your own personal knowledge did you know whether or not the County of Duval was paying for D-8 tractors in the possession of Judge O. P. Carrillo?

A Yes, to my knowledge, it was, sir.

Q And the basis for your personal knowledge was that other than these checks Senator Mauzy has asked you about?

A Yes.

MR. MITCHELL: I submit that it would be impossible other than be based on hearsay. She's just a receptionist, she's not the comptroller of the county, so we move to strike that on grounds of hearsay.

MR. ODAM: I'm just asking her if she has a basis other than those checks, Mr. Mitchell.

MR. MITCHELL: I understand what you asked her, Counsel, but her answer doesn't have any input into it, it's strictly hearsay.

THE PRESIDING OFFICER: Counsel, I think you have the right of cross-examination to determine the basis of that answer. We will let the answer stand at this time.

Please proceed.

Q So, the basis of your personal knowledge was other than just these checks that Senator Mauzy asked you about. Is that correct?

A Correct.

Q Do you know Commissioner Juan Leal?

A Yes, sir, I do.

Q Did Commissioner Juan Leal ever come -- strike that. Have you ever had any conversations with Commissioner Juan Leal?

A Yes sir, I have.

Q Is Commissioner Juan Leal -- how long has he been a Precinct Commissioner of Duval County?

A I think he was a Precinct Commissioner for about sixteen or eighteen years. He's not anymore, he resigned last month.

Q He resigned last month?

A Correct.

Q Can you state whether or not you ever had a conversation with Mr. Juan Leal concerning equipment in the possession of Judge O. P. Carrillo that was being paid for by the county?

MR. MITCHELL: Object, that would be hearsay.

MR. ODAM: I haven't asked her what he said yet, Counsel.

MR. MITCHELL: You asked whether or not an ultimate issue and her answer would drive home the fact of the hearsay. I'm going to object.

THE PRESIDING OFFICER: The Chair will overrule the objection. The witness can testify whether or not she had such a conversation.

Q To restate the question for you, we might ultimately get to the matter yet. Can you state whether or not you ever had a conversation with Mr. Juan Leal, Commissioner of Precinct 2, concerning equipment that was being used by Judge O. P. Carrillo that was being paid for by the county? Did you ever have such a conversation?

A I did have that conversation with Mr. Juan, yes.

Q Now these payments that Senator Mauzy asked you about, I think these were 1974, the ones you identified, these were at some later point in time. Do you recall when you had this conversation with Mr. Juan Leal?

A No, I don't recall dates, I don't recall months, I'm not too good at months.

Q Can you recall what year it was in?

A It was the year '75, early part of '75.

Q Now, the conversation that you had with Commissioner Leal, Precinct 2 about the equipment being used by Judge Carrillo, was that the basis for your statements to Mr. Don Lee about the equipment?

A Correct.

Q I believe you stated you worked in the Tax Assessor's office?

A Yes, sir.

Q Can you reach over there, Mrs. Montemayor and pull down that gold book -- or Mr. Doyle will bring you one -- and I ask you to turn to Page 781.

A Yes, sir.

Q I direct your attention to the second line -- do you see the second line where it has the date?

A The second line is January 8, 1973.

Q Yes, ma'am.

A Is that the one?

Q Now, can you -- of your own personal knowledge, can you identify for us for example, what the budget code 229 means, if you know? 229, I believe, budget code 229?

MR. MITCHELL: Excuse me, Counsel, I'm going to object. I don't know what the receptionist would know about the budget code of Duval County. That would be pure speculation.

MR. ODAM: Well, if she doesn't know, she doesn't know. I have asked her the question.

THE PRESIDING OFFICER: The objection is overruled.

Q I will restate the question for you, Mrs. Montemayor. Do you know of your own personal knowledge what budget code 229 means?

A I think that was Mr. Juan Leal's budget code.

Q That is budget code 229?

A Correct.

Q And if you go down to --

MR. MITCHELL: Excuse me, I would object, Your Honor, on the grounds of what she thinks. That demonstrates it's speculation.

Q Let me ask you, what is the basis for your opinion that that is Juan Leal's budget code?

A Sir?

Q What is the basis for your opinion that that is Juan Leal's budget code?

A My opinion?

Q Why do you think that that is his budget code?

A I have seen it. I have been in the auditor's office and I think I have seen that budget code.

MR. ODAM: Your Honor, for the benefit of the Court, I do not think it's necessary to develop through this witness these particular budget codes, but I would direct the Court's attention to the Volume of the Examiner's Exhibits which are admitted. I refer, for example, to Page 840. There is a statement there -- 840 -- that

says Duval County Precinct Number 2 and it's written on there 229 R and B. The next page it says 229, Precinct Number 2, for that amount. The next page is a check, code number 229, the claim number and the amount of the check. The next page shows on the invoice Duval County, Precinct Number 2, it's written across there 229 R and B. The check claim jacket with the code number 229, Precinct Number 2. I will leave it to the Court to draw its own conclusions as to what 229 R and B means and offer for the benefit of the record how Mr. Walter Meek has explained it, if he has in fact explained it.

We pass the witness.

THE PRESIDING OFFICER: Mr. Mitchell.

CROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q The fact of the matter is Mr. Walter Meek didn't have anything to do with the budget code, does he, Mrs. Montemayor? Mr. Hinojosa makes that up, doesn't he?

A Sir?

Q Or did you know Mr. Hinojosa makes up the budget code number, Mr. Meek doesn't have anything to do with it? Or did you know that?

A Oh, yes, I know that.

Q Tell us, when did George Parr come into your office wanting to shoot O. P. Carrillo?

A Would you repeat your question.

Q When did George Parr come into your office looking for Judge Carrillo to shoot him?

MR. ODAM: I object, Your Honor, this has nothing to do with the questions I just raised. Let's don't go far afield on political matters at this time. I don't know what that had to do with the Road and Bridge Fund matter. It wasn't raised on direct examination.

MR. MITCHELL: I understand that the Court called this witness, am I going to be restricted in my examination strictly to what the Board of Managers -- or I can recall her as my own and ask her, if it will suit the --

MR. ODAM: Well, Senator Mauzy did not ask these questions about George Parr and neither did I and I still don't think it's a relevant matter that's been raised on direct examination by the Court or by the Board of Managers.

THE PRESIDING OFFICER: The objection is sustained at this time.

MR. MITCHELL: Then may I have the witness subpoenaed for recall when we proceed with our case, Your Honor.

Q Those checks that you did make out to Plains Equipment though, you recognize those that Mr. Mauzy went through, those were all dated in 1974, weren't

they Mrs. Montemayor?

A '74?

Q And '75, yes, ma'am.

A I didn't notice the dates on all of them, Mr. Mitchell.

Q You're not going to testify -- you just got through looking at the documents, but you're not going to testify to the Court the dates of them, Mrs. Montemayor?

A Sir, I didn't notice the dates. I was just looking at the handwriting, sir.

Q You're not going to give us the benefit of your testimony. Is that it?

MR. ODAM: May I address the Court, please. If Mr. Mitchell would like to ask her a question about the items he just simply has to refer them to her. She said she didn't notice the dates.

MR. MITCHELL: Counsel, if I would be permitted to cross my own way, if you don't mind.

THE PRESIDING OFFICER: Mr. Mitchell, would you proceed with your cross-examination?

MR. ODAM: Obviously I do mind.

Q You just got through looking at those checks and testified at great length when the Manager put the question to you, but you won't tell this Court that those checks that you just got through looking at -- it ain't been ten minutes -- are all dated in 1974, '75, isn't that right, Mrs. Montemayor?

A Sir, I tell you, I did not notice the dates, I was looking at the handwritings.

Q All right. When did you go to work for the Tax Collector, Mrs. -- I think that's Couling's sister, isn't it?

A No, sister-in-law.

Q Oh, excuse me. It is an Oliveira though?

A Mrs. Oliveira.

Q Yeah, and that was after you were fired by Judge Carrillo, weren't you?

A I was not fired, I was given a thirty-day vacation.

Q And that was because of what reason.

A I was seen drinking coffee with Judge Archer Parr one afternoon with the same receptionist he has right now. We were both together.

Q And you left under circumstances which were obviously very emotional, you're still emotional over it, aren't you?

A Emotional?

Q Aren't you considerably upset with Judge Carrillo and the circumstances under which you left his employment?

A Not exactly.

Q You don't have any ill-feeling toward my client?

A No, I don't.

Q As a matter of fact you searched out Mr. Lee and told him that you had some things you wanted to tell on O. P., because you wanted to get even with him, didn't you?

A Will you please repeat the question.

Q I say, you hunted out Mr. Lee in August of 1974 and you volunteered information against your former employer, Judge Carrillo, didn't you? For the specific purpose of hurting him, didn't you?

A No, sir.

Q All right. I just told the truth, because I'm not going to perjure myself for him or nobody.

Q Has anybody asked you to perjure yourself?

A No, sir, but I'm not.

Q Did Judge Carrillo ever complain to you and in your presence that George Parr was using his equipment, specifically the two dozers and not paying the rent on them?

A Yes, he did.

Q Can you tell us whether Judge Carrillo complained on more than one occasion that George Parr was using the equipment and not paying the rental or just one that you can recall, Mrs. Montemayor?

A I recall one time.

Q And can you tell us to your best present recollection, please, ma'am, the year when you recall he complained of George Parr using the equipment?

A Around -- maybe, I'm not very good at dates, I don't recall dates. Maybe around -- early part of '75 or late part of '74, I don't recall exact dates.

Q Mrs. Montemayor, I noticed when Senator Mauzy went through these checks from O. P. Carrillo to Plains Machinery that you recognized, I believe, only about one or two. Were there other checks that you remember writing for Judge Carrillo to Plains Machinery that you weren't shown copies of? Could you tell us?

A There was only one that I wrote in the book, in the Exhibit.

Q I understood that your testimony indicated that you might have written more than one.

A Right.

Q But you were not shown any of those by Mr. Mauzy?

A Correct, because those were after I was given my thirty-day vacation.

Q All right. Now, I want you to explain that. You wrote some even after you were given notice of termination, didn't you, Mrs. Montemayor?

A Sir?

Q You wrote some of those checks carrying out some of those responsibilities even after you were given the notice, am I correct?

A No. No, sir.

Q Did you write any of the checks from O. P. Carrillo to Benavides Implement and Hardware?

A No, sir.

Q Did you know that he was paying Benavides Implement and Hardware rent back in '73 on the two dozers, on two dozers or other equipment?

A No, I didn't know.

Q Juan Leal, now, Juan Leal is a Commissioner, then, for what Precinct, Mrs. Montemayor?

A Precinct 2.

Q And from Concepcion, Texas?

A From Concepcion, correct.

Q And if there are documents in here from Benavides Implement and Hardware in '71 addressed to him, he was a real person at that time and a Commissioner of Precinct 2 living in Concepcion, Texas, is that correct?

A Correct.

Q All right.

MR. MITCHELL: Thank you. I have no further questions, Mr. President.

THE PRESIDING OFFICER: Mr. Odam.

REDIRECT EXAMINATION

(Questions by Mr. Odam:)

Q Mrs. Montemayor, Mr. Mitchell asked you about Judge Carrillo ever talking to you about George Parr using the Caterpillars. Do you recall that question?

A Yes, sir, I recall the question.

Q Did George -- strike that. Did Judge Carrillo ever express any statement to you about George Parr having the county pay for those Caterpillars while they were being used?

A No, sir, he only -- I only recall him telling me that he was using them, that Judge Parr -- George Parr was using his equipment.

Q Did he state whether or not the -- how the Caterpillars came into his possession? Were they loaned to him or did George Parr come over there and take them away from him? Do you recall?

A I recall him saying -- all he says is -- he gives orders for us to let him borrow, and we had a hard time getting them back from Mr. Parr.

Q But he never had a conversation about Mr. George Parr getting money from the county to pay rent on the bulldozers while the bulldozers were being used by George Parr?

A No. Not that.

Q When was this that -- you say it's 1974 or 1975 that the conversation was had with respect to George Parr having the bulldozers? When was that?

A I don't recall, Mr. Odam. I don't recall the date exactly or when it was.

Q Was it --

A It might have been the early part of '75.

Q Was it as far away as 1973?

A Could have been. I just don't recall dates. I'm more than sure it was '75.

MR. ODAM: Pass the witness.

THE PRESIDING OFFICER: Mr. Mitchell.

MR. MITCHELL: Thank you, Mr. President. I have no further questions. I would like to have the right to recall and ask her about the one incident, unless I can be permitted to do it now and save the lady a trip back.

MR. ODAM: That's fine with me. I waive the objection to benefit Mrs. Montemayor so we wouldn't have to bring her back up here again at State expense.

THE PRESIDING OFFICER: Mrs. Montemayor, these questions have been submitted by Members of the Court. Senator Clower asked the question, "Have you been granted immunity from prosecution for any offense by any authority?"

THE WITNESS: No, sir, I never have.

THE PRESIDING OFFICER: These questions from Senator Snelson -- I'm sorry, Mr. Mitchell.

MR. MITCHELL: Mr. President, I understand Mr. Odam graciously waived the prior objection that was sustained, and I would like to perhaps to cover it in one or two questions.

REXCROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q Mrs. Montemayor, did an incident occur back in the early part of last year where Mr. Parr prior to his death in April came into your office at the time you were receptionist for Judge Carrillo with a gun looking for Judge Carrillo to kill him?

A He came in, but I never saw a gun in his hand.

Q All right. Regardless, he did come in, is that correct?

A Correct.

Q Tell the Court when it was that he came in. What month, if you recall?

A It was in March.

Q Of nineteen seventy --

A Of '75.

Q All right. And tell us, just describe to the Court what transpired. Was he agitated? Was he calm? Was he cool? Describe what --

A He was irritated.

Q And what, if anything, did he say to you?

A He came in and asked me for Judge Carrillo, and I told him that we were waiting for him because we were going to hold Court. And he says, "I want him here, because I want -- I'm going to kill him." And I said, "We're waiting for him." He says, "You call him right now."

Q Did he use any off-colored language at that time when he asked where he was?

A No, sir.

Q Other than that, did he -- other than making the threat to kill him, did he make any other threats with regard to Judge Carrillo?

A No, he only -- when I told him that I called the house and that Judge Carrillo was not there, he said, "Well, he's not -- he's not coming in -- because Clinton Manges had already told him that he was looking for him to kill him."

Q And what else, if you recall, transpired at that time, that you can tell the Court about? Anything else?

A I went back into the back office where Judge Carrillo has his chambers, and I called his father and told him to tell the Judge not to come in to San Diego. His father didn't know anything about it and I didn't tell him what was going on either.

Q Was there any question in your mind of the serious intent of Mr. Parr to kill him if he had found him?

A I don't know.

Q How long did the incident take place in terms of time? Five minutes, ten minutes? Do you recall?

A I was so scared and so nervous, I couldn't tell you. He was pointing his finger at my face and all the time when he was telling me --

Q And was Archie Parr with him?

A No, Archie was out in the hall. And then Archie came in and told me not to find Judge Carrillo.

Q And did he tell you why?

A No, sir. He just said, "Don't find the Judge."

MR. MITCHELL: No further questions.

THE PRESIDING OFFICER: Mr. Odam.

MR. ODAM: Your Honor, if I might call the Court's attention, since Mr. Mitchell has gone into this matter, with her here, that Article II of the Articles of Impeachment is a separate Article, and it states in part that in the case of the State of Texas on a relation of Jose Nichols, et al, which involves the suspension or removal from office of former political ally with whom O. P. Carrillo had publicly split and who was involved in heated competition for the political control of the governmental entities in Duval County, Judge O. P. Carrillo refused to recuse and disqualify himself in that case. In my judgment, the testimony that Mrs. Montemayor gave here would be relevant to Article II, and it would have been my intention when we got to Article II to ask her questions about this, and I think it would be relevant here. And I just want to apprise the Court that I would like to ask her questions about that and let the Court consider that as evidence on Article II before I proceed. The questions, in my opinion -- nor do I think those questions relevant to the Article that we are on.

MR. MITCHELL: I make this statement, I do not, of course, have any objections.

Mr. Odam was considerate enough to permit me to ask the questions. I offer, however, the offer that I make is not with II. It's with the full spectrum of the Articles of Impeachment, because, it's our position that all this matter had it's Genesis in the

political strike between George Parr and Judge Carrillo, and it relates, Your Honor, if it please the Court, to Article I and VII under present consideration by reason of the Senate's action on its resolution.

THE PRESIDING OFFICER: Mr. Odam, you're stating to me in regard to Article II, I assume, to permit recalling Mrs. Montemayor in the event that we have testimony in Article II, or that when that time comes? Is that the reason for your statement?

MR. ODAM: Yes, sir.

THE PRESIDING OFFICER: Mr. Odam has asked the Court to take testimony in regard to Article II from Mrs. Montemayor. How long do you anticipate that questioning would take?

MR. ODAM: Well, let me restate it this way. Let me just state that in my judgment, even the questions that Mr. Mitchell has propounded to Mrs. Montemayor would be relevant to Article II. And, at a later point, if we get to Article II, we would use her answers on Mr. Mitchell's questions for that basis. And so, at this time, and in light of the number of questions the Senate has for her, I will not ask her further questions at this time.

THE PRESIDING OFFICER: Mrs. Montemayor, I have two sets of questions that have been sent up by Members of the Court.

Senator Snelson asks these questions: "From your knowledge as secretary of Judge Carrillo, what post office box or address did you use as his mailing address?"

THE WITNESS: Some of them were mailed to Drawer S in Benavides and some of them were mailed to San Diego.

THE PRESIDING OFFICER: So, then, this answers the second question, that he did have more than one mailing address?

THE WITNESS: Correct.

THE PRESIDING OFFICER: Senator Snelson, does that cover your question?

These questions from Senator Ogg: "How long did you work under the direction of Judge Carrillo?"

THE WITNESS: For about six years.

THE PRESIDING OFFICER: From approximately what dates did you work for him? As best you can remember.

THE WITNESS: As I told you, it was '67, '68 until April the 16th, 1975 when he gave me my thirty-day vacation.

THE PRESIDING OFFICER: Who was your actual employer?

THE WITNESS: Actual employer?

THE PRESIDING OFFICER: The State or the County or --

THE WITNESS: The County, sir.

THE PRESIDING OFFICER: County?

THE WITNESS: The County.

THE PRESIDING OFFICER: What were your duties while you worked for Judge Carrillo?

THE WITNESS: I would answer the phone and give settings on dates for cases and make his payments, keep his -- do his bookkeeping for him.

THE PRESIDING OFFICER: Any others?

THE WITNESS: Sir?

THE PRESIDING OFFICER: I thought maybe you weren't through with your answer.

THE WITNESS: No, that's about it.

THE PRESIDING OFFICER: And you've answered previously you did prepare and write checks other than the ones mentioned to whom and when and for what other purposes were checks written?

THE WITNESS: Oh, to the BankAmericard, to the -- his gas, Exxon, you know, to all the credit cards that he had, Master Charge, Sears, quite a few.

THE PRESIDING OFFICER: Did you ever work for the Benavides Implement and Hardware Company?

THE WITNESS: No, sir.

THE PRESIDING OFFICER: Are you presently under any indictment or investigation, to your knowledge?

THE WITNESS: Not to my knowledge.

THE PRESIDING OFFICER: Senator Ogg, does that cover the questions that you had?

SENATOR OGG: Yes, sir. The last question, I couldn't make it clear because I didn't know at the time what her answer was going to be. I think it would be, now -- the question would be, did she make any statement to any investigatory authorities in any period prior to the time that she says she went on a thirty-day vacation, and whatever happened after that.

THE PRESIDING OFFICER: All right. Can you answer the question as it was stated, Mrs. Montemayor?

THE WITNESS: What? After my thirty-day vacation?

THE PRESIDING OFFICER: Before.

THE WITNESS: Before? Not before, no, I did not make any statements. Yes, I did make a statement before. Before my thirty days, did you say, sir?

SENATOR OGG: If you made a statement to an investigatory agency.

THE WITNESS: I did, sir.

THE PRESIDING OFFICER: To whom did you make the statement?

THE WITNESS: To the Internal Revenue people.

THE PRESIDING OFFICER: And what date was that?

THE WITNESS: I think it was the day before the threat to Judge Carrillo -- no. A day after. A few days after the threat.

THE PRESIDING OFFICER: A few days after the threat to Judge Carrillo?

THE WITNESS: After the threat that Mr. Parr made to Judge Carrillo.

SENATOR OGG: Was that --

THE WITNESS: You wanted to know, before that?

SENATOR OGG: Was that statement based on -- your statement to the Internal Revenue, was it based on something of her own knowledge?

THE WITNESS: It was based on the threat.

SENATOR OGG: Did it relate to anything having to do with any payments of money or checks that you may have prepared for Judge Carrillo?

THE WITNESS: No, sir.

SENATOR OGG: By bookkeeping, does she mean just paying bills and preparing checks for the Judge's signature, or did she actually keep a set of books either for her or for the Judge at his direction?

THE WITNESS: I kept a journal for my own -- I kept one for myself.

SENATOR OGG: Do you have that journal?

THE WITNESS: No, I don't have it with me. It is at the office. I left it there when I was given a thirty-day vacation. I didn't bring it with me because it wasn't mine, personal. It was the Judge's.

SENATOR OGG: Were all those entries made in that journal yours?

THE WITNESS: Yes, sir.

THE PRESIDING OFFICER: Mrs. Montemayor, Senator Clower asks this question. "Did you ever send checks signed by Judge Carrillo and drawn on his personal account to the Cash Store?"

THE WITNESS: No, sir.

THE PRESIDING OFFICER: Is there any reason that this witness cannot be excused at this time?

Mrs. Montemayor, did you send checks on a regular basis to pay Judge O. P. Carrillo's personal bills?

THE WITNESS: Every month.

THE PRESIDING OFFICER: Mrs. Montemayor, Senator Ogg sends up the question that after the thirty days leave of absence, why did you not return to work for Judge Carrillo?

THE WITNESS: I called Judge Carrillo about two or three times -- three times to his residence to find out if I was going to go back or what was he going to do about it because he already had someone else in my place. He never returned my calls.

THE PRESIDING OFFICER: Was this the last contact that you had?

THE WITNESS: That was the last, correct.

THE PRESIDING OFFICER: Mrs. Montemayor, in view of the fact that the possibility exists that you might be recalled for further testimony in this case, it is my duty to warn you that you are under The Rule and that you are not to converse with any person except Counsel for the two parties concerning the proceedings before this Court. Do not read any report or comment on testimony before the Court. A person violating this instruction may be punished for contempt.

Do you understand this instruction?

THE WITNESS: I do, sir.

THE PRESIDING OFFICER: Thank you, Mrs. Montemayor. Mr. Doyle advises the Court that they have left word for Mr. Powell, the Ranger who was the other person mentioned in the subpoenas, and so far, have not established contact with him.

(President in Chair)

SENATOR OGG: Mr. President.

THE PRESIDENT: Senator Ogg.

SENATOR OGG: May I now have Colonel Jaworski ask the question to Defense Counsel, now that she has left, that I propounded in writing a while ago, before we get into anything else? Or the Chair to.

THE PRESIDENT: The question submitted by Senator Ogg was, is it the contention of the Defense, Mr. Mitchell, that Mrs. Montemayor was fired?

MR. MITCHELL: Yes, it is. We will offer testimony to that effect, Senator Ogg. At least, my client informs me, Senator Ogg.

Of course, the Court can make its own conclusion. We will describe the circumstances, and of course, the Court can conclude it wasn't a firing. It was unilateral or bilateral, but I am authorized to say yes, she was.

THE PRESIDENT: Mr. Mitchell, as we draw near 5:00 o'clock, a number of Members of the Senate have inquired about the proposed work schedules so that they can make their plans. Would you advise the Court, Mr. Mitchell, as to what your plans for calling other witnesses are, and please give the Court the best estimate you can as to the time to be consumed.

MR. MITCHELL: I would have an opening statement, if permitted by the Court, prepared to deliver to the Court. I would call as my first witness, Judge Carrillo, Mr. President.

I would follow Judge Carrillo with three witnesses who will establish the reality of the Zertuche General Store. They would be Ibarra Rodriguez who worked there, George Zertuche, Sr., who helped move it when the building was damaged. And, Mr. Lozano who was the State Comptroller who investigated it. Those three witnesses.

THE PRESIDENT: How long?

MR. MITCHELL: And Mr. Terry Canales who would be the follow-up witness.

I hesitate to say, Mr. President, how long it would take with Judge Carrillo. I -- he was on about seven days, I think, before. Hopefully, with the record in, it can be shortened, but I don't think that he can possibly take less than a day and a half or two days.

THE PRESIDENT: All right, sir. You estimate a day and a half to two days for Judge Carrillo.

MR. MITCHELL: Half a day for the other three witnesses, Mr. President.

THE PRESIDENT: All right, sir.

MR. MITCHELL: And then probably a half a day for Mr. Canales. That would be two days, and then we have --

THE PRESIDENT: It would be two and a half days.

MR. MITCHELL: Two and a half days, yes, sir. I believe that that would be all.

MR. DOYLE: Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: I have an inquiry of the Chair.

THE PRESIDENT: State your inquiry.

MR. DOYLE: It will necessitate you asking Counsel, but I understand that under the motion passed by the Senate, that we are now instructed to proceed on Articles I and VII.

THE PRESIDENT: That's correct, Mr. Doyle.

MR. DOYLE: It would appear to me that the Defense witnesses that Mr. Mitchell mentioned with respect to the Zertuche Store don't have any bearing on

Articles I and VII, and I was wondering why we would take that matter up at this time and not once we have disposed of Articles I and VII as we have been instructed to do by the Court?

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: I knew that question was going to arise, Mr. President. I agonized over it considerably and I read VII several times and went back into my notes and into the record and ascertained that Counsel put to the witness, Cleofas Gonzalez, the questions as regard to the reality of the existence of the Zertuche General Store, and quite pointedly and quite forcefully put the questions to the witness as regards its existence or nonexistence. And I believe that the witness' testimony was it was a box of paper invoices and that it engaged in a business that was a sham and a front. And, I think it is included in VII.

Now, if he wants to stipulate that it's not part of his proof --

THE PRESIDENT: Prior testimony by Mr. Gonzalez, of course, Mr. Mitchell, was before the Senate adopted the two motions in effect severing I and VII.

MR. MITCHELL: Yes, Mr. President. One new aspect of it was the testimony solicited by Counsel from Mr. Gonzalez that after the Zertuche General Store went out of business in December of 1970, that the same arrangement continued into the Benavides Implement and Hardware. Then, of course, testimony takes up at that point of the conspiracy, I suppose, out of VII, pure and simple.

MR. DOYLE: Mr. President, Mr. Mitchell is obviously correct on that. There was -- we did offer the testimony on Zertuche and in response to a question by the Court or Mr. Mitchell, we did allege that it was a continuing thing and that it just changed horses.

So, in view of that -- I didn't pose that in the form of an objection at the time I made the inquiry, but now that Mr. Mitchell reminds me, he is exactly correct.

THE PRESIDENT: Mr. Doyle, would you and Mr. Mitchell come to the rostrum, please?

Senator Farabee, would you come to the rostrum, please?

THE PRESIDENT: Mr. Mitchell has advised the Court that he estimates about two and a half days of testimony remaining. Of course, added to that would be whatever time the Court decides to allot to each side for closing arguments and then the time for deliberation, however long that may take, to reach a resolution on Articles I and VII. That simply is for the advice of the Court.

Members of the Senate that I have talked to have indicated that if it cannot be completed by this weekend -- and apparently it cannot be -- to quit early on Friday and to come back Monday morning at a time that would permit Members of the Court to stay home on Sunday and travel Monday morning, and come back.

MR. MITCHELL: Mr. President, pardon me. Would I be allowed a few minutes to make an opening statement prior to the --

THE PRESIDENT: Certainly.

MR. MITCHELL: Okay. I didn't include that, at the time I get started tomorrow.

MR. DOYLE: Mr. President.

THE PRESIDENT: Yes, Mr. Doyle.

MR. DOYLE: I would object to an opening statement. If you will recall, when I attempted to do that, when we started, the Court sustained his objection and I was not allowed to do that and I would just ask equal treatment under the law.

THE PRESIDENT: Mr. Doyle, it was the Chair's -- it was not the Chair's recollection that you were denied the opportunity to make a statement, but --

MR. DOYLE: Yes, sir. I requested an opportunity to do that, and in fact, had it prepared and typed up. When I came up here, there was an objection leveled and you sustained the objection and said that --

Mr. President, might I be recognized?

THE PRESIDENT: For what purpose, Mr. Doyle?

MR. DOYLE: Mr. President, in fairness to Mr. Mitchell, throughout the trial, since we have -- since the Senate allowed in the Judicial Qualifications transcript, both sides have made references to that without objection by either party that I can remember. And certainly, if that is what he had in mind, you know, I am not going to object. But, I really think that, in fairness, I was precluded from making a classic opening statement and I would suggest that he perhaps should be precluded from doing that also.

I am not going to object to his making whatever reference he sees fit to what's in that record.

THE PRESIDENT: Mr. Doyle, the Chair will review the record as to the exact nature of the objection that was lodged and sustained, and if Mr. Mitchell desires to make an opening statement, if there is objection to that, the question will be submitted to the Senate for a vote of the Senate as to what the wish of the Senate is.

MR. MITCHELL: Mr. President, would it be out of order if I request a period of time, say, Monday morning, to prepare for the going forward of my case? I've a tremendous amount of material to put together. I certainly don't want to impose on the Senate. I know they are tired. They have been working hard all week. I don't really -- I need some time to put the case together, and I just ask --

THE PRESIDENT: Is what you are suggesting, Mr. Mitchell, that the Senate not meet until Monday afternoon?

MR. MITCHELL: Monday morning to give me some time.

THE PRESIDENT: Without taking a vote, is it generally acceptable to the Members of the Senate to come back at 2:00 p.m. Monday? When we adjourn on Friday, to come back at 2:00 o'clock Monday afternoon?

SENATOR AIKIN: Mr. President.

THE PRESIDENT: Senator from Lamar.

SENATOR AIKIN: Mr. President, if it is agreeable with the Senate, and I have talked to a good many on what I said to the Chair a minute ago. We will come

back here at 2:00 o'clock Monday afternoon. We will work in the morning, and work right up to 12:00 o'clock to try to do all we can to move this thing along. Then, come back in here at 2:00 o'clock, and that will give Mr. Mitchell the opportunity to do the work that he said was necessary.

And with that, if it is agreeable, I will make a motion --

THE PRESIDENT: Senator Schwartz.

SENATOR SCHWARTZ: Just one question. Does Mr. Mitchell want to vote on his right to make an opening statement now, or when we begin on -- it seems like he would have to know at some point, if he intends to make that opening statement, whether he is to make it tomorrow or Monday, or whether he is going to have an opportunity to make it.

SENATOR AIKIN: The Chair will review that tonight.

If I understood the Chair, the Chair wanted to review that tonight. I was making the motion, and we will come to that conclusion tomorrow.

And with that, I move that the Court stand adjourned until 9:00 o'clock tomorrow morning, and sincerely hope that every Member will be here at 9:00 o'clock.

THE PRESIDENT: The Senator from Lamar moves the Court stand adjourned until 9:00 o'clock tomorrow morning.

All in favor, say "Aye", those opposed, "No".

The "Ayes" have it. The Senate stands adjourned.

Accordingly, the Senate, sitting as a Court of Impeachment, at 5:01 o'clock p.m. adjourned until 9:00 o'clock a.m. tomorrow.

EIGHTEENTH DAY (Friday, January 16, 1976)

The Senate, sitting as a Court of Impeachment, met at 9:00 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, McKinnon, McKnight, Moore, Ogg, Patman, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: Gammage, Hance, Mauzy, Meier, Mengden and Santiesteban.

A quorum was announced present.

The Reverend Dr. Marvin E. Griffin, Ebenezer Baptist Church, Austin, Texas, offered the invocation.

LEAVES OF ABSENCE

Senator Hance was granted leave of absence for today on account of important business on motion of Senator Aikin.

Senator Mauzy was granted leave of absence for today on account of official business on motion of Senator Clower.

Senator Santiesteban was granted leave of absence for today on account of important business on motion of Senator Jones.

Senator Mengden was granted leave of absence for today on account of important business on motion of Senator Traeger.

Senator Gammage was granted leave of absence for today on account of important business on motion of Senator Brooks.

Senator Meier was granted leave of absence for today on account of important business on motion of Senator Farabee.

APPEARANCES

Judge O. P. Carrillo, Respondent; Honorable Arthur Mitchell, Attorney for Respondent.

Board of House Managers; Honorable Terry Doyle, Counsel; Honorable John Odam, Assistant Attorney General on behalf of the Board of Managers.

THE PRESIDENT: Mr. Mitchell, I understand that Ranger Powell is here. Would you please call him?

MR. MITCHELL: Yes. Thank you, Mr. President. We will call the Ranger to the stand. I believe the Court had expressed some interest in asking him some questions and I would, of course, also like to ask him a few questions.

THE PRESIDENT: You do solemnly swear or affirm that the evidence you give upon this hearing by the Senate of Texas of impeachment charges against O. P. Carrillo shall be the truth, the whole truth and nothing but the truth, so help you God.

MR. POWELL: Yes, sir, I do.

MR. DOYLE: Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: With the witness -- the previous witness that was testifying in this connection, we introduced the witness to the Court, tendered the witness to the Court, and then the Court asked the questions. Should we follow the same format with this witness?

THE PRESIDENT: Yes.

GEORGE E. POWELL

was called as a witness by the Court, and having been first duly sworn, testified as follows, to-wit:

DIRECT EXAMINATION

(Questions by Mr. Doyle:)

Q State your name for the record, please.

A George E. Powell.

Q And you are a Texas Ranger, is that correct, Mr. Powell?

A Yes, sir.

Q How long have you been a Texas Ranger?

A Since September 1st, 1973.

Q And prior to that, where were you employed?

A Chief of Police, Pleasanton, Texas.

Q Where do you live?

A I live in Bishop, stationed in Kingsville.

Q Okay. Now, were you assigned as a member of the Task Force that worked in Duval County since sometime in the middle of last year?

A Yes, sir, I was.

Q And did you have occasion during the time that you were working with the Task Force to work with Mr. Don Lee of the -- at that time, of the Department of Public Safety and now with the Attorney General's office?

A Yes, sir, I did.

Q And in the course of your working with Mr. Lee, did you have occasion to assist him in the preparation of certain Exhibits which are being used herein? You see that yellow -- let me show you.

Now, Mr. Powell, I've shown you what has been marked as Exhibits R-91, 92 and 93. On page -- beginning on Page 775, in the volume which is marked Respondent's Exhibits, and it's a yellow book, is that correct?

A Yes, sir.

Q Now, are you familiar with those three items?

A Yes, sir, I am.

Q There has been previous testimony which indicates Mr. Don Lee participated in the preparation of those Exhibits, and my question to you, did you assist him in the

preparation of those Exhibits?

A Yes, sir.

Q Specifically, Mr. Powell, did you furnish to Mr. Lee in the preparation of those instruments information concerning payments received by Plains Machinery on certain equipment?

A Yes, sir, I did.

Q Did you obtain from Plains Machinery a record of payments they received on certain equipment?

A Yes, sir, I did.

Q Did your investigation indicate to you that Plains Machinery had indeed received payments from Duval County for the purchase of certain machinery from some person or thing in Duval County?

A Yes, sir.

Q Okay. Now, you will notice on the Exhibit R-91 --

A Yes, sir.

Q -- on about the second -- look on Page 781, that will be about the sixth page, I guess. Have you located that?

A Yes, sir.

Q All right. Now, you'll see that the Exhibit contains a series of columns.

A Yes, sir.

Q Now, the last column indicates a conclusion.

A Yes, sir.

Q Did you participate in the placing of the information which is in the last column on the right-hand side where a conclusion was reached?

A Well, Don Lee is the one that entered this here. I was mainly furnishing him with information off certain documents that I had. We discussed it some when he entered it.

Q Right. Okay. So you were furnishing Mr. Lee with information you had gathered through your investigation as he entered --

A Yes, sir.

Q -- his conclusions on the right-hand side of that page?

A Yes, sir.

MR. DOYLE: I believe that's all.

CROSS-EXAMINATION

(Questions by Mr. Mitchell:)

Q Good morning, Mr. Powell. May it please the President of the Court. I would like to call the Court's attention to Ranger Powell's prior testimony introduced in the Judicial Qualifications and taken before the House Select Committee. I will not duplicate it, and it appears in the record December 16, 1975. Ranger Powell, you are the same gentleman that testified before the House Sub-Committee here I believe back in the early part of this year.

A Yes, sir.

Q Last year. I'm sorry. 1975.

A Last year.

Q And I believe I was permitted by the Sub-Committee of the House to ask you certain questions which for your information have been carried over into the present record. I'll hand that to you, my personal copy, which is an extract of your testimony. I'm not going to duplicate that. All I would like to do is to ask you if you caused to be made an inventory sometime, I believe, in April of '75 of equipment belonging to Duval County?

A Yes, sir.

Q After the death of George Parr?

A Yes, sir.

Q And I would like to ask you if you would briefly and hurriedly tell the Court where you found -- what equipment you found on the George Parr ranch. And specifically as it relates to our procedure here, there's been some question, and I'm going to hand you now -- and gentlemen of the Court, I'm handing the Ranger a copy of the contract between Benavides Implement and Hardware and Plains Machinery, it appears at 887 of your green copy. Now, the reason I'm doing that, Ranger, I want you to look at the serial number and the designations of those two Cats. Can you see them there?

A Yes, sir.

MR. DOYLE: Mr. Mitchell, could you identify which contract that is, please?

MR. MITCHELL: That's the December of 1972 contract between Benavides Implement and Hardware and the Plains Equipment of Corpus Christi, appearing on Page 887 of the record, and that was E-160 of the Judicial Qualifications Commission.

Q Now, first I'll ask you, Ranger -- you recognize the designation of the two Caterpillars?

A Yes, sir.

Q And I believe you told us -- now, let me interrelate that -- when you testified earlier -- let me get some of this out of your lap -- when you testified earlier, I believe you identified those two very same Caterpillars, didn't you, as being found on the George Parr ranch after Mr. Parr's death?

A No, not both of them on the George Parr ranch, one of them was.

Q Okay. Now, one of them was found on the George Parr ranch, you're quite sure?

A Yes, sir.

Q All right. And tell the Court which one -- just tell us the circumstances of your inventory of April 11th and interrelate it to the discovery of that equipment on the George Parr ranch, if you would?

A On April 11th we looked at -- I believe it was Sheriff Raul Serna of Duval County was with me. We looked at some Caterpillars on George Parr's ranch, which is located about five miles south of Benavides, Texas, in Duval County. And there was about four or five of them -- I don't remember exactly now, I have it in my notes, but this particular Caterpillar here, this D-8 -- 36A-470.

Q Hold on, just a minute, Ranger, you're going -- now, which one was it, the --

A It's a model D-8.

Q All right.

A Serial number 36A-470.

Q All right. Now, tell this Court is that the same Caterpillar that's on that contract of purchase between the Benavides Implement and Hardware and Plains Machinery?

A Yes, sir, it is.

Q All right. Now, I am going to ask you one more question -- I'm going to interrupt the flow of your testimony, then I'm going to let you tell your story. I'm going to show you another Exhibit. And, if it please the Court, this is the contract of purchase of the same tractor by Judge Carrillo from Benavides Implement and Hardware, which is, Counsel, Page 614 in the yellow. And it's the contract which was introduced in the Judicial Qualifications Commission as R-50, it's dated May 2nd, 1974 and I will just show it to you and ask you can you identify the Caterpillar that you have just described that appeared in the Benavides Implement and Hardware Plains Machinery Company contract, Exhibit 160, and the one that you found on the ranch? Can you find that in the contract of Judge Carrillo's, Page 614?

A Yes, sir, it's the same Caterpillar.

Q All right. Now, I'm sorry I had to do that, but to be sure the Court understood that that's the same contract -- I'm sorry, that's the same Caterpillar that was in the Benavides Implement and Hardware agreement that you have in front of you, assuming for the purpose of your testimony that is a correct copy of that agreement?

A Yes, sir.

Q All right. Now, tell us again, you found that, then, April 11th, '75 on the George Parr Ranch?

A Yes.

Q And tell the Court what the condition of the D-8 -- the Caterpillar designated as 36A was in if you recall. Was it in running condition?

A Yes, sir, it was.

Q And what did you do after -- did you make an inventory of the equipment that you found on the George Parr ranch that day?

A Yes, sir, I did.

Q And can you tell the Court about how much equipment you found in terms of -- well, give us just an itemization, brief itemization of the equipment, Ranger Powell?

A Well, I don't have my notes here so it would be -- on that day I believe we looked at -- it was either four or five and I believe it was five different Caterpillars. Later on in the course of looking for it we also looked at a maintainer that was there, a road grader. And there was some root plows and so forth -- root rakes that were there on the place that day.

Q And were you able -- what did you do after you discovered the D-8 -- 36A, the Caterpillar there on George Parr's ranch?

A In reference to that tractor?

Q Yes sir.

A We then began attempting to run that tractor along with the others down to find out who owned those Caterpillars.

Q And did you make a determination of who owned that tractor?

A Yes, sir, I did.

Q Who was the owner of that tractor?

A O. P. Carrillo.

Q All right. Now, Counsel asked you -- Mr. Doyle asked you about whether or not in putting together R-91 that you had before you certain Plains Machinery checks. Do you recall that question?

MR. DOYLE: Mr. Mitchell, that's not quite accurate. What I asked him was if he had information from Plains Machinery which indicated they had received payments on --

MR. MITCHELL: Let me withdraw my --

MR. DOYLE: He really didn't have the checks at that time.

MR. MITCHELL: Let me withdraw my question, I hadn't really finished and I will get back to it and try to restate it correct.

Q Ranger, so that the picture is complete what other inventory did you make as regards the location -- strike that. Who accompanied you and assisted you, if anyone, in making this inventory to determine where the County equipment was located?

A Well, on different dates it was different people. In times Ray Bravenec of the Attorney General's office was with me, Rudy Rodriguez, a ranger stationed in San Antonio was with me on part of it and Captain Woods was with me on part of it.

Q Did any of the Commissioners help you down there?

A Yes, sir, Mr. -- different ones of the Commissioners went with me and showed me their equipment that they were using. Felipe Valerio went and looked at the equipment in his precinct; Ramiro Carrillo carried me and showed me the equipment that he was using in his precinct.

Q And Ramiro Carrillo pointed out to you the equipment that was -- the equipment that was used in his Precinct Number 2?

A Number 3, I believe it is.

Q Number 3?

A I believe it is.

Q Was any of that on the Parr Ranch that you recall that Ramiro Carrillo pointed out as being Precinct 3 equipment?

A What -- that he pointed out?

Q Uh-huh.

A No, not at the time that he pointed out, some of it had previously been on the Parr Ranch. The date that he pointed it out was sometime after we had been on the Parr Ranch and after we had identified properties there that belonged to Duval County, then the County had picked up their equipment. And then he had some of that equipment in his precinct at the time I went with him. I remember one or two Caterpillars in particular, a TD-25 tractor, it was on the George Parr Ranch and later was in Ramiro Carrillo's precinct.

Q You know as a matter of fact when that equipment was discovered to be on the Parr Ranch that steps were taken by Ramiro Carrillo to remove it from the Parr Ranch and put it back in the County yard?

A I couldn't say that Ramiro -- the County officials did, now whether it was Ramiro or one of the others I couldn't testify. I just reported back to Ramiro Carrillo and the other Commissioners and, you know, who went and got it I couldn't -- the County did go get it though.

Q All right. Ranger, did your investigation continue from the Parr Ranch for the inventory that you were making up back there in April of '75 of the various county equipment? Did you go anyplace else?

A Yes, sir, we did.

Q Did you go to Laredo, for example?

A Yes, sir.

Q Did you discover any County equipment in Laredo?

A Yes, sir, we did.

Q And can you tell the Court about that?

A There was -- when we went to Laredo I believe we looked at four Caterpillars out there at Laredo and later on in the investigation I believe it was determined that three of those Caterpillars belonged to Duval County.

Q And were steps taken to return the equipment back to the County?

A Yes, sir, and it's all been returned back.

Q And let me ask you this, Ranger, where else did you go, if you recall, during and around the period of April 11th, '75 to secure identification of equipment that belonged to Duval County?

A Well, we went all over Duval County and anyplace else that we would hear there might be -- we looked on property belonging to Archie Parr, we went down on Judge Carrillo's property and looked around and other ranches around there. And still just recently we found another Caterpillar, just recently, that belongs to Duval County.

Q Now, where was that one located?

A It was on A. E. Garcia's property, which would be north of San Diego in Duval County.

Q Now, you have told the Court that you did locate the D -- I keep saying DC-8 -- 36A. Is that the -- is that a proper way to designate that?

A It's a D-8 36A.

Q All right. D-8 36A. The 36A is an identification number, I suppose, isn't it, Ranger?

A It's part of the serial number and also designated the size of the Caterpillar, it's my understanding.

Q All right. So, there can't be any confusion that that's the one we're talking about, the 36A that's on these contracts?

A Well, now there's two of those, they're both identical. One serial number is **470** and the other one is **4** -- according to these papers 473.

Q All right. Now, that's the reason for my question.

A I mean -- correction, 143.

Q 1 --

A 143, according to these papers.

Q Let me ask you, the one that you discovered was the D-8 36A, did you discover the other one?

A Yes, I did.

Q All right. And where was it?

A It was at the County Shop -- County yard building in San Diego, Texas.

Q In San Diego?

A Yes.

(Senator Snelson in Chair)

Q And were you able -- well, strike that. Was that also in the middle of April of '75?

A I believe we didn't look at that tractor until probably in May is when we looked at it. It could have been April, but possibly in May --

Q All right, sir.

A -- when we looked at that tractor.

Q Now, can you tell us the condition of that tractor?

A The motor was removed from the tractor and the motor from the tractor was laying inside of the County Shop building.

Q Were you able in your investigation to determine how it got to the County Shop?

A Yes, sir, the County -- one of the County trucks went out and picked it up and carried it in there. I have been told by one of the County -- ex-County employees -- that they picked it up from property belonging to O. P. Carrillo and carried it to the shop.

Q And was it on the Parr Ranch, also?

A That tractor, as far as I know -- I don't have any information that that tractor was on the Parr Ranch.

Q Ranger, did you get a chance to look at that tractor in the yard? Was it pretty well scattered out and disassembled? Tell us its condition, I don't --

A Well, it was partly disassembled, the motor -- like I say, the motor is out of the tractor. The tractor -- as far as I know it's still sitting there in the County Shop and it's out -- the motor is out and the motor is lying inside the County Shop and I believe the motor has been partially torn down. I was told that there was some trouble with the pistons and so forth and some parts had been ordered and then returned to Plains Machinery Company.

Q All right. Now, at the time that you undertook your investigation in connection with making up that inventory -- my questions now will relate to the two tractors, the D-8 36A and the others that are contained on Exhibit -- at Page 887 and at Page 614 of the Respondent's. At that time did you talk to Judge Carrillo about his ownership of those two tractors?

A Yes, sir, I did.

Q And did Judge Carrillo then show you or call your attention to the contract that he had with the Plains Machinery Company that was dated May the 2nd, 1974?

A He didn't show me a copy of it. And I don't remember if we discussed -- well, he told me that he had bought it from Plains Machinery Company and that he had it on contract. And I later obtained a copy of that contract from Plains Machinery Company.

Q All right. Now, turn to Page 614 in the yellow -- and I think you have it in front of you. That's this one, if it please the Court. And for your information --

A 614.

Q Yeah. Let me -- excuse me just a minute -- yes, now, Ranger, looking at the contract on 614. And if you look at Page 615 it's what we lawyers call a security agreement, one's a conditional sales notice of insurance, that's 614 and one's a security agreement, that's 615. And 616 is a note signed by O. P. Carrillo to the Plains Machinery for the purchase of these Cat D-8 with dozer, serial number 36-A -- 143. One Cat D-8 with dozer and power units, serial number 36A-470. Do you see those three documents?

A Yes, sir.

Q Now you testified that you were able to secure from the Plains Machinery, a copy of the agreements. And I will ask you, were those the agreements that you got, the ones appearing on 614, 615 and 616 on the Respondents' Exhibits. Do you recognize them?

A I have this 6 -- these on 615 and 616. I'm not sure -- I believe I possibly do, I'm not sure I have a copy of this on Page 614.

Q All right, sir. And, then, when you talked to Judge Carrillo about the title to those two Cats 36A-143 and 36A-470 there at the Courthouse in San Diego?

A Yes, sir, he talked at his home about them and then later at the Courthouse.

Q Did they recall that he procured or secured a copy of those contracts or agreements and gave those to you?

A Yes, sir, he did. And also I believe there was something about some insurance papers, yes, sir.

Q All right. And, now, can you tell us in using that April 11, 1975 as sort of a beginning point to refresh your recollection, can you tell us when that conversation with Judge Carrillo occurred at which he furnished you the agreements? Was it after -- how far after -- or after April 11th or before? Can you tell us about your best present recollection when the conversation was with Judge Carrillo when he furnished you with this data?

A It would have been after April 11th and it would have been sometime after -- probably in about May, possibly. I couldn't -- but I couldn't tell you exactly.

Q Of 1975?

A Yes, sir, 1975.

Q Now, is it a fair statement, then, to say -- is it a fair summary that by May of 1975, Ranger, that you had before you -- well, strike that.

Let me start back again. You mentioned, or a question that I had asked you that I didn't get very far with awhile ago as regards some checks to Plains. Before I ask you additional questions, let me ask you, please, to turn to Page 617, if the Court would -- in Respondent's Exhibits, that's the yellow hornet again. Now, on Page 617 as well as 669, and I can't explain to this Court why those Exhibits are broken up, there appear to be checks from O. P. Carrillo to Plains Machinery. Now, looking specifically to Page 617, Check Number 263, do you see that, please, sir? Page 617.

A Yes, sir.

Q At the top of the page.

A Which check, sir?

Q Well, look at the one on Page 263.

A At the top of the page, yes, sir.

Q All right. Now, look at the Series 263 and the one in the middle that's unnumbered and the one that's been reproduced upside down and 370, and I'll ask you if you had seen those before today?

A These checks?

Q Yes, sir. Those are copies, of course. Do you recall having been given the checks by Judge Carrillo showing payments by Judge Carrillo to the Plains Machinery on account of these two tractors?

A These checks -- no, sir, I don't believe I've ever seen these checks.

Q All right. Now, I'll ask you to turn over with me -- well, let me ask you, in reviewing, there appear to be, as I characterize them, do they not, and, of course, the record I understand speaks for itself, but there are checks from O. P. Carrillo to Plains Machinery, those on Page 617 and there are four of those there, am I correct?

A Yes, sir.

Q And on Page -- if you would turn to 669, we'll find some more. Have you ever seen those on 669 before today?

A No, sir, I don't believe so.

Q I'll ask you to turn to 671, and we see there are three more from O. P. Carrillo to Plains Machinery. The bottom one, for example, says, "Two tractors". It's a check for \$2,549.62 on his personal account. Have you seen those prior to today, Ranger Powell?

A I don't believe so. I don't recall ever seeing any checks of O. P. Carrillo's.

Q All right. That was my next question. And that is, did you have before you the checks? And let me -- on 648, which are from O. P. Carrillo to the Benavides Implement and Hardware for Caterpillar rental in 1973, and I suppose by reason of your answer that you did not have those in front of you either?

A No, sir, I didn't.

Q All right.

MR. MITCHELL: May I have just a minute, Mr. President, to be sure I -- I think I'm about through, Mr. President.

We have no further questions of this witness. Thank you, Mr. President.

REDIRECT EXAMINATION

(Questions by Mr. Doyle:)

Q Mr. Powell, you mentioned that there was a -- some equipment you located in Laredo. What did you find in Laredo?

A When we went down there, there were four Caterpillars down there that we determined that were transported by Rene Martinez or under his direction. I believe they were moved by a company in Corpus Christi. And, through the investigation, we determined three of those Caterpillars belonged to Duval County.

Q Did you determine where they had come from?

A Well, two of them had -- two of them had -- one of them that didn't belong to the County, and one of them that did, had been on George Parr's ranch, and the other two, exactly where they had been prior to going to Laredo, I'm not sure.

Q Okay. Now, you mentioned that you found the other Caterpillar that the subject matter of the contract I believe Number 143, you found it in the county barn?

A Yes, sir, I did.

Q Was that O. P. Carrillo's -- I mean Ramiro Carrillo's barn?

A No, sir, that's the shop in San Diego, which is --

Q What, is it in his precinct or some other Commissioner's precinct?

A No, sir. It would be in Precinct Number 1. Manuel Amaya is in that precinct at this time.

Q Right. Did you determine who had taken the engine out of it?

A Yes, sir, the best we could determine, the employees of Duval County --

Q The County employees had taken the engine out of the Caterpillars?

A That's my understanding of it, yes, sir.

Q Now, you indicated that you had a conversation with Judge Carrillo about these Caterpillars?

A Yes, sir.

Q I'm now going to ask you, Ranger Powell, did you also have a conversation with some fellows who had operated those bulldozers out on Judge Carrillo's ranch?

A Yes, sir, I did.

Q Didn't you determine from that conversation that Judge Carrillo had paid them for operating those bulldozers out on his ranch?

A Yes, I did.

Q And that that had taken place in the year 1973?

A Yes, sir.

Q And the contract that Judge Carrillo showed you, I believe Mr. Mitchell showed you two contracts this morning, one in December of '72 and another one in May of '74. Do you recall that?

A He showed me -- I believe he just showed me the one in May of '74. The other one was -- I looked at the other one there awhile ago.

Q Okay. Now, you indicated that Judge Carrillo showed you a contract when you went out there to his ranch. Are you sure that it was the May of '74 contract and not the December of '72 contract?

A No, it was the contract in May of '74 showing that he owned the Caterpillars.

Q Right. Okay. Did he tell you on the contract, the previously existing contract in December of '72?

A Well, he didn't talk about necessarily the contract. He told me that those tractors had previously belonged to Benavides Implement and Hardware, and that then he had purchased the Caterpillars.

Q Well, did he acknowledge to you at that time that since the date of their purchase, they had been on his ranch?

A No, sir. We didn't --

Q Did you ask him about that?

A -- discuss it. No, we didn't discuss that at that time. But, later on, we discussed that.

Q Well, did he tell you that they had been out there since the day they were -- they left Corpus Christi?

A We had two different conversations in reference to those Caterpillars, and to his use of them. The first one seemed to me like it was in about July of '75, and that was at his house in Benavides and along with Captain Woods and myself. At that time, he told me he had the use of the two Caterpillars and that he was leasing them from Benavides Implement and Hardware at \$1,500.00 a month.

Q This is all back in '73 since the date they were purchased?

A Yes, sir.

Q All right.

A Then later in August, and I believe the date would have been August 18, I'm not sure, he requested that I come to his office. He had some other matters he wanted to discuss with me, and then we also discussed those Caterpillars at that time. And, at that time, he told me that he had continuous use of one of the Caterpillars. And part -- and use of the other one at times.

Q So he changed his story, in effect?

A Yes, he did.

Q At first he told you he had rented both of them since the date they were purchased?

A Yes, sir.

Q Then the second go around, he told you, no, that wasn't the case, that he had rented one of them and that he had had the use of the other one from time to time?

A Yes, sir.

Q Now, you described that when you found the D-8 on the George Parr ranch that there was some other equipment out there. Did you determine that any of that equipment belonged to Judge O. P. Carrillo?

A No, I don't recall anything else out there that belonged to Judge O. P. Carrillo.

MR. DOYLE: I believe that's all.

RECROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q Ranger Powell, let me clarify one or two matters that have been raised by the questions of Mr. Doyle. First, the contract purchase that I've handed you by Benavides Implement and Hardware, I believe we've established was dated December 14, 1972, and I hand it back to you.

A Yes, sir.

Q All right. Now, that contract of purchase -- strike that fragmentary question. Following that contract of purchase, and if you'll look now with me on Page 648 in the yellow copy.

A Yes, sir.

Q It appears that Judge Carrillo at least in February, March, April of '73, August, right on through, now, and I'm looking, for the benefit of the -- 648 in the yellow copy, 649, 650, 651, that O. P. Carrillo paid Benavides Implement and Hardware considerable sums of money on checks labeled "Cat Rental", "Tractor rental," I'm looking now at 648. You see that series of checks? That's the R-58-1 through the R-58-11 series on 652.

A Yes, sir, some of them were marked "Rental on Cat", "rent on equipment." Some of them are left blank. They're not marked.

Q Yes. And some of them are rentals on -- for example -- pear burner, 652, which has nothing to do with this inquiry. My reason for referring you to 648 is to refresh your recollection and put the matter of the documentary together. That is, following the contract between Benavides Implement and Hardware and the Plains Machinery, it appears that Judge Carrillo began to pay checks to Benavides Implement and Hardware for rental, some of which checks are recited "Cat rental," and so forth. Correct?

A Yes, sir.

Q And that, of course, the documentary, would be consistent with what he told you when you talked with him, that is, that the equipment belonged to Benavides Implement and Hardware in '73 and he rented from Benavides Implement and Hardware and paid rent on it. Those checks indicate that that's precisely what occurred?

A Yes, sir, the checks indicate he paid rent on them.

Q Then, on further inquiry of Judge Carrillo at that time, it was indicated, as I recall your testimony, and I don't want to put words in your mouth, that in May of '74, that -- he somehow took over the contracts because of a default by the Benavides Implement and Hardware, and entered in his own agreement in May of 1974, and that's the contract agreement appearing on Page 614 that we've already talked about, am I correct?

A I believe that's right.

Q Look at 614 to be sure.

A Yes, sir.

Q Consequently, after that date, that is May 2nd, 1974, if the documents are to be believed, Judge Carrillo was buying the same two Caterpillars for \$22,946.58 which is evidenced by that note on 616, correct?

A Yes, sir.

Q All right. And now, if you'll look at Page 669, it appears that Judge Carrillo then began to pay Plains Machinery directly, if you'll flip over there to 669, Judge Carrillo began to pay Plains Machinery directly out of his personal account for the purchase of those Caterpillars. In fact, those checks are labeled, "May payment", May and June and the like where the documentary, of course, speaks for itself, isn't that correct?

A Yes, sir.

Q All right. And that is consistent with his statement to you that after May of 1974, he owned the two tractors and he bought the two tractors directly from Plains Machinery out of his own personal funds?

A Yes, sir.

Q That was consistent with what the Judge told him, am I right?

A Yes, sir.

Q Now, but -- in answer to a question put to you by Mr. Doyle about who took the engine out of the -- one of the tractors, it came to your attention that a County employee took the engine out, do you recall that?

A Yes, sir.

Q All right. Now, as a matter of fact that when them Caterpillars were found on George Parr's ranch, it was originally thought that those two Caterpillars did belong to the County? Isn't that correct, Ranger Powell?

A No, only one of the tractors was on the George Parr ranch.

Q I'm sorry. The other was in the yard.

A Yes, sir.

Q Wasn't there some question about the title is the reason I -- my question is that wasn't it quite reasonable in considering the title of the other equipment that everyone just simply supposed that the title of both of these was in the County, too, and not Judge Carrillo personally under the May contract?

A No, when we -- whenever we found that equipment out there, well, we were sure that, you know, we felt that some of it belonged to the County, but we didn't know -- we also -- you know, just talking generally, and people, you know, that some of it belonged to possibly even to George Parr. So we didn't know which belonged where or

to who.

Q All right.

A And, sometime in there, I don't remember if it came from Judge Carrillo or who, I was told that Judge Carrillo had a Caterpillar on George Parr's ranch.

Q All right. Now, I'll ask the Court and you, please, sir, if you would turn -- now, this is to R Exhibit 91, Page 781, if it please the Court. Now, you will notice, and this is the one that we got you here, some Members of the Court wanted to ask you about, particularly Senator Mauzy, and I'm going to ask you concerning some entries in it. Now, you'll notice 1/8/73, that's the second line, budget code, and I'm reading from Page 782. "One thousand --"

A 780 --

Q I'm sorry. 781. "\$1,018.10." And it shows that a check went into Benavides Implement and Hardware and the recital is "Rent on O. P.'s two D-8 dozers," you see that?

A Yes, sir.

Q Now, actually -- now we know that on the 8th day of January, 1973, those two dozers belonged to the Benavides Implement and Hardware and not to O. P. Carrillo. Am I correct?

A That's right.

Q And consequently -- and the Court, I'm sure, has caught the significance -- that recital is incorrect, isn't it, insofar as it designates the title to these two tractors being O.P.'s -- my client, Judge O. P. Carrillo, if we're going to believe the document --

A Well, according to the information I've determined in talking to people at Plains Machinery Company and everybody, then their statements to me were that in their opinion these tractors in fact belonged to O. P. Carrillo; however, they were in the name of Benavides Implement and Hardware.

Q Nevertheless, Ranger, we know that O. P. Carrillo paid rent to Benavides Implement and Hardware on these checks in that very month, don't we, from his checks. If you'll look back --

MR. DOYLE: Mr. President, I'm going to object to that. That calls for a conclusion on the part of the witness. We know that O. P. Carrillo issued checks to Benavides Implement and Hardware. But we don't know what those checks were for. And Mr. Mitchell is attempting to ask the witness to conclude that they were for those two D-8 tractors when the record reflects that there was a Massey-Ferguson tractor involved that Benavides Implement and Hardware was paying payments on. There were two root plows involved that the Judge had that Benavides Implement and Hardware was paying payments on. So it's impossible for this witness to conclude as to what those payments to Benavides Implement and Hardware by Judge Carrillo were.

MR. MITCHELL: Perhaps the question is already --

THE PRESIDING OFFICER: Ranger Powell, do you know the answer to the question?

THE WITNESS: Well, I looked at the checks where he sent the payments to Benavides Implement and Hardware. This is the first time I've seen those checks. Now, he said in January -- I believe that check I looked at, earliest date was February, I believe. I'm not real sure. I'd have to go back and look at those checks again, but I believe that --

MR. MITCHELL: Well --

THE WITNESS: -- the check we looked at, the earliest date was February, so if that's correct, then in January of '73, he didn't have any checks.

Q Yeah, but now look at Page 652. I got them a little out of order when I introduced them down in the Judicial Qualifications Commission, and I'm sorry I did. That one's in January for \$2,000.00. And it says "Cat rental, Benavides Implement and Hardware, O. P. Carrillo," doesn't it? And for the Court's purpose, that's 652 in the yellow.

A Now, which?

Q Bottom check.

A Bottom check. Yes, sir.

Q So, there was a check in January of '73 for \$2,000.00 from Judge Carrillo to Benavides Implement and Hardware and it's labeled "Cat rental", isn't it?

A It's hard on this copy -- it says Benavides something -- to read here it goes to.

Q All right. Well --

A You know --

Q -- look on Page 653 directly opposite it, and for your information it's been testified by Mr. Couling that he wrote for "deposit only" and put it in the Benavides Implement and Hardware. That's the back of that check.

A Uh-huh. If that's the back, then it says "Benavides Implement and Hardware".

Q All right. At any rate, I'm not quarreling with you, I'm just simply asking -- and I believe you answered the question when you said that's the first time you saw the checks was now, and consequently wouldn't have the knowledge of those checks as part of input on that exhibit.

A Yes, sir.

Q Isn't that a fair statement?

A Yes, sir.

MR. MITCHELL: Okay. I have no further question, Mr. Doyle.

REDIRECT EXAMINATION

(Questions by Mr. Doyle:)

Q Mr. Powell, you testified that you talked to somebody at Plains Machinery and established from them that Judge O. P. Carrillo owned the Cats. Who did you talk to down there? Mr. Kurtz?

A Yes, sir, I did, and I talked to -- I had some conversation with the secretary there.

Q Did Mr. Kurtz tell you that the deal for the Caterpillars had been made by O. P. Carrillo?

A Yes, sir, he did.

Q Did he tell you that the Caterpillars had been delivered straight from his place of business to the Borjas Ranch?

A Yes, sir.

Q Did you determine that once the Caterpillars got there that they remained on Borjas Ranch for many, many months?

A Yes, sir, I did.

Q You talked with operators who operated them on the Borjas Ranch?

A Yes, sir, I did.

Q Did you determine that O. P. Carrillo owned the Borjas Ranch?

A Yes, sir.

Q And that he paid the operators out of his own monies for operating them on his ranch?

A Yes, sir.

Q Both Cats?

A Yes, sir.

Q Did you also from the course of your investigation determine that Benavides Implement and Hardware made a series of payments to B. D. Holt on a couple of root plows?

A Yes, sir.

Q Did you determine from your investigation that those two root plows had been on the Borjas Ranch and then used by Judge Carrillo during that entire period of time?

A Yes, sir.

Q Did you determine from your investigation that Benavides Implement and Hardware about that same time or a little later, I believe, had made a payment on a Massey-Ferguson tractor that Judge O. P. Carrillo had the use of?

A No, sir, I don't have any impression about that.

Q You didn't know about that. All right. Well, now, the checks, some checks that Mr. Mitchell showed you were marked, "tractor rental". Some were just marked something about equipment or another. Is that correct?

A Yes, sir.

Q Now, is there any way now or at any time for you to determine that those were not payments on the root plows?

A No way for me to determine what they were payments for.

Q Or if they were payments on anything?

A That would be correct, yes, sir.

Q Now, did you talk to Mr. Kurtz at Plains Machinery in great detail?

A Yes, sir, I did on several different occasions.

Q Did you inquire of him if Mr. Couling had come down and made a deal on those Cats?

A Yes, I did.

Q He told you no, didn't he?

A He told me that O. P. Carrillo came in and looked at the Caterpillars, had people come over and try them out, and then O. P. Carrillo on or about December 14, 1972, told him that he would take the Caterpillars and told him at that time to draw up the papers for the Caterpillars and told him to put them in the name of Benavides Implement and Hardware. And then he -- Mr. Kurtz told me that he then did this and then carry the paper to Benavides, where he contacted Rudolfo Couling, and Rudolfo Couling signed the papers. He told me that this was the only conversation he had with Rudolfo Couling in reference to the Caterpillars.

MR. DOYLE: No further questions.

RE CROSS EXAMINATION

(Questions by Mr. Mitchell:)

Q He did tell you that he had talked with the man whose signature finally ended up on the contract, Mr. Rudolfo Couling, didn't he, Ranger?

A He told me he carried it down there and Mr. Couling signed it.

MR. MITCHELL: Thank you. No further questions.

THE PRESIDING OFFICER: Are there any questions from Members of the Court?

Ranger Powell, we have some questions from Members of the Court, from Senator Ogg. His question is: "Which precinct or precincts owned equipment found in counties other than Duval or on private property in Duval County?"

THE WITNESS: Which precincts. I don't believe that the equipment is necessarily designated as to which precinct it goes to. At least I'd -- I have some old lists that were designated way back there as to what precinct he was in. There was one piece of equipment that -- that on an old list was designated in Precinct Number 4, I believe it is, that was found on -- but I forget exactly where it was found. I believe one of the ones in Laredo was designated on an old list as Precinct 4. Some of it now is in different precincts. Some of it we found is now in Precinct 3. Some of it's in Precinct Number 1. And I believe mainly the equipment that we recovered is mainly now in either Precinct 3 or Precinct Number 1. Where it belonged prior to when we discovered it, I don't know which precinct.

THE PRESIDING OFFICER: The next question he asks, Senator Ogg asks, is: "Did you personally observe any unauthorized use of the equipment belonging to Duval County?"

THE WITNESS: Yes, sir, I did on the one tractor in particular. That would have been, I believe, the Serial Number on that tractor is D-8, 36A203, and that tractor was being used on some private property, which would be west of Benavides. I believe the property belongs to -- I'm not real sure, but I believe it belongs to Enrique Carrillo, the property does. It was being operated by a Mr. Garcia, who was employed by Ramiro Carrillo.

THE PRESIDING OFFICER: Does that answer your question, Senator Ogg? All right. The next question is from Senator Jones. He said: "Did you develop information as to the circumstances under which the D-8 was moved on to the Parr ranch and how long it had been there?"

THE WITNESS: I talked to Judge Carrillo in reference to that and also talked to some of the County employees, and it was moved on to the Parr ranch, best we could determine, by County equipment, by County truck and trailer. And George Parr had requested the use of the tractor from O. P. Carrillo, is the information O. P. Carrillo gives me.

THE PRESIDING OFFICER: Did you determine how long it had been there?

THE WITNESS: I don't think -- the best we could determine, somewhere -- it was moved there somewhere either the early part of '75 or the latter part of '74.

THE PRESIDING OFFICER: Another question from Senator Jones: "Was the equipment found in Laredo in use or there for repairs?"

THE WITNESS: No, sir, it was at an export yard. The best we could determine, it was fixing to be shipped into Mexico.

THE PRESIDING OFFICER: Are there other questions from Members of the Court.

Ranger Powell, in view of the fact that the possibility exists that you might be recalled for further testimony in this case, it is my duty to warn you that you're under The Rule and that you're not to converse with any other person except Counsel for the two parties concerning the proceedings before this Court. Do not read any reports or comment on testimony before the Court. A person violating such instructions, may be punished with contempt. Do you understand the instructions?

THE WITNESS: Yes, sir.

THE PRESIDING OFFICER: Thank you very much, Ranger Powell, for your testimony before the Court this morning.

Mr. Mitchell, are you ready to proceed, sir, with the presentation of --

MR. MITCHELL: Mr. President, as I understand now, the Board of Managers have rested on I and VII, is that correct? Is that correct, Mr. Doyle? I'm sorry, I didn't mean to address that -- is that correct?

MR. DOYLE: The Board of Managers has no further affirmative evidence on Articles I or VII.

MR. MITCHELL: All right. In view of the fact that it's close to the break time, Mr. President, and it's not past 10:00 o'clock, and for the purpose of continuity -- and I don't intend to suggest to the Court how to run its business, but would it not be appropriate if we adjourn and let me commence with my opening statement Monday plus the free-run of my case? I'm at the call of the Senate, of the Court. Whatever the Court wants me to do. I would prefer, when I get up to talk to take it and go from there. I didn't know how much time would be involved this morning with Ranger Powell and how many questions the Court might have had of the Ranger.

THE PRESIDING OFFICER: How long an opening statement had you planned to make?

MR. MITCHELL: Oh, I had been informed by the President that perhaps ten minutes, and that would be probably satisfactory.

THE PRESIDING OFFICER: And your statement is that you would rather wait until Monday --

MR. MITCHELL: To commence it and put it together, yes, sir.

THE PRESIDING OFFICER: -- for presentation of your case at that time?

MR. MITCHELL: The flow would be much better, yes.

THE PRESIDING OFFICER: Mr. Mitchell, the only problem, we still have two hours before even the noon hour, and Members of the Court have stayed over, and it would be kind of a shame, it appears to the Chair, not to at least continue --

MR. MITCHELL: That's fine. May it please the Court, I would like whatever the Court wants to do.

SENATOR TRAEGER: Mr. President.

THE PRESIDING OFFICER: Senator Traeger.

SENATOR TRAEGER: Could I ask Mr. Mitchell a question?

THE PRESIDING OFFICER: Yes.

SENATOR TRAEGER: Mr. Mitchell, are you saying that your first thing will be an opening statement?

MR. MITCHELL: Yes, sir.

SENATOR TRAEGER: And then you will put Judge Carrillo on the stand for rather lengthy testimony, is that correct?

MR. MITCHELL: Yes, sir.

SENATOR TRAEGER: Would it break your continuity if your opening statement were given this morning and then --

MR. MITCHELL: Well, as all attorneys know, you'd like to give your opening statement in back-to-back with your first witness, fresh on the Court's mind. And that was the reason. I don't intend to waste the Court's time, and don't like to waste the Court's time, and I hesitated to ask that indulgence of the Court. But I would like to be able to make my opening statement and put my testimony on directly back-to-back, while it's fresh on the mind. However, again, I'll do whatever --

SENATOR LOMBARDINO: Mr. President.

THE PRESIDING OFFICER: Senator Traeger -- excuse me. Senator Lombardino. Did you have a question?

SENATOR LOMBARDINO: I would make a motion that we adjourn until 2:00 o'clock Monday.

SENATOR ADAMS: Mr. President.

THE PRESIDING OFFICER: Senator Adams.

SENATOR ADAMS: May I ask Mr. Mitchell a question before we vote on this motion?

THE PRESIDING OFFICER: Yes. Mr. Mitchell, would you respond to a question from Senator Adams?

MR. MITCHELL: Yes, sir.

SENATOR ADAMS: Are you prepared to make an opening statement this morning?

MR. MITCHELL: Yes, I can, Senator.

SENATOR ADAMS: Thank you.

MR. MITCHELL: I neglected to say prepared. I can make one that I think will be a creditable one, Senator.

SENATOR ADAMS: I'm sure it will be creditable.

(President in Chair)

THE PRESIDENT: Mr. Mitchell, you said that you would prefer to avoid breaks in your testimony. If we come back Monday afternoon, from what you said yesterday, it would probably not be possible to complete Judge Carrillo's testimony on Monday.

MR. MITCHELL: I might be able to get through with my direct, Mr. President. The reason why I said a day and a half or two days, I was going by what happened in the Judicial Qualifications Commission on cross. The cross went about three times the length of the direct.

THE PRESIDENT: Mr. Mitchell, there's been some pretty serious breaks in the continuity of the prosecution's case.

MR. MITCHELL: Well, I don't want to take unfair advantage of them, Mr. President. I'll do whatever the Senate wants me to do, of course.

THE PRESIDENT: It seems to the Chair that the purpose of the Senate would better be served by proceeding on until noon today. Senator from Bexar, Senator Lombardino has moved that the Senate stand adjourned until 2:00 o'clock Monday.

SENATOR LOMBARDINO: Mr. President, what we're trying to do now, is he going to make his opening statements now and then we would adjourn, or will there be some testimony put on thereafter?

THE PRESIDENT: That's up to the Senate, of course, Senator, our informal understanding yesterday was that we work until noon today and then adjourn until Monday.

SENATOR LOMBARDINO: I would like to withdraw my motion at this particular time.

THE PRESIDENT: All right. Motion has been withdrawn.

Mr. Mitchell, you're recognized for an opening statement for a period not to exceed ten minutes.

MR. MITCHELL: Thank you, Mr. President. Gentlemen and ladies of the Court, I understand the rules adopted by the Court provide that the Rules of Civil Procedure will obtain and prevail at these proceedings. And as I envision the function of the opening statement, the opening statement is a factual statement not involving argument of the law, but a factual statement based upon what we propose to prove.

As the Senate is well aware, the Respondent, Judge Carrillo, has no burden of proof or persuasion in this case. The burden of proof and persuasion, of course, rests upon the Counsel for the House Managers to prove each and every essential element of Article I and Article VII beyond a reasonable doubt. That is, if there is at this point a reasonable doubt in your mind, which as an attorney of twenty-five years experience I can gamble that there is in almost a majority, I would shut it down and quit at this point and go to you fully and completely convinced that there is a reasonable doubt on

the elements in I and VII. However, my client, being a Judge, has instructed me to proceed affirmatively in the establishment of certain facts. Article I, the evidence will show -- Article I -- there was -- incidentally, I am going to be forced, of course, to comment on the evidence as it is now and I might violate that opening rule a bit. But the evidence will show there was and is no conspiracy. The evidence to this point shows there is no conspiracy between O. P. Carrillo and this--now it comes out of the Article, "Conspired with others to have Duval County pay for groceries". The evidence, one, does not show the existence of a conspiracy. And when I say conspiracy, Members of the Court, I use the traditional Court's charge conspiratorial definition, a conspiracy as a combination or an agreement or contract or understanding between two or more persons, the object of which is unlawful or the means being unlawful to obtain a lawful object. Using that basic definition I say there is no contract or agreement shown by the facts between O. P. Carrillo and anyone to have Duval County pay groceries for his personal use.

Remember, Members of the Court, Duval County is administered and managed and its Board of Directors are a Commissioners Court composed of elected Commissioners from four precincts and presided over by a County Judge. A... that body governs the affairs, physical and monetary, of Duval County. And that the evidence will show that body has changed from time to time within the scope of Article I.

There is no evidence -- and the evidence from our point of view will show no evidence -- of an agreement or contract or understanding between O. P. Carrillo and any member of or that Court in its entirety. The evidence will be to the contrary and is to the contrary, that the Court operated the County in a lawful manner, the jackets were made up in a lawful manner, the claims were presented to the Court in a lawful manner, the Court passed on the claims in a lawful manner and the claims were ordered paid or rejected in a lawful manner and that action of the Court found its way into a book documenting each and every transaction, which raises, really, the basic defense. And that is that in I and VII there are no acts, one that span Judge Carrillo's present term of office. The basic defect in the prosecution's case is there is no act for which Judge Carrillo can stand impeached, I submit to this Court, that is proven in connection with either I or VII, arguendo now that they're wrongful or whatever they are. There's no act that goes beyond November 4, 1974, the date of the Certificate of Election.

An impeachment procedure, as I understand it, is to determine whether or not he is guilty of official misconduct in his current office and therefore not fit to be an official and should be removed. I ask myself, suppose he hadn't run last year, suppose he weren't an official --

MR. DOYLE: Mr. President.

MR. MITCHELL: That's probably argumentative.

MR. DOYLE: I want to level an objection. I have sat silently --

MR. MITCHELL: That's probably argumentative.

MR. DOYLE: Counsel is not making an opening statement. He's making a jury argument and this is not the proper place --

MR. MITCHELL: I think that's probably correct, Mr. President. I apologize to the Court, I got a little caught up in my fever. I do withdraw that.
The facts will show --

THE PRESIDENT: The objection is sustained. Mr. Mitchell, please confine yourself very strictly to the matters that you propose to prove.

MR. MITCHELL: The facts will be proven to you that the Certificate of Election -- in fact it's in evidence, November 4, 1974. The evidence will establish that no fact of any operative nature occurred past November 4, 1974 in connection with I or VII. The facts will show that Judge Carrillo took his office and oath of office January 1st, 1975.

And the evidence is and I think Counsel will stipulate that no fact goes past January 1st, 1975 that constitutes the basis for impeachment. And, two, the evidence is in the record, and I will not reprove it, that Judge Carrillo discharged the official duties of his office effectively, efficiently, correctly and with impartiality and there's no evidence in this record sideways, top or bottom that he has not performed the duties of his office correctly, period.

I think the evidence on -- moving now to VII -- the evidence has demonstrated and we will offer additional evidence that the contract -- first of all, now, VII, if the Court will recall deals with the rental of non-existent equipment. Let me be sure I get it correctly. It charges Judge Carrillo, subject to impeachment, because first, of a conspiracy to collect money from governmental entities for rental of equipment that did not exist and -- that's conjunctive -- for rental of equipment that the governmental entities did not use. The evidence will show and the thrust as I understand it of the House Board of Managers case there deals with the employment by Judge Carrillo of Zertuche General Store, Farm and Ranch, and Benavides Implement and Hardware to accomplish the rental to Duval County, the water district, the school district of equipment that did not exist. And to the security of rental income from equipment -- rental contracts the benefit of which did not go to the county or the various agencies.

Our proof will be, one, that as to -- let's take the dozers, that being fresh on our mind, that Judge Carrillo, first of all, owned those dozers from May of '74 to date, he bought them. Prior to that date they were owned by Benavides Implement and Hardware and were rented by him and he paid for the rent. There is no evidence of any conspiracy between him, Couling or anybody to rip the County off, the school district or the water district off for money for the rent of those tractors. Why? Evidence will show, gentlemen and ladies, he rented them himself from Benavides Implement and Hardware and paid \$20,000.00 rent.

The evidence will show and has shown and this is very significant, that if this were a round delay conspiracy between Benavides Implement and Hardware, O. P. Carrillo and others -- Lord knows, I don't know how they're going to rip off that County with them people running that County, but let's assume that. The evidence shows that Judge Carrillo paid rent in January -- December of 1973, January, February, March, April to Benavides Implement and Hardware. But Benavides Implement and Hardware didn't pay the payment to Plains under its contract of December of '72. And the contract was thrown in default with a necessity that Judge Carrillo went in and bought the contract in May of '74, you see. The evidence belying in the loudest, clear voice of conspiratorial conduct.

Well, our point is and our position is there was no conspiracy as regards the tractor, there's no conspiracy as regards any other equipment.

Now, as to the checks that have been introduced, that the Series E-155, E-166, appearing at Page 797, 803, 810, 812, 820, our position in those and the testimony will be that those are legitimate transactions and that you will either have to believe -- disbelieve the documentary evidence and believe -- that is all of the contracts, the financing statements, the notes, the checks to Plains, the checks to Benavides Implement -- you will have to disbelieve all of that and believe Rudolfo Couling's testimony in its entirety in order to conclude that those checks that were given to O. P. Carrillo out of Benavides Implement and Hardware were checks given pursuant to a

conspiracy to rip off from the county.

The evidence will show no checks, if it please the Court, no checks from Benavides Implement and Hardware in '73, none in '74, none in '75 and none in '76, a time which is relevant to whether or not he can perform his function as a Judge of the 229th District Court under its Certificate of Election November 4th, 1975. That's our case.

And we would like to call Judge O. P. Carrillo as our first witness.

THE PRESIDENT: Judge Carrillo, would you raise your right hand. "You do solemnly swear or affirm that the evidence you give upon this hearing by the Senate of Texas of impeachment charges against O. P. Carrillo shall be the truth, the whole truth and nothing but the truth, so help you God."

JUDGE CARRILLO: I do.

THE PRESIDENT: Please be seated, sir.

JUDGE O. P. CARRILLO

was called as a witness and having been previously duly sworn, testified as follows, to-wit:

DIRECT EXAMINATION

(Questions by Mr. Mitchell:)

Q Your name, for the record?

A O. P. Carrillo.

Q And your present trade, occupation or employment?

A I am an attorney; I am the Judge of the 229th Judicial District of the State of Texas.

Q And were you duly licensed as an attorney by the Board of Legal Examiners of the State of Texas?

A I was.

Q And give us the date, please, sir.

A I took my bar exam and passed it in 1972 -- I mean, 1952, June, I believe.

Q And you have been a licensed attorney since 1972?

A No, '52.

Q I'm sorry, I'm repeating your date.

All right, sir. And your present term of office as Judge is for what district?

A It's for the 229th Judicial District composed of Duval County, Starr County and Jim Hogg County.

Q When were you first elected as the Judge of the 229th Judicial District, Judge Carrillo?

A I was elected at the General Election held in November of 1970 -- 1970 and I took office January the 2nd, 1971.

Q And that term ended when, please, sir?

A December the 31st, 1974.

Q Did you during the course of the last year of the term of the first term as a judgeship announce and seek reelection?

A I did.

Q And tell the Court please, were you reelected and if so the date of the Certificate of Election?

A I was reelected and I received a Certificate of Reelection and I took my oath of office again on January 2nd, 1975.

MR. MITCHELL: If it please the Court, that Certificate of Reelection is in the evidence. I would like to call the Court's attention to it. It is in the Judicial Qualifications Commission record, if it please the Court and it's in this record and the Certificate -- I don't suppose there's any dispute on the date, is there, Mr. Doyle, on the date of the Certificate of Election to Judge Carrillo, November 4th, 1974? Is that the date?

MR. DOYLE: It was in November, I don't remember the date.

MR. MITCHELL: Well, maybe we better ascertain that date. John, you should know that.

If I might have a minute to -- Mr. President, may I have just one minute, please, to be sure that date is fixed in the minds of the Court. It appears in our answer on Page 44 of the Senate Journal. It will take me just a second to find it.

Q Judge Carrillo, your recollection is your Certificate is dated November 4th of 1974?

A I believe it is, Mr. Mitchell, I'm not quite sure, but I believe it is. Whenever the General Election was held in 1974, that was the date that I was elected.

THE PRESIDENT: Mr. Mitchell, can you supply that date at a later time?

MR. MITCHELL: Yes. It's in -- it's a matter of record, if it please the Court. I thought I -- it's attached to our pleadings. And I can't supply that in the interest of time.

THE PRESIDENT: It doesn't violate the best evidence rule?

MR. MITCHELL: It would technically.

Q At any rate, you took your oath of office in January of 1975 pursuant to that Certificate dated the previous November of '74?

A That's correct, sir.

Q All right. And you are -- and did you discharge -- did you assume the duties of that office and discharge those duties to the best of your ability until such time as the Impeachment Articles were returned by the House in August of 1975 at which time under the Constitution you were placed on suspension pending the trial on those Articles by this Senate body?

A I did.

MR. MITCHELL: Counsel, are you willing to stipulate as was stipulated in the Judicial Qualifications Commission that Judge Carrillo during the time he has been the Judge of the 229th Judicial District in his first term and his present term has discharged his duties and responsibilities of that office officially, effectively, and without any official misconduct as reflected by the testimony of Mr. Randall Nye that appears in this record?

MR. DOYLE: No, sir, I don't think that's what the testimony of Mr. Randall Nye shows, and we will not stipulate that.

MR. MITCHELL: All right. I will then call attention to the Court of Mr. Randall Nye's testimony in the record, if it please the Court, and perhaps we'll call some witnesses on that point.

Q At any rate, Judge Carrillo, what is the itinerary that you set for yourself as a District Judge in the 229th Judicial District Court?

A It is a three-county district. I assigned one week of each month to each particular County, and I left the fourth week open, which permitted me to travel to any one of the three counties which needed my services.

Q All right. I understand those three counties, as you've previously testified, are Duval, Starr, Jim Hogg?

A Yes, sir.

Q Your hometown, that is, your home base is where?

A San Diego, Texas.

Q And what County is it in? Duval?

A That is in Duval County, sir.

Q Do you have a courthouse there at San Diego?

A I don't have a courthouse, sir. The County has the courthouse.

Q Well, is there a court for the 229th District there?

A Yes, sir, there is a courthouse in San Diego.

Q And where is another court in your circuit? Is that down at Rio Grande City?

A There is another courthouse at Hebronville, in Jim Hogg County, and then there is another courthouse in Rio Grande City in Starr County.

Q All right. So that the circuit -- you are the judge of what we call the circuit, that is, you go from the courthouse there at San Diego in Duval County, am I correct?

A Yes, sir.

Q To the courthouse there in Rio Grande City in Starr County, which is another County in the 229th District, am I correct?

A Yes, sir.

Q And from that courthouse to the one in Hebronville in Jim Hogg County, is that correct?

A Yes, sir, and I am also assigned from time to time to different counties in the State of Texas by the presiding -- the Administrative Judge of the Judicial District.

Q All right, sir. And do you have any other duties as regards, for example, juvenile office, probate?

A Yes, sir, I am also the Juvenile Judge of the different counties.

Q All right. Those duties, Juvenile Judge, in addition to those as the Judge of the 229th Judicial District?

A Yes, sir, well, they are my duties as the District Judge and as the law provides for me to -- as the District Judge to be the juvenile -- and in such counties where the County Judges are not attorneys, and so I had two counties where the Judges were not attorneys, and one County where a judge was, but I also concurrently with him presided over the juvenile court.

Q Does Duval County have in addition to the district, the 229th District Court, a County Court System?

A It has the County Court System, yes, sir. I think that's by law all over the State of Texas.

MR. MITCHELL: Mr. President, may I furnish for the record the Certificate of Election that appears at Page 154 of the yellow Respondent's Exhibits, and it shows to be dated -- certify that at a General Election held on Tuesday, November 5th of the year '74, when Judge Carrillo was elected as Judge, and the Certificate is dated the 22nd day of November, 1974. Thank you, Mr. President.

Q Judge Carrillo, there is then by the Legislature provided for in Duval County a County Court System, is there not?

A Yes, sir.

Q And there are the -- of course the County is divided into precincts, is that correct?

A Four precincts.

Q And those precincts are in turn divided for purposes of justice of the peace courts, are they not?

A Yes, sir.

Q And they are divided, are they not, for Commissioners Courts precincts, are they not?

A Yes, sir, there are four Commissioners.

Q And of course they are divided for election precincts, are they not?

A Yes, sir.

Q So that the Court understands, we are talking about the statutory scheme, and it's been that way ever since you've been District Judge, has it not?

A Yes, sir.

Q As the first term and the present term?

A That is correct, sir.

Q So that we have four precincts in your County?

A Yes, sir.

Q Each elect a County Commissioner?

A Yes, sir.

Q And the County has been run by the Commissioners Court as long as you've been in there?

A Yes, sir.

Q And an additional election precinct, which I understand is divided along the same geographical boundary as your County precinct.

A I beg your pardon, sir?

Q Your election precincts, they generally follow that same -- or do they follow that same --

A No, sir, I believe you will find that there are some precincts that have two or more election precincts within them.

Q All right. At any rate, that system is well-structured and well-established in the County, is that correct?

A Yes, sir.

Q All right. Now, in addition -- and I suppose that's true with regard to Jim Hogg County, and your other County, Starr County, is that correct, Judge Carrillo?

A Yes, sir.

Q Judge Carrillo, what age man are you, please sir?

A I am fifty-one years old, sir.

Q And I'll ask you, please, sir, are you married, a single man or a divorced man?

A Single man, sir.

Q And where do you reside?

A I reside in Benavides, Texas. I have my home at the ranch, Borjas Ranch, but I generally stay at Benavides at the home of my parents, because they are elderly folks.

Q All right. During the period of time about which Article I and the Article VII inquire, there is no date, the Article as you have read it and as it appears on record, appears that during the time you were the Judge of the 229th Judicial District Court, I -- well, I'll just cover both terms. While holding office as District Judge of 229th Judicial District of Texas, both Article I and Article VII are couched in those terms, have there been elected the same Commissioners for the Commissioners Court? What has been the makeup of the Commissioners Court of Duval County?

A Well, the Commissioners Court of Duval County, when I became District Judge, consisted of Judge Archer Parr as the County Judge, Mr. Daniel Tobin, Jr. as one of the Commissioners, Mr. Juan Leal, Ramiro Carrillo --

Q That's Juan Leal?

A Yes, sir.

MR. DOYLE: Pardon me, Judge. Is this when you first got elected as District Judge we're talking about?

THE WITNESS: Yes, sir.

MR. DOYLE: Okay.

A Ramiro Carrillo and Felipe Valerio. Then --

Q Just a minute. Just a minute. Is that Juan Leal the one from Concepcion?

A Yes, sir.

Q And Archie Parr is the gentleman who is in the Federal penitentiary now?

A Yes, sir.

Q All right. And, now, let me ask you, did the Commissioners Court that was in the County in '71 when you were elected to the first term, Judge of 229th District, are they the same ones that are there now, that is, during your second term in January of 1975 under your Certificate Election dated in November of 1974?

A No, sir.

Q All right. Now, tell us the makeup -- and I'm going to label this the 1975 Court. Who were the Commissioners --

A The '75 Court that the -- in January, it was still the same as I have just stated. It was -- then it was changed, and Daniel Tobin, Jr. --

Q Wait a minute, Judge. There was a change in February of '75?

A No, sir. The change was in March of 1975.

Q And what was it changed to then?

A Daniel Tobin, Jr. was the County Judge, and --

Q Just a minute. All right. Go ahead.

A -- was the County Commissioner. Juan Leal, County Commissioner Ramiro Carrillo, County Commissioner. And Felipe Valerio, County Commissioner.

Q Now, prior to 1971, is that the Commissioners Court that was composed of Atlee Parr? Who was that -- who was on the Commissioners Court prior to the year of '71, now?

A Incidentally so that the relevancy is determined there, there are some statements in the -- or some evidence in here as regards to the period of time, of '67, '68, '69. What position, if any, did you hold prior to the time you became Judge of the 229th District Court in 1971, Judge Carrillo?

(Senator Aikin in Chair)

A I was elected as County Attorney in -- the election was held in I believe November of 1960, and I took office in January of 1961 as County Attorney of Duval County.

Q January, 1961, you took office as a County Attorney?

A Yes, sir.

Q Of Duval County, is that correct?

A Yes, sir.

Q Well, come on in to the latter part of '60 -- let's say '67, '68, '69 and '70, do you know or recall, please, sir, who were the members of the Commissioners Court and if they were distinct and separate and apart from those you've given us in the year '71? Would you give me those, because you are alleged to have conspired with some of these folks, and I need to get them identified.

A Well, the composition of the Commissioners Court when I took office as County Attorney was the same as it was when I became Judge in 1970, with the exception of Mr. Atlee Parr was a member of the Commissioners Court. And he died in 1967, I believe, and, at that time, my brother, Ramiro Carrillo, was appointed to take his place on the Commissioners Court.

Q All right. So, is it an accurate statement to state that the Commissioners Court in the '60's was composed of Archie Parr, Dan Tobin, Juan Leal, Felipe Valerio and Atlee Parr?

A Yes, sir.

Q And upon Atlee Parr's death.

Ramiro Carrillo replaced him in the Court and remained on that Court continuing from 1971, composed of Archie Parr as County Judge, as I understand under the statute, is not a member of the Court, but presides over their meeting --

A Yes, sir.

Q Dan Tobin, Juan Leal, your brother, Ramiro Carrillo and Felipe Valerio up until March of 1975? Is that correct?

A Yes, sir.

Q At which time, according to your testimony, the Commissioners Court of Duval County changed so that County Judge became Daniel Tobin, Manuel Amaya a Commissioner, Juan Leal a Commissioner, Ramiro Carrillo a Commissioner and Felipe Valerio a Commissioner, is that correct?

A Yes, sir.

Q Did -- Judge Carrillo, were you as a District Judge and functioning as a District Judge instrumental in the change or the makeup of that Court in March of '75?

A I was.

Q And tell the Court if that -- if your participation was by reason of petitions having been filed by the District Attorney, Arnulfo Guerra of the 229th Judicial District in your Court and the 229th District Court, to remove Mr. Archie Parr as a member of that Court?

A It was.

Q And I'll get to that later on, but that -- the sum and substance of that litigation was that there was an order of removal entered, and an appeal taken, and that order sustained, is that correct?

A That's correct, sir.

Q All right, Judge.

I believe Mr. Meek and Mr. Hinojosa have both testified that the Commissioners Court for as long as they have been related to -- or connected with Duval County, the Commissioners Court have met on -- at the first part of every month? Do you recall that testimony?

A Well --

Q First Monday in every month?

A Well, let me state this, Mr. Mitchell. They are supposed to meet -- now, I have been holding my duties as District Judge for sometime, and I have not attended meetings of the Commissioners Court, so I cannot testify whether or not they met on the supposed day that they were supposed to meet.

Q All right.

MR. MITCHELL: His testimony, if it please the Court, reflected in the first volume, Walter Meek and Mr. Hinojosa, and I would like to call just by rapid reference the Court's attention to that testimony and by cross-examination on this very point, the witness, Mr. Meek, having testified. And the 350 -- the 300 and 350 Series, if it please the Court, and I would like to move on to another question.

Q Judge Carrillo, there has been some testimony here as regards to Benavides Independent School District. Let me get that under our belt, and then maybe we'll get enough preliminary matters out of the way to move on directly into the substance of the Article I and Article VII. Now, Benavides is a town in Duval County? Where is Benavides, Texas?

A Benavides is a town in Duval County, sir. That is the city where I was born, small town.

Q All right, sir. And the county -- it's in Duval County?

A Duval County.

Q And it is therefore within the 229th Judicial District?

A Yes, sir, it is.

Q Now, Benavides is a city of what size?

A About 2,500 people, sir.

Q I'm sorry. I didn't hear you.

A About 2,500.

Q And where is it located in connection with San Diego?

A Approximately sixteen miles southwest of San Diego.

Q Now, the Benavides Independent School District, is that a school district in the City of Benavides, Texas?

A The City of Benavides is part of the Benavides Independent School District. The school district is quite larger in area.

Q That's what I meant to ask you. The city is just a small part of the Benavides Independent School District, am I correct?

A Yes, sir.

Q And is the Benavides Independent School District run by a Board of Directors or Board of Trustees as provided by the statute?

A Board of Trustees.

Q Now, I'll have to ask you, by reason of the fact that there have been -- there has been considerable amount of testimony as to Mr. Rudolfo Couling's function on that Board, and I believe your father and other folks. I will have to ask you for some background information. Could you tell us who the members of that Board were in 1971?

A I -- 1971, I --

Q When you first took office as a Judge of the 229th District.

A Mr. D. C. Chapa, who was my father.

Q Was he the President of the board? What was his office?

A Yes, sir.

Q All right.

A Mr. Luis Elizondo, Mr. Enrique Garcia --

Q Just a minute, now. All right, sir.

A Mr. Ken Bercaw, Mr. Al Schuenman, Mr. Joe Garcia and Mr. Rogelio Guajardo, Jr.

Q All right. Did that board maintain that composition through your first term as District Judge of the 229th Judicial District?

A I'm not quite sure. I believe in the latter part of -- the latter part of the first term, Mr. D. C. Chapa, my father, resigned sometime in there. I'm not quite sure when it was.

Q Do you recall I asked a question of Mr. Rudolfo Couling as to whether or not Mr. D. C. Chapa was on that School Board in 1974? Do you know whether -- when he resigned? Let me ask you this. Is he presently on the board?

A No, sir.

Q All right. Can you give us your best present recollection of when he resigned from the Board, Judge Carrillo?

A I believe that it was during the first part of 1974, but I am not quite sure.

Q All right. What connection in '71 and thereafter, if you know, during your first term did Rudolfo Couling have, and the relation to the Benavides Independent School District and the Board of Trustees?

A He was the Tax Collector for the District, and also the, you might say, the office manager of the school tax office and district office and everything else.

Q Did Archie Parr or George Parr have any connection with the Board of Trustees or the Benavides Independent School District in that first term?

A Mr. Archie Parr was attorney for the School Board, sir.

Q Archie Parr was the attorney during that entire first term?

A Yes, sir.

Q All right. Now, let me fill the picture here. During the second term, your second term beginning January '75, who were the members of the Board of Trustees that governed the Benavides Independent School District?

A During my second term?

Q Yes, sir. The one that you're presently serving.

A Well, the board changed -- it was the same board. It changed in March of 1975.

Q All right. And what was the change?

A The change was Miss Villegas came on the board. Mr. Santaro Garcia, Mr. Pete Hunter --

Q Wait a minute. All right.

A And Mr. Morris Ashby.

Q Now, is that the board that there's been two or three of them -- two or three of these boards that we've been reading about in the paper that --

A Yes, sir.

Q So actually it depends on who you talk to down there on whether there's one board, two boards, or three boards. Correct?

A Yes, sir. I don't have anything to do with that.

Q Well, I understand. As a matter of fact, your connection with that was, I believe, as a District Judge, you had some applications filed for the purpose of removing some of those members of the board. Am I correct?

A Yes.

MR. DOYLE: Mr. President, I would level an objection at his point. Under the motion that was carried by the Senate, we were limited to Articles I and VII, and I fail to see any connection whatsoever between the testimony now being elicited about the School Board and the County Commissioners, and so forth, back in '71 and '74 and '75, with respect to those two Articles.

MR. MITCHELL: Mr. President, may I speak to that objection, please?

THE PRESIDING OFFICER: Yes.

MR. MITCHELL: The Articles of Impeachment allege that while holding office as a District Judge of the 229th District, that is I and VII do, and I, of course, heard ample testimony as regards Mr. Rudolfo Couling and his connection with the Benavides Independent School District and the Commissioners Court. I'm charged with conspiring with the Commissioners Court. I think we need to establish for the Court, the identity of this Court, and who I'm alleged to have conspired with. I'm trying to be relevant, and I'm trying not to consume a lot of time, but I don't see how we can paint the picture without the background.

THE PRESIDING OFFICER: Mr. Mitchell, aren't you about through with that --

MR. MITCHELL: Yes, I am as a matter of fact. I've gone through the Board of Trustees, Mr. President.

THE PRESIDING OFFICER: Could we get through with it? I'm not being critical, but I really don't see -- I think Mr. Doyle is right up to a point.

MR. MITCHELL: Well, perhaps I can get a stipulation from him and eliminate a lot of this background. Is the Board of Managers taking the position that I can be impeached for an act that occurred from my first term that's over?

MR. DOYLE: Very definitely.

MR. MITCHELL: Then I don't know how I can keep from going back to '71, if it please the Court. I will try to finish up.

MR. DOYLE: Arthur, I am not trying to be cantankerous, but I just really don't see what the makeup of the School Board, when they got elected, has to do with Articles I and VII.

MR. MITCHELL: Well, I get the feeling -- and I don't want to be impertinent, but I've been in this business for twenty-five years. I don't know another thing than what I am doing. And I have been trying cases every week, or every month for twenty-five years, and I do not like the implication that I am going beyond what I consider as a legitimate inquiry. I have been charged with a conspiracy, which is a violent, violent thing, Mr. President --

THE PRESIDING OFFICER: Let's proceed --

MR. MITCHELL: All right.

THE PRESIDING OFFICER: And see if we can get some things concluded.

MR. MITCHELL: I do it only because of absolute necessity to tie in these people in this picture.

Q Now, Judge Carrillo, as a matter of fact, I think we could--strike that. Let me go back into the -- to complete this line of testimony, the board of trustees changed to Mrs. Villegas, Garcia, Hunter and Mr. Ashby in March of '75, is that correct?

A Yes.

Q And Mr. Couling testified that he was discharged as the Tax Assessor-Collector in March of 1975. Do you recall that as being --

A Yes.

Q All right, sir. Now, the reason I ask you these questions as regards the background, Judge Carrillo, is to give this Court some idea of the political makeup of this County during the period, say, of your first term and up until the time you commenced your second term -- was the County predominately a Democratic county?

A Yes, sir.

Q Was it monolithic to the extent that we had a Parr-Carrillo type control in the County? Was that -- can you characterize the political makeup of the County?

A I would say it was a County in complete unity, sir.

Q All right. Can you trace -- was there -- there has been testimony that there was a disunity or a political split sometime in early 1975. Can you trace it to a split between various factions in that County at that time, Judge Carrillo, and if so, do so for us.

A Well, to trace the political structure of Duval County, Mr. Mitchell, I think I would have to go back to the time of my grandfather and bring it on down, if that's what you want.

Q Your family has been in that County how many years?

A My -- the Carrillo family has been the owner of the Borjas Ranch from the time that Texas belonged to Mexico.

Q All right.

A And then in 1836, I guess you would say when the flag of the Republic of Texas went up we became citizens of the Republic of Texas, that is, the Carrillo family.

Q And Borjas was an original Spanish grant to your family, is that correct?

A As far as I know, Bishop Drury of Corpus Christi was tracing the history of that ranch from way back when. And as far as I know, my ancestors have been in possession of that land for years and years. And that ranch was inherited by my -- as far as I can trace it, by my great grandmother, my grandmother, my father, and on down to me at the present time.

Q All right. Your father is D. C. Chapa, is that correct?

A Yes, sir.

Q All right. Now, the Borjas Ranch, which there's been testimony and that you own, is this a part of the Borjas you just told us about you inherited that was in your family?

A Yes, sir.

Q How did you come about your share? First of all, what's the size of the Borjas Ranch?

A Borjas Ranch itself is approximately 1500 acres.

Q That's your share?

A Yes, sir. I own more land than that, but I'm talking about what I inherited.

Q There's been some testimony here about R. Carrillo and Brothers. Is there any relationship between R. Carrillo and Brothers and the Borjas Ranch?

A R. Carrillo and Brothers is a trust that was set up by my father and my mother for the benefits of their six children, which includes me, shortly after I came out of college. You see, I had been gone from Benavides for quite a number of years before that, sir.

Q All right. And this land that we talk about, the Borjas Ranch, was your share of your inheritance, is that correct, Judge Carrillo?

A As an inheritance, you might not call it that because my parents are both alive. It was a gift. During the lifetime of my father and my mother that was made to us children.

Q Actually it's an advance on the inheritance, is it not, Judge?

A Yes, sir.

Q And, did your family lawyers work that out for your daddy and your mother and the family?

A My family lawyers and the accountants and bookkeepers set up that trust.

Q And who was your family lawyer?

A Mr. Ed Lloyd from Alice.

Q And your accountant?

A Mr. Benson, also a CPA, from Alice.

Q And your personal accountant?

A Mr. O. D. Kirkland from Alice, who was a partner of Mr. Benson and took over the practice after Mr. Benson passed away.

Q All right. And as I understand it, Judge Carrillo, what your testimony is that the attorneys for your family and the accountant worked out a method of conveyance in advance to the various members of the family, is that correct?

A Yes, sir.

Q And how many members of the family were there?

A There are six of us, sir.

Q And who are they, please sir?

A My oldest sister, Mrs. Celia Valerio, my brother, Oscar Carrillo, myself, Ramiro Carrillo, Mrs. Elma Stockwell, and Mrs. Emma Gavito.

Q And all of these persons are alive and grown people, is that correct?

A Yes, sir.

Q And let me ask you this, Judge Carrillo, is the trust for the benefit of some of the grandchildren of D. C. Chapa?

A Yes, sir. And the provisions, of course, this was something that my parents worked out on their own the way they saw, and part of the land and part of the royalties and minerals was passed on to some of the grandchildren also.

Q Now, there's been some testimony in the record as to R. Carrillo and Brothers. Is that the -- what is that designation?

A That is a trust, Ramiro Carrillo and Brothers. That is a trust that my father set up.

Q Is that trust presently in existence, Judge Carrillo?

A Yes, sir.

Q And who is the trust administered by, if you know, please, sir?

A It is administered by Ramiro Carrillo.

Q Is the income from the trust reported on your tax returns for the years that are relevant here, Judge Carrillo?

A I have a one-sixth interest in that trust. And my share of Ramiro Carrillo and Brothers, which is the trust, is reported on my income tax return, sir.

Q During the time that you were a District Judge or the County Attorney -- that is on your first term as District Judge and presently did you undertake any managerial duties or functions as regards the Ramiro Carrillo and Brothers trust?

A I have never had anything to do with the managing of the trust, sir.

Q Is it your testimony that the managerial functions were those that resided in your father, your brother and the experts that those people have with them?

A Yes, sir.

Q May I call attention of the Court to Judge Carrillo's tax returns appearing on page -- the one for '74 appears at 802 in the yellow addition and the '72-'73 appears at Page 1065. And I will ask you, Judge Carrillo, that R. Carrillo and Brothers income is

reported in these tax returns, is it not?

A Yes, sir.

MR. DOYLE: Mr. President, may I ask a question of Mr. Mitchell at this point?

THE PRESIDING OFFICER: Yes, sir.

MR. DOYLE: Mr. Mitchell, do we have copies of his '73 return and his '74 return in the record?

MR. MITCHELL: Yes, '72 --

MR. DOYLE: I remember '72.

MR. MITCHELL: '72 is in the white.

MR. DOYLE: I remember the work papers for '73.

MR. MITCHELL: We have the work papers and all the tax returns, if not we will make them available. Let me see -- look at the other volume -- there in separate volumes and I can't explain that. The '72 is in the white volume -- if you will look on page --

MR. DOYLE: Well, we have '72 and '71, I remember looking at those. I can't remember '73 and '74.

MR. MITCHELL: Well, '74 appears on page -- on Page 802, Counsel, in the yellow book. And I can't account for one being a Respondent -- or two being Respondent's and the other Examiner's, but --

MR. DOYLE: Okay. I found them. We have got '73, also. It's in R --

MR. MITCHELL: Right. So, that the Court understands the '72, '73 and '74 returns are in the record.

Q And, I will ask the question, if, Judge Carrillo, the income from that trust is reported -- found reported on our personal 1040 form and, if so, tell us, just on the pick one there, like I say, the '72, where it's found, where it's picked up?

A Yes, sir, it's reflected in my income.

Q As --

A That's under -- it says check applicable box and it's checked under the state or trust.

Q All right.

MR. DOYLE: What page are you on, may I ask?

MR. MITCHELL: For example, we're looking at 1072.

MR. DOYLE: What page?

MR. MITCHELL: 1072 of the green volume. And that's the '72 return. They're found in the corresponding spaces, Counsel for the other returns.

MR. DOYLE: Mr. Mitchell, I find -- if you don't mind me asking a question again.

MR. MITCHELL: No, go ahead, I have no -- ask me.

MR. DOYLE: Mr. Mitchell, I don't see Judge Carrillo's '73 income tax return. Now that -- the return for Farm and Ranch appears to be in there, but I would certainly think it's very material and would request that you get that for us. I know it must be available and I am sure that Judge Carrillo would want the Senate to see it.

MR. MITCHELL: The '70 -- without taking the time of the Court we will examine the records at a time when there is a recess and determine whether that '73 return is there, if not, we will furnish it.

MR. DOYLE: I don't think the '73 -- the '73 individual return -- I don't think it's in the record. I know it's been talked about, but I don't think it's been introduced.

MR. MITCHELL: Let me state for the Court that at the Judicial Qualifications Commission trial we subpoenaed Mr. Oscar Kirkland, who is the accountant and has been the accountant many years for the Carrillo family. And at that time we introduced all of the work papers -- I say we and the attorney for the examiner -- and I thought got all the tax returns that were relevant, but if he feels he wants those, we certainly -- I thought they were in the record.

MR. DOYLE: Well, the work papers are in here for '73.

MR. MITCHELL: We just don't have the returns.

MR. DOYLE: But I don't see the return in here.

MR. MITCHELL: Okay. We will get the copy of the return. We certainly don't have any objection to the returns that are relevant being in evidence.

Q All right. Judge Carrillo, let me ask you this -- we will come back to that return from time-to-time and interrelate it. You had testified earlier that you were licensed to practice law in 1952. Is that correct?

A Yes, sir.

Q And you are a graduate of what law school?

A St. Mary's Law School, sir.

Q And where did you take your undergraduate work?

A The University of Texas.

Q And when did you graduate from The University of Texas?

A 1949.

Q And what degree did you hold, if any?

A No, sir, I took my pre-law work in 1949 -- finished it in '49 -- I came out of the service in 1946.

Q All right. And what branch of the service were you in?

A I was in the Army.

Q And when did you go in the Army?

A I volunteered in the Army in 1943.

Q For how long were you in the Army?

A Three years.

Q And was your discharge an honorable discharge?

A Yes, sir.

Q And thereupon you then went to The University of Texas?

A Went to The University of Texas, took my pre-law studies at The University of Texas, then went to the University of Colorado for one summer and then went to St. Mary's University and got my law degree in 1952.

Q All right, sir. And then did you study in any lawyer's office -- did you open your own office, how -- what did you do?

A I went back and opened my law office and then I worked with Mr. Percy Foreman in Houston for approximately three years.

Q What years were those?

A That was around 1956. And then from there I went to --

Q '56, '57, '58, Judge Carrillo?

A Something like that, yes, sir. I went to the office of Arnold, Fortas and Porter in Washington, D.C.

Q And when did you go with Mr. Fortas' firm?

A Well, it was after I was with Mr. Foreman and I was working, of course, with Justice Arnold and Justice Fortas and Mr. Porter. But mostly under Mr. Abe Fortas of that firm.

Q And how long did you stay in Washington with Mr. Fortas' firm?

A I was in Washington approximately two years.

Q So, about 1960 you left Washington. Did you then return to your home?

A Shortly after I came back from over there I was elected County Attorney.

Q And that ties us in with your prior testimony that you became an elected official, that is the County Attorney of Duval County in 1961?

A Yes.

Q And from there to the Judge of the 229th Judicial District for the first term and the Judge of the 229th Judicial District for the second term. Is that correct?

A Yes, sir.

Q All right. Judge Carrillo, in addition to the Borjas Ranch, do you maintain other -- do you own other ranch properties there in the community that you have acquired on your own and not through an advance against your inheritance?

A Yes, sir.

Q And do you have ranches at, say, Duval County, or -- where do you have them?

A Well, I have a -- through what you call an inheritance -- I have a ranch which is called Florida, which is Florida -- spelled the same, in Jim Hogg County, which was also the ranch that belonged to my grandfather and my grandmother on my mother's side.

Q And when was that -- when did you get the title to that ranch?

A My mother deeded me that property in 1950 -- '55, '56, something like that.

Q And you got your deed to the Borjas Ranch on your daddy's side when?

A Approximately the same time.

Q And do you have livestock on the Borjas and the Florida Ranches?

A Yes, sir, I do and other properties that I have acquired.

Q I notice in your tax return you have a Beefmaster breed of cattle. Have you had those for quite a while?

A Yes, sir, I have.

Q Do you eat that kind of beef?

A The best in the world.

Q You don't buy any of that with any of that money you rip-off from the county, you have got all of the cows you want, haven't you?

A I have a large herd of cattle, sir.

Q All right. I will ask you this, have you acquired properties on your own?

A Yes, sir, I bought a piece of property under the GI Bill of Rights.

Q All right, sir.

A And I own the Calvin North Ranch, which is called the Calvin North Ranch.

MR. DOYLE: Calvin North?

THE WITNESS: North, N-o-r-t-h.

MR. DOYLE: That's one you bought with the GI Bill?

THE WITNESS: No. The GI Bill was --

MR. MITCHELL: We can't hear you, Terry, turn your mike on. Go ahead, you can ask him all you want.

THE WITNESS: The GI Bill is another piece of property, Mr. Doyle. It's approximately 160 acres.

A And I own approximately 300 acres over in Zapata County, which was acquired by me as the result of a fee in a legal matter. And I also own a small piece of property in Jim Wells County, also acquired as a fee in another case. I own another piece of property which I acquired from the Cuellar family back in --

Q What family?

A Cuellar, C-u-e-l-l-a-r.

Q What year?

A Back in approximately 1957, '58.

Q The Borjas was acquired in the '50's, the Florida was acquired in the '50's, the Cuellar was acquired in the '50's, the land, I suppose, on the GI Bill -- was that also acquired in the '50's?

A All of these properties that I have acquired were acquired in the '50's after I came out of law school. And were all in the '50's with the exception of thirty-six acres, which I bought under a bankruptcy proceedings, which are inside the city limits of Benavides. And that was acquired around 1963, '64, something like that.

Q And, of course, Calvin North ranch -- the record reflects you got your deed to the Calvin North ranch in '68?

A Yes, sir, that is correct, I'm sorry.

Q So, the Calvin North ranch was '68, others in the '50's, with the exception of the tract that you bought -- the piece of property you bought within the City of Benavides from the Bankruptcy Court in the '60's. Is that correct?

A Yes, sir.

Q Now, the purchase of the property in the City of Benavides, was that -- what is that, the Vaello?

A That was involving the bankruptcy -- the bankruptcy proceedings of the Vaello family.

Q And how is that spelled?

A V-a-e-l-l-o.

Q The Vaello -- is that the tract that's in the record as the Vaello Sales Building?

A No, sir. The Vaello Sales Building was a furniture store and appliance store that the Vaello's had that I also bought. This particular tract of land that I'm talking about is just thirty-six acres divided into lots.

Q Is that Vaello Sales Building the location of the Zertuche General Store that's been previously testified to?

A The Vaello Sales Building housed the Zertuche Store when it was first started.

Q All right. And do you still own the Vaello thirty-six acres, Judge Carrillo?

A Yes, sir, I do.

Q And do you still own the Vaello Sales Building?

A Yes, sir, I do.

Q Judge Carrillo, I haven't asked you as regards Ramiro Carrillo and Sons -- or Ramiro Carrillo and Brothers -- what is the correct designation of that?

A Ramiro Carrillo and Brothers.

Q Right. I have asked you, because that name appears on some of the Exhibits and that's the relevancy of that inquiry, as you know. I'm going to now move to Zertuche General Store.

MR. MITCHELL: And I do that, if it please the Court, because of the testimony previously introduced through the witness, Cleofas Gonzalez and Couling as to the existence or non-existence of the Zertuche General Store.

And may I have marked as Exhibits, Mr. President, these documents that appear as Carrillo's Exhibits before the House and have been previously introduced into evidence. I would like to have them marked and show them to Counsel.

MR. DOYLE: Are they in evidence in this trial?

MR. MITCHELL: I think they are, Mr. Doyle. They carry a Carrillo designation, but I want to be doubly sure we give them a Senate number.

These appear as Exhibits, if it please the Court, to the hearings before subcommittee of the House under HSR 161.

While the Clerk is marking that, if I might be permitted by the Court to expedite the matter. If the Court will look on Page 2594 of the record of the proceedings the High Court of Impeachment we have the first Exhibit. That's the one that's been previously introduced into evidence, Mr. Doyle before this Court as R-7(2).

MR. DOYLE: Well, what is that, please?

MR. MITCHELL: I'm sorry, R-7(1), (2), and (3). It is the application by Arturo Zertuche with the State -- the Comptroller of Public Accounts. The Exhibit is actually the Comptroller of Public Accounts certificate, reproduction of documents on file with the Comptroller's office, being --

MR. DOYLE: I remember that one.

MR. MITCHELL: Okay. I do want to call the Court's attention as being the application on file with the Comptroller's office for a store -- a sales tax application number. The Exhibits being marked by the Secretary are the store license issued under that application.

Mr. Schnabel, would you mind giving Mr. Doyle copies of all of them so that he has them before I make an offer of them?

MR. DOYLE: Mr. President, with respect to all of these Exhibits, I would object because they violate the best evidence rule. With respect to -- they all appear to be copies of various instruments, some of which are so illegible, I can't even read them.

MR. MITCHELL: May I explain that, Mr. President? I was given the originals by the custodian of those documents. I had a guard bring them down here, and he wouldn't turn them loose to me and he made me swear that I would reproduce them and get them back to him. So I had to reproduce them. And we got the originals back to him and that's the reason that they are in such poor form.

MR. DOYLE: With respect to the Exhibit on which is marked R-8, it appears to be a copy of an income tax return of Hector Zertuche. I will submit that is irrelevant, and in order to get around the best evidence rule, obviously Hector Zertuche could come up and testify if this was his income tax return. It seems to me that would be very appropriate.

THE PRESIDING OFFICER: Bring them down, Mr. Doyle, so that Counsel can --

MR. DOYLE: R-9, I would level the same objection as R-8 which appears to be another copy of an income tax return on Hector Zertuche.

MR. MITCHELL: Am I to understand that Counsel takes the position that the Zertuche -- Hector Zertuche and Arturo Zertuche tax returns are irrelevant and immaterial after taking the position that the store was non-existent?

MR. DOYLE: Well, Mr. Mitchell, if I might reply, the best evidence about Hector and Arturo's income would be Hector and Arturo. And if you want to put their income tax return in, it seems to me that you would want to put in at least a copy and not some photostats. We don't know whether that's accurate or not, and they are not here to establish whether they are accurate or not. Obviously, they are both still alive.

There has been previous testimony to that effect.

MR. MITCHELL: My response to that is that the House Select Committee admitted those as being proven documents that are on file with the IRS. They are of the same standing as all the Carrillos and all the Rudolfo Couling ones.

MR. DOYLE: They were introduced in the House by you, Mr. Mitchell, and without any objection by anyone that I know of.

MR. MITCHELL: They were requested of me and I delivered them to the House Select Committee.

MR. DOYLE: My objection stands, Mr. President, as I have stated with respect to 8 and 9. With respect to 10, I would again say it violates the best evidence rule. All of these violate that.

THE PRESIDING OFFICER: The Chair thinks that the objection certainly should be sustained, nobody signed these, and there is no identification. It does violate the best evidence rule. The Chair sustains your objection.

MR. MITCHELL: Well, the Court is then going to be deprived of the documentation on Zertuche Store, Mr. President. May I request that the volumes be delivered, the original volume be delivered by the custodian, that they delivered them to me just yesterday, and under instructions that I was not to keep them, but that I was to duplicate them and return the volumes, and I'll see if I can't meet the objection.

MR. DOYLE: Mr. President --

MR. MITCHELL: They are part of the official records of the House Select Committee --

MR. DOYLE: But all we have are copies. All you ever delivered to us was copies, Mr. Mitchell. We don't have originals of any of the stuff you've asked us about. And you well know that. Everything that you saw yesterday was Xerox copies. All you ever delivered to the House was Xerox copies.

MR. MITCHELL: Counsel, there are tons of Xerox copies of tax returns in these records. That's all I was delivering. The originals of these documents were delivered to the House, the Select Committee and I was given them back yesterday to duplicate and make available for this record.

THE PRESIDING OFFICER: The Chair sustained the objection. And, Mr. Zertuche, I suppose he's living, and he would be the best evidence. Let's move on.

MR. MITCHELL: Mr. President, then the ones on 11, 12, 13, 14, 15, 16, 17, and 18, have they come in? The objection was only made to --

MR. DOYLE: No, sir, I objected to every Exhibit I said I leveled the best evidence objection at, Mr. President. I took it that you sustained those objections.

THE PRESIDING OFFICER: That's the way the Chair understood it, yes. All the way through. Yes.

MR. MITCHELL: I am going to withdraw them --

MR. DOYLE: Mr. Mitchell, out of an abundance of caution, if you'll allow --

MR. MITCHELL: I have no appeal, so I can't do anything but withdraw them. That's what I am going to do.

MR. DOYLE: I will be happy to attempt to see if we have any of the originals. I am very confident we have none of the originals on any of the items you just handed me. But if we do, I'll be happy to tender them to you.

MR. MITCHELL: I'm representing to this Court and this Senate, I asked for those to avoid just what we're getting into, and I was delivered bound books yesterday with the instructions I couldn't keep the Exhibits that had been previously introduced, and I was to duplicate them and return them is what I've done. Now, I am faced with the objection created by the physical impossibility for me to hold on to the bound official volumes, which the best evidence rule applies, which I say does not apply.

THE PRESIDING OFFICER: Let's don't argue any more about it. Let's proceed.

Go ahead, Mr. Mitchell.

MR. MITCHELL: I was waiting for him to give me back my Exhibits, Mr. President. Mr. Schnabel wanted to make inventory, which I think is proper, and I would like to have them back.

Q You do know a Zertuche General Store existed, don't you, Judge Carrillo?

A I do.

Q And the Zertuche General Store existed as your tenant, did they not, in the Vaello Sales Building?

A Yes, sir.

MR. DOYLE: Mr. President.

Q When did the Vaello Sales Building become rented to the Zertuche General Store?

MR. DOYLE: Mr. President. Could I again request to the Chair you ask Mr. Mitchell to establish dates with respect to the -- you know, what he's talking about.

MR. MITCHELL: I just asked him when, Counsel.

Q When did you lease it to Zertuche Store?

MR. DOYLE: Well, Arthur what I -- you said it existed. If it existed in 1850, doesn't make any difference in this proceeding. That's what I need to know is when it existed.

Q Judge Carrillo, you are a lawyer and judge and heard his question. When did it exist, please, sir? When did you lease this building to him?

A The Zertuche General Store began its existence approximately in 1964 and continued in the family until December of 19 -- December 31st, 1970.

Q All right. And in '64, who owned the Zertuche General Store, if you know of your own personal knowledge?

A Zertuche General Store was owned by Hector Zertuche.

Q And how long, if you know, did Hector Zertuche own Zertuche General Store?

A He owned the store until the end of 1966 when the gentleman joined the Army and got married and moved away, and then it was -- the ownership was assumed by Arturo Zertuche in 1967 to December of 1970.

Q All right. Now, I will show you what's been previously introduced -- I'll show you what's been previously introduced in evidence as the official record, Comptroller of Public Account, R-71, 2 and 3 and ask you if, looking at R-73 -- and, gentlemen of the Court and ladies, it's 2595 -- if that appears to be an application by Arturo Zertuche dated in 1967 for store license for the operation of his business?

A Yes, sir.

Q All right. Do you recognize that as Arturo Zertuche's signature, Judge Carrillo?

A I do, sir.

Q And do you know of your own personal knowledge where Arturo Zertuche conducted the business known as Zertuche General Store?

A At the beginning of 1967 it was conducted at the Vaello Sales Building. After Hurricane Celia, I think it was or Beulah, one of the two -- I can't remember exactly which one -- in September of 1967, the inventory was moved over to the Farm and Ranch over at the Vaello Lumberyard Company.

Q Do you know of your own personal knowledge how long it maintained its location at the Farm and Ranch Building?

A Until December of 1970.

Q And do you know of your own personal knowledge what occurred to the Zertuche Store in December of 1970? Did it terminate business?

A Arturo Zertuche graduated from school, got married, and moved to the Valley and went out of business.

Q All right. To summarize your testimony, the Arturo--the Zertuche General Store as owned by Arturo Zertuche existed then from about the first month of 1967 to the last month of 1970, is that correct?

A That's correct, sir.

Q And for a period of time had its location at the Vaello Sales Building, the building that you have already told this Court that you bought back in the '60's, I believe, is that correct?

A Yes, sir.

Q All right. Now, Judge Carrillo, the evidence is, in this case, I believe, to the witness, Rudolfo -- Cleofas Gonzalez as to the existence or non-existence of the Zertuche General Store. Let me ask you this. Did you have an occasion to do business or -- strike that. Did you have occasion to talk with Mr. Lloyd, your lawyer, as regards sales of the property through the Farm and Ranch to the Zertuche Store? And, if you do, tell us when you had such a conversation and what the nature of it was.

A We did have a conversation with Mr. Ed Lloyd, and that was back in 1967 when after Mr. Atlee Parr died, my brother was appointed as County Commissioner of Duval County, and we had a question on our mind about doing business with the Duval County since he was a County Commissioner. And I went over and talked to Mr. Ed. Lloyd to secure his advice as to what should be done about this particular matter.

Q And tell us, please, your recollection of what advice he gave you that you relied upon?

A Well, he told us that -- there was some question as to whether or not we could do business with Duval County and the County entities. He suggested and advised us that it would be best to do business through some other entity and not directly with the County.

Q And did you agree with him, Judge Carrillo, at that time?

A Yes, sir, I did.

Q And did you then undertake not to do business with the County or the school district thereafter?

A We did.

Q I will ask you, did you -- strike that. There is testimony in the record as regards the Benavides Implement and Hardware Company. Now, are you following my questions?

A Yes, sir.

Q Judge Carrillo, let me ask you, you are of Mexican descent, are you not?

A I am, sir.

Q And your family emigrated here from Spain and into that area prior to the time this state became a part of the United States, is that correct?

A And Mexico, sir.

Q And what's the percentage of people of Mexican descent in your county?

A I would say 98 percent.

Q All right. Let me ask you this: The Benavides Implement and Hardware, the record reflects, and I call the Court's attention to R-105, Page 871 of the yellow edition, that Mr. Couling filed an application with the Comptroller of the State of Texas, and this certification shows from the Comptroller, this application being dated 2/22/71, and I'll hand that to you.

A Yes, sir.

Q Do you recognize that as the document Mr. Couling mentioned, is that correct?

A Yes, sir.

Q All right, sir. Now, in February of 1971, you had just become the Judge of the 229th Judicial District for your first term, is that correct?

A That is correct, sir.

Q All right. Now, did you have any ownership interest with Mr. Couling in the Benavides Implement and Hardware Company?

A I did not, sir.

Q There was testimony, if you will recall, from Mr. Couling, that in the month of May of 1972, that he had a conversation with your brother, Ramiro Carrillo, as to the establishment of a partnership of which you were to be a partner. Do you recall that testimony?

A I remember the testimony, but it is not true, sir.

Q My question is put to you on the basis of that testimony of Mr. Couling. Tell this Senate, did you ever have any kind of working arrangement with Rudolfo Couling in the business of Benavides Implement and Hardware, Judge Carrillo?

A I did not. The first time that I ever heard about the fact that I was a silent partner in that store was during the Judicial Qualifications Commission hearing in Corpus Christi.

Q The fact that --

A Even the fact that Mr. Couling had testified once before in Corpus Christi, Texas at the Federal Court, he never mentioned the fact that I was -- any kind of a partner insofar as his store was concerned, and that was the very first time.

Q And the fact of the matter is, in September of '75 in the Federal Court, he testified he owned the business himself, did he not, Judge Carrillo?

A As far as I can recall, yes, sir.

Q And in November of '75, the first time, according to your testimony and my recollection is that he testified that you, through Ramiro Carrillo, were some character of partner in the Benavides Implement and Hardware, am I correct?

A Yes, sir, in Corpus Christi, as I recall, he testified that he had owned the Benavides Implement and Hardware Store, but just shortly before that had sold it to Cleofas Gonzalez. And then at the Judicial Qualifications Commission hearing in Corpus Christi, he again testified that he had sold it to Cleofas Gonzalez. But then for the first time, I heard that he was claiming that Ramiro, my brother, and myself, were partners in that store.

Q All right. Now, let's not refer to what the illustrious Mr. Couling has testified to, but rather what are the facts.

A The facts --

Q Where is the Benavides Implement and Hardware Store presently located, if you know; that is, a physical location?

A It's located at the center of town in Benavides, and, to the other question, sir, I have never had anything to do or any ownership, anything whatsoever to do with that store.

Q I'll ask you -- let me ask the question, Judge Carrillo. Is the location of the Benavides Implement and Hardware beginning in 1972 to date, distinct and apart from the location of the Zertuche General Store in the Vaello Sales Building which you own?

A Yes, sir.

Q Is the location of the Benavides Implement and Hardware Store in Benavides, Texas? And, from '72 to date, distinct and separate and apart from the location of the Farm and Ranch Store in Benavides, Texas?

A Yes, sir.

Q Has it always been separate and apart, Judge Carrillo?

A Yes, sir, the Benavides Implement and Hardware store is a successor, you would say, to the Oliveira Implement which was owned by Mr. Couling's father-in-law. When he passed away, Mr. Couling took it over.

MR. MITCHELL: Did you get the -- it's Oliveira.

A O-l-i-v-e-i-r-a.

Q All right. Now, the Oliveira Implement, Mr. Oliveira was Rudolfo's daddy-in-law?

A Yes, sir.

Q And the implement company was known as the Oliveira Implement Company?

A Yes, sir.

Q And how long was it known as the Oliveira Implement Company?

A As far as I can remember.

Q Well, '50's?

A Since I was -- no, back in the '40's. Oliveira Implement existed in Benavides back before I went with the Army.

Q All right. And as -- Mr. Oliveira became aged, and he lost his eyesight in the '60's, did he not, so that his son-in-law took over the business and changed its name from Oliveira Implement or Oliveira Implement and Hardware to Benavides Implement and Hardware, is that correct?

A Yes, sir.

Q Has the location of that business ever changed, to your knowledge, in the last forty years?

A No, sir.

Q Could you characterize the Benavides Implement and Hardware business as strictly a family business, that is, Oliveira family business, Judge Carrillo?

A That business was started by Mr. Jesus DeVeda Oliveira, Mr. Couling's father-in-law, from the very beginning, and has been in the Oliveira family all through the years. This is the first time I've ever heard that he's left the family.

Q Now, I had asked you earlier about some background information, and you had told this Court that Mr. Couling was a Tax Collector of the Benavides Independent School District for the Board.

A Yes, sir.

Q And as a matter of fact, he was a full-time employee of that board, was he not?

A Yes, sir, he -- he was in complete charge of the business office.

Q And his daddy-in-law and his in-law's family ran the Benavides Implement and Hardware up to the recent time, isn't that correct, Judge Carrillo?

A Yes.

Q And, as you heard his testimony, he sold the Benavides Implement and Hardware after several short years of operation to Cleofas Gonzalez in 1975, is that correct?

A That's what he says.

Q I'll ask you these questions, Judge Carrillo: Did you have any power of -- or control over the Benavides Implement and Hardware or its predecessor, Oliveira Implement, bank account?

A No, sir.

Q The administration or management of the daily affairs of the Oliveira Implement and/or the Benavides Implement and Hardware?

A No, sir.

Q How many times have you even been in the store building in your lifetime, if you can tell us?

Q Well, now, in the store building, I used to visit the store as a youngster back in those years. But, since it has become known as the Benavides Implement and Hardware as owned by Mr. Couling, I have been there once to buy a cylinder for a windmill.

Q What is the nature, if you know, of the business -- you say you went in there to buy a cylinder for a windmill?

A Yes, sir.

MR. DOYLE: Been there once since when, Mr. Mitchell? I missed it.

MR. MITCHELL: I'll have to ask --

Q Now, Judge Carrillo, without belaboring the point too long, I want to show you -- the reason I've asked these questions is that you know there is a series of Exhibits. Here, if the Court please, on Volume Two, beginning at -- well, as early as eight -- well, as early as 793 -- 795, for example, there are a series of exhibits -

MR. DOYLE: Mr. Mitchell, could you refer to a volume?

MR. MITCHELL: I thought I said Examiner's Volume Two. I'm sorry. Examiner's Volume Two, if it please the Court. These are all original documents and they are in the record.

MR. DOYLE: Page what?

MR. MITCHELL: Page 795. I picked that at random because it's the first one I could turn to.

Q There are a series of Exhibits beginning about the late 700 Series and running right on through the volume, indicating an invoice form which is Benavides Implement and Hardware printed across the top, "DRAWER M, BENAVIDES, TEXAS. HARDWARE, JANITOR SUPPLY, CEMENT, AUTO PARTS, PAINTS, TIRES, COMPLETE RANCH AND FARM SUPPLIES." Do you see that?

A Yes, sir.

Q All right. Now, Judge Carrillo, the testimony has been that those Benavides Implement and Hardware invoices were filled in by Cleofas Gonzalez. Do you recall that?

A Yes, sir.

Q Do you know anything about Cleofas Gonzalez filling in the Benavides Implement and Hardware vouchers that you have there in front of you?

A No, sir.

Q What is the date of the one, for example, you're looking at?

A June 30th, 1971.

Q All right. In June 30th of '71, you were a Judge of the 229th District serving your first year of your first term, correct?

A Yes, sir.

Q And June -- Mr. Cleofas -- Mr. Rudolfo Couling, if we're going to believe his application with the Comptroller, has been in the Benavides Implement and Hardware about four months, correct?

A Yes, sir.

Q The Zertuche General Store had closed in December of '70, correct?

A Yes, sir.

Q Did you have any connection with the Benavides Implement and Hardware store on that date or any other date, Judge Carrillo?

A No, sir.

Q Did you conspire with Cleofas Gonzalez, with Rudolfo Couling, Oliveiras, or anyone as regards the execution of that invoice on Benavides Implement and Hardware printed form, Judge Carrillo?

A No, sir.

Q When was the first time you ever saw it or knew anything about it? Or any of them, incidentally. I'm going to ask you about all of them before we're through. But I want to know specifically --

A The first time I saw those instruments, I believe, was during the Judicial Qualifications Commission hearings.

Q All right. Now, we'll move to a third incident. We've discussed Ramiro Carrillo and Brothers. We've discussed Zertuche General Store, Benavides Implement and Hardware. Now I want to talk about Farm and Ranch.

A Yes.

Q We'll move to it. Now, first of all, what is Farm and Ranch?

A Farm and Ranch is the supply store that is owned by Ramiro Carrillo, my brother, and myself.

Q All right. And, Judge Carrillo, is the Farm and Ranch -- how long has it been in business?

A We started that business in 1962.

Q And is that the business that continues to date?

A It is -- today --

Q To date.

A To date.

Q All right. Is that the business that has continued from 1962 to date?

A To date.

Q And has it been continuously a partnership owned and operated -- owned by you and your brother, Ramiro Carrillo?

A It is, sir.

Q And is that the business you told us about earlier that you went to Mr. Lloyd and requested his expert opinion as to whether or not it should be selling anything to these governmental entities?

A It is.

Q Is that the one that he told you that he would not -- he didn't think anything was wrong, but he would not sell anything directly to the entities?

A That is correct.

Q And is that the one that began selling to Zertuche General Store at that time?

A It is. It did -- it was.

Q All right. Now, is it a business separate and apart from and has it always been separate and apart from Zertuche General Store?

A It has.

Q You know as a matter of fact that the Farm and Ranch income has been reported in the 1066 forms and they are in the evidence on your individual return and Ramiro's individual return. Am I correct, Judge Carrillo?

A Yes, sir.

Q And the returns reflect your pro rata income from '62 to date, and those returns are available for the Senate's examination.

A They are, sir.

Q Those returns were prepared by whom, please, sir?

A By O. D. Kirkland.

Q And I'll ask you where is the physical location and where has -- strike that. Tell us the physical location of Farm and Ranch.

A The physical location of Farm and Ranch is on the south side of the main street highway on the west -- on the east part of town.

Q Now, tell us what it is. Is it a building or lot or what?

A No. It used to be Vaello Lumber Company. It is a very large building, and it covers -- the building and the yard cover approximately three-quarters of a city block. Now, the building itself, the front part of it through the storage rooms and what have you is, I would say, as large as this Senate Chamber.

Q Is the entire block covered, Judge Carrillo? Is it enclosed? Describe it for the Court, please, sir.

A Well, on the east side, there is the Dr. J. C. Gonzales' clinic. He was married to one of the Vaello sisters, and he owns two blocks -- I mean, two lots, I believe, on the northeast part of that city block. And the -- then beginning with the southeast corner, those lots behind Dr. Gonzales' clinic are part of the Farm and Ranch. Then on down clear on through the other highway, which comes through Concepcion, with the exception of, I believe, one or two lots that are owned by the -- they were owned by a Mr. Pete Coronado. He sold them to some individuals. I don't know who owns them now.

Q Judge Carrillo, I'll ask you, is the location -- strike that. We've had the name Vaello, into the evidence earlier. Now, I want to be sure that we all understand. There is a Vaello Sales Building, is there not?

A There's a Vaello Sales Building and a Vaello Lumber Company.

Q Are they distinct and apart?

A They are distinct and apart, sir.

Q And there's a Vaello thirty-six acres.

A And there's a Vaello thirty-six acres also.

Q All right. Now, the Vaello Sales Building, is that the building you previously testified that housed the Zertuche General Store?

A In Concepcion, yes, sir.

Q And the Vaello Lumber Building housed the Farm and Ranch.

A That is correct, sir. It was started -- the Farm and Ranch Supply was started at the Vaello Sales Building in the rear part. And then when I acquired the Vaello Lumber Company, we moved it over to the Vaello Lumber Company.

Q Put us in terms of years now in time.

A That was back in 1962 or '63, something like that.

Q Is it a fair statement that since 1962 or '63 that the Farm and Ranch was over at the Vaello Lumberyard, is that right? Just a minute. Counsel may have an objection.

MR. DOYLE: I don't have an objection specifically, Mr. Mitchell. It's just that he acquired the Vaello --

THE WITNESS: Sales Building.

MR. DOYLE: No, the ranch, the land --

MR. MITCHELL: The thirty-six acres.

MR. DOYLE: The thirty-six acres.

THE WITNESS: The thirty-six acres.

MR. DOYLE: Okay. Now, was it at that time that Farm and Ranch moved?

THE WITNESS: No, sir. There were three separate transactions. The bankruptcy court in Corpus Christi under the referee was selling all of the properties that were owned by the Vaello family. I bought the Vaello Sales Building.

MR. DOYLE: About when?

THE WITNESS: 1962, approximately.

MR. DOYLE: All right.

THE WITNESS: I bought the Vaello Lumber Company approximately four or five months later. And I bought the thirty-six acres shortly thereafter. That was the last part that I bought.

MR. DOYLE: Now, Mr. Mitchell, what was confusing me was when he moved the Farm and Ranch it was in connection with one of those purchases, and he didn't say which one or at what time.

Q All right. You heard Counsel's inquiry, Judge Carrillo. Answer that question, please.

A Yes, sir. Well, when we -- when I bought the Vaello Sales Building, my brother and I started the Farm and Ranch Supply at the Vaello Sales Building. Shortly thereafter I bought the Vaello Lumber Company and all its contents, which included some lumber and several materials which a lumber yard would have, was included in there. So, what we did was moved the Farm and Ranch Supply store over to the Vaello Lumber Company and took over all of the supplies that were already there plus the supplies that we had. Just continued in business.

Q When you acquired the Vaello Sales Building, Judge Carrillo, was there equipment in the Vaello Sales Building?

A Yes. When I bought the -- also when I bought the Vaello Sales Building, I bought it with everything that was contained therein. It used to be a furniture and appliance store.

Q Well, the reason for the relevancy, of course, is -- and I'll get on with it -- is that E-156, a check from Rudolfo Couling dated 5/20/71 to you was for \$1,000.00 recites "Store counter from O. P. Carrillo Drug Store". Now, I want to know what that is.

A Well, the O. P. Carrillo Drug Store -- part of the Vaello Sales Building I remodeled and converted into a drug store. And this counter, which was a part of the Vaello Sales Building that I bought, was made a part of the O. P.'s Drug, which --

Q Well, you got me confused now, Judge Carrillo. Where was the drug store in connection with that, with all of this?

A The drug store was on the -- at the Vaello Sales Building on the west section of the building. Again, the Vaello Sales Building is also a very large building and storage space, which covers approximately a quarter of a block.

Q Judge Carrillo, what other businesses have been conducted in the Vaello Sales Building since the '60's? What -- in the commodities --?

A The County commodities were occupied -- now, I didn't have anything to do with that except that there were -- the County had the delivering groceries and commodities to the poor people in Duval, and they were doing this at a little place on the western part of town. And it was not able to accommodate the people, and they had to sit out in the weather and come in for their groceries. So I made arrangements for the county to let them use some space in the Vaello Sales Building without rent, free of charge. All they had to do was to assume and pay the light bill because they had several large refrigerators and things like that that they needed to store their butter and whatever commodities they had.

Q All right. The summary is that the Vaello Sales Building I had been previously owned by the Vaello family and was a business of some sort. Is that correct, Judge Carrillo?

A Yes, sir. It was a large furniture store.

Q And in addition to that you had Farm and Ranch there for a short time.

A Yes, sir.

Q You also had the -- or you rented part of it to the Zertuche General Store.

A Well, the part that I rented to the Zertuche General Store was the part that was remodeled for the O. P.'s Drug because I had problems getting pharmacists to stay down there and run the business, and I didn't have any time to run the business and I'm not a pharmacist, and I was getting into a field that I was a stranger in. So, what I did was I closed it down.

Q As a result, you have sold most of the equipment. Am I right, Judge Carrillo?

A Well, I sold part of the equipment and part of the equipment went with the rental of the building to the Zertuche General Store.

MR. DOYLE: Mr. President, again, I'm having trouble hearing dates. I didn't hear when he said he closed the drug store, if he said when he closed the drug store.

THE WITNESS: Well, I opened it and closed it just about the same time. I couldn't get a pharmacist to come down there.

MR. DOYLE: What year?

THE WITNESS: That was in 1962.

MR. DOYLE: 1962?

THE WITNESS: Yes, sir.

MR. DOYLE: You opened the drug store and closed it down in 1962?

THE WITNESS: It was never actually really opened, Mr. Doyle. It was -- I remodeled it, fixed it up, and started the business. I had two friends of mine who were pharmacists, Mr. Freddy Garcia from Alice and Mr. Emilio Salinas from Austin, go down there and help me set it up. And then we couldn't locate a pharmacist to go down there and stay because our little community is quite small and doesn't offer the kind of life that some folks like to get used to in the big cities. So, I couldn't get any pharmacists, so it never really took off the ground. But a license was acquired and issued by the State of Texas for O. P.'s Drug and started out.

MR. DOYLE: All right.

THE WITNESS: Records over here in Austin would reflect that.

MR. MITCHELL: Mr. Doyle, did that clear up -- have you got any more --

MR. DOYLE: The date was what I was asking about, Mr. Mitchell.

MR. MITCHELL: All right.

MR. DOYLE: He said it was 1962.

THE WITNESS: Approximately, sir. It's been a few years, and I hate to put myself in a -- particular date. It was '62 or '63, something in there because Zertuche Store opened in '64, and they took over the office, the store space that was designated or that I had intended to be O. P.'s Drug.

Q Judge Carrillo, your prior testimony was that at some time, point in time, that the Zertuche Store moved from the Vaello Sales Building to the Vaello Lumberyard. Is that correct?

A The Farm and Ranch moved from the Vaello Sales Building to Vaello Lumberyard.

Q And you fixed that incident by what? I think you said one of the hurricanes.

A No, that was the Zertuche General Store moved from the Vaello Sales Building to the Vaello Lumberyard after the hurricane in September of 1967.

Q All right, sir. Now, do you recall when -- was there any merchandise moved from the Zertuche General Store at the Vaello Sales Building to the Farm and Ranch location at the Vaello Lumberyard?

A Yes, sir.

Q Do you recall who moved it?

A It was moved by George Zertuche, Sr., the father of Arturo Zertuche. I helped out and several people. I don't remember exactly who all did.

Q And do you know Elvira Rodriguez?

A Yes, I do.

Q And who is Elvira Rodriguez?

A Elvira Rodriguez was the lady who was attending to the Zertuche General Store.

Q Point of time again.

A During the years when it was in operation and when it was destroyed by the hurricane in 1967.

Q Did you, as a matter of fact, recover a damage claim against the insurance company for the destruction of that Vaello Sales Building by that hurricane? There was a lawsuit, as a matter of fact, over that --

A Yes, sir, well, that's what delayed the return of the Zertuche General Store from the Vaello Lumber Company back to the Vaello Sales Building because I had the building insured, and I filed my claim with the insurance company. And everybody down in that area, from the Corpus Christi area on down, was having trouble collecting from the insurance company on these hurricane claims. And I finally had to file a lawsuit, and it was not until, I believe, 1970 or close to there when I finally settled my case with the insurance company. And I was -- never remodeled the place back so that my tenants could move back in.

Q All right. What merchandise, if any, did the Farm and Ranch sell, commencing in the '60s and going through the '70s, Judge Carrillo, if you knew?

A I did not have any part in the running or the managing or the -- anything to do really besides the fact that I owned one-half interest. But what it had was all kinds of ranching supplies, home appliances, rental equipment.

Q Judge Carrillo, you saw the Benavides Implement and Hardware voucher and the list of the supplies and goods that were available for sale by Benavides Implement and Hardware.

A Yes, sir.

Q Would it be a fair statement to say that the Farm and Ranch was in fact a competitor of the Benavides Implement and Hardware?

A It was.

Q Now, did Farm and Ranch do business with the governmental entities?

A Farm and Ranch?

Q Yes.

A It did before my brother became County Commissioner.

Q All right. Are you informed there was some change. Tell the Court what change, if any, occurred and how the change was brought about.

A Well, when my brother was appointed County Commissioner in 1967, we stopped doing business directly with the governmental agencies.

Q Now, Judge Carrillo, you have been in public office, as your previous testimony indicates since January, 1961, when you became the County Attorney?

A Yes.

Q You were the District Judge operating in a three-county district, Duval County, Starr County, and Jim Hogg County, from January of 1971 to the time that you were suspended. Is that correct?

A Yes, sir. And I was also a school -- a member of the School Board for sometime, sir.

Q All right. I'll ask you this, and I'm now going to direct your attention to the time of, say, January 1971. Did you have any managerial duties whatsoever as regards the Farm and Ranch Store?

A No, sir.

Q Did you have any -- well, did you ever write any account -- check on the account? If so, tell us how many in the years '71, two, three, four, and five.

A No, sir. I was not authorized to write any checks. At least -- I did not write any checks on the Farm and Ranch Store, have anything to do with the running of the business, have anything to do with the store at all. As a matter of fact, I didn't come into the store but about once every month or so.

Q Do you know Cleofas Gonzalez?

A Yes, sir.

Q And I believe the testimony is that he worked for the County and his location was there at the Farm and Ranch location at the Vallejo Lumberyard Building, is that correct?

A Yes, sir.

Q Do you recall an incident that happened along '71, '72 where you and he had some discussion?

A Yes, sir.

Q And can you date that incident for us, please?

A I would say that that was back in 1971 sometime.

Q All right, sir. And tell us what occurred.

A Well, what happened was that I discovered that we had a shortage of money -- I discovered that there was some bills from Farm and Ranch that were not paid and I was --

Q Let me interrupt you. Had the folks that Farm and Ranch owed brought that to your attention?

A The people that the Farm and Ranch was doing business with were -- complained that -- I walked into a business store in Alice, Texas and I was asked ab a bill that was outstanding. And I was surprised and so I came back to find out how come that bill had not been paid. And Mr. Gonzalez advised me that there wasn't any money and I was surprised to find out that there was no money in the bank for Farm and Ranch Supply and I started to question Mr. Gonzalez about it. He felt insulted that I would question his operation and running of the store and heated words were exchanged and he said, "Well, if you would like for me to get the hell out of here I will do that." And I said, "I think that's exactly what you ought to do."

Q And did he thereafter leave?

THE PRESIDING OFFICER: The Chair wants to recognize the Senator from Potter. Senator, why don't you make your own request.

SENATOR SHERMAN: Mr. Mitchell, you had some testimony in regards to testimony of Mr. Couling before the Federal Court. My question, one, would it be possible to get an extract of that testimony -- as Counsel in the case, you would be able to request it and make it available to the Court next week.

MR. MITCHELL: Yes, I would like to -- I will do everything I can. However, Senator I have ordered that record for the appeal and been informed that the reporter is very ill. And we have an extension of time on into the next two months. I will make a special effort by calling her.

SENATOR SHERMAN: We can isolate it to that specific --

MR. MITCHELL: Yes, I would love to have it here, yes, sir. I will sure try to do that, Senator.

THE PRESIDING OFFICER: Yesterday I talked to a good many Members on the floor before I made the motion and several have to catch planes and the Chair is going to recognize the Senator from Tarrant.

SENATOR ANDUJAR: Mr. President, I move that the Court stand adjourned until Monday at 2:00 o'clock.

THE PRESIDING OFFICER: You heard the motion of Senator Andujar, the Senator from Tarrant. As many as favor say "Aye", those oppose "No". The "Ayes"

have it and we will adjourn until 2:00 o'clock Monday.

Accordingly, the Senate, sitting as a Court of Impeachment, at 12:01 o'clock p.m. stood adjourned until 2:00 o'clock p.m., Monday, January 19, 1976.

NINETEENTH DAY
(Monday, January 19, 1976)

The Senate, sitting as a Court of Impeachment, met at 2:00 o'clock p.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present: Adams, Aikin, Braecklein, Clower, Creighton, Doggett, Farabee, Hance, Harrington, Harris, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Mengden, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent: Andujar.

Absent-excused: Brooks, Gammage, Lombardino, Meier, and Moore.

A quorum was announced present.

Reverend W. H. Townsend, Austin, Texas, offered the invocation as follows:

O God, Our Father, Thou hast said if any lack wisdom, let them ask of God who giveth to all men liberally. There are problems in this life too great for mortal minds. In the holy hush of this moment, may Thy unseen presence inhabit all our minds and hearts to supply all our needs. We need Thy wisdom to make plain all our problems. We thank Thee for these servants of Thine and our State. Give them clear minds that they may think clearly, act wisely and with unselfish aims. Give them hearts of compassion for the poor and needy, and forbid that any should suffer unjustly. We thank Thee that Thou hast so blessed our great state for two centuries. As Thou hast made it great grant we of this generation may make it safe. We pray in Christ's name, Amen.

LEAVES OF ABSENCE

Senator Moore was granted leave of absence for today on account of important business on motion of Senator McKnight.

Senator Lombardino was granted leave of absence for today on account of illness on motion of Senator Traeger.

Senator Gammage was granted leave of absence for today on account of important business on motion of Senator Schwartz.

Senator Brooks was granted leave of absence for today on account of important business on motion of Senator Williams.

Senator Meier was granted leave of absence for today on account of important business on motion of Senator Farabee.

APPEARANCES

Judge O. P. Carrillo, Respondent; Honorable Arthur Mitchell, Attorney for Respondent.

Board of House Managers; Honorable Terry Doyle, Counsel; Honorable John Odam, Assistant Attorney General on behalf of the Board of Managers.

THE PRESIDENT: On January 7th, 1976, Mr. John Odam, the Assistant Attorney General prepared a memorandum for file outlining the precise conditions and procedures under which the Judicial Qualifications' Transcript was made available to the House Board of Managers and to the Senate. And if there's no objection from counsel for either side, the Chair at this moment will enter that memorandum in the record, is there objection?

MR. MITCHELL: No objection, Mr. President.

THE PRESIDENT: The Chair hears no objection. It is so ordered.

MEMORANDUM

TO: FILE

FROM: JOHN W. ODAM, EXAMINER, JUDICIAL QUALIFICATIONS COMMISSION

On Wednesday, January 7, 1976, the following individuals met at the Judicial Qualifications Commission's offices. Those initially present were Mr. Maurice Pipkin, Mr. Terry Doyle, Mr. Arthur Mitchell, Mr. Max Flusche, Mr. John W. Odam. Mr. Charles Schnabel and Mr. Tommy Townsend later came. The purpose of the discussion was to receive from the Judicial Qualifications Commission (hereinafter styled the "Commission") the volumes of testimony as well as all of the Exhibits in the proceeding before the Master and all pleadings.

The Judicial Qualifications Commission delivered to Mr. Mitchell, on behalf of Judge O. P. Carrillo, the "copy" of the following dates of testimony taken before the Master:

1. Monday, November 3, 1975;
2. Tuesday, November 4, 1975;
3. Wednesday, November 5, 1975;
4. Thursday, November 6, 1975;
5. Friday, November 7, 1975;
6. Monday, November 10, 1975;
7. Tuesday, November 11, 1975;
8. Wednesday, November 12, 1975;
9. Thursday, November 13, 1975.

(There is no volume for November 14, 1975 for the reason that Judge Carrillo was in a pre-trial hearing in Federal Court on Friday, November 14, 1975.)

On Monday, November 17, 1975, Judge Carrillo was also in the continuation of the same hearing. On Tuesday, November 18, 1975, Judge Carrillo was before the

Senate in the Impeachment Trial.

The volumes began again on Wednesday, November 19, 1975:

10. Wednesday, November 19, 1975;
11. Thursday, November 20, 1975;
12. Friday, November 21, 1975.

Testimony continued beginning Monday, December 1, 1975. Mr. Mitchell was delivered testimony for the following days:

13. Monday, December 1, 1975;
14. Tuesday, December 2, 1975;
15. Wednesday, December 3, 1975;
16. Thursday, December 4, 1975;
17. Friday, December 5, 1975;
18. Monday, December 8, 1975;
19. Tuesday, December 9, 1975;
20. Wednesday, December 10, 1975;
21. Thursday, December 11, 1975;
22. Friday, December 12, 1975;
23. Monday, December 15, 1975;
24. Tuesday, December 16, 1975;
25. Wednesday, December 17, 1975;
26. Thursday, December 18, 1975;
27. Friday, December 19, 1975.

Hearings were recessed for a week and testimony began again on Monday, December 29, 1975. Mr. Mitchell was delivered a copy of the testimony for the following:

28. Monday, December 29, 1975; and
29. Tuesday, December 30, 1975.

Testimony was completed before the Master on Tuesday, December 30, 1975.

Mr. Mitchell thereafter acknowledged receipt of the foregoing volumes of testimony. Thereafter Mr. Arthur Mitchell gave the foregoing volumes to Mr. Doyle who in turn presented them to Mr. Charles Schnabel, Secretary of the Senate. Mr. Charles Schnabel thereafter turned the volumes of testimony over to Mr. Tommy Townsend, Sergeant at Arms for the Senate for reproduction purposes. It was agreed and understood that these volumes of testimony would be returned after reproduction to Mr. Maurice Pipkin, Executive Director of the Judicial Qualifications Commission.

Mr. Mitchell was also tendered by Mr. Odam on behalf of the Judicial Qualifications Commission the original exhibits used in the Judicial Qualifications Commission proceedings. It was agreed and understood that these were all of the exhibits in the possession of the Judicial Qualifications Commission. It was agreed and understood that because of various use by counsel and the Master, that it may be possible that some of the exhibits would be missing. This would be due to the fact that there were thousands of pieces of paper with sub-parts. Also tendered for Mr. Schnabel's purposes in making the inventory were the original exhibit list prepared by the Court Reporters, Mr. Gene Chatham and Associates.

Also tendered were the pleadings filed by Mr. Mitchell and those on file with the Judicial Qualifications Commission. It was also agreed and understood that any pleadings filed on behalf of Judge Carrillo or any pleadings filed by the Examiner not included at the time of transmittal will be presented to Mr. Schnabel at a later time.

Also tendered and received by the above referenced parties were extractions of testimony of George E. Powell, two volumes, extraction of testimony of Cleofas Gonzales, and extraction of testimony of Arnulfo Guerra. Also the depositions of the following witnesses: Judge O. P. Carrillo, Ramiro Carrillo and Clinton Manges.

Mr. Mitchell acknowledged receipt of the exhibits and Mr. Mitchell thereafter tendered the exhibits and pleadings available to Mr. Schnabel on behalf of the Senate.

While it was understood that the tender was made by Mr. Mitchell to Mr. Schnabel, it was further agreed and understood that Mr. Terry Doyle on behalf of the Board of Managers was present at the time of the tender of the exhibits. Also, in addition to the above volumes and exhibits being tendered to Mr. Schnabel, they were first tendered to Mr. Doyle on behalf of the Board of Managers.

(Original signed by John W. Odam)
John W. Odam

JWO:pb

cc: Lt. Governor Bill Hobby
President of the Senate

Honorable Phil Peden
Chairman, Judicial Qualifications Commission

Mr. Maurice Pipkin
Executive Director
Judicial Qualifications Commission

Mr. Terry Doyle
Counsel, Board of Managers

Mr. Arthur Mitchell
Counsel for O. P. Carrillo

Mr. O. P. Carrillo

Ms. Elizabeth Levatino
Examiner, Judicial Qualifications Commission
Office of Attorney General

Mr. Max Flusche
Examiner, Judicial Qualifications Commission
Office of Attorney General

Mr. Charles Schnabel
Secretary of the Senate

Mr. Tommy Townsend
Sergeant at Arms
Senate, State of Texas

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: Mr. President, we would like to recall Judge O. P. Carrillo, please, to the stand.

DIRECT EXAMINATION RESUMED

(Questions by Mr. Mitchell:)

Q Judge Carrillo, you have been previously called to the stand, I believe, last Friday, had you not?

A Yes, sir.

Q And you were sworn to tell the truth and you understand, of course, the obligation of that oath?

A Yes, sir.

Q As carrying forward to your testimony today, do you not?

A Yes, sir.

Q By way of bridging the gap of our break over the weekend, I will refresh your recollection that in the latter part of our session last Friday I asked you concerning a discussion that you had with Mr. Cleofas Gonzalez in May of 1972. I direct your attention, please, to that date and that time and ask you whether or not at that time you did have such a discussion and for the purpose of bringing the Court up to date and bringing the record up to date I will ask you, if you had such a discussion, to tell us where the discussion was had?

A I did have such a discussion. I don't remember the exact date, Mr. Mitchell, but I did have such a discussion.

Q For the purpose of the record and may I respectfully call to the attention of the Court, Mr. President, that Cleofas Gonzalez recounts this discussion on Page 1123 of the record, on Page 1129 of the record, and upon 1139, if the Court desires to follow his rendition of the same discussion.

All right, sir. Is it your present recollection that you had some character of discussion with Cleofas in May of 1972, Judge Carrillo?

A Yes.

Q What was the nature of your discussion, what brought it about, please, sir, if you recall?

A I had been to Alice to a business place where it was called to my attention a bill from the Farm and Ranch Supply was outstanding and had been for sometime. So, I came back to Farm and Ranch Supply and asked Cleofas why the bill had not been paid. And he was very touchy about my inquiry into the business of Farm and Ranch Supply and he said he was running it and if I didn't like the way he was running the store he would get the hell out of there. And I said, "Well, under the circumstances perhaps that's the best thing you can do."

Q Judge Carrillo, were you in a habit, prior to that discussion with Mr. Gonzalez, of undertaking control of the daily running of the affairs of the Farm and Ranch?

A No, sir, I did not, I did not have time to do so and I didn't come by the store but once every month or so.

Q Well, let me ask you specifically. Prior to that time -- that is, May of 1972 -- did you have an occasion to make -- to employ any of the employees of Farm and Ranch?

A No, sir, I did not.

Q Did you have an occasion to, well, open a bank account?

A No, sir. I didn't have anything to do with the store at all.

Q Specifically -- I'm going to be required to ask you specific questions. Did you write checks on the account?

A No, sir. I did not.

Q Did you buy or sell on account of the Farm and Ranch account?

A No, sir, I did not.

Q Did you undertake to determine equipment that was to be purchased by the Farm and Ranch?

A No, sir, I did not.

Q Did you have an occasion to, well, open a bank account?

A No, sir. I didn't have anything to do with the store at all.

Q What was your -- strike that. Your testimony then, as I understand it, was -- for going on the premises in May of '72 was specifically in connection with matters that you discovered in Alice. Is that correct?

A Well, I wanted to find out how come the bill had not been paid. And, he told me that there wasn't any money and that surprised me, to find out that we didn't have any money in the store's account. And, I started to ask questions which he didn't like, and I arrived at the conclusion that something was wrong, but he wouldn't talk to me. He got very touchy and started an argument.

I considered myself the owner, or part-owner of the store, and he wouldn't answer my questions. He was outraged that I would question him, so I -- it led to his leaving the premises and I haven't, to this date, spoken one word to Cleofas Gonzalez.

Q Judge Carrillo, I know you dislike being specific, but as a matter of fact -- you say, "Questions he did not like".

State whether or not, as a matter of fact, you questioned him about thefts in connection with the store?

A Well, I was, because he was the one that was running the whole show, and at that time, I became interested -- I wanted to find out what was wrong because my name was going to be connected with the store and if we were going to buy merchandise that was not going to be paid, I wanted to be sure where we stood. But, he was very possessive and he didn't want anyone messing around with his business.

MR. MITCHELL: May it please the Court, and Mr. President, may I have permission to call the Court's attention to Mr. Cleofas Gonzalez' testimony on the question of the thefts and the admissions in connection therewith appear at Page 1151 of the record.

Q Judge Carrillo, I'll ask you, please, sir, is it a matter of fact that you did not, following that discussion with Cleofas Gonzalez in May of 1972, have any discussion with Cleofas Gonzalez thereafter?

A I had none whatsoever. As a matter of fact, the way Mr. Gonzalez came back -- my sister-in-law, Ramiro's wife, Alma, came over to talk to me, because Cleofas had left the store in a hurry and no one could make heads or tails out of what was there or the accounts or anything. It was in such a situation -- and my brother had confided in her and he didn't want to hurt my feelings. It seemed like he was going to take Cleofas' side against my wishes. And, she told me the problem that Ramiro was having and I told her, well, since I was not running the store and I didn't have anything to do with the store, that Ramiro could do whatever he wished, but I would have nothing further to have with Mr. Gonzalez -- to do with Mr. Gonzalez.

Q Judge Carrillo, although you have previously testified that the exact month or date that you could not recollect, but that you were sure it was 1972. If the record reflects that Mr. Gonzalez on various occasions, has testified that his recollection was - served that it was in May of 1972, would that serve your present recollection?

A He would have a better knowledge of the date because he went to work as he has stated, for Page Aviation in Corpus Christi, and he would know when it was that he was paid by Page Aviation. I don't -- I didn't keep track of his goings on after that.

Q That was my next question. Do you, of your own personal knowledge, know where Cleofas hid himself, or where he went after you all had your discussion in May of 1972?

A No, sir. I didn't have anything to do with Mr. Gonzalez after -- I didn't know what he was doing.

Q Now, did he show up for work, if you know, on the following day thereafter?

A He came back about 30 days later, as I recall, but I didn't have anything to do with him.

Q All right. Now, Judge Carrillo, while that is upon us, and the memory of your testimony; that is, that after May of 1972 you had no further conversation with him, I'm going to ask you, in connection with Article I, which is one of the Impeachment Articles that is being tried before this Court, you are charged here with, while holding office as District Judge for the 229th Judicial District of Texas, conspiring with others to have Duval County pay for groceries to which you were not entitled for your own personal use and benefit. Did I paraphrase that Article fairly accurately?

A Yes, sir.

Q Now, I'll ask you, Judge Carrillo, did you, using first of all the May of '72 date as the cornerstone for my question, did you, following May of 1972, conspire with Cleofas Gonzalez to secure the payment by Duval County for groceries to which you were not entitled?

A I did not.

Q I'll ask you if prior to May of 1972 you had a contract or an agreement or an understanding or a conspiracy with Cleofas Gonzalez whereby through either the device directly or indirectly or the welfare device, conspire to secure the payment by Duval County of groceries for your personal benefit?

A I did not.

Q Now, Judge Carrillo, I'll ask you further, in connection with the same general question, and I'm going to come back to him, I'll ask you now to move to Article VII, Article VII, under which you are being tried by the Court of High Impeachment is, and I'll hand it to you, relates further to conspiratorial conduct as regards to renting of equipment to Duval County which did not exist, or for renting equipment, the benefit of which did not fall upon Duval County. You see that Article VII?

A Yes, sir.

Q All right, sir. Now, I'm going to get to -- at a later point in our examination, my examination of you, Judge Carrillo, I'm going to ask you specifically as regards to Exhibits appearing on Page 797 and the like, but I'll ask you the general question. Following your discussion or the argument, however you want to characterize it, that you had, that you told the Court about in May of 1972 with Cleofas Gonzalez, did you discuss with him or have any agreement, combination, understanding, or contract as regards the charging to the County of Duval or any other governmental entity of rentals for equipment that did not exist?

A I did not.

Q Did you have an agreement, a contract or understanding, a conspiracy with him as regards the rental of equipment to Duval County or the school district or the water district when the governmental entity did not receive the benefit --

A No, sir, I did not.

Q I'll ask you, prior to May of 1972, Judge Carrillo, did you have such an agreement or understanding with Cleofas Gonzalez as regards charging the County or the school district or the water district for rental on equipment that did not exist or for the rental of equipment that the governmental entity did not use?

A I didn't have it with Cleofas Gonzalez or with anybody else.

Q All right. Now, Judge Carrillo, I have spent considerable time Friday, if you will recall, detailing the various governmental entities, the Commissioners Court of '71, the Commissioners Court of 1975, if you'll recall?

A Yes, sir.

Q And the school board of trustees?

A Yes, sir.

Q I'll ask you a general question, and I think you owe this Court the responsibility under oath, and I'll ask you questions specifically about these various courts in like with Article I and Article VII as preferatory to my going into those two

Articles specifically. Did you at any time, Judge Carrillo --

MR. MITCHELL: And, if it please the Court, now, I'm going down the list of the Commissioners Court of the year '71, then the Commissioners Court of '75.

Q Did you at any time before May or after May of '72 at any time, Judge Carrillo, have any contract or agreement or understanding with County Judge Archie Parr, Dan Tobin, Juan Leal, Ramiro Carrillo or Felipe Valerio, your Commissioners Court in 1971 as regards securing of groceries for your own personal use, which groceries were paid for by the Duval County Treasurer?

A I did not.

Q I'll ask you the same questions as regards to renting of equipment to Duval County, to the school district or to the water district as regards equipment that did not exist, Judge Carrillo?

A I did not.

Q I'll ask you the same question as regards the Commissioners Court now that you testified to Friday was in office in March of 1975. Did you have such a contract, agreement, understanding or conspiracy with Judge Daniel Tobin, Manuel Amaya, Juan Leal, your brother, Ramiro Carrillo, or Felipe Valerio as regards any scheme, device, conspiracy to furnish groceries to yourself without having paid for them and having Duval County pay for them, Judge Carrillo?

A I did not.

Q I'll ask you the same question, please sir, as regards any contract, any understanding, any agreement, any conspiracy with the Commissioners Court in March of '75 as regards collecting the money from the County, water district, school district, for rental of equipment that did not exist and for rentals of equipment that these entities did not use?

A I did not.

Q Judge Carrillo, Mr. Rudolfo Couling was asked several questions by Counsel for the Board of Managers as regards the Old Party, etc. I'm going to ask you to clarify what the political situation is there and has been there in Duval County. What is the Old Party or what was the Old Party, if you can tell us, please sir?

A How far back do you want to go, sir?

Q Well, as far as the memory of man, as they say. Whatever your personal knowledge is. I think the Court needs to know what the political, the social structure of that County is as relates to these charges.

A Well, I can't tell you from the beginning of time when the Old Party began, because I know that there is a plaque at the courthouse, when the courthouse was built, I believe it was 1916 --

Q That's the courthouse of San Diego?

A San Diego, and my grandfather was one of the County Commissioners. At that time, the Old Party was in existence, and I was not. I hadn't been born yet. So, it goes way back before my time. I can only tell you, the Old Party as I have known it, since really coming back from law school, because I was away from Duval since the fifth grade.

Q Your testimony previously indicated, and there is testimony in this record that members of your family have been politically active, is that correct?

A My grandfather was County Commissioner, and a political friend of old Senator Archer Parr. And through the years, my father, also, was a very close friend and close associate of Mr. George Parr.

Q Your father, D. C. Chapa, is that correct?

A Mr. D. C. Chapa. David Carrillo Chapa. A lot of folks don't understand why my father is Chapa and I am Carrillo. The fact is it goes back to the old Spanish way of using your mother's name last, so he is called D. C. Chapa, which is David Carrillo Chapa.

Q The Spanish custom and the custom among many Latin people is to use the matronym rather than the patronym, is that your --

A Yes, sir.

Q And Chapa is your maternal name?

A That's correct. My grandmother was Chapa on my father's side.

Q And Carrillo is the paternal?

A That's correct, sir.

Q Is your father alive and is he politically active?

A He is alive. My father will be 80 years old his next birthday, and he's not politically active any more.

Q How about your brother? There is some testimony you have a brother who was -- his name is Oscar Carrillo, who has also been in politics in that area, is that correct?

A Mr. Mitchell, there is no question that my family has been in politics for years. We were raised in politics. We grew up in politics. And that's about all we know, really, is politics.

Q All right.

A We won't deny that.

Q Taking -- well, this, of course, is a pastime for that area, isn't it? Everyone is sort of politically active in the whole area, isn't that correct, Judge Carrillo?

A I would say that there are very few folks down in Duval County who are not politically inclined one way or the other.

Q All right. Now, I'll ask you, there has been testimony in the record as regards split between the Carrillo faction and Parr faction. Is that true, did such a division occur?

A Yes, sir, it did.

Q Can you pinpoint for the Court, when, if you know, if such a division occurred in that area, Judge Carrillo?

A The division occurred during the school elections of 1974.

Q All right. Let me ask you, 1974, is that the Benavides Independent School District?

A Yes, sir.

Q All right. Now, tell the Court, please, what were the circumstances of that election that led to the split between the Parr faction and the Carrillo faction?

A Well, George Parr and Archer Parr were supporting one candidate, and my family was supporting another candidate for the school board. I myself remained neutral and apart, because I was District Judge, and I did not want to get involved, and I so made the statement, and I made an appearance at a political rally to make my statement, that I was not going to get involved one way or the other. And I made the statement to the press, and I also made the statement that I was just going to go and vote that day, and I was going to leave the county and had asked my Administrative Judge to have another Judge available in case one was needed.

Q Was that board, the one that was coming up for election, composed of your father as the president of the board with Luis Elizondo, Enrique Garcia, Ken Bercaw, Al Schueneman, Joe Garcia, Rogelio Guajardo?

A No, I believe by then my father had already resigned from the board, Mr. Mitchell. I don't believe my father was on the school board at that time.

Q Was the Parr candidate Ruben Chapa?

A No, sir, that was before that election. And what happened was that the opposition was taken lightly, and as it developed, there was also a division of candidates in the city election, of the City of Benavides, where what was called the Carrillo faction had fielded a slate, and the Parr faction had fielded a slate and it was the first time in many years there had been a separation of politics insofar as that was concerned. No one paid too much attention to it, and as a result what happened was the candidate that the Carrillo faction supported for the school board, which was Mr. Al Schueneman from Freer, won the election, and the Carrillo slate which was supported for the city council also won the election, and I was -- when the returns came in, as a matter of fact, Mr. Parr, Mr. George Parr visited me.

Q When was that visit? Do you recall?

A It was the night the returns -- election returns came in.

Q About when?

A It was in April of 1974.

Q All right, sir.

A And he was completely unglued, and making all kinds of remarks and I was -- and he visited with me because I had stayed neutral, and he talked to me, and he said, "This will be the last time that the Carrillo family surprises me. I assure you that I will get you the next time." And I said, "You know, Mr. Parr, I was not involved in any of these things, and I think it's sort of a family misunderstanding. And everyone has been together here for too many years, and I believe that if the folks got together and talked, that these matters could be straightened out." And for the whole year as follows, the newspaper accounts will verify this. I did my best. I was about the only one who was able to visit between both sides, visit and carry messages and everything, and I was kidded and I was called the Henry Kissinger of Duval County, because I was trying to settle -- make peace among the troops down there.

Q Were your efforts successful, Judge Carrillo, in bringing about --

A I thought they were. It got to the point where visits were held, differences I thought had been settled and agreed upon and things would go peacefully down the road, but then at the election of '75 it started to -- as the elections approached it became clear day by day that things were not going the way they were supposed to go. And I had a conversation when the candidates were again starting to file -- George Parr called me over to his house one day and he asked me if I could not talk my father into running for the school board. And that he was respected in the community and he thought that would settle the differences and get a lot of the candidates out of the way. I advised him that my father was getting old and that he had retired from politics and the family did not feel that he should get back into politics, but that I would convey the message to him and if it helped matters I would tell him but personally I was against it and I felt my family was going to be against it. And I did talk to my father and my father said "Well, if it's going to help things I will run, otherwise I will not." So, we had a conference, at which time I drove my father, and Mr. Parr and my father and myself met. And everyone agreed that things would be rosy, you know, from there on out. Everything was going to be all right, everything was fine and dandy and everyone was going to drop out of the race and then everything was going to be fine.

And as the date approached for candidates to either file or get off the ballot -- rather the filing date had closed, nobody else could run or file as a candidate. And the days approached when a candidate could get his name withdrawn from the ballot and it seemed like Mr. Parr was not keeping his word, insofar as my father was concerned.

Q In what way, Judge Carrillo?

A He had told my father that if he filed as a candidate that he would talk to Hilda Parr, his sister-in-law and get her out of the race and that would make everybody happy.

Q How about Ruben Chapa, did he say anything about --

A He would get Ruben Chapa out of the race, too.

MR. DOYLE: Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President, I would object to this line of questioning at this time. I thought for a moment there was some relevancy, but I don't absolutely see any at all.

THE PRESIDENT: Could you state the relevancy, Mr. Mitchell?

MR. DOYLE: And I further object to the hearsay statements that he's eliciting from the Judge with respect to other parties.

MR. MITCHELL: I do think -- Mr. President, may I ask my client a question and it might clear up that later objection, then I will answer the Court's question.

Q Were you in the presence of Mr. Parr?

A Yes, sir.

Q And heard the -- and participated in the discussion as to Mrs. Hilda Parr and Ruben Chapa?

A As to all of this conversation, I was present.

MR. DOYLE: Mr. President, that still makes it hearsay, that witness is not here and able to testify.

THE PRESIDENT: Could you speak to the relevancy, please, Mr. Mitchell.

MR. MITCHELL: Yes, the next -- I will address myself to the relevancy on the political motivation of the proceedings as has been pled in our answer, Mr. President, and has been part and parcel of our case all the way down the line. The testimony -- I'm going to tie it in with Mr. Cleofas Gonzalez and give them a motive for leaning against this man -- Cleofas Gonzalez -- as a matter of fact I'm going to tie in Ruben Chapa, Oscar Sanchez, Vincente Chapa, Rudolfo Chapa, Francisco Ruiz. And the testimony relates to their credibility and the reason for their testimony that's been introduced in this proceeding against Judge Carrillo.

THE PRESIDENT: Judge Carrillo, is it your testimony that the various political arrangements and agreements that you have testified to that Mr. Parr made, he made directly to you or in your presence?

THE WITNESS: Every single bit, sir, I'm not talking about at any time -- that any of these conversations covered at any time which I was not present, I'm only stating what occurred when I was there and present.

THE PRESIDENT: The hearsay objection is respectfully overruled. The Chair would request you, Mr. Mitchell, please to make your connection, show your relevancy with a minimum of detail.

MR. MITCHELL: All right, Mr. President.

Q Judge Carrillo, in line with the objection and the President's instruction, you, of course, your being a lawyer and a judge, limit your testimony as to those matters within your personal knowledge, and though the question might ostensibly call for hearsay you of course will limit your answer?

A Yes.

MR. MITCHELL: If it please the Court I will make the matter relevant as expeditiously and quickly as the flow of the testimony will permit.

Q Judge Carrillo, I will ask you, did Mrs. Hilda Parr withdraw and Mr. Ruben Chapa withdraw from the race?

A No, see it -- as it turned out, on the very last day --

Q Pardon me, is that the same Mr. Chapa that testified here and is known as Tete Chapa?

A No, Ruben Chapa, that's his brother.

Q All right. Pardon me, because of the objection. Is that the gentleman that Mr. Cleofas Gonzalez stated that you had entered a conspiracy with to buy these groceries, is that Mr. Tete Chapa and Mr. Ruben Chapa, the very same man?

A Those are the folks, yes, sir.

Q Those are the grocery people and those are the names that appear on H-1(1) to H-1(28), is that correct.

A Tete and Rosa Chapa.

Q Right. All right. So, these Chapa folks are the ones that were in the school race, the school board race back in 1975 about which you're testifying?

A Yes, sir.

Q All right. You may proceed.

A On the last afternoon, on the last day to withdraw as a candidate I went back to Mr. Parr and I told him, "Now, it looks like what you said was going to happen is not going to happen and if it's not I would like to know today, because in that case my father will drop out as a candidate today. Today's the last day to get out." And he said, "I am leaving right now, everything will be taken care of this afternoon. Don't you worry about it, I gave you my word and I will keep my word." So, I said, "Fine."

So, I left and nothing happened and everyone stayed in the race. So, I came back the next day and I asked Mr. Parr what had happened and he said, "Well, you know your daddy testified against me in the federal courts..."

Q Well, let me interrupt at this point. Had at that time Mr. Parr been convicted in the Federal Court U. S. vs. George Parr in the Southern District at Corpus Christi for income tax evasion?

A Yes, sir. Well, that sort of started things out, because my father testified against -- or rather, not against, but he testified for the government in the Federal case.

And the day that Mr. Parr was convicted he came back to San Diego and made everyone on the school board -- my father was -- I mean on the water district, my father was on the water district, he made everyone resign from the water district and named successors. And my brother, Ramiro, had also testified against Archer Parr in the case in San Antonio. And at that time Mr. Parr told me, he said, "Your father testified against me in Corpus Christi and Ramiro testified against Archer in San Antonio," and he said, "And you all have been nothing but trouble to us the last year. You made a fool out of me last year and you will recall that I told you that I would get you and gut you." And he said, "That is exactly --" he said, "I never had any intentions of honoring my word to you or of honoring my word to your father." He said, "I wanted to do this so that at the next election I could make a complete fool out of your father."

Q Is it your testimony at this time -- that is in the first part of 1975, then, Ramiro Carrillo had testified in the Federal District Court for the Western District *U.S. v. Archie Parr* in San Antonio. Is that correct?

A Yes.

Q And your father, D. C. Chapa, had testified for the government in the case of *U.S. v. George Parr* tried in the Southern District at Corpus Christi, where Mr. Parr was convicted, I believe, on income tax evasion. Is that correct?

A Yes.

Q All right. Now, Judge Carrillo, what, if anything, then transpired as regarding the split between the Parrs? Was there anything else that occurred that precipitated a further breakup between the Carrillos and the Parrs?

A Well, unknown to me, although I have been accused, at that time I made a statement to the press that I was through trying to patch things up between the families and that I was completely going to divorce myself. I was hurt by the way Mr. Parr had treated my father and I was not going to have anything to do with him. But unknown to me on the very next day I went to Rio Grande City to hold Court and the District Attorney met me over there with removal proceedings, because the Task Force in the investigation had already begun over in Duval County.

MR. MITCHELL: May I interrupt? If it please the Court, the testimony of Arnulfo Guerra, the District Attorney of the 229th District is before the Court in a special extract dated -- showing his testimony as of December 5th, 1975, Volume Two. And his testimony can be referred to in the transcribed form that ties in with Judge Carrillo's testimony at this point. Judge Carrillo -- and as I might state to the Court further the removal partitions are on file and are part of the documentation of this case.

Q Let me ask you this: The record reflects that there were partitions for removal filed by Arnulfo Guerra sometime in the first part of 1975. Is that correct?

A Yes, sir.

Q And I believe the record reflects -- and I'm going to try to summarize it, although I must lead you in order to do so, the record reflects you had not been in communication with the District Attorney of Duval County or the 229th Judicial District prior to the time that he filed these petitions under the statute and presented them to you for action. Is that correct?

A The District Attorney notified me of his plans while I was in Rio Grande City one morning and I told him I would meet him back in San Diego at the courthouse, that I thought that matter should be taken up in Duval and not in Starr County. That I would be back in Duval County at 2:00 o'clock that afternoon.

Q Now, without going into the pleadings. And if it please the Court, those pleadings are here. They are styled, I believe, State of Texas vs. --

A Joe Nichols against the various parties.

Q All right. Let's see if we can get them. That would be first of all Mr. M. K. Bercaw, Jr., that you previously identified was on that board, is that correct?

A Yes, sir.

Q That would be --

A M. K. Bercaw. Mr. Al Schueneman who was a man that we had supported just recently for the school election.

Q He was sued, was he not?

A Also.

Q And Enrique Garcia?

A And Enrique Garcia and --

Q Luiz Elizondo?

A Luiz Elizondo.

Q And how about Joe Garcia?

A And Joe Garcia.

Q And state whether or not as a Judge these petitions, or the informations as the statutes called them, were presented to you for action, Judge Carrillo?

A They were presented to me the following morning and that was the reason why I was trying to say there was an accusation that I had done this, because of my misunderstanding with Mr. Parr and I took issue with that, because no one, no attorney, could possibly prepare all of those petitions within the time that there was -- as a matter of fact, what had happened was that the District Attorney -- because for the Task Force -- we would have to go back a little bit in point in time -- had started when there was news that the records were being destroyed over at the Benavides Independent School District, the records were being refused to the public, to the press and to the grand jury.

Q Now, let me stop you at that point. As a matter of fact, the *Corpus Christi Caller Times* had an article in the first part of 1975 as regards the refusal of Rudolfo Couling to deliver the records of the Benavides Independent School District. Isn't that correct?

A Yes, sir. There was a law suit filed by the *Corpus Christi Caller* because of that.

Q Sued Mr. Couling?

A Mr. Joe Coudert and I think a gentleman who was here today were parties to it, I believe.

Q And that Mr. Couling is the gentleman that has previously testified here and in the Judicial Qualifications Commission and in the Federal trial. Am I correct?

A Yes, sir.

Q All right. Now, let me bring it up now --

THE PRESIDENT: Mr. Mitchell, at that point, may I refer to last Friday just before adjournment, I believe Senator Sherman asked you if it would be possible to make available a copy of Mr. Couling's testimony in that trial.

MR. MITCHELL: I have attempted to contact the reporter for a copy of Mr. Couling's testimony in the Federal Court, Mr. President. She is very ill. She has given us no indication she would have our record ready before the latter part of February, and quite honestly, I don't think she will be finished then. But, I will make every effort to get that record.

I ordered the record -- officially ordered the record, I might add -- for the Court's purpose, I ordered the record back in September, the entire record.

THE PRESIDENT: Well, even if it's not possible to produce, in a matter of a few days, the entire record, would it be possible for the reporter to go directly to Mr. Couling's testimony and put that on a priority basis?

MR. MITCHELL: Yes, sir. I have informed her of that, Mr. President, but the Court must realize that he was on the stand about five days, and several -- literally hundreds of exhibits were introduced. I am trying to get it for the Court.

As I said, I have an official request for the full transcript dating back to September of last year. I have contacted her; she is ill. The fact of the matter, I believe Judge Carrillo has personal knowledge on her condition. I sent him down there to talk with her.

I would like to have the record for this Court.

I might say this, if it please the Court. Much of his testimony is reproduced in the Judicial Qualifications Commission trial that was in the Federal trial. I brought over some of the checks, and whatnot, from that trial. I am trying to make -- I remember the Senator asking for that. I will try every -- I will make every effort I can to get that record before us.

MR. DOYLE: Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: While we are on that subject --

THE PRESIDENT: Could you turn on your microphone?

MR. DOYLE: Well, it's on.

While we are on the same subject, I inquired of Mr. Mitchell if he would get us copies of the Judge's income tax return for those years that are missing, and I was wondering if he had gotten those for us.

MR. MITCHELL: Judge Carrillo, you have your '71 return? I believe Mr. Doyle has asked for that.

MR. DOYLE: No. It is '73, I believe, and '74.

MR. MITCHELL: Now, wait a minute. Most of those are in the record, but you have no objection to delivering your tax returns for '71, '72, '73 and '74?

THE WITNESS: I have no objection whatsoever. If there are any missing, I will contact Ms. Gibson, and I am sure that I can get them even though Mr. Couling couldn't get his.

MR. DOYLE: Can we count on those for like tomorrow, perhaps?

MR. MITCHELL: Judge, did you hear Mr. Doyle?
We'll have those. I think we have --

MR. DOYLE: I think you have them. I just don't think they got in the record because the record in the Judicial Qualifications Commission is replete with references to them, but somehow, they just never did get introduced.

MR. MITCHELL: So the Court will understand, Mr. President, we made available those returns to the House Select Subcommittee back in March.
Judge Carrillo, how many did we deliver? Do you recall?
We didn't deliver --

THE WITNESS: I believe, Mr. Mitchell, that at that time, the '73 was missing also, and we tried to locate it and Ms. Jan Fox was not in Corpus Christi at the time and you and I couldn't locate it in the filing cabinets. It should be -- they should be somewhere in there, and if they are not, we will -- I think Mr. Kirkland possibly has a copy of it, and he is due to testify here also. We will get it.

MR. MITCHELL: Yes, we are going to have Mr. Kirkland.
Mr. President, we have subpoenaed Mr. Kirkland who is the accountant for O. P. Carrillo, individually; Zertuche General Store; Farm and Ranch; Ramiro Carrillo, and we intend to have him here with all his work papers and all the tax returns.
Fact of the matter is -- Judge Carrillo, where is your chart that I made up for you?

If I might be permitted --

THE WITNESS: Mr. Mitchell, I returned it to you back in the office, and it's probably over there, then.

THE PRESIDENT: Mr. Mitchell, returning for a moment to the matter of Mr. Couling's testimony in the Federal trial down there. The point in which Senator Sherman has expressed particular interest is whether or not Mr. Couling indicated in that testimony that he was the sole owner of Benavides Implement and Hardware. Does testimony relating to that point appear in the record of this trial?

MR. MITCHELL: I can represent to this Court under my oath as an attorney, he testified at that trial that he was the sole owner of Benavides Implement and Hardware; that he took \$22,000 worth of checks, endorsed them and they were forged -- forged either to payees, forged on --

MR. DOYLE: Mr. President, I respect the Court's --

MR. MITCHELL: I'm trying to answer the question, Mr. Doyle. I didn't --

MR. DOYLE: I respect the Court's curiosity but it seems to me that the best evidence on that would be some other source than what Mr. Mitchell recalls.

MR. MITCHELL: Now, I examined him for several days. I recall his testimony.

THE PRESIDENT: Mr. Mitchell, if that testimony does appear in the record before this Court, the Court would be obliged if you would indicate the references.

MR. MITCHELL: Yes. Mr. President, it appears, partially in this record. I examined him as -- well, I can make a separate inventory of--I wasn't -- I didn't expect to be called on Mr. Couling's testimony. I've got everybody but him, but --

THE PRESIDENT: If you could make -- if you could just make that reference available at some time in the future.

MR. MITCHELL: Yes, I will be glad to.

THE PRESIDENT: Mr. Mitchell, also, does there appear in this record a copy of the pleadings in the suit filed by the Caller Times?

MR. MITCHELL: Yes. The -- it was under the open -- It's under the open --

THE PRESIDENT: Open Records Act.

MR. MITCHELL: Yes, sir. It was the Open -- it was a suit filed against Couling under the statute of the Open --

THE PRESIDENT: Open Records Act.

MR. MITCHELL: Right.

THE PRESIDENT: Could you make available to the Court a copy of the pleadings in that case?

MR. MITCHELL: All right, sir. I think they are in here. I have used them so many times.

MR. DOYLE: Arthur, that's not in that record. It's not in there.

MR. MITCHELL: I think it's an Exhibit to my pleadings before the Judicial Qualifications. If I might be permitted, at the break, to go in. Fact of the matter is, I have them.

THE PRESIDENT: All right. Let's wait for the break, then. Please proceed, Mr. Mitchell.

THE WITNESS: If I might make a suggestion, Mr. President. I believe that I have a car coming in either tonight or first thing in the morning, and if we could make a telephone call to the District Clerk's office in Duval County and get a certified copy of those pleadings, they could -- but, that should be decided right away. They could be brought in later on tonight or in the morning.

THE PRESIDENT: Well, I think that would be very helpful, Judge. Could you have somebody make that call, or is it a call you need to make yourself?

THE WITNESS: Yes, sir. Is Mr. John Cutright, our investigator, here? He's supposed to be here somewhere. If we can get him, I will have him make that phone call.

THE PRESIDENT: All right. The Bailiff has gone to look for Mr. Cutright.

Q At any rate, Judge Carrillo, at that time, there was a coming together then of the matter of the school board election, the Hilda Parr-Ruben Chapa feeling -- that is, those two candidates as versus your father, and then the question of the petitions for removal filed by the District Attorney for the removal of the various members of the school board -- Mr. Bercaw, Mr. Luis Elizondo, Enrique Garcia and Joe Garcia. Is that correct?

A Yes, sir. But, there was another incident that happened a little -- shortly before that that had something to do with it.

Q All right, sir. Judge Carrillo, was there another petition filed to remove Archie Parr?

A There was a petition filed to remove Archie Parr but that's the incident that I am referring to where displeasure was shown towards me was prior to this time.

Q All right.

A At the time, the -- there was some problem in the water district, and there was a -- some talk about the removal of -- placing the water district in receivership. And, Mr. Archer Parr came over to me and told me that he had come over and talked to John Hill, the Attorney General, and he had made arrangements to have Mr. Gilbert Sharp appointed receiver. The Attorney General had filed a petition. If I would agree to go along, and appoint Mr. Gilbert Sharp as receiver of the water district. And, I asked him why I had not been consulted about such a move, if it involved my making an appointment and arrangements for me to act as a District Judge were being made before a petition was even filed.

So, he said, "Well, that's the way things stand." So, I immediately got in the car and I drove to Brownsville, and I talked to Mr. Gilbert Sharp. And, I said, "Mr. Sharp, has anyone been in touch with you about anything?" And he said, "Yes, the Attorney General's folks and members of the water board had been in touch with me and they are going to file a petition in your Court. And it says you will appoint me as receiver and take over that water district."

And I said, "Does that mean that you are going to do whatever anyone tells you to do, or does that mean that you are going to act independently and of your own

judgment?"

And he said, "No, sir. I'm going to act independently and of my own judgment."

So, we went out and visited and had lunch, and on the way back, I stopped and I talked to Judge Alamia, my Administrative Judge. I told him of what was happening and what was going to happen. And, Judge Alamia told me, he said, "You know, Judge Sharp has been an associate of yours and he was an attorney who represented George Parr and you folks in that federal case back in 1956 or '58. And, I think you would be criticized if you appointed Judge Sharp as receiver of that water district."

I always consulted Judge Alamia in all matters -- that had to do -- I was new on the Court, and in all matters that have to do with the -- my function as a District Judge. And Judge Alamia definitely told me that he thought that it would be a mistake and that I would be criticized for it. And, I came back and I told Archer that in -- that as far as I was concerned, I was not going to be in agreement to any arrangements that him and the Attorney General had insofar as appointing someone to take over that water district and continue to run it the way it was being run.

So, what happened was they changed the procedure. Instead of going to the District Court, the water board named Judge Sharp to take over as conservator of the water district. Archer Parr was very displeased with me. He argued with me for awhile. And again, like I had told him during the divorce proceedings in which I had disqualified myself and in which he was involved. I said, "Archer, I am afraid you have been reading the newspapers too long and you have started to believe that you own me as a District Judge and I want you to know that you do not, and all decisions have to be mine.

Q About what in point of time in '75 are we talking about, Judge Carrillo? About March?

A We're talking about -- whenever -- it was a matter of four or five days after that Judge Sharp was appointed conservator of the water district.

Q All right, sir. Now, up to that point, you and Mr. Parr had had the discussion as regards the receiver of the water district, is that correct?

A Yes, sir.

Q There had been the discussion between you and George Parr as regards Ruben Chapa, Mrs. Hilda Parr and your father as to their candidacy on the school board, am I correct?

A Yes, sir.

Q You had petitions filed by the District Attorney to remove from the Commissioners Court the various people named -- or, no, the school board, the various people named, Mr. Bercau, Mr. Garcia, those we've already gone over.

A There had been talk around town and in the area that Mr. Guerra, the District Attorney, who was investigating the Benavides Independent School District and county affairs and water district affairs, when it was discovered that the records were being destroyed, and/or not being made available, that he was contemplating such a move. And on the day that the removal of the school -- I beg your pardon, those matters did not take place at that time. That was -- when Mr. Guerra told me that he was going to present those petitions, I told him that I would hear them at the Courthouse in San Diego at 2:00 o'clock, and I called my secretary, Zenida

Montemayor who previously testified here, and I told her that we were coming back to San Diego to hold Court at San Diego at 2:00 o'clock. And that is when Mr. George Parr found out that I was going to hold such a meeting at 2:00 o'clock and that was the day that Mrs. Montemayor testified that he came to the Courthouse to kill me.

Q All right. You recall Mrs. Montemayor's testimony concerning the fact that George Parr came to the Courthouse looking for you to kill you?

A Yes, sir.

Q And do you recall that she testified that she had called you on the phone to warn you not to come to the Courthouse? Is that correct?

A Yes. But she never reached me.

Q Well, I believe you are shown, I saw that *60 Minutes* program, Mike Wallace, was shown going to the Courthouse with two Rangers. When was that? Is that the very next day?

A No, it was about two or three days later. What happened was that we got home around noon, and I told the court reporter to go on and take my car and pick me up about 1:30; that we were supposed to be at the Courthouse at 2:00 o'clock. And I had lunch with my family, and I took a short nap, and he came in and picked me up. And as I was walking out of my home, the phone rang. And I started to answer it, then I hesitated, and then I went ahead and answered it. And the telephone was from Mr. Clint Manges. And he said, "Are you coming to San Diego?" I said, "Yes." He said, "What highway are you taking?" And I said, "There is just one highway between here and San Diego." He said, "All right. I want to talk to you on the phone." He said, "But I'll see you. I'll meet you on the road." And I said, "Fine." So, I hung up the telephone, and I got in my car with my court reporter, and going down the road approximately half way, we met. Mr. Clint Manges and his brother, Chick, were in his car, and the court reporter and myself were in my car, and I got out and I talked to Mr. Clint Manges, and he said, "O. P." He said, "Don't you go to the courthouse, because George Parr is over there, and he's going to kill you." And I told him, "No, I don't think George would do that." And he said, "Yes, he is. He's mad enough. Someone has told him that you're coming to the courthouse at 2:00 o'clock to sign --" and Mr. Manges didn't know about this thing, and George Parr had told him about that. And he said he -- "The word is out that Arnulfo Guerra is going to present proceedings against the trustees, and George Parr is going to shoot you when you walk into that courthouse." Well, I didn't want to believe it, because I knew that we had differences with George Parr, but Mr. George Parr and I had been very close throughout the years, and I never dreamed that he would do anything like that. And I didn't want to believe it, but he talked to me, and I could see by the semblance in his face that he was dead serious about this thing. So, he said, "He's going to -- he's stated that after he kills you, he's going down and he's going to kill your brother, Oscar." He said, "If you can get a hold of Oscar, you get hold of him and tell him that George Parr is out looking for both of you." And he said, "But, please don't go to the Courthouse."

So, I turned around, I went back to Benavides, I ran into one of the deputy sheriffs, and I told him to please take word to my brother, Oscar, that evidently Mr. Parr was upset, and that word was out that he wanted to kill us, and that he should take whatever precautions he deemed necessary. I went to my home. I started to call the F.B.I. or someone. And -- to get assistance, and by then, it was setting on me and it was beginning to make me feel a little nervous. And I had gotten information, and I had gotten the telephone number in Corpus when my mother walked into the room.

What I did, I hanged up, because I didn't want her to hear what was going on, and I left again. And I said I was leaving. About that time, my brother, Ramiro, came in, and I signaled him to follow me, and he followed me to the outskirts of town. I told him I was going out to my ranch. I told him what was going on, and I said, "Please get hold of Oscar first thing and then get a hold of the Texas Rangers or get hold of the Federal Government or get a hold of somebody, because this is what I understand is happening."

So, I went on to my ranch. And I stayed there until Ranger Gene Powell showed up with my brother, and he took charge from there. There were a lot of people that came by.

Q Did he escort you back to the courtroom, then, Judge Carrillo?

A No, sir, I was advised by all concerned to completely stay away from the Courthouse. I told Ranger Powell that if -- . The District Attorney was there. And he told me that he also had a petition for the removal of Archer Parr. And I told him that it was up to the District Attorney; if he filed on him, I was going to have to hear the cases. It was not up to me. It was up to the District Attorney. Because if he filed them while me -- sitting as a Judge, that when petitions are filed in my Court, I have to hear them and determine them no matter how tasteless they might be. So, the District Attorney said he was going to file them. So, I told the Texas Ranger that I was going to -- I did not want to endanger anyone at that time, and the necessary arrangements had not been made, so I told the Texas Ranger that I was going to go to San Antonio and spend the night, and that I would call him from there and call the District Attorney and advise him as to when I would go to Court.

MR. DOYLE: Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President, I would again raise my relevancy objection, Mr. President, and would further point out to the Court that this whole story has been told, and it's in the record in this case. It's in the testimony as introduced by Mr. Mitchell from the Judicial Qualifications hearing. And, at this rate, we're going to be here until next June.

THE PRESIDENT: Mr. Doyle, would you and Mr. Mitchell come to the rostrum?

THE PRESIDENT: The Court will take a 10 minute break until 3:25.

Accordingly, the Senate, sitting as a Court of Impeachment, at 3:15 o'clock p.m. took recess until 3:25 o'clock p.m.

AFTER RECESS

The President called the Court to order at 3:25 o'clock p.m.

MR. MITCHELL: Shall I proceed, Mr. President? May I proceed?

THE PRESIDENT: Please, Mr. Mitchell.

MR. MITCHELL: Okay. Thank you, sir.

Q All right. Judge Carrillo, by the first part of 1975 then there had been the problem that you have already described for us of the disagreement between you and George Parr as regard the candidates for the school board. Correct?

A Yes.

Q And then the fact that your father testified in the trial of U.S. vs George Parr and Ramiro Carrillo, your brother, had testified in the case U.S. vs Archer Parr, both for the United States government?

A Yes.

Q And then there had been the further cause of the disagreement between the Carrillos and the Parrs, the filing of petitions in your Court for the removal of members of the school board, as we have already previously discussed.

A Yes, sir.

Q All right. Now, did you long about that time receive a telephone -- strike that. I will ask you as a matter of fact -- and this matter is pled in the pleadings, if it please the Court, on page -- I have set out in my pleadings the various procedures of this -- 351.

Judge Carrillo, were pleadings filed, petitions filed in the Supreme Court in behalf of Mr. Parr and Mr. Bercaw and these gentlemen to enjoin you, to keep you from acting on these petitions for removal?

A Yes, sir.

Q And, of course, the Supreme Court permitted you to go ahead and act and you did act on all those petitions filed by the District Attorney?

A Yes, sir.

Q And I believe there were, what, five or six? Do you recall how many were filed against you?

A There were closer to ten or fifteen, sir, I believe.

Q Before the Supreme Court?

A Before the Supreme Court and the Court of Civil Appeals.

Q All right. And that was the Court of Civil Appeals in San Antonio?

A In San Antonio, yes, sir.

Q All right, sir. Now, at any rate, it appeared that you had judicial prerogative by both the Supreme Court and the Court of Civil Appeals to proceed on the petitions for the removal of Mr. Bercaw -- of Mr. Elizondo Garcia -- and Enrique Garcia and Joe Garcia and Mr. Parr. Am I correct?

A Yes, as a matter of fact they ordered me to proceed promptly with them.

Q All right. Now, and then did you proceed to hear those cases and did you enter Orders of Removal?

A Yes, sir, I did.

Q And were the cases appealed and were those appeals affirmed, sustaining your Orders of Removal?

A My Orders were sustained, yes.

Q Now, did you then receive a call from Mr. Terry Canales?

A I received a call from Mr. Terry Canales before I heard the cases.

Q All right. And what was the nature of that call and first of all tell us when it was.

A We were getting ready to start the removal hearing of Archer Parr. And Mr. Terry Canales called me and he asked me --

Q Let me ask you first of all, where is he from? Where is Mr. Terry Canales from?

A Mr. Terry Canales is our State Representative, he is from Premont, Texas.

Q And, if it please the Court, on Page 231 of the records, that is the Respondent's Exhibit, Page 231 and on Page 234 appear to be petitions styled the State of Texas vs. George Parr and the State of Texas vs. Archer Parr. I will ask you, briefly, to cover this territory for us. Were these proceedings instituted by the State Bar of Texas against George Parr and Archer Parr to disbar them on account of those convictions that you previously told us about in the Federal courts?

A Yes, sir, the State Bar had moved to disbar both gentlemen.

Q All right. And was Terry Canales the Attorney of Record for George Parr in Cause No. 8806 on the docket of the 229th Judicial District Court?

A Yes, sir, he was.

Q And was he the Attorney of Record also in Cause 8806 on the docket of the 229th pending before you involving Archie Parr, that's 8807, I'm sorry.

A Yes, sir, he was.

Q Now, those cases had been continued under the mandatory continuance provision of the statutes, had they not?

A Yes, sir, Mr. Canales had filed a legislative motion for continuance while the Legislature was in session.

MR. DOYLE: Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President, the questions seem to be getting very specific about telephone calls and dates and so forth and I was going to make another request of Counsel to give us the date of any telephone calls, please.

MR. MITCHELL: I intended to and I want to give a little background, Mr. President.

Q The telephone call, Judge Carrillo, in line with Counsel's observation, did they precede or follow the defendant's motion for continuance in the State of Texas vs. Archie Parr, which was 8807 on your docket and the State of Texas vs. George Parr which was 8806 on your docket?

A The telephone call came after Representative Canales had filed his motion for continuance in both cases and shortly before the Archer Parr case was to go to trial as had been ordered by the Court. And it was about two or three weeks before the end of the Legislature, last year.

MR. DOYLE: Mr. President, again, could I interrupt and ask Counsel. Mr. Mitchell, he's testified that there were two or three lawsuits with respect to Archer Parr. And if he's going to use one of those to pinpoint a date of a telephone call, we need to know which one he's talking about.

MR. MITCHELL: Yes. As a matter of fact the public record -- the record here reflects, if it please the President and the Court, those petitions for mandamus and injunction filed in the Supreme Court of the State of Texas, Archie Parr vs. O. P. Carrillo, they're of record. There were three of them, 8808 -- and I have set those out -

MR. DOYLE: Arthur, you don't see my point. What my problem is, he's trying to use another date to correlate to a date of a telephone call. And he's using the lawsuit to do that with. So, I need to know which lawsuit he's u: g.

MR. MITCHELL: I'm probably not making my questions clear. If you will give me an opportunity, I think I can clarify it. The telephone call relates to the introduction of HSR 161. The telephone call was after the motions for continuance in the two cases that I mentioned.

Q And as I understand it, Judge Carrillo, after the application for writs of mandamus were filed by Archer Parr in the Supreme Court?

A Yes, sir.

Q All right. Now, if I can look to the record to help answer that question. Do you recall of your personal knowledge when HS -- you received notice, Judge Carrillo, of the filing of the sponsorship by Mr. Terry Canales of the Resolution here in the House as regards this impeachment procedure? Do you remember the date?

A No, I do not, sir. Like I say, it was approximately three weeks before the end of the Legislature, the last day of the Legislature, let's say.

MR. MITCHELL: If I might have a minute, Mr. President, in view of the objection, to pinpoint that date with exactitude.

Q How did you receive notice of the filing, Judge Carrillo? Was that by wire?

A By telegram.

MR. MITCHELL: All right. I think the Court can take judicial notice of the filing of the Resolution here before the House. Mr. President, on Page 113, Exhibit J to our Answer in this cause is the wire notice which is to Judge Carrillo. States the "House Select Committee on Impeachment will meet in the State Capitol Tuesday, May the 20th to consider HSR 161 by Canales, seeking your impeachment from the office of District Judge."

Q Judge Carrillo, using that date, that is May 20th now?

A Yes, sir.

Q I will ask you if you can tell -- and this is response to question by -- objection by Mr. Doyle -- was the telephone call prior to May 20th, 1975?

A Yes, sir, it was about three or four days before.

Q All right. Now, tell the Court, please, where were you when you received your call from Mr. Canales?

A I was holding Court in Hebronville, Jim Hogg County.

MR. MITCHELL: Go ahead.

MR. DOYLE: Pardon me.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. Mitchell was speaking while you were tryi to answer, Judge. Is your testimony that the telephone call from Mr. Canales to you was three or four days prior to May the 20th, 1975. Is that your testimony?

THE WITNESS: Approximately three or four days before the filing of the Resolution in the House.

MR. DOYLE: Before the filing of the Resolution in the House.

THE WITNESS: That is correct.

Q If the records show it was filed on May 15th, Judge Carrillo, does that serve your present recollection it would have been either May 11th or 12th of 1975?

A Something like that. It was shortly before he filed his Resolution.

Q All right. Now, would you then continue please.

MR. MITCHELL: If it please the Court, the matters about which I'm questioning this witness, that is the affidavits, the motions for continuance filed by Mr. Terry Canales for Archer Parr and George Parr all appear of record on Page 108, one through and including 113 of the record.

Q I will ask you, what was the nature of that telephone call?

A Mr. Canales told me that if I did not step down and refuse to hear these cases, which I took to mean the Parr cases, that he was going to file impeachment proceedings in the House against me. However, if I agreed to step down and not hear the cases, he would not introduce the Resolution.

Q All right. Now, Judge Carrillo, it was a well-known fact that Mr. Canales, who was a member of the Legislature was an attorney, at least of record, for Archie and George Parr. Am I correct?

(Senator Braecklein in Chair)

A That was the reason why I took it in the light I did take it, knowing fully well, of course, that Mr. Canales was my State Representative and Representative in the Legislature, I also knew he was an attorney who was practicing in my Court. And I felt that it's completely improper and out of line for an attorney who is practicing in my Court to come to me and threaten to take the action that he was going to take unless I step down from hearing the cases of the clients that he represented.

Q That's the reason for my question. The pleadings filed before you as a Judge were pleadings filed by Mr. Canales as a lawyer. And in setting aside the political consideration, Mr. Canales was an attorney of record and an officer of that Court representing people before you in that Court?

A Yes, sir.

Q And, of course, you had, I suppose honored the State statute and had granted a continuance to Mr. George Parr at the instance of Mr. Canales and Mr. Archie Parr based on what you understood the statute to be, because of his involvement and duties here in Austin?

A It was mandatory and the State Bar Association's attorneys agreed with Representative Canales that his motion was in order and a continuance should be granted.

Q All right. Now, Judge Carrillo, in a conversation with Mr. Canales and you, did Mr. Canales talk to you in terms of the attorney of record for Parr or did he talk in terms of your State Representative or in a political context? Do you recall?

MR. DOYLE: Mr. President, I'm going to object. That will call for a conclusion on the part of a witness.

Q Well, if you know.

MR. MITCHELL: Mr. President, if he knows.

MR. DOYLE: Mr. President, it would also be hearsay.

PRESIDING OFFICER: Overruled.

Q You may answer the question, Judge Carrillo, if you know and from your personal knowledge based on what the man communicated to you.

A From the tone and from the words that he used in the conversation, I took it very clearly to mean that if I wanted to prevent impeachment proceedings from being

instituted against me, that I would have to step down and not listen and not hear the cases involving George Parr and Archer Parr.

Q Now, let's carry this a step further. As a matter of fact, Judge Carrillo, weren't the Parr motion -- wasn't Archer Parr's motion for continuance -- strike that.

Didn't the State Bar cause Archer Parr's case to be set down in your Court after the Legislature adjourned?

A It did.

Q And as a matter of fact, did you hear that case?

A I did not. I recused myself under the circumstances.

Q And was -- state whether or not a successor Judge was appointed and that case was heard and Archer Parr's license -- judgment entered for the State Bar canceling his license?

A I called Judge Alamia the day that the case came up and advised him that I was going to recuse myself. He asked me to consider it very closely because Judges were very hesitant --

Q Just answer yes or no, now. We are having a problem of going far afield, Judge Carrillo.

As a matter of fact, you were in the courtroom when that case was heard by a successor Judge. Is that correct?

A No, sir, I was not.

Q Well, was it heard?

A It was heard, but by another Judge.

Q All right. And George Parr's case was abated because of his death in April?

A Because of his death. That's correct.

Q All right. And Mr. Canales did represent Archer Parr at the hearing before you?

A Mr. Canales was present when I recused myself. Mr. Parr, George Parr had already passed away, and nothing was done about his case. It was moot.

Q Now, Judge Carrillo, one more question.

As a matter of fact, when the split occurred between the Carrillos and the Parrs, people like -- and I'm going to list these, now. Cleofas Gonzalez, who has testified both before the Subcommittee and the Judicial Qualifications Commission and the Federal trial and here, went from working for you or your family to Archer Parr and worked for him, and continued to work for him. Am I correct?

A That had happened in 1974, yes, sir.

Q All right. Now, let me just list some folks.

How about -- now, this was Cleofas Gonzalez. How about these other folks -- how about Tete Chapa.

A Tete Chapa was not employed by the County. He had been employed before and he had left town. He moved back into town and he wanted his job back, and my brother would not hire him back. That was the second time he had quit the job on him.

Q How about Ruben Chapa?

A Ruben Chapa also was self-employed, sir.

Q Did he -- how about Oscar Sanchez?

A Oscar Sanchez was an employee of my brother as County Commissioner, and he left his employment and went over to the water district.

Q Well, now, the water district was Archer Parr, wasn't it?

A Yes, sir. That was it.

Q All right. Vincente Chapa?

A Vincente Chapa was an employee, also, of my brother. And, he also quit and went over to work for the water district, which was where that group was. Or at the --

Q Again --

A That's where the Benavides Implement and Hardware Store is.

Q That's right. That's where the present location was--is of the Benavides Implement and Hardware?

A And is today.

Q Mr. Couling's business that was sold to Mr. Cleofas Gonzalez in the middle of last year?

A Yes, sir. Mr. Gonzalez, like I have stated, he was at the Farm and Ranch one evening and he woke up at the Benavides Implement and Hardware Store the next morning.

Q That's also true with the witness, Francisco Ruiz?

A And Francisco Ruiz also, yes, sir.

MR. MITCHELL: For the purpose of this record and to this Court, each one of these gentlemen have testified against Judge Carrillo in the Judicial Qualifications Commission --

Q Am I correct, Judge Carrillo?

A Yes, sir.

Q And this hearing?

A And this hearing, and in the Impeachment Select Committee hearings of the House.

Q Would -- is it your -- these gentlemen, then, followed over, did they not? They flipped over to the Archer Parr side of the split when that occurred in the middle of 1975. Is that correct, Judge Carrillo?

A They did, yes, sir.

MR. MITCHELL: I want to call the Court's attention to Page 1159 where Mr. Cleofas Gonzalez further admits that he is a vengeful man and admits in testifying against Judge Carrillo, he is being vengeful. That's Page 1159, if it please the Court.

Q All right, Judge Carrillo. Had you stepped down when Mr. Canales called you, do you feel that your problems would have been ended at that point?

A I am sure they would have.

Q All right.

A As a matter of fact, Mr. Archer Parr told me shortly thereafter that if I would agree to reinstate him as County Judge that he would talk to Terry Canales and all the impeachment matters before the House would be dropped.

Q And your response, sir?

A My response to him was that he should not be talking to me about his case, that he ought to talk to the District Attorney. He was the man that had filed the lawsuits in my Court and I was duty bound as a Judge, as long as they were pending on the docket of my Court, to hear them.

Q Judge Carrillo, in exercising the jurisdiction that you did in the cases involving the members of the school board, were you following to the best of your ability the statutes that provided --

A Yes, sir, I was.

Q Let me finish -- that provided the remedy for removals?

A Yes, sir.

Q And tell the Court, now, as you understand the statutes, those actions are instituted by the prosecuting attorneys, are they not?

A Removal actions -- the law calls for removal actions to be presented by the District Attorney or the County Attorney. Whichever one files it first holds control of the case and they are the only two that are eligible to file such causes of action.

Q All right. And it's your testimony, you had no conversations with Arnulfo Guerra as regards the filing of these actions to remove Mr. Bercaw -- who, incidentally, testified before the House Select Committee, did he not?

A Yes, sir. The first that I knew that they were actually going to happen was when Mr. Arnulfo Guerra told me that he was coming -- that he wanted to file the applications for a temporary removal.

Q All right.

SENATOR OGG: Mr. President.

THE PRESIDENT: Senator Ogg.

SENATOR OGG: Mr. President, I would like to ask, as a matter of law -- there is no contention that the Judge could not have removed himself from those two removal suits just as he did from the disbarment suit? There is no legal impairment there, or reason? And, is that your contention, that he couldn't or what --

MR. MITCHELL: No, Senator.

There is no contention that he could not have removed himself.

Our position -- and I will ask the witness, if it please the Court, whether or not, in his opinion, there was a grounds of law to remove himself.

Q Judge Carrillo, you have heard the Senator's question.

Was there, in your opinion, any reason why you were disqualified -- strike that. Was there a motion to disqualify you filed?

A Yes, sir.

Q All right. Did you -- what did you do as regards the motion to disqualify?

A I overruled the motion because of the contents of the motion.

Q All right. And was there a subsequent action filed in the Supreme Court to test your action in overruling the motion?

A That action was appealed to the Court of Appeals in San Antonio and to the Supreme Court of the State of Texas, and my decision was affirmed by both courts.

MR. MITCHELL: And that action is in the record, Mr. Ogg.

SENATOR OGG: Is it not correct that a Judge, on his own motion, may remove himself with or without the contents of materiality or the merits of what may have been in the pleadings?

THE WITNESS: Yes, sir.

MR. MITCHELL: So stipulated, yes.
I believe --

Q Judge Carrillo, on that question -- and you are familiar with the opinion of the Court of Civil Appeals, I believe, within the last three weeks on the very point, whether or not a trial court has the authority to remove himself, or should he pass on the question to another Judge. Do you recall that opinion handed down by the Court of Civil Appeals in San Antonio -- I'm sorry, Corpus Christi. Are you familiar with it?

A I read it, but I don't recall it.

MR. MITCHELL: Any further questions?

SENATOR OGG: No, sir.

Q All right. I think the point is important enough for me to take just a minute and get the Supreme Court -- the petitions filed in the Supreme Court on this point. May I, Mr. Jaworski?

THE PRESIDING OFFICER: Mr. Mitchell, could you come up to the Chair for just a moment?

MR. MITCHELL: Yes, sir.

MR. MITCHELL: Thank you, Mr. President. I'll follow the instructions of the Court in that connection. I'll simply state to the Court we have the pleadings of record in the event the Court wants to satisfy its mind as regards propriety of Judge Carrillo in not disqualifying himself.

Before I proceed, now, to the specific allegations, Mr. President, I would again call the attention of the Court to Arnulfo Guerra's testimony that's before this Court in Volume Two of December 5, 1975.

Q Now, Judge Carrillo, I am now going to move to the specific allegations contained in Article I of the Articles of Impeachment.

A Yes, sir.

MR. MITCHELL: May I have, please, the H-1 (1-38) Series right on through to H-2, 3, 4 and 5?

May it please the Court, these relate to the allegations that Judge Carrillo had entered into a conspiracy to buy \$300.00's worth of groceries a month. Incidentally, that would include the R-1 Series, too, if I might have those.

And these, if it please the Court, appear on Page 351 of the record. They appear on Page 543 of the record, and 751.

Q Now, Judge Carrillo, it appears that the thrust of Article I, my best understanding of it and its charge, is that you entered into a conspiracy to cause to be paid \$300.00 a month out of the County Treasury for your own personal use, specifically the money being paid to Cash Store for your personal groceries, do you understand that?

A Yes, sir, I understand that.

Q Now, as I understand further, the allegation deals with a use or an abuse of the welfare system to accomplish this payment. So, I'm going to use that as a basic statement to ask you some questions that I want to be sure that the Court is clear on.

A Yes, sir.

Q All right, sir.

A Yes, sir.

Q Now, first, Judge Carrillo, did you have a personal account with the Cash Grocery Store?

A I did.

Q And how far back does that personal account go?

A It goes back about 15, 20 years.

Q Now, the Cash Store is owned by the Yzaguirre family?

A Yes, sir.

Q And the Yzaguirre family is composed of Mr. and Mrs. Lauro Yzaguirre and Abel Yzaguirre?

A That's correct.

Q Abel is the old man that started the store?

A Yes.

Q Lauro is the son-in-law, isn't he?

A No, his son.

Q I mean his son. Right.

A Yes.

Q The lady that testified here back in November is the daughter-in-law?

A The daughter-in-law, yes, sir.

Q All right. Now, the only witness that's testified here is the daughter-in-law, correct?

A That's correct.

Q And the daughter-in-law was, I believe, in the hospital for a period of over two years, was she not?

A Yes.

Q Do you recall those two years that she testified she wasn't even in the store?

A Yes, sir.

Q What were they?

A They were '72 and '73, I believe.

Q All right. '72 and '73, she wasn't there, was she?

A As I recall.

Q All right. Now, Judge Carrillo, let's first of all look at your personal account, and may I call the Court's attention, please, to the evidence that's been introduced on Page 3 -- I mean 543.

Now, Judge Carrillo, I hand you H-3(1) to (29) appear to be adding machine tapes, do they not?

A Yes, sir.

Q Now, tell the Court whether or not those adding machine tapes evidence purchases on your personal account of groceries from the Cash Store, if you know?

A As far as I know, they are on my personal account, yes, sir.

Q All right. Now, tell the Court, please, sir, how you went about authorizing the charges and how you went about paying for your personal groceries at the Cash Store, Judge Carrillo?

A For my -- my personal account, I just sent folks out to go and get whatever groceries I need when we were going to have some kind of activity at the ranch.

Q All right. I notice Patricio Garza, he signed one of these tapes. Who is Patricio Garza?

A Patricio Garza is one of the gentlemen who worked for me at the ranch.

Q Patricio Garza testified here previously, did he not?

A Yes, he did.

Q How long has he been -- well, first of all, is he presently your personal employee or the county's employee?

A He is my employee.

Q How long has he worked for you?

A Now approximately three years.

Q All right. So, he went to work for you sometime in 1972 or '73?

A Something like that, yes, sir. I don't recall the exact date.

Q I recall he could not speak English and testified through an interpreter, is that correct?

A Yes, sir.

Q What are his duties? What does he do?

A He is -- takes care of the ranch and looks after the cattle on the place, and whatever --

Q All right. Judge Carrillo, I notice here that Patricio Garza signed, for example, the 19th day of -- 8th month in 1972, he signed a ticket for groceries. He did that in 1972. And was he your employee at that time, please, sir?

A Before he became a full-time employee, he was an employee of the County, and he used to work for me on weekends, and whenever we were going to have a roundup, I -- he was sort of the cook when we had roundups.

Q All right. And during those weekend instances and thereafter for full-time, would he be authorized to go by Yzaguirre's and charge groceries?

A Yes, sir, he was.

Q Now, Judge Carrillo, did you pay those bills? I think I asked her if they were paid up to date and she said yes, you were. I think you owed her \$5.00 and we paid that, and that's through December 31st, 1975?

A Yes.

Q On your personal account, is that correct?

A Personal account.

Q All right. Now, for the purpose of your testimony, I want to call the Court's attention, please, to the checks on Page 546. I hand you the official Volume. And then I'm going to hand you, Judge Carrillo, the Series, R-1(1) through and including (37).

MR. DOYLE: R what, please?

MR. MITCHELL: The R-1 Series, R-1(1), through and including R-1(37).

Q And ask you, please, Judge Carrillo, if you could identify the R-1 Series and tell us what they are?

A These are checks made out on my personal account to the Cash Store.

Q And what are they for?

A To pay for my personal account, groceries, my personal account.

Q Is it your testimony, Judge Carrillo, that you paid for your own groceries out of your own personal account?

A I always did, and I traded not only at the Cash Store, but at other stores.

Q What other stores did you buy groceries at?

A I bought groceries at Ramiro's Drive-In Grocery in Benavides; I bought groceries at the Stockholders Exchange, the grocery store in Freer, Texas, bought groceries at both the Hillcrest Groceries in Hebronville, Texas, and bought groceries at the Value Mart at Rio Grande City, Texas, and I bought groceries at Kroger's in Alice, Texas.

Q All right. Now, Judge Carrillo, I'm going to hand you the R-2 Series.

MR. MITCHELL: Now, Mr. Doyle, this is R-2(1) through and including R-2(2).

Q They are checks by you personally to Cash Store, and I ask you if these checks, that series, also represent your own personal check out of your own funds for the payment of your personal grocery bill?

A They do, sir.

Q I hand you R-3 Series. These appear to be personal checks in the year '72 from you to Cash Store on your personal account, and I ask you the same question, is that payments of your personal account, out of your personal account for groceries at the Cash Store, Judge Carrillo?

A They are, sir.

Q I'll hand you now the R-4 Series, which appear to be your personal checks to Cash Store, and ask you the same question, if those appear to be payments by you out of your personal account to Cash Store on account of your personal account?

A They are, sir.

Q And I will hand you now the R-5 Series that appear to be your original checks, Judge Carrillo, out of your personal account to the Cash Store, and I'll ask you if they are in payment of your personal account with that Cash Store?

A They are, sir.

Q And I'll hand you the R-6 Series and ask you the same questions. Are those checks out of your personal account to the Cash Store for payment of your personal account?

A They are, sir.

Q Now, Judge Carrillo, I'm going to ask you now to turn with me to these Exhibits as relate to Article I.

MR. MITCHELL: If it please the Court, I'm now -- I'm now referring to the checks on Page 440, E-56 before the Judicial Qualifications Commission, H-2(1)-(12) before the Senate on Impeachment.

Q I'll show you what appear to be checks from Duval County payable to Cash Store, and I direct your attention, Judge Carrillo, to H-2(1), do you see it?

A Yes, sir.

Q In that series. These are checks made payable to Cash Store and endorsed by Abel Yzaguirre.

A Yes, sir.

Q Now, is it your testimony that the checks issued out of Duval County payable to Cash Store and as represented by that Series of Exhibits has nothing whatsoever to do with payment of your personal account that you have previously indicated were paid by those checks, the Series R-1, 2, 3, 4 and 5?

A There were no County checks made payable to me for any groceries that went to my own personal use, sir.

Q All right, sir. Now, I want to take what I understand to be the thrust, the secondary thrust of the Board of Managers' case, and that is the use of the welfare program as regards the payment for the -- for the payment of groceries. Now, let's take a look at some of these Exhibits in that connection. You are quite positive, Judge Carrillo, that your personal account was separate and apart, you handled your personal account out of your personal checks?

A I always did, sir.

Q Now, you will recall the testimony, and I am going to try to summarize it fairly, Judge Carrillo, that you would -- now, we are going to direct -- I'm going to direct your attention, and if it please the Court, to the H-1 Series. I'm going to hand you out of the Exhibits the H-1 Series. I'm going to hand you small yellow chits. I am going to hand you the claim jacket in A-2015, Judge Carrillo.

A Yes, sir.

Q And I'm going to hand you the Duval County official form H-1(2). Have I done that?

A Yes, sir.

Q All right. And, H-1(2) includes a Cash Store. Now, let's see if we can talk about that. First of all, Judge Carrillo, by way of a preferatory statement, you recall the introduction into evidence in the Judicial Qualifications Commission of the booklets that were identified as 42 units?

A Yes, sir.

Q These booklets, I believe they are in evidence here as R-40, or R-50. You recall that your testimony, and I am going to rush through this because I want to expedite our time, back in the '60s that you were involved in the welfare program, were you not?

A Yes, I was.

Q Judge Carrillo, rapidly, I am going to hand you R-99 which appears to be one of the booklets that we talked about, you see it?

A Yes, sir.

Q And this box has about 42 of them over here, am I correct?

A I don't know exactly, but something like that.

Q All right. That's for the benefit of the Court, in case the Court wants to use them. Judge Carrillo, these booklets, are they the same type that are used presently to administer the welfare program in Duval County?

A They are, sir.

Q Whether it be for groceries, drugs, medicine or whatever, am I correct?

A That's correct.

Q All right, sir. Now, let me ask you first and foremost, the -- who administers, who had the authority in connection with the welfare program in the '60s and '70s as far as you know?

A There were several people.

Q Who was the originating authority, Judge Carrillo?

A Well, the County Commissioners of the County and the Commissioners Court were the ones that authorized the different people and procedures to be used in giving out the welfare orders.

Q The County Commissioners authorized various persons to receive applications for welfare, is that correct?

A That is correct.

Q Has Mrs. Elvira de Leon been County Welfare Officer in Duval County as far as you know?

A Yes.

Q In the '60s and '70s?

A Yes.

Q Judge Carrillo, in the '60s, you were County Attorney?

A I was.

Q In the '70s, you became District Judge your first term?

A That is correct, sir.

Q And in '74, I believe in January of '75, you took oath for the second term as District Judge?

A That is correct.

Q During the time you were County Attorney, did you have any, or active part in the administering of the welfare program? If you did, please tell the Court.

A I did.

Q What was it? We are talking about the '60s when you were County Attorney.

A In the 1960s when I became County Attorney, I was handling the welfare orders for Precinct Number 2.

Q All right and by whose authority --

A 3.

Q And by whose authority were you handling the welfare orders of Precinct Number 3?

A By authority of the Commissioners Court of Duval County, Texas.

Q And do you recall whether or not the Commissioners Court entered a special order authorizing you among other persons to administer the program?

A They did.

Q Can you tell the Court who else had the authority besides you, as County Attorney, please, sir?

A The County Commissioner, Mr. Atlee Parr in my precinct, Mrs. Katy Villa was also in the precinct, Mrs. O. D. Barrington who was also within the same Commissioners precinct over in Freer, Texas and various other people around the County.

Q All right. Now, Judge Carrillo, there is some magic in the figure \$300.00. Now, what is the magic in that figure, if you know, in the 1960's? Do you know?

A No, I don't. There were -- I had a budget of around \$1,500.00 a month for the whole precinct. Mr. Atlee Parr and I handled that part for the Benavides area and also the Realitos area, but Mr. Atlee Parr asked me to go ahead and take complete charge of it, because there being duplications, there were being people who were coming to me for a welfare order and then they would go over to Mr. Atlee Parr and get another welfare order from him and get two orders. So, in order to avoid a duplication of these folks we decided to channel it through one office and if they went to him he would send me a little note and say give Mrs. so-and-so an order for whatever it was that she needed.

Q All right. Judge Carrillo, the Commissioners Court you are telling this Court authorized these individuals among the persons in the County, including yourself, a budget of a given amount in administering the welfare?

A That is correct.

Q And did that continue through the '60's while you were County Attorney?

A It did, sir.

Q All right. Now, Judge Carrillo, I'm going to look to the originals -- would you get those yellow chits in that folder, please, sir?

A Yes, sir.

Q I want the rest of those chits -- just hold on to the chits.

A All right, sir.

Q Judge Carrillo, also I'm going to hand you yellow chits H-1(4). There's been a lot of testimony about those, hold those, because I'm going to ask you about them. I hand you the yellow chits and the checks there have been an awful lot of testimony about, H-1(2). Now, that's three sets, have you got them?

A Yes.

Q One more set that's mimeographed, do you recall those?

A Yes, sir.

Q Now, Judge Carrillo, you have in front of you and I want the Court to be -- you have yellow chits and the backs of checks in H-1(2). And I hand that to you.

A Yes.

Q Now, those appear to be -- first of all, let me ask you, are they in your handwriting?

A They are, sir.

Q And is that initial, that O. P., is that you?

A That is me, sir.

Q Now, tell the Court, let's limit our testimony now to H-1(2), because I'm going to get to all of them. What is the function -- what function did these chits have in the welfare procedure, Judge Carrillo? That's the first question I want to ask you. I notice they are all poked full of holes, they appear to be stapled, do they not?

A Yes, sir, they have.

Q I will ask you, what were they, what's their function?

A Those were sent to the different people who were going to render welfare orders -- issue the welfare orders, sometimes before and sometimes after they had issued the orders.

Q Now, Judge Carrillo, I notice -- and I'm going to hand you R-99, it appears -- is that Rudolfo Couling's signature?

A Yes, sir, it is.

Q What did Rudolfo Couling have to do with the welfare business in the '60's?

A Well, what happened was that my official duties kept me out of town quite a bit and Mr. Couling was over there at the school tax office and he would handle the welfare orders, help me out, him and the young ladies that were there in the tax office.

And folks would come to them and get an order and then when I came in they would tell me we gave Mrs. -- whoever it was an order or we authorized it and then I would sign them and sign the orders.

Q You recall his testimony was that for about two years he assisted in the administration of the welfare programs in the '60's?

A Yes.

Q And would that account for the fact that his initials appear on quite a few of these official welfare forms, Judge Carrillo?

A Yes.

Q Now, Judge Carrillo, a curious matter and this is -- first of all, I want you to tell the Court, these yellow chits, were they used in the '70's and the '60's or can you date them for us?

A These yellow chits were all used back in the 1960's, sir.

Q Are you positive?

A I am positive.

Q Now, of course, the reason I asked you is that they were attached to Exhibit H-1(2) and introduced by the Board of Managers as part of an Exhibit dated July 15th of 1970, correct?

A Yes, sir, I know, but these were all issued way back in those days. We had run short of these forms -- as you will notice, the procedure changed to where they would put in more names into one order, what was being done was each one individual, instead of issuing one of these -- before these chits came into existence, one of these orders was issued individually to each individual that came in. And, of course, the books that we had were going out a little too fast, so, what happened was when we ran out of books we used this for awhile and then put them into the order later on and they were only used for a short period of time.

Q In other words, what you're saying is that the chits were used at a time when you ran out of copies of the books themselves?

A That's right, sir.

Q And would the orders -- the official orders then would include more than one chit, would it not?

A That is correct, sir.

Q Now, Judge Carrillo, can you explain for the Court why there are yellow chits that you testified under oath that you didn't use past 1969 in an Exhibit dated in the '70's? Do you have any explanation for that?

A No, sir, these chits were not made a part of the original claim jacket. These chits were used and sent to the merchants and then they were taken and passed over to the official claim form and that was the claim form that went to the Courthouse. And

these were, as Mr. Cleofas Gonzalez testified, very clearly, that when these chits came over to his possession he would throw them away or give them back to the Yzaguirres over at the Cash Store.

Q Let's see if --

A He said I only kept a few of them for the future.

Q Judge Carrillo, as a matter of fact -- I'm going to limit your testimony now at the time -- in the '60's. The books that are in evidence demonstrate there were three copies of the order forms filled out, the white and the yellow and the pink. Is that correct?

A Yes, sir.

Q They were signed by the official authorized to sign it?

A Yes, sir.

Q They were filled in with the recipients' name?

A Yes, sir.

Q And those recipients' names were communicated to the merchants, the doctor, the druggist, whoever it was, by the use of the chits?

A Yes, sir, many times the merchants themselves would call and say, "Now, look, Mrs. Gonzales is here and she needs some groceries and her bill is overdrawn. We can't let her have any more credit. Is it all right to give her some groceries and will you send us an order?" The same was with medicine or with the doctor.

Q What did Mrs. Yzaguirre have in mind, if you know, when she said that you had a budget of \$300.00 in the '70's? Is that the limitation given by the Court?

A No, sir, I never had any limitation at all. What happened was that I used to handle this up until the year 1967 when my brother, Ramiro, became a Commissioner then he took over the welfare program and with very few exceptions I had very little to do with it after 1967.

Q All right. Now, that brings me, Judge Carrillo, down to the questions involved directly in Article I. Those orders -- now, by those orders now I mean specifically the evidence that's before us -- deal with H-1(2) and if it please the Court now I'm referring to -- I'm referring to the whole spectrum of claim jackets, order forms and Yzaguirre or Cash Store tickets that appear at H-1(1) - (38). You see these, Judge Carrillo?

A Yes, sir.

Q Now, Judge Carrillo, let me ask you -- let's take a look at them one at a time. These yellow chits appear along with others at H-1(23) on 406, if it please the Court and thereafter. Now, specifically Mr. Gonzalez testified that he would fill in certain of these claim forms where you were involved and would put the notation "O. P." underneath them. Do you remember that?

A I remember him testifying about them.

Q Now, let's turn to one of those and see what -- there were not but one or two or three, if my recollection serves me. Let's take, for example, Judge Carrillo, the one that appears on Page 406, if it please the Court. There it appears that an order form in 1970 -- August of 1972, 1, 2, 3, 4, 5, 6, 7, 8 -- 9 people received groceries at \$20 each. Do you see that, Judge Carrillo?

A Yes, sir.

Q Let me direct your attention --

A Yes, I do.

Q Take the Exhibit, Judge Carrillo. It appears that in addition to that order, that official order form, signed -- apparently authorized by your brother Ramiro Carrillo as the Commissioner. Am I correct?

A Yes, sir.

Q And it appears that Abel Yzaguirre signed his Cash Store documents showing that he had delivered to the various individuals listed on the official form the groceries in the amount shown. Am I correct?

A Yes, sir.

Q Well, did you have anything to do, Judge Carrillo, with the making out of the official form to begin with. That would be H-1(23)?

A Yes -- I didn't have anything to do with it, no, sir.

Q Did you have anything to do with the filling out of the drug store receipts -- I mean of the Cash Store receipts?

A No, sir, I did not.

Q Do you have any knowledge of the transactions?

A No, I do not.

Q Did you conspire with the people whose name appears on the Cash Store receipt or with Mr. Yzaguirre or with Ramiro Carrillo or with Cleofas Gonzalez or with Rudolfo Couling, Judge Carrillo, to rip the county off for the face amount of that official form, that is \$160.00?

A No, sir, I did not.

Q Does it appear to be the usual and customary method employed in the welfare after 1969, that is after you left the active participation of the welfare business, does it appear to be that type of procedure, that type of process?

A Yes, sir.

Q Let me ask you this, Judge Carrillo, you don't have any personal knowledge of the filling out of the form by the Cash Store. Is that correct?

A No, I don't.

Q I can't ask you any questions about it. Do you have any knowledge of the filling out of the official form?

A No, sir.

Q Well, look at the bottom of the page, there appears to be the chits?

A Yes, sir.

Q Do you know whether or not those chits are interrelated, Judge Carrillo, with the official form in the order blank?

A These chits were made back in the '60's, they were not made back in '72.

MR. MITCHELL: Mr. President, I wonder -- would like to call the attention of the Court that I have made an analysis of each and every Exhibit introduced by the House Managers as regard the number of chits, the number of orders and the number of official order forms in H -- this series H-1(11) there were 29 total orders; seven for \$35.00, one for \$25.00, five for \$30.00, one for \$10.00, 15 for \$20.00 or a total of 29 orders and there are only 14 chits. I believe, Counsel, we went through this once before to establish the fact that there were only 14 chits and 29 orders. In the A3040 series there were 14 chits, obviously the ones that I have just previously shown you -- there were 14 yellow chits, five orders for \$35.00, 15 for \$25.00 or a total of 25 orders. And that's in claim jacket A3040 H-1(4) Exhibit.

ANNOUNCED PRESENT

Senator Meier who had previously been recorded as "Absent-excused" was announced present.

Q Am I correct, Judge Carrillo, you have that in front of you there?

A (Witness nodding head affirmatively.)

Q And then in the A2015 series, if it please the Court, there were 11 yellow chits at \$20.00 each, four blank checks -- that's the one I previously showed you, Judge Carrillo?

A Yes, sir.

Q But there were a total of 15 orders for \$20.00, four orders for \$25.00, eight orders for \$30.00, one order for \$10.00, for a total of 28 orders. That is there were 28 orders and only 15 chits?

A Yes, sir.

Q In addition, Judge Carrillo, in the C2139 there were 15 white chits in the jacket, but there were 27 order forms and 12 -- that's for \$10.00 and 12 for \$35.00. In C2139.

Now, that analysis and that breakdown, Judge Carrillo, if you will just assume that they're made correctly from the analysis of the original evidence. It would appear that they're not order chits, that is yellow chits behind each and every order?

A Yes, sir.

Q And it's your testimony that the yellow chits with your initials on them, which you recognize, were not even executed prior to January 1st of '70. Is that correct?

A No, sir. And looking into the 1960's, the books, when I was handling the welfare, we found copies and they were introduced at the Judicial Qualifications Commission. Similar yellow chits, just like this one, that have been introduced here today.

Q In other words, what you are testifying to, Judge Carrillo, in examining the books, the official books for the '60's --

A Yes, sir.

Q -- the units that are available for the Court, that the yellow chits -- the very same chits that have been introduced by the House Board of Managers here as being part of a program in the '70's that actually existed as underlying these 1970 orders?

A That is correct.

MR. JAWORSKI: Bring those up here, please.

MR. MITCHELL: Yes, sir.

MR. JAWORSKI: Just the two, Arthur.

MR. MITCHELL: Mr. President, there have been introduced two of those for the record, and the rest are available here for any member of the Court who cares to examine them.

Q Now, Judge Carrillo, taking the jackets -- that is, the H-1, 2, 3, 4, 5 series, all introduced by the House Board of Managers, relying on -- as evidence for -- on Article I, do you recall the testimony -- strike that.

Do you have any personal knowledge of the makeup, or the processing of the award or the disallowance of any of those claims.

A No, sir, I don't.

Q Were you ever -- did you ever go before the Commissioners Court of Duval County in behalf of any claimants for the welfare program?

A No, sir, I did not.

Q Did you ever appear in behalf of any claimant?

A No, sir, I did not.

Q Judge Carrillo, now interrelating the two pieces of testimony -- that is, the testimony as regards the personal checks --

A Yes, sir.

Q Are you following me now?

A Yes, sir.

Q And the testimony as regards the use of the welfare --

A Yes, sir.

Q -- I will ask you, isn't it a matter of fact that the R-1 -- (1) through and including (37) series, which I hand you back -- and that's the R-2, 3, 4 and 5 -- cover essentially the same period of time? That is, from January of 1970 on through and including 1974, the same period of time?

A Yes, sir.

Q And if you had to, take some more time to examine them because they are very important questions.

A Yes, sir, they do.

Q Don't they -- Don't your personal checks go from the early part of '70 -- I believe your last check as Ms. Yzaguirre testified here, you owed her \$5.00 and you paid your personal account since then. Am I correct?

A My own personal checks to the Cash Store date back to approximately 20 years, up until about three months ago.

Q Right. And the H-1 series -- Now, look at them. They are dated when? Same period of time? That is, the '70's, aren't they?

A Yes, sir.

Q And if you will look at the very last check, you will find that there is one check dated November '74 from Duval County to the Cash Store, but that all others are dated prior to the time that you had your certificate of election in November of '74, from Duval County to the Cash Store. Check me now to be sure.

A Yes, sir. I have checked those. That is correct, sir.

Q But you are quite sure that the two cover the same periods of time?

A Yes.

Q Your personal check and personal account and this other?

A Yes, sir.

Q Now, Judge Carrillo, without being facetious, if you add up your checks and add up these other checks -- I think the allegations are that you, as a single man, have

been eating over \$1,000.00 to \$1,500.00 worth of groceries since 1968?

A No, sir. To begin with, at my home, as I have stated --

Q I was being facetious, Judge Carrillo. I will withdraw that.

But, at any rate, the personal account is paid as separate and apart from the welfare account?

A Yes, sir.

Q And you are testifying under oath, you had nothing whatsoever to do with the -- well, strike that.

The welfare account has, first of all, nothing improper as far as you know?

A No, sir.

Q And your participation in it in the '60's was not improper. Is that correc..

A No, sir.

Q And your participation in the '70's, once again, has been what?

A In the '70's, there has been almost no participation whatsoever.

Q All right, Judge.

MR. MITCHELL: If I might be permitted, Mr. President, I would like to move now to Article VII, and to first of all, the bulldozers.

Q Now, Judge Carrillo, I now am -- I think we are going to move, if I might be permitted from Article I to Article VII.

Article VII, I believe, if it serves my recollection is divided up into about two categories. First of all, you ripped off the County in some scheme with Benavides Implement and Hardware to buy a dozer, and secondly, you just ripped them off generally.

Now, that's a very brutal approach to it. Let's take first, the bulldozers. Okay?

A Yes, sir.

Q Judge Carrillo, I hand you what's been introduced into evidence as the original contract of purchase for two DC-8 Caterpillar tractors. It appears that the contract is dated in December of 1972?

A Yes, sir.

Q And the contract runs from Benavides Implement and Hardware, Plains Machinery, Corpus Christi, Texas. Do you recall that document?

A Yes, sir.

Q If you will hold on, I will find it, Judge Carrillo.

MR. MITCHELL: Mr. President, may I have just a minute, please, to find that contract.

THE PRESIDENT: Yes, sir.

Q Judge Carrillo, would you take this and turn to Page 614 in that volume, please, sir?

A Yes, sir.

MR. MITCHELL: If it please the Court, I would like to refer to Page 887 of the Examiner's Exhibit, Volume Two, which I am going to hand you, Judge Carrillo.

Q You are a lawyer and a Judge. Do you recognize that as a lease-purchase agreement?

A Yes, sir, I do.

Q On Page 887 of the blue edition?

A Yes, sir.

Q Judge Carrillo, that appears to be a contract between Benavides Implement and Hardware, signed by Rudolfo Couling and Plains Machinery?

A Yes, sir.

Q Now, at the very outset, did you -- what, if anything, did you have to do with the negotiation of that contract, please, sir? Tell the Court.

A Yes, sir. The first time, I had agreed with Plains Machinery to buy one bulldozer and had entered a contract to buy one bulldozer from them. And then, Mr. Couling was interested -- I was going to clear some land, and Mr. Couling was interested in clearing some land, too, and we found that we could make a better deal if we bought two bulldozers instead of one bulldozer.

Q All right. Let me ask you something. Judge Carrillo, your tax return, which appears here in this record --

MR. MITCHELL: Page 1056, if it please the Court.

Q -- contains a whole sheet of equipment that you depreciate and have for all this period of time, does it not?

MR. DOYLE: Which year is that, Mr. Mitchell?

MR. MITCHELL: This is 1972 return. I just picked it at random.

Q I will ask you in that connection, Judge Carrillo, had you previously had an occasion to do business with Plains Machinery, and if so, tell us the extent and scope of that business?

A We had been doing business -- the family and myself had been doing business with Plains Machinery for many years.

Q All right. And what is the nature -- what does Plains sell? Does it sell heavy equipment?

A Heavy equipment, yes, sir.

Q All right, sir. Now, the first matter of concern that I have to ask you about is these two tractors, the D-836A470 and the D-836A143?

A Yes, sir.

Q All right. You have the contract in front of you?

A Yes, sir.

Q I will ask you, was there a contract or an agreement upon your part and Mr. Rudolfo Couling's part and/or your brother, Ramiro Carrillo, and/or any and all of these gentlemen that have been identified as being on the Commissioners Court at this time to purchase a tractor to your own account -- that is, Archer Parr, Daniel Tobin, Juan Leal, R. Carrillo, Felipe Vallerio, Manuel Amaya -- and use county funds to pay for it?

A No, sir. This matter of the bulldozers was a transaction that took place strictly between Mr. Rudolfo Couling and myself.

Q All right. Now, in substance, Judge Carrillo -- and I will ask a specific question. The record reflects that Rudolfo Couling purchased the two tractors. Is that correct?

A Yes, sir.

Q The record reflects that, doesn't it?

A Yes, sir. Yes, sir, but I wanted to explain the fact that at first there was only one bulldozer that was bought, and it was bought in my name. And, that contract was destroyed because we entered into a second contract in the name of Benavides Implement and Hardware Company to buy the two bulldozers, and that is the reason why that "Drawer S" appears over here, because the first contract was in the name of O. P. Carrillo, Drawer S, Benavides, Texas.

Q All right.

A Then, Mr. Couling got interested in buying the second bulldozer, and we had a savings of about \$2,000.00 or \$3,000.00 by buying two instead of one. So, we did away with the first contract in which I had bought one bulldozer, and entered into a contract to buy the two bulldozers which Mr. Couling was buying from -- in the name of Benavides Implement and Hardware, and which I agreed to rent from him to clear my land.

Q Judge, let me ask you, the contract on Page 887 of the Exhibits, that speaks of an agreement between Benavides Implement and Hardware and Plains on a rent/purchase of two tractors, doesn't it?

A That's correct, sir.

Q All right. Now, in addition, the following page, 889, appears to be a financing statement, Benavides Implement and Hardware signed by R. M. Couling, the debtor, with Plains Machinery to put people on notice of that agreement, am I correct?

A Yes, sir.

Q 890 and 891 of the same volume, further documents that transfer, am I correct?

A That's correct, sir.

Q Now, Judge Carrillo, in addition, on 894 appears to be a purchase by Benavides Implement and Hardware from B. D. Holt of two root plows, one 2/6/73, and one, 12/4/72, am I correct? That's 88 -- 894 and 896. Are you following me?

A 89 -- yes, sir, I am now.

Q All right.

A Yes, sir.

Q Now, Judge Carrillo, what agreement, if any, did you have with Rudolf Couling as to the rental of those two dozers and those root plows?

A It was agreed that when I used the bulldozers, I would pay the rental on them and when he used the bulldozers, he would pay the rental on them.

Q All right. And did you commence using the bulldozers?

A Yes, sir. When they were delivered, they were brought over to my ranch, and I started to use them.

Q All right. Just a minute. Then, Judge Carrillo, did you pay out of your personal account to Mr. Couling for the rent of those dozers?

A I did.

MR. MITCHELL: Now, if it please the Court, I am referring to Page 648. They are Judge Carrillo's personal checks.

Q I hand you the R-58 Series, Judge Carrillo. Now, I want you to take them and look at them. I want to ask you some questions about them.

A Yes, sir.

Q First of all, answer the question, are they checks on your personal account to Benavides Implement and Hardware for rental of the two dozers and the root plow?

A This is checks on my own personal account made out to Benavides Implement and Hardware Company, Benavides, Texas, for the rental of the bulldozers.

THE PRESIDENT: Judge, let me interrupt you just a moment.

THE WITNESS: Yes, sir.

THE PRESIDENT: Senator Clower.

SENATOR CLOWER: Mr. President, if Counsel would be so kind as to give us the page number and what volume it is in.

MR. MITCHELL: Yes, Senator, those checks are found on 8 --

Q What is that number, please, Judge Carrillo, on the top of that --

A 648.

SENATOR CLOWER: Of what volume?

THE WITNESS: I don't have it. What volume is it?

SENATOR PATMAN: In this yellow one.

MR. MITCHELL: It's the yellow one.

SENATOR MAUZY: In the Respondents' Exhibits?

MR. MITCHELL: These checks, if it please the Court, appear on 648 in the yellow volume. That's the first series. Unfortunately, they are split up here. They also run over to six -- right. We have the originals of these checks, if the Court desires to look at them. They've been reproduced in the -- now, at the same time, while I'm pausing to answer that question, may I also call attention of the Court to Exhibit, may it please the Court, to Exhibit R-100 at 831, which is a composite showing the total amount of money paid by Judge Carrillo. If you all will turn to 832, this is a summary. It shows, "Judge Carrillo paid Benavides Implement and Hardware \$20,744.00 for equipment and rental."

Q Am I correct, Judge?

A That is for the two bulldozers.

Q For the two bulldozers and root plow, is that correct?

A Yes, sir.

MR. MITCHELL: Is the Court with me now? The individual checks appear at --

MR. DOYLE: Mr. President, could I ask for a clarification there?

MR. MITCHELL: Go ahead.

MR. DOYLE: Mr. Mitchell, is it your client's testimony that the amount of \$20,700.00 and -- what?

MR. MITCHELL: It's \$20,744.10 where O. P. paid Benavides Implement and Hardware, and that appears --

MR. DOYLE: His testimony is that that was paid for the rental of the two bulldozers?

THE WITNESS: And the root plows, yes.

MR. DOYLE: Okay.

MR. MITCHELL: And, in addition, Mr. Doyle, that one check of \$2,932.00 for the payment of the Massey-Ferguson is not included in that figure.

Q Is that correct?

A That is correct, sir.

MR. DOYLE: Where is that check?

MR. MITCHELL: That check, if you will recall, was introduced, Counsel, after we made up the Exhibit and therefore it was not a part of the input.

This amount of \$20,000.00 was the amount of money Judge Carrillo paid Benavides Implement and Hardware when he rented the two bulldozers and the two root plows that Benavides bought from Plains Equipment.

Q Am I correct, Judge Carrillo?

A Yes, sir.

MR. MITCHELL: That's his sworn testimony.

MR. DOYLE: Where is the check to Massey-Ferguson? What page is that on?

MR. MITCHELL: You've already introduced that. That's in your Exhibits. And I will --

MR. DOYLE: That's the point I'm trying to be sure of, Mr. Mitchell, is that the \$2,900.00 --

MR. MITCHELL: That's E-172.

MR. DOYLE: -- on the Massey-Ferguson is not part of the \$20,000.00. His testimony is that it's not part of the \$20,000.00?

THE WITNESS: Yes, sir. As a matter of fact, if you'll notice the date of the Massey-Ferguson check with Mr. Couling, and you all are claiming that I --

MR. MITCHELL: In October.

THE WITNESS: It was before -- even before the date of the entering or purchase of these bulldozers and this root plow.

MR. MITCHELL: And that check is E-172, and appears at 939 in Volume Two, the Massey-Ferguson check, which is originally dated October. It bounced, went back into the account in November. This contract is dated in December, and Judge Carrillo's first check is January, 1974.

Q Am I correct, Judge Carrillo?

A 1973.

Q Of the year '73. I'm sorry. Run through '73. Yes, sir.

SENATOR LONGORIA: I have a question for clarification of Mr. Mitchell. It's Page 888 of Volume Two, Mr. Mitchell?

MR. MITCHELL: Yes, sir.

SENATOR LONGORIA: There is a witness here to this contract. I would like to know who the witness is.

Q All right. Judge Carrillo, do you understand the Court's question? On Page 888 of the blue, that is Exhibit Number Two, there appears to be a witness. Can you tell the Court who that --

A That's Eloy Carrillo. He is the employee that Mr. Rudolfo Couling said was working for the Benavides Implement and Hardware Company.

MR. MITCHELL: And those were shown by the checks paid to Eloy, and if the Court will recall, I asked him whether or not Eloy actually worked for him, and he said he did, and he paid him. He was not -- he was satisfied that was a bona fide transaction.

Any further questions of the Court?

THE PRESIDENT: Mr. Mitchell, I have one.

Are these agreements -- has it been established whether these rental agreements were in writing or verbal agreements?

MR. MITCHELL: Yes, sir, they are in writing, if it pleases the Court. At 887, the checks paid by Judge Carrillo, of course, were in writing, the contract where Judge Carrillo bought the equipment in 1974 --

MR. DOYLE: Mr. Mitchell, I think what the President was asking you, if the rental agreements between -- that Mr. O. P. Carrillo is alleging existed between he and Benavides Implement and Hardware are in writing.

MR. MITCHELL: I am sorry, Mr. President, I didn't understand.

Q Judge Carrillo, other than the checks which recite "Rental, DC-8 --" are there any other written memorandum between Benavides Implement and Hardware by Rudolfo Couling and you as to the rental of the tractor and the root plows commencing in January of 1973?

A No, sir, there are not.

MR. MITCHELL: Does that answer your question, Mr. President?

THE PRESIDENT: Thank you.

SENATOR TRAEGER: Mr. Mitchell, I never did quite get clear whether the relationship of the check of \$2,900.00 is -- did it just supplement this \$20,000.00 -- is it a part of the \$20,000.00 or -- how does it relate?

MR. MITCHELL: Senator, it's my understanding that check is not included in the \$20,000.00.

Q Am I correct, Judge Carrillo?

A That's correct. That was before -- that check that they have brought into evidence is before the entering of the contract for the bulldozers and the root plows.

Q As a matter of fact, Judge Carrillo, now that the Court is evidencing interest in that line, I would like to show you what appears to be an appendix to the last two or three days' testimony, as Alice in Wonderland says, it gets more curiouser and curiouser, if the Court will permit me just one minute. It appears --

SENATOR MAUZY: Mr. President, while Counsel is searching for that, in order that I may be clear, Judge Carrillo, do I understand the only agreement between you and Mr. Couling for rental of this equipment was an oral agreement?

THE WITNESS: Yes, sir, it was mainly the organization of money, and we agreed that whenever I used the bulldozers, I would pay the rental on them, when he used the bulldozers, he would pay the rental on them.

SENATOR MAUZY: That was just an oral agreement between you and Mr. --

THE WITNESS: An agreement, that is correct.

SENATOR MAUZY: Thank you, sir.

Q Judge Carrillo, that oral agreement is backed up, however, by a transfer of over \$20,000.00 of your personal money, isn't that correct?

A Yes, sir, as soon as the tractors were delivered, they began to work on my place, and I began paying rent on them.

MR. MITCHELL: If I might be permitted just -- well, the record for the last one or two days had an Exhibit on --

MR. DOYLE: Mr. President, might I interrupt Counsel again?

Counsel, we find a check in the record from Mr. Couling to Massey-Ferguson, but I get the impression that the Judge is testifying that he in turn gave a check to Mr. Couling from himself on the Massey-Ferguson, and I can't find it.

THE WITNESS: No, sir, I have never testified to that.

MR. MITCHELL: No, never.

THE WITNESS: Neither here nor at the Judicial Qualifications Commission, you will --

MR. MITCHELL: Judge Carrillo, may I -- I think, Counsel, you can take him on cross on that.

Q That check to Massey-Ferguson is not a part, as I understand it, of the contract for the purchase of the two tractors, having been dated some 60 days prior, is that correct, Judge Carrillo?

A That is correct.

Q Judge Carrillo, do you recall the testimony of Mr. Cleofas Gonzalez and/or Mr. Rudolfo Couling that the deal was whereby Mr. Cleofas Gonzalez would execute a false and fraudulent claim on Benavides Implement and Hardware invoice, do you recall that?

A Yes, sir.

Q And that -- that would be turned in followed by a statement, the execution of a claim jacket, the presentment of that claim jacket, and false invoice and the issuance of a check for the purpose of buying--paying for those bulldozers?

A Yes, sir, I remember that.

Q All right. And the thrust of the Board of Managers' case is, essentially, that you participated in that scheme to rip-off the county to pay for those dozers?

A No, sir.

Q I say that's the thrust of the case?

A That is the thrust of the --

Q All right. As a matter of fact, Judge Carrillo, if we look at the evidence, it appears that you paid over \$29,000.00 in '73 and up -and in '74, doesn't it, for the rental of those bulldozers?

A I paid whatever the total amount of these checks -- there might be some missing. As I recall, Mrs. Montemayor recalls having written some in her own handwriting, and I can't seem to locate them. My records have been spread all over the State of Texas, and I --

Q Well, if we look at Exhibit 100, the \$20,744.00--

A Those checks we have here, these are the checks that I paid Benavides Implement and Hardware.

Q Right. Now, if it please the Court, Benavides Implement and Hardware then paid the rent to Plains Machinery, didn't it?

A That is correct.

MR. MITCHELL: Now, gentlemen of the Court, those checks appear on 669.

Q But you paid Benavides Implement and Hardware your rental check for December of '72 -- or '73, did you not, January, February and March, but Benavides Implement and Hardware did not remit to Plains with the result that the contract was in default, am I correct?

A As a matter of fact, I believe that --

Q Judge Carrillo, yes or no?

A That's correct.

Q All right. So that in May of 1974, you were put on notice that the contract was in default and that they would be repossessed with the result that you negotiated your own agreement with Plains Machinery for the purchase of these two dozers?

A Yes, sir, Plains Machinery was coming over to pick up the bulldozers.

MR. MITCHELL: And that agreement, if it please the Court, is on 614 of the yellow hornet.

Q Now, Judge Carrillo, you then agreed -- I'm going to hand you now 614. That appears to be 614, 615, 616, appear to be an agreement whereby you agreed to pay two -- \$22,946.58 for the purchase of those two bulldozers, correct?

A Yes, sir.

Q In addition --

MR. MITCHELL: And, may it please the Court, you'll have to look at 617, now.

Q You gave Plains Machinery at that time, that is, May 3rd, 1974, check for \$6,000.00, that's in the record, am I correct?

A Yes, sir.

Q And that was on the account of the balance of that purchase?

A Yes, sir.

Q And you then proceeded to pay the Plains Machinery direct from May of '74 until you paid out the full \$22,000.00, am I correct?

A Yes, sir.

MR. MITCHELL: And those checks, if it please the Court, appear in the record, Judge Carrillo's personal checks to Plains at 669, if you gentlemen will look there. 669.

Q Judge, I'll hand that to you. Is that the 60 Series, 61, 2, 3, 4, 5, etc., etc.?

A Sir?

Q Those are your personal checks to Plains in Corpus Christi for the payment of the dozers after you bought them in May of 1974?

A Yes, sir.

Q Now, the record reflects that while you were paying Mr. Rudolfo Couling for the rental -- Rudolfo Couling was not paying Plains, doesn't it?

A Yes, sir.

Q The record reflects further that while you were paying Rudolfo \$20,000.00 for rental of those dozers that he was receiving from the County a like amount if not more, isn't that correct, Judge Carrillo?

A Yes, sir, because Mr. Parr was using those tractors --

Q Well, that's the next thing. As a matter of fact that was on account of the fact that Mr. Parr took the dozers, put them on his land and used them and was not paying the rental.

A That is correct.

Q And at Mr. Parr's death that's where the tractors were found, correct? I think that's established.

A Yes, sir, there were two different transactions, Mr. Mitchell.

Q Well, tell us.

A They were taken by Mr. Parr shortly after they were brought in in 1973. One of them -- one of the bulldozers was taken and he was supposed to pay the rental on that and one tractor to Benavides Implement and Hardware Company. And then that bulldozer was returned sometime later and then it was taken back again in 1975, I guess it is.

Q All right. It appears then that the invoices on Benavides Implement and Hardware by Cleofas Gonzalez or Rudolfo Couling were separate and apart and distinct and a deal that George Parr had with them that you know nothing about. Am I correct, Judge Carrillo?

A Yes, sir, because when Mr. Parr came after the tractors the second time that he wanted to use them, I told him that the bulldozers were no longer the property of the Benavides Implement and Hardware Company and that I was paying the rental on them. And he said that he had been paying the rental of them through the County and he would continue to do the same thing. And then I told him that no, I would not have him pay checks from the County towards the rental of my own bulldozers, that I would rather he just use the bulldozers. He said, "In that case I have several bulldozers over at my ranch and as soon as I get through clearing this land in time to start planting I will send over all of the tractors that I have over there and they will clear all of your land and save the time that you've lost by my taking the bulldozers." And I told him no, that I didn't want that either, if he would just go ahead and use them and then return them that would be fine with me.

Q All right. Judge Carrillo, I'm going to turn here in the record at about 839, if it please the Court, where you -- the Board of Managers allege that you had this deal going with Cleofas and/or Rudolfo to take money from the County for the payment of the dozer. Now, that Exhibit on 839, those that are following all this money coming in -- that appears to be December 6 of 1972, does it not?

A Yes, sir.

Q All right. Now, let me show you another one. This is an Exhibit -- I don't know -- this one is on as an Appendix, I didn't hear it introduced, but I assume it's part of the record. If it please the Court, this is at the back side of the 17th day, January

15th, on Thursday. I am going to show it to you. Judge Carrillo, the Appendix -- that's C-1, I imagine that designates the fact that one of the members of the Court asked about it. C-1 appears to be a Benavides Implement and Hardware invoice dated December of 1972. Am I correct?

A Yes, sir.

Q Can you tell us the date in December?

A No, there's no date in December.

Q The contract for the purchase of the bulldozer we have already established was what date in December? December 14th, am I correct, 1972? Here's the contract, Judge Carrillo.

A Yes, sir.

Q The payments under the contract were not due until January of 1973, am I correct?

A That is correct, sir.

MR. MITCHELL: Go ahead, Mr. Odam.

MR. ODAM: Mr. Mitchell, the other day when Mr. Couling testified I asked him about these and he specifically stated the ones you are referring to, that on the back of the Benavides Implement and Hardware check the first one went to make a payment of the note of the Massey-Ferguson tractor. That's why we went into it to explain---

MR. MITCHELL: I understand what the great Mr. Couling testified, Mr. Odam, but that's not what the Exhibit shows. What does the Exhibit show? It shows rental on two D -- well, I will read it, "D-8 tractor rental" in December before those tractors were even bought.

Q Isn't that what it says, Judge Carrillo?

A Yes, sir.

Q In other words, it appears, if you're going to believe that Exhibit, that he had already cranked up that money machine before he even bought them, doesn't it?

A Yes, sir.

Q Wasn't that what the Exhibit says?

A Yes, sir.

Q And we do know, Judge Carrillo, that he continued to receive money all through '73, all through '74 from you and from the county on account of these?

A Yes, sir.

Q And we do know that he did not remit to Benavides Implement -- I'm sorry, to Plains Machinery from Benavides Implement and Hardware after December of 1973. Am I correct?

A That's correct. He was in default in December of 1973 and even in January of '74 I had written him a check for \$3,550.00.

Q You had paid your December rental payment to him, had you not?

A On January 18th I paid him \$3,550.00 for the rental of these two bulldozers. And he was in default for December, January, February and March of 1974.

Q All right. Now, there was some testimony about when you went over there at Plains to work out the deal with them there was a check that had been given to Plains for three grand. Do you remember that?

A Yes, sir.

Q Wasn't it your agreement and doesn't the record reflect that if that check were cleared you would be given credit, if not you would pick it up?

A Yes, sir, I was buying the contract for the balance due on it. And if that check -- it was agreed with Mr. Red Kurtz that if that check was honored that I would be given credit for that amount.

Q And how much did you give Plains at the time you closed the deal for the purchase of the tractors, Judge Carrillo, in May of 1974?

A There were four months of default for a total of \$6,000.00 and I had to write a check for \$6,000.00 to buy the contract.

Q And that's the one that is in the record?

A Yes, sir.

Q And evidence is that you had also paid Benavides Implement and Hardware for the rental of the dozers from the very same period of time. Am I correct?

A Yes, sir.

Q And that's what series, so the Court will know? What's that in front of you?

A That's Series R-58.

Q R-58. A check from you in January for how much to Plains?

A On January 18th, 1974 I paid Benavides Implement \$3,550.00.

Q And you negotiated your deal in May. Am I correct, Judge Carrillo?

A Yes, sir.

Q Now, Judge Carrillo, when did George Parr come and get those tractors?

A What time, sir? Which one of the times, sir?

Q Well, you got them in -- the contract was in December of 1972.

A You mean the first time that he borrowed the tractors?

Q Yes, sir.

A It was about three or four months after I got the tractors, something like that.

Q And for what period of time, if you recall, did he use those tractors?

A He kept them for quite a while.

Q Now --

A He kept one of them for quite a while.

Q Do you know whether or not he took up the rental payments with brother Rudolfo Couling?

A He told me that he was paying Benavides Implement and Hardware store through the county. I don't know how he was working it. And he wanted to work the same deal with me and I would not do it.

Q Well, when did you get them back? Didn't you get them back sometime in 1973?

A Well, he brought them back -- the first time he took them I... brought them back in 1974.

Q And then did you take --

A And then he --

Q Excuse me, Judge Carrillo. At that time did you take up the rental payment to Benavides Implement and Hardware as reported by your check?

A I don't understand your question, sir.

Q At the time that Parr brought those two dozers back did you then take up your payments again --

MR. DOYLE: Mr. President, I have an objection at this point.

MR. MITCHELL: I haven't finished it, Mr. Doyle.

MR. DOYLE: Well, I have an objection to the question, not just the answer.

THE PRESIDENT: State your objection, Mr. Doyle.

MR. DOYLE: This is the third time that Mr. Mitchell has referred to George Parr bringing back those two dozers, and on each occasion his client has answered there

was only one. And my objection is that Mr. Mitchell is intentionally intending to mislead the Court with respect to what his client's testimony is.

THE WITNESS: On the first time he took one tractor, on the second time he took both tractors.

MR. DOYLE: Well, would you please elicit from your client -- or, Mr. President, would you please ask Mr. Mitchell to elicit from his client the dates of the removal of the one tractor and the date of the removal of the two tractors.

THE PRESIDENT: Mr. Mitchell.

Q Judge Carrillo, I don't want to be guilty of misleading the Court, did you testify that on the first occasion he took one and on the second occasion he took two of them?

A On the first occasion that Mr. Parr borrowed the bulldozers he took one bulldozer. And then it was returned sometime later. On the second occasion that he borrowed the bulldozers he took both bulldozers.

Q And were those --

A And the bulldozers were in his possession at the time of his death. One was at the ranch and one was at the shop.

Q That's what Ranger Powell testified, right?

A Yes, sir.

THE PRESIDENT: Judge Carrillo, as nearly as you can, can you put a date on the time that Mr. Parr borrowed the first bulldozer?

THE WITNESS: The first time, sir, it was, I would say three or four months, approximately, after I took delivery of those two bulldozers at my ranch.

THE PRESIDENT: All right. And when did you take delivery of those bulldozers?

THE WITNESS: Those bulldozers -- as close as I can remember they were brought over right after the first of the year.

Q Be specific now.

A In 1973.

THE PRESIDENT: All right. So, then three to four months after the first of 1973 would be approximately March or April.

THE WITNESS: March or April of 1973, yes, sir.

THE PRESIDENT: Now, is it your testimony, Judge, that about that time was the first time that Mr. Parr borrowed a bulldozer and at that time he borrowed a single bulldozer.

THE WITNESS: That is correct, sir.

THE PRESIDENT: All right. Now, at about what time did he return that bulldozer, Judge?

THE WITNESS: I think it was about six months later or something like that, six or seven months later.

THE PRESIDENT: So, that would be roughly August or September of 1973.

THE WITNESS: Sometime, I would imagine, sir, I'm not quite sure.

THE PRESIDENT: But, to the best of your recollection that's about the time.

THE WITNESS: That is correct, sir.

THE PRESIDENT: All right, sir. Now, at what time did Mr. Parr borrow the two bulldozers?

THE WITNESS: The second time he came after the two bulldozers was in the latter part of 1974 or the very early part of 1975, I don't recall the exact date.

Q And the date of his death now?

A And the date -- he died on April 1st, 1975.

THE PRESIDENT: Thank you very much.

Mr. Mitchell, are you approaching a logical break in your testimony?

MR. MITCHELL: Yes, sir, I'm about finished with this line, I might have just one or two more questions I would like to leave the Court with and then would like to move to another inquiry under Article VII, Mr. President.

THE PRESIDENT: All right. When you conclude your line of -- this current line of questioning, Mr. Mitchell, the Court will entertain a motion to adjourn until 9:00 o'clock tomorrow morning.

MR. MITCHELL: All right, sir.

Q Judge Carrillo, after the May, 1974 contract did you then put the dozers on your own tax return in any way? Does your tax return reflect that agreement?

A On the recommendation of Mr. O. D. Kirkland, my accountant, he said that we should wait until after, because this is land that I had bought and that we should wait until the conclusion of all of the work and then take up all of the expense that was taken towards this land and set it up as the cost of the land.

Q And he would capitalize that amount.

A That's correct.

Q And that's found in his testimony before the Judicial Qualifications Commission. Am I correct?

A That is correct, sir.

Q And you will note that Mr. Couling deducts the payments made to Plains for the year '73?

A Yes, sir.

MR. MITCHELL: All right. Mr. President, I would represent that I'm now at a breakpoint where I'm going to move to the second facet of what I conceive to be the thrust of the House Managers' case as regards impeachment of Judge Carrillo on Article VII. It would be a logical breakpoint, if it please the Court.

THE PRESIDENT: Senator from Lamar.

SENATOR AIKIN: Mr. President, I move the Court stand adjourned until 9:00 o'clock tomorrow.

THE PRESIDENT: Senator from Lamar moves the Court stand adjourned until 9:00 o'clock tomorrow morning, all in favor say aye, those opposed no. The ayes have it. Court stands adjourned.

Accordingly, the Senate, sitting as a Court of Impeachment, at 5:03 o'clock p.m. stood adjourned until 9:00 o'clock a.m. tomorrow.

TWENTIETH DAY
(Tuesday, January 20, 1976)

The Senate, sitting as a Court of Impeachment, met at 9:00 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Hance, Harrington, Harris, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: Gammage and Lombardino.

A quorum was announced present.

The Reverend David J. Bena, Associate Rector, St. Matthew's Episcopal Church, Austin, Texas, offered the invocation as follows:

Let us pray.

Almighty God, who hast ordained that all people should live and work together as brethren: guide with Thy never failing wisdom this assembly here gathered. Give to each one of these persons the patience, integrity, and compassion to do Thy will.

Remove from them the spirit of strife and the occasion of bitterness: that remembering that they are serving Thy people, they may discern the truth and impartially administer justice. To the praise of Thy Holy Name. Amen.

LEAVES OF ABSENCE

Senator Lombardino was granted leave of absence for today on account of illness on motion of Senator Traeger.

Senator Gammage was granted leave of absence for today on account of important business on motion of Senator Brooks.

APPEARANCES

Judge O. P. Carrillo, Respondent; Honorable Arthur Mitchell, Attorney for Respondent.

Board of House Managers; Honorable Terry Doyle, Counsel; Honorable John Odam, Assistant Attorney General on behalf of the Board of Managers.

MR. MITCHELL: Yes, Your Honor, at the outset, if it please the Court, I would like to call the Court's attention to an official transcript of the testimony of Mr. Couling at the Federal trial. Members of the Court have requested that such testimony be made available, and I in answer to the question put to me by members of the Court, perhaps left the impression that I had not reproduced it. It has been, in fact, reproduced, and it's been put on the desk with the other documents. And it is the testimony, if it please the Court, of Mr. Couling at the trial in Criminal Action 75C45 in the District Court of the United States for the Southern District of Texas at the Corpus Christi Division, in the case styled *The United States of America vs. Ramiro Carrillo and O. P. Carrillo*. His testimony, if it please the Court, occurred September 16, 1975.

If it please the Court, I would like to make this official transcript under the seal of Alice I. Morrison, Official Court Reporter, a part of the record. For the purpose of the record further, if it please the Court, I questioned Mr. Couling before the Judicial Qualifications Commission, now, and that was on January -- that was in December, rather, December 1 of 1975 when he took the stand down there under oath. I questioned him and I refer now to the page in the Senate Journal, it's 1512, Page 1512. So that the Court can turn to 1512 where I asked him about his prior testimony in the Federal court on September 16. The Court must remember that before me at the time of the Federal trial was the Comptroller's application filed by Couling wherein he stated that this was a sole proprietorship. And that appears on Page 871. That's a certificate of the Comptroller of Public Accounts where Mr. Couling -- and that's the yellow book -- states the Benavides and Hardware was a sole proprietorship. I therefore assumed on September 15, 1975 that he owned the business, and questioned him. And the record is before you.

MR. DOYLE: Mr. President --

MR. MITCHELL: Pardon me, Mr. President. I just wanted to read the one, the Court's going to read it all. "Question: Mr. Couling, when did you become the sole owner of Benavides Implement?"

"I opened the store in 1971."

"All right. I think you told the jury yesterday that you are now in the cattle business."

If you'll follow it right on through, he makes a representation at least in my opinion that he owned the store individually as a sole proprietorship. That, of course, is up to the Court. The Court can make its own decision.

MR. DOYLE: Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President, this is a rather unusual way to introduce impeachment testimony. And I recognize that the Court asked Mr. Mitchell to do this, but, in fairness to the Court, I would like to ask Mr. Mitchell if in fact during the course of the Federal income tax trial, there were -- the attorneys on both sides were operating under a stipulation or an order by the Court not to go into the tax years, 1971, 2, 3 and 4, because the tax years involved in that case for 1970, '69, '68 and '67.

MR. MITCHELL: No, the indictment Count 1 alleged a conspiracy commencing in 1967 and going through and including 1974.

MR. DOYLE: No, sir, I am not talking about the indictment. It seems to me I remember reading in the paper where you had and Mr. Kelt agreed prior to the time of trial that you would not go into the tax years, '71, '72, '73 and '74.

MR. MITCHELL: No, as a matter of fact, Mr. Doyle, the very heart and soul of the government's case was Zertuche Store which was '67, '68, '69 and '70.

MR. DOYLE: Yes, sir. That's the years I said.

MR. MITCHELL: And those are the years that we tried.

MR. DOYLE: But, weren't the years '71, 2, 3, and 4 specifically excluded?

MR. MITCHELL: No. They were specifically excluded on some testimony by the Court's order, and I took objection to it, and I think I have a reversible error.

MR. DOYLE: Well, that's what I meant. That is exactly the point I'm trying to make to the Senate. You couldn't go into the tax years, '71, 2, 3 and 4, the year that Mr. Couling owned the store.

That is accurate, isn't it?

MR. MITCHELL: No. The Count 1 of the indictment, Mr. Doyle, alleges a conspiracy which ended in 1974. I don't see how in the world I could have been kept from going into 1974 when the first count of the indictment carried me through '74.

As to the observation made by Counsel, Mr. President, that this is a somewhat strange procedure for impeachment, I agree. However, out of courtesy to the Court, the Court had asked for this information. I felt like I had a responsibility to the Court.

And incidentally, may I add one other quote? On Page 5 of this material:

"Benavides..." -- this is a question put to Mr. Couling. "Benavides Implement and Hardware store belongs to you, doesn't it?"

His answer was, "Yes, sir."

That was in September of 1975. He testified under oath in December of the partnership and I cross-examined him on Page 1512 about this very material which the Court has before it.

If it please the Court, I would like to introduce the official record from Mrs. Alice Morrison, the court reporter of that testimony of Rudolfo M. Couling,

September 16, 1975, and make it a part of the record, please.

THE PRESIDENT: Is there objection to that, Mr. Doyle?

MR. DOYLE: Yes, Mr. President, I do object. I really think this is an improper way to impeach a witness, and I don't think it would be proper to do it in this manner.

THE PRESIDENT: Objection overruled. The testimony will be entered in evidence.

(Respondent's Exhibit No. 19 was marked for identification, R-19.)

MR. MITCHELL: Mr. President, should I have this simply marked and delivered to the Court?

Mr. President, without being out of order further, I was requested by the Court to secure a copy of the pleadings in the *Caller Times vs. Mr. Couling*, and I am pleased to announce to the Court that that should -- a certified copy of that pleading should be in our possession today for delivery to the Court.

I might --

THE PRESIDENT: Please proceed, Mr. Mitchell.

MR. MITCHELL: Thank you. I recall Judge O. P. Carrillo.

DIRECT EXAMINATION RESUMED

(Questions by Mr. Mitchell:)

Q You are the same O. P. Carrillo that was on the stand yesterday and Friday, are you not?

A That is correct.

Q You are the Respondent herein?

A Yes, sir.

Q And you are under oath?

A I am.

Q All right. Now, Judge Carrillo, by way of summary, we have -- your testimony has now covered Article I. I have asked you some questions on Article I, Article VII, the political background of the area, the facts touching on your defense. And I now want to move to the last area of your examination.

This area, for the purposes of the Court and the President, will deal with the area of certain checks, if you will recall, that the testimony indicates that you received from the Benavides Implement and Hardware. Now, if it please the Court, I would like to call the Court's attention to three places where these items about which I am going to question the witness appear, 797 in the green book -- they are in summary form -- and the chart 832 in the yellow book. And they appear in a part of this chart appearing on Page 1555 of Volume Three of the Examiner's Exhibits. And for those of you that have available the Judicial Qualifications Commission's Exhibits they appear in E-192

of that Exhibit. That's the large Exhibit. That large Exhibit, of course, has been reproduced on Page 1555 of Volume Three. Okay? These are all Exhibits now that have been introduced in the Judicial Qualifications Commission.

Now, Judge Carrillo, you will recall Mr. Couling's testimony and the documentary here that there are certain checks to you from Benavides Implement and Hardware. Do you recall those?

A Yes, sir.

Q Now, Judge Carrillo, you also recall that Mr. Couling's testimony in best sum and substance is that those checks came to you pursuant to a scheme, a device, a conspiracy, a combination or agreement in which you were a party, a moving party, a principal to, for better expression, rip off these sums from the county. Do you recall that testimony?

A Yes, sir, I recall that testimony.

Q He also testified in part, if I recall, about three agreements. One, such a conspiracy existed between your brother, Ramiro, and him.

A Yes.

Q Two, a silent or secret partnership that came into existence in May of 1972 between Ramiro and him, whereby you were to be a party, if you recall?

A Yes, sir.

Q And, three, a scheme whereby \$750.00 would be ripped off from the County, \$500.00 of which was to go to your brother, Oscar, and \$250.00 to R. Carrillo and Brothers?

A Yes, sir.

Q All right. Now, let's take those one at a time. First of all, Judge Carrillo, were you a partner in any form, silent, vocal, any form, with Mr. Rudolfo Couling?

A No, I was not.

MR. MITCHELL: Again, I call the Court's attention to his sworn testimony in September of last year -- and the record speaks for itself.

Q Did you ever have an understanding with him as regards joining into business with him in the Benavides Implement and Hardware?

A I did not.

Q Now, Judge Carrillo, there is, could I have that easel here, please -- Judge Carrillo, the chart here on the board -- I prepared that chart and I will direct your attention to it. First of all, we start talking about a partnership?

A Yes, sir.

Q Between you and anyone, say Farm and Ranch etc. -- there's been a lot of testimony. For the purpose of clarification to the Court, was there a partnership

between you and Rudolfo Couling and Benavides Implement and Hardware?

A No, there was not.

Q Now, your tax returns, Judge Carrillo, are in evidence, I believe for the years '70, '71, '72, '73 and '74. You have tax returns going back I believe to 1964, do you --

MR. DOYLE: Mr. President.

A Yes, sir.

MR. DOYLE: Mr. President, I would object to that. Mr. Mitchell is again misquoting the record, we don't have -- still don't have all of the tax returns he mentioned. He indicated to us Friday and again yesterday that --

MR. MITCHELL: Well, I will withdraw the questions. I can bring Oscar Kirkland in and we will go back at it that way, if it please the Court. I was trying to accomplish, if I could, a little more clarity on the question of tax returns.

MR. DOYLE: Mr. Mitchell, can we rely upon you getting us those returns?

MR. MITCHELL: I have Mr. Kirkland subpoenaed, Mr. Doyle. I have nothing to hide about a tax return. But you all have alleged there's a partnership. And you have got a definite hill to climb when you start talking about partnerships when you can't produce a partnership return between Mr. Couling and this gentleman. And that's my point.

MR. DOYLE: Mr. Mitchell, the Impeachment Articles nowhere allege a partnership.

MR. MITCHELL: Well, he swore to it. I will withdraw that.

Q At any rate, Judge Carrillo, I will ask you as regards -- did you execute or did you have your accountant, Mr. Kirkland, execute a partnership return with Mr. Couling?

A No, I did not, because no partnership existed.

Q All right, sir. I will ask you this -- setting aside now the question of partnership -- you are, of course aware, that nowhere in any documentary is there any evidence of any partnership between you and Mr. Couling?

A That's right.

Q The written documents show an application by him with the Comptroller of the State of Texas where he represented the Benavides Implement and Hardware as a sole proprietorship.

A Yes, sir.

Q The evidence shows that he reported it as a sole proprietorship.

A Yes, sir.

Q The evidence reveals further that he controlled it as a sole proprietorship, checks, etc.

A Yes, sir.

Q All right. Now, setting aside the partnership, did you have a personal understanding with him now, short of the partnership, a conspiracy or a contract or a combination or an agreement in September of --

MR. DOYLE: Mr. President, I would object, that's a leading question. This is his witness and he has no right to lead his own witness.

THE PRESIDENT: That objection is sustained. Mr. Mitchell, please refrain from leading your own witness.

MR. MITCHELL: All right. I withdraw the question.

Q State whether or not you had any such understanding with him at any time, Judge Carrillo?

A I never had any understanding of any kind whatsoever with Mr. Couling regarding Benavides Implement and Hardware, either to be a partner, silent partner or in any way have anything to do with the running or the operations of the Benavides Implement and Hardware Company. Like I have stated before only once during my lifetime have I visited Benavides Implement and Hardware Store and that was to buy a cylinder for a windmill. And that is the only time that I ever stepped into the Benavides Implement and Hardware Store. I know nothing about its operations, I know nothing about the way it's run, I know nothing about nothing and that's it.

Q All right. Did you have any control over his bank account?

A I didn't -- none whatsoever, I don't even know where he has his bank account.

Q All right. Now, Judge Carrillo, I am going to hand you some checks. These checks are identified previously as -- and I have asked you about them I believe before, in the Judicial Qualifications Commission and I have asked about them to Mr. Couling. I'm going to hand them to you. I'm going to hand you -- this is E-152, 153, 155, 156, 157, let me hand you those, Judge Carrillo. Those all appear to be checks from Benavides Implement and Hardware to you, O. P. Carrillo.

A Yes, sir.

Q They are all in Mr. Couling's handwriting, according to his testimony.

A Yes, sir, they are.

Q Now, let's take the first one, Judge Carrillo.

A Yes, sir.

Q This is a check for \$700.00 -- strike that and go back. This is a check for a thousand dollars on 5/20/71.

MR. DOYLE: Mr. Mitchell, could you identify them by E number?

MR. MITCHELL: Yes, it's E-156, the check number is -- Number 120. I hand that to you.

SENATOR JONES: What page?

MR. MITCHELL: That check appears on -- no, that's the draft form. That series, if it please the Court, Senator, is on Page 878, it starts 878, Volume Two, E-155. 151 appears on 878 -- 879 is E-52 and so forth.

Q And Judge Carrillo, you have E-155, am I correct?

A I have E-156.

Q E-156. That appears on Page 883.

MR. MITCHELL: I have the original of the check -- Judge Carrillo has the original, the one in the record, of course, is a reproduction.

Q All right. Judge Carrillo, I will ask you concerning that check that you are holding.

A Yes, sir.

Q That check -- and I might add to the Court now. These checks, plus one or two more are all of the checks, are they not, that come to you from Benavides Implement and Hardware?

A Yes, sir, to the best of my knowledge.

Q All of them?

A Yes, sir.

Q We're going to go through them. All right. Looking at that check, what is the date of the check?

A This is May 20, 1971.

Q What occasion did you have in May of 1971, Judge Carrillo, to receive a check from Mr. Couling?

A I sold him a counter for the drug store and this is a check in payment for that counter.

Q Now, when did you acquire the counter, do you recall?

A The counter was acquired when I bought the Vaello Sales Building at the bankruptcy sale.

Q And do you recall, Judge Carrillo, how that transaction was handled on your tax return. You remember Mr. Kirkland testified at the Judicial Qualifications hearing and that testimony is in the record as to how that was handled? Do you recall?

A Well, I reported it to Mr. Kirkland and he handles my income tax matters and sometimes I don't even understand what he's doing.

Q He carried it as ordinary income on your tax returns?

A That is correct.

Q Now, Mr. Couling, on the other hand, testified that the recital -- first of all that it was in his handwriting, but -- that the recital was false and had nothing to do with the reality of the transaction. Do you have any comments as regards his testimony?

A Well, he's lying, I sold him a counter.

Q Is that handwriting your handwriting in the lower left-hand corner?

A No, sir, this check is in completely Mr. Couling's handwriting.

Q Turn the check over and tell us is it endorsed by anyone and if so who, if anyone?

A It's endorsed by me.

Q All right.

A And I received the check.

Q Now, Judge Carrillo, I am going to hand you -- this is E-155, if it please the Court, and the copy of this one appears on Page 882 of Volume Two. Now, this check and the original -- incidentally, that check also appears, if it please the Court, on the Chart 1555 right down at the bottom of the page, a \$1,200.00 check.

Judge Carrillo, I hand you E-155 and ask you, first of all, if that is a check payable to you by R. M. Couling on Benavides Implement and Hardware dated June 21st, 1971 in the amount of \$1,200.00?

A Yes, sir.

Q And I will ask you to flip the check over, and tell us, please, sir, had you endorsed the check?

A Yes, sir.

Q And whose endorsement follows yours, if any?

A Jose Saenz.

Q Was it negotiated by you to Jose Saenz?

A Yes, sir.

Q Turn the check back on the front side, please.

A Yes, sir.

Q The check -- what notation is in the lower left-hand corner?

A "Loan."

Q Now, Judge Carrillo, you'll recall Mr. Couling's testimony that that recital was in his handwriting?

A Yes, sir.

Q As a matter of fact, is it in his handwriting?

A It is in his handwriting.

Q Do you recall his testimony that the notation, "Loan," written by him has no connection with reality and that that check was not a loan?

A Yes.

Q Can you recall that testimony?

A Yes.

Q Can you tell the Court, please, what the check was given to you for in the amount of \$1,200 on June 21, 1971?

A Yes, sir. My brother and myself and Farm and Ranch Supply, it is all reflected in our tax returns, owned a water well rig. The water well rig was leased to the Benavides Implement and Hardware Company through the Farm and Ranch Supply, and it was drilling wells for the County on right-of-way -- they were condemning land, cutting it through, they were building fences, making a County road, and the land that was divided that -- where pieces of property were left without water, the County was drilling water wells with the -- as part of the condemnation proceedings, and then when they got through with that, they took the water well rig --

MR. DOYLE: Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President, again I would ask Counsel and ask the witness to give us an idea of when he's talking about. He's talking about the County doing right-of-way work, and I don't know when it was taking place. He is talking about the contract between Farm and Ranch and BI & H. I don't know the date of that contract. He's talking about any number of things that we need to know when these things were alleged to have taken place.

Q Judge, in answer to Counsel's objection, give us a time-frame, now, within which you're talking.

MR. MITCHELL: In that connection, if it please the Court, may I call the Court's attention to 1108, Depreciation Schedule, Farm and Ranch, water well rig, 1972, on Page 1872 -- I'm sorry, 1108, Volume Three, shows acquisition date, 1963, cost of water well rig, method of depreciation.

Q Go ahead, Judge Carrillo, with that in mind, and that as a point of recollection, and Mr. Doyle's objection in mind, tell the time-frame we're talking about.

A All right. Now, the water well rig was taken by the County back in the '60's.

MR. DOYLE: That's ten years.

A Yes, Mr. Doyle, I don't remember the exact time or date, because I did not negotiate the leasing of the water well rig. The water well rig to this date has not been returned to us. It's still -- we have just located it over in Victoria where it was taken by Mr. Archie Parr.

Q Judge Carrillo, I appreciate all that. Tell me, and get to the point. Is that a loan of \$1,200, or is it not?

MR. DOYLE: Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President, could I again request of Counsel, he's alleged now a contract between BI&H and the County for the purpose of drilling water wells in connection with the purchase of a right-of-way. Obviously, the County has a record of that. Obviously, if that's a true story, we need to know when this took place so we can verify it. And I'm confident the Judge has that knowledge.

THE WITNESS: If I can continue with my explanation, Mr. Doyle, I believe I can make things very clear.

Now, this water well rig that was taken over to the County, when they got through drilling the water wells for the County, George Parr and Archie Parr took this water well rig to drill irrigation wells on their ranches -- on their farms. And, they were not paying the rent, the rental on this water well rig. There was no way to get this, and there were complaints from the Farm and Ranch that we could not get our money that we had coming, and they were using this rig.

So, I complained to Mr. Parr, and he said, "Now, you will get your money." And I told Rudolfo Couling, who was supposed to have charge of this water well rig, and he said, "We'll get you the money." They owed us, by then, in rental was \$20,000.00 or \$25,000.00, something like that. And they brought over -- he said, "I'll give you \$200.00 now. As soon as we settle how much it is that you are supposed to have coming, you'll get it."

And I have testified to this story before, and Mr. Odam is well-acquainted with this story.

MR. ODAM: I am well-acquainted with the story.

MR. DOYLE: Mr. President, my objection remains. We are now in, sometime between 1960 and today, that this contract is supposed to have been in existence. I would move to strike his testimony if he can't tell us when the County drilled the water wells, and I would move to strike his testimony if he can't give us some idea better than a fifteen-year span as to when all this was supposed to have taken place.

THE PRESIDENT: Judge Carrillo, I believe you have testified that this took place in the '60's, is that correct?

THE WITNESS: And, to date, Governor, we have not received this water well rig back. It has not been returned to us.

THE PRESIDENT: But certainly, you can be more specific than a whole decade.

THE WITNESS: No, it's not a decade, Governor. They started drilling these wells, I guess it was around 1965, 1966. I don't remember the date, because I did not negotiate this contract.

THE PRESIDENT: Were you the County Attorney at that time?

THE WITNESS: I was the County Attorney at the time. And, legally, I was supposed to be the advisor to the Commissioners Court, but they never asked me to advise, and they never took my advice.

THE PRESIDENT: This was a written contract?

THE WITNESS: No, the -- when my brother became County Commissioner, Governor, we could not legally do business directly with the County. And business was done through Zertuche General Store and through Benavides Implement and Hardware Store.

THE PRESIDENT: When you say "we," Judge, could you be more specific?

THE WITNESS: My brother, Ramiro Carrillo, and myself who were the owners of Farm and Ranch Supply.

THE PRESIDENT: Mr. Doyle, did that --

MR. DOYLE: Well, Mr. President, now we know that the County was drilling some wells in 1965 or '66. I would still request that the Court inquire of the witness, he alleges a contract between his Farm and Ranch and BI & H with respect -- evidently, what he's saying is that they leased a water well to BI & H who in turn leased a water well rig to the County. And I would like to know if there was a contract between Farm and Ranch and BI & H -- you know, when that contract was in existence.

THE PRESIDENT: Mr. Doyle, you'll have an opportunity for cross-examination.

MR. DOYLE: All right.

Q Judge, my question to you is, was the \$1,200.00 paid to you by Mr. Couling pursuant to some conspiracy, some unlawful and illegal plan whereby you all were ripping off the County of twelve hundred bucks?

A No, sir.

Q The Exhibit 100 shows Mr. Couling's Benavides Implement and Hardware got over \$398,000 -- or \$370,382.23 from the County school and the water district, does it not, Judge Carrillo?

A Yes, sir.

Q The \$1,200.00 represented by that check, your testimony is a bona fide transaction?

A It was.

Q All right. I hand you now E-157, if it please the Court, and that appears on Page 884. It also appears as part of the summary at 88 -- no, at 831 of the yellow edition, and it appears, if it please the Court, in the chart at 1555, being a check, July 2nd, 1971. Judge Carrillo, I hand you E157 and ask you, please, if you recognize that as a check to you in Mr. Couling's handwriting on Benavides Implement and Hardware?

A Yes, sir, I do.

Q And the date, please, sir?

A July 2nd, 1971.

Q And the amount?

A \$982.00.

Q And do you recall Mr. Couling's testimony that the check is in his handwriting?

A Yes, sir.

Q And the recital on the lower left-hand corner of the check?

A "Tubing."

Q All right. Do you recall the transaction?

A Yes, sir, I do.

Q Recount it for the Court, please, sir.

A Well, I sold some tubing to Mr. Couling.

Q You sold some tubing to Mr. Couling?

A Yes, sir.

Q And did you deliver the tubing to him?

A Yes, sir.

Q And did he deliver you the check?

A Yes, sir.

Q And do you recall whether or not that transaction was likewise reflected on your tax returns by Mr. Couling?

A It is and it is reported as such.

Q All right. Judge Carrillo, on the reverse side, it appears to be endorsed for deposit, and is that your signature?

A Yes, sir, it is.

Q Placed in your bank account?

A Yes, sir.

Q Judge Carrillo, I now hand you --

MR. MITCHELL: And, for the purpose of those Members of the Court that are following this, this is 153, E-153, if it please the Court. And this check appears on Page 880 in the Volume Two of the Examiner's Exhibits. The check is October 5th, 1971, and appears on Page 1557 of Volume Three in that chart. It also constitutes a part of the Exhibit appearing at 832 of the yellow chart.

Q Judge Carrillo, I hand you the original check, E-153, being a check for \$306.00 dated October 5th, 1971, and ask you first of all if you recognize it as a check in the handwriting of Mr. Rudolfo Couling?

A Yes, sir, I do.

Q Do you recall his testimony that he executed the check?

A Yes, sir, I do.

Q And it is in his handwriting?

A Yes, sir.

Q And I'll ask you, what is the notation on the lower left-hand corner?

A "Rent."

Q And if you'll turn the check over, does it appear to be endorsed and deposited by you?

A Yes, sir, it does.

Q If you'll turn the check back to the front, I asked you if you recall first of all the transaction -- of what date?

A October 5, 1971.

Q Do you recall the transaction?

A No, I don't.

Q Do you have any reason to disbelieve the recital that it is a check given to you for rent by Mr. Couling?

A No, sir, I don't, because I had a lot of rental equipment that was there, and it's shown -- also carried on my tax records -- and that equipment that I had was rented out by the Farm and Ranch to different persons, and this was rented to Mr. Couling.

MR. MITCHELL: Now, may I call the Court's attention in Volume Three, Page 1065, Judge Carrillo's Depreciation Schedule on his 1040 form for '72.

Q And I hand it to you, that's E-181. Is that your Depreciation Schedule, Judge?

A Yes, sir, it is.

Q Is that the equipment you have reference to?

A Yes, plus some more that I do have that is --

Q I picked that at random in your '72 return. Your '73 return has a like page and your '74 return has a like page.

A Yes, sir.

Q All right. At any rate, my question put to you, is that check given to you as a part of a scheme between you and Mr. Couling to defraud Duval County out of the proceeds of that check?

A No, sir, it is not.

Q How much is the check, please?

A \$306.00.

Q All right. Judge Carrillo, the next item I want to call to your attention is E-152, if it please the Court. That appears on Page 879 of Volume Two, if it please the Court. That also appears in the summary on 832 in the Respondent's Exhibits. That check also appears on Page 1557 of Volume Three in the chart form back down in the lower right-hand corner.

All right, Judge Carrillo, I hand you E-152 and ask you please, sir, do you identify it as a check given to you by Mr. Couling in his handwriting? And on the date indicated and for the amount indicated?

A Yes, sir.

Q All right, sir. And what's the amount of the check?

A The amount is \$700.00.

Q And the date?

A September 22nd, 1971.

Q And if you will turn it over, your -- does your endorsement appear on that check?

A Yes, sir.

Q And was it deposited in your account?

A Yes.

Q And is it reflected on your tax return?

A It is.

Q And what was the purpose of the check as written --

A It is --

Q Pardon me, Judge. From the recital appearing on the check itself.

A "Rent on truck."

Q All right, sir. And I believe your Depreciation Schedule reflects that you owned trucks at that time. Do you recall the transaction, and if so, tell the Court about it.

A Well, this equipment, Mr. Mitchell -- I was not at the Farm and Ranch, and I was not there to actually, physically rent the equipment myself, personally. It was done through the Farm and Ranch, through Mr. Cleofas Gonzalez -- who was in charge of it.

Q All right. And that check your testimony is, was a part of the receipt of the rental for part of that equipment through the Benavides Implement and Hardware?

A Yes, sir.

Q All right. I will ask you whether or not the \$700.00 represented by check, September 22nd, 1971, E-152, is a part of the elicited gain of a conspiracy between you and Benavides Implement and Hardware to rip that sum off from Duval County.

A It is not.

Q Now, Judge Carrillo, I hand you -- strike that, please.

MR. MITCHELL: This check is E-158. If it please the Court, and it appears on Page 885 of Volume Two. It likewise appears in Exhibit -- in Examiners' Exhibit, Volume Three, Page 1559. It is included in the summary of 832, and it's on the Judicial Qualifications Commission Exhibit 192.

Q I hand you E-158, Judge Carrillo, and can you tell the Court, please, how much that check is for?

A This check is in the amount of \$267.00.

Q And the date?

A November the 8th, 1971.

Q All right. Now, if you will flip the check over, you will notice that it is endorsed by you. Am I correct?

A It is endorsed by me.

Q And that under that endorsement, it appears to be endorsed, "Cash Store, Abel Yzaguirre."

A Yes, sir.

Q And do you recognize Abel Yzaguirre's signature?

A Yes, sir, I do.

Q All right. Tell the Court the transaction out of which that colossal sum flowed to Abel Yzaguirre of the Cash Store?

A This money had to do -- there were sixteen of us who had a hunting lease over at Callahan in Webb County, Texas. And before the beginning of each hunting season, which started in approximately November the 15th of each year, we would all get together and buy all of the groceries, all of the --

Q Beer?

A And, social drinks that we were going to have at the camp for the whole duration -- for the whole forty-five days, and put everything together. There were sixteen of us, like I say, plus the guests that we took over to the hunting lodge, plus those that had children that were old enough to hunt who accompanied the parents, the fathers, to the camp. We all provided the groceries and we divided, share and share alike, and each one threw in his share of the part of the cost of maintaining the kitchen and the groceries for the hunting camp.

Q And is that -- is that check filled out by Yzaguirre? Whose signature, whose handwriting is that?

A No. I filled in the \$267.00. It is endorsed by Mr. Yzaguirre of the Cash Store.

Q All right. Is that -- that one is not filled in by Mr. Couling.

A No, sir. He just signed this one, and I filled in the rest of it at the Cash Store.

Q What was the occasion of his handing you the check in blank on its face? The fact that the ultimate amount was unknown? What was the occasion?

A Every year, each one of us contributes the amount that has to be -- we divide up the groceries that we buy, and the beer, and the drinks, and whatever is going to be needed, and the part that has to be put in, you know, for taking care of the eats -- of eating and the groceries and the drinking, and everything else that goes with hunting. And, that is what it is.

Q Judge Carrillo, I hand you E-152, 153, and 155, 56 and 57 about which you have testified, and ask you if the singular distinctive characteristic -- the difference

between that series and the one you are holding is the fact that E-152, 53, 57, 56 and 55, Mr. Couling filled those out.

A That is correct. Those were filled out by Mr. Couling. This E-158 is filled in by me.

Q All right. Now, if I might digress just a minute.

MR. MITCHELL: Mr. Odam, would you mind giving me the number of the -- there were four other checks that were introduced after this original series at the Judicial Qualifications Commission level. If you will give me those numbers, there is another one of this type that I would like to ask the witness about at this time. Do you have those numbers handy so that we can get them before the Court?

MR. ODAM: I believe it is E-151.

MR. MITCHELL: Pardon?

MR. ODAM: E-151 which is on Page 878.

MR. MITCHELL: Thank you.

No, there was another one -- Mr. Odam, there was another one to the Cash Store that was endorsed the very same as this one that you introduced, if you recall. I intend to cover the E-151 series.

There was another check, if I recall, that you introduced at the Judicial Qualifications Commission after the original series that bore this same type of endorsement, "The Cash Store". If you have that handy, I will cover it at this point. Otherwise, I will move on.

MR. DOYLE: Which one are you asking about, Mr. Mitchell?

MR. MITCHELL: There is another "E" to Yzaguirre.

MR. DOYLE: Well, there is one for \$930.00 on December 27, number 229. That's the check number.

MR. MITCHELL: Well, perhaps I can finish the ones I have, and then I can move to those. Let me --

MR. DOYLE: It's on E-192. You may have notes on yours of what the numbers are, if you will look.

MR. MITCHELL: Let me cover these. I'm sorry I started that. I thought we could do some short cutting, but we can't.

Q Now, Judge Carrillo, let me hand you what is marked as E-151. Now, that is a check, July 27, 1971. I hand that to you.

MR. MITCHELL: That's E-151, Members of the Court. That appears in the Exhibit at 878 of Volume Two. And it also appears in summary form on 832, and it appears in the Chart 1559.

Q What is the date of that check, please, Judge Carrillo?

A July 27, 1971.

Q That would be Page 1556.

Judge Carrillo, that check appears to be a check from Benavides Implement and Hardware to you, does it not?

A Yes, it is.

Q And I will ask you if you will recognize the handwriting as that of Mr. Couling?

A It is.

Q Now, if you will turn it over, is it payable to you? Is it payable --

A It is payable to me, O. P. Carrillo.

Q Now, if you will flip it over, I notice an absence of an endorsement on that check by you.

A Yes, sir.

Q You do not endorse that check, do you?

A No, sir.

Q Is there an endorsement on it?

A There is a stamp credited to the account of the name paid.

Q All right. Now, do you recall Mr. Couling handing you that check?

A I remember -- I don't remember this very particular check, but I remember that we were renting my equipment to Benavides Implement and Hardware Company, and --

Q That was a payment on the account.

A That was what I had coming.

Q All right. I note, Judge Carrillo, that there is no endorsement by you personally although on the others there are endorsements. Do you know whether or not perhaps that would indicate that Mr. Couling just simply sent the check over to your bank to be put in your account?

A I don't remember, sir.

Q All right. Now, I'll hand you, if it please the Court, E-154. That's the check for \$995.00.

MR. MITCHELL: And if it please the Court, that appears at 881 of Volume Two. It appears on Page 1559 of Volume Three, and it appears in summary form on 832 of the Respondents Exhibits.

Q Judge Carrillo, I hand you E-154. It appears to be a check, as I have already indicated, November 15, '71, and it appears to be in Mr. Couling's handwriting. Am I correct?

A Yes, sir.

Q Now, it has no notations -- it is a characteristic of that check, there are no notations on the lower left-hand corner.

A Yes, sir.

Q If you will turn it over, it is indicated that you deposit -- you endorsed it "For deposit, O. P. Carrillo."

A "For deposit, O. P. Carrillo."

Q And you recall, or do you recall Mr. Kirkland's testimony, that was picked up as ordinary income in your tax return?

A These checks are shown on my income tax as rental.

Q Rental; that's right.

All right. I will ask you if you recall that transaction, that is, the one now, out of which that check for the amount of \$995.00 arose, and if you do, recount it to the Court, please.

A No, I don't remember the exact transaction, Mr. Mitchell. All I know is it was for equipment that was rented -- my equipment that was rented to the Benavides Implement and Hardware Company, sir.

Q And your return so reflects?

A And my return so reflects.

Q All right, sir. Now, Judge Carrillo, I believe that those constitute all the checks that we have the original for. And I believe there is still one here, E-65 on 797. I have that copy, and I hand that to you.

A Yes, sir.

MR. MITCHELL: That appears in the record at 797, if it please the Court.

Q That check appears to be a check in the amount of \$1,008.00, Benavides Implement and Hardware to -- by R. M. Couling to you, and deposited in your account as evidenced by 799.

A Yes, sir.

Q All right. Now, Judge Carrillo, that check was given in '71, correct?

A Yes, sir.

Q And it was April of '71. Can you give the Court, please, sir, the reason for the delivery of the check to you by Mr. Couling, the \$1,008.00?

A It was for the rental of equipment that was rented by Benavides Implement and Hardware Company.

Q All right. Now, Judge Carrillo, let me call your attention to some other documentation. I'm going to ask you some additional questions about that Exhibit.

MR. ODAM: What Exhibit is that?

MR. MITCHELL: That's your E-65, John, and it appears on Page 797 of the Volume Number Two.

Q Judge Carrillo, this business of renting equipment, let me ask you concerning it. Your testimony is, by way of summary, that the equipment was there, either belonged to you or Farm and Ranch, and was maintained available for rental either through Farm and Ranch or through Benavides Implement and Hardware to any and all persons. Is that correct?

A That is correct.

Q Now, I note in this connection that there is a rental -- looking now, if you would, with me at E-60, 793. That appears to be, and I believe this -- if my recollection serves me correctly, Mr. Cleofas Gonzalez testified that he executed this invoice appearing at 793 on Benavides Implement and Hardware stationery.

A Yes, sir.

Q Do you recall that?

A Yes, sir.

Q And that the statement appearing on 390 -- 793-A -- that's E-61 -- was likewise executed by him, and that was addressed to Duval County, Precinct 2, care of Juan Leal.

A Yes, sir.

Q For the \$1,008.00.

A Yes, sir.

Q Do you recall?

A Yes, sir.

Q Now, I will ask you, Judge Carrillo, did you have any conversation whatsoever with Cleofas Gonzalez, Rudolfo Couling concerning the execution of that invoice appearing at 793?

A No, sir, I did not.

Q Do you know whether or not -- strike that. It appears that the \$1,008.00 went to you.

A Yes, sir.

Q In that check which you have just testified about.

A Yes, sir.

Q Appearing at 797.

A Yes, sir.

Q And your testimony is that that check is for rental of your equipment. Is that correct?

A Yes, sir. That is exactly correct.

Q And of course, you don't know whether or not Mr. Couling rented the same equipment to the county, or anybody?

A No, I don't. My rent was to the Benavides Implement.

Q Well, that's the reason for my question. Did you have any input? Did you have any conversations with Mr. Couling about the March 30th, 1971 invoice, E-60?

A No, sir. Because this equipment that I have is either at the Yard, at the Farm and Ranch or at the storage warehouse that I have. And, it's there for the Farm and Ranch to rent out.

Q All right. Now, let me flip over, if I might, to 796. 796 appears to be a claims jacket, Benavides Implement and Hardware, Duval County, road and bridge funds for the amount of \$1,008.00. Do you see that, it's E-64.

A Yes, sir.

Q Did you have any -- first of all, did you make any appearance before the Commissioners Court as regards the allowance of this claim or their favorable action of that claim for amount of \$1,008.00?

A I did not.

Q Do you have any personal knowledge about the presentment of that claim, the make up of it or the presentment of it?

A No, sir, I do not.

Q Did you have anything to do with the composition of the claim jacket that appears to be -- is that B-911 -- at any rate it's on Page 796. Did you have any --

A Nothing whatsoever.

Q Now, Judge Carrillo, I will ask you to look at E-68, which appears to be -- no, strike that. E-69, which appears to be another check. Do you see that one, please, sir?

A Yes, sir.

Q All right. Now, for the purpose of the Court I'm now looking to Page -- in Volume Two to Page 803, Exhibit E-69. Now, Judge Carrillo, I will ask you the same question, that appears to be a check to you for the amount of \$1,018.00. I will hand you the exhibit book. Do you recognize that?

A Yes, sir.

Q And that's a distinct check, separate and apart from the one I previously asked you about for \$1,008.00.

A Yes, sir.

Q All right, sir. What is the date of that check, Judge Carrillo?

A July 27, 1971.

Q All right, sir. Do you recall, Judge Carrillo -- let's see, that was 1971, \$1,018.00 from Benavides Hardware to you. Am I correct?

A Yes, sir.

Q And does that check -- does that have an endorsement, or do you recall? That does not appear to be endorsed by you at 804, does it?

A No, sir.

Q Do you recall anything about the check, Judge Carrillo?

A No, sir, I don't.

Q Do you know whether it was given to you or transmitted directly by Mr. Couling to your bank?

A I don't know how it was worked.

Q All right. Well, can you tell us the reason why he would be giving you a check in July of '71 for \$1,018.00?

A Well, this is what they represented to me that I had coming for the rental of my equipment.

Q Is that the same nature of the check that was given to you on E-65 for the \$1,008.00, Judge Carrillo?

A Yes.

Q In 4/16/71?

A Yes, sir.

Q All right. Now, I will ask you the same questions about that check. That is one appearing at 803, Judge Carrillo. Following -- preceding it, not following it, it

appears -- and I believe that Mr. Cleofas Gonzalez -- now I'm looking at Page 794, which appears to be a statement in the amount of \$1,018.65. Do you see 794?

A Yes, sir, I do.

Q Now, that appears to be a check -- I mean, a statement in the amount of \$1,018.65 that I believe Mr. Cleofas Gonzalez testified that he executed.

A Yes.

Q On Benavides Implement and Hardware account?

A Yes, sir.

Q Did you know anything or have any understanding with Cleofas Gonzalez or Mr. Rudolfo Couling about the execution of the invoice appearing at Page 794, Volume Two of the Examiners' Exhibits for the amount of \$1,018.65, Judge Carrillo?

A No, I do not.

Q Did you have any conspiratory intent or agreement as regards that check -- that statement for the purpose of securing the issuance of the check that appears in the record for the amount of \$1,018.00?

A No, I did not.

Q As a matter of fact, you don't have any knowledge whether or not as a matter of fact Mr. Couling did rent equipment belonging to you to Duval County and correctly bill them for which he remitted to you \$1,018.00, do you, Judge Carrillo?

A No, I don't.

Q Let me ask you this, Judge Carrillo, and I'm going to refer again to the jacket that appears in the record at 800. It appears that a claim number -- it looks like a B-1587, Benavides Implement and Hardware had filed a claim with the county, road and bridge fund for the amount of \$1,018.65. Am I correct?

A Yes, sir.

Q And it appears that --

(Senator Clower in Chair)

MR. MITCHELL: And that's E-67, Mr. Doyle, on Page 800.

Q Did you, first of all, know of that claim being presented to the Commissioners Court?

A No, I did not.

Q Did you appear in behalf of it?

A No, sir.

Q Did you talk to your brother or to anybody about favorable treatment of it, Judge Carrillo?

A No, sir.

Q Did you have any understanding or agreement concerning the favorable payment of the claim filed by Benavides Implement and Hardware, anybody that sat on the Commissioners Court at that time?

A No, sir.

Q Did you even know it was being presented?

A No, sir.

Q Now, the check that appears on E-68 appears to be the check issued following the claim of Benavides Implement and Hardware, does it not, Judge Carrillo?

A Yes.

Q At least if we can go by the amounts. Did you know anything about the check from Duval County to Benavides Implement and Hardware being check Duval County 5983 on the 15th day of -- the date is not legible, of 1971?

A No, sir.

Q I think I have covered them all. Let me see.

No, I don't believe I have covered the one on E-75. Judge Carrillo, let me hand you E-75 which appears at Page 810, for purpose of the Court, on Volume Two. Let me hand you that, please.

Have we talked about that check?

A Yes, sir, I think we have.

Q You previously testified -- that's a check that shows "Rent on truck."

A Yes.

Q Given by Mr. Couling to you. And that's in his handwriting, am I correct?

A Yes.

Q You heard his testimony that he had written in there "Legal services," struck that out and put "Rent on truck"?

A Yes.

Q Did you have a truck in 1971 to rent?

A I had several trucks.

Q All right.

A And not only that I also sold him a truck.

MR. DOYLE: What is the date of that check?

MR. MITCHELL: Well, it looks like it's September 22nd, 1971, Mr. Doyle. That's very -- E-75, Page 910.

Mr. President, if I might just have a minute to be sure that I have covered all of these items. I will take just a second.

Q Judge Carrillo, commencing -- these items -- these are items in evidence. I believe we have covered all the checks, if not I'm sure Mr. Odam or Mr. Doyle will call them to our attention. I've tried to cover them all. But looking now at these claims -- first of all the series beginning at 839, which appear to be Benavides Implement and Hardware invoices that were prepared by Cleofas Gonzalez in '72. You see these Exhibits, being the invoices, the statements, the claim jackets and the checks?

A Yes.

Q I will hand that Volume to you and I will ask you some questions about those items, please, sir.

A Yes, sir.

THE PRESIDING OFFICER: Where are you?

MR. MITCHELL: At 839, Volume Two, if it please the Court.

Q Now, those appear to be claims that were initiated by invoices that were composed either by Cleofas Gonzalez or Rudolfo Couling.

A Yes, sir.

Q According to their testimony.

A Yes, sir.

Q And those claims, beginning now with 839 were acted upon by the County, that is Mr. Meek's office in the execution -- composition claim forms, such as the ones appearing on Page 841. Do you recall that testimony?

A Yes, sir.

Q And in addition the County acted upon -- the Commissioners Court acted upon those claims and issued checks on the Treasurer of the County of Duval, those checks being each and every instance payable to Benavides Implement and Hardware, such as appear at E-94 on Page 842.

A Yes.

Q Am I correct, Judge Carrillo?

A Yes.

Q Now, without going into each and every one -- and by that now, I mean, Judge Carrillo, if we start at Page 839, go through that series, 43, 44, 53 -- right on up, there appears to be the false and the fraudulent invoice on Benavides Implement and Hardware stationery in Cleofas Gonzalez' handwriting or in Rudolfo Couling's handwriting, the issuance -- the composition of claims form, the issuance of a statement, again, which is in Cleofas' or Rudolfo's handwriting and a check in each and every instance.

A Yes, sir.

Q And I will ask you if you -- and take your time to look at them now -- did you have any personal knowledge as to the execution of the invoice, the presentment of the claim, the composition of the claim or the payment of the money to Benavides Implement and Hardware?

A No, sir, I didn't have any knowledge whatsoever.

Q Did you have any understanding or agreement with Mr. Gonzalez, Cleofas Gonzalez, or your brother or anybody, Rudolfo Couling, as regarding the composition of, the drafting of and the presentment of and the payment of those claims, Judge Carrillo?

A No, sir, I did not.

Q Which brings me now, Judge Carrillo, to the chart appearing on Page 1555. That, of course, is the summary chart that was introduced into evidence, E-192. Now, would you please turn to 1555 in Volume Three? Do you have Volume Three, Judge?

A No, I don't have Volume Three.

Q Now, Judge Carrillo, I have to ask you some questions about the Exhibit appearing. First of all, would you please turn with me through the Exhibit and make a determination -- the checks that we have now testified to all appear on this chart appearing at 1555. Do they not? Turn to 1555, first, sir.

A Yes, sir, they do.

Q All right. Now, let's start at the first page. The checks that we have -- you have previously testified to.

A Yes, sir.

Q Those that had the recital of "Rent," "Sale of counter," "Tubing," all appear in the Exhibit at 1555, am I correct, Judge Carrillo?

A Yes.

Q For example, on Page 1-A, we have a check, \$1,008. That's the one you previously testified to, am I correct?

A Yes, sir.

Q Coming on down to 5/20/71, the check for \$1,000.00, that's the one you previously testified to?

A Yes, sir.

Q The loan, 6/21/71, that's the one you previously testified to?

A Yes, sir.

Q All right. And then on Page 1556, in 982, the check for \$982, 7/14/71, that's check number 134 you previously testified to?

A Yes, sir.

Q Likewise a check for \$1,018.00, being Check 146 on Page 1556, this is the one you previously testified to, am I correct?

A Yes, sir.

Q All right. Now, Judge Carrillo, I want you to, without going through all of them, I want you to please turn with me to Page 1565. I want to determine the last date of any check out of Benavides Implement and Hardware for the purpose -- for the record. There appears to be E-176, a check for \$2,640.00, 9/5/72. Do you see that check on 1565?

A Yes, sir, I do.

Q Judge Carrillo, look, would you, at the balance of this Exhibit and see if there are any other checks -- now, I have made a hurried review -- to O. P. Carrillo following the date of that check, please, sir.

MR. ODAM: What page are you on?

MR. MITCHELL: I'm on Page 1565, Mr. Odam. If you can help me, I'd appreciate it. I'm trying to date the last check from Benavides Implement and Hardware as reflected by your Exhibit 192.

A I can't find any others here.

Q Let me turn to that Exhibit. That appears to be Exhibit E-176, am I correct?

A E-176.

Q That appears, if it please the Court, on Page 1041. I didn't ask you about it, so I'll proceed to do so. Judge Carrillo, turn, if you would, in Volume Two to E-176. That's a check on September 5th, 1972 for \$2,640.00, and I'm going to ask you some questions about it. First, the check appears to be in the handwriting of Mr. Couling, am I correct?

A Yes, sir.

Q It appears to be a check payable to you?

A Yes, sir.

Q And can you determine from looking on the reverse side of the check whether you endorsed the check?

A Yes, sir.

Q And how was it endorsed, please?

A "For deposit, O. P. Carrillo."

Q Look back on the front side of the check. The date is 9/5/72, am I correct, Judge Carrillo?

A Yes, sir.

Q And what does Mr. Couling's handwriting in the lower left-hand corner indicate the check is for?

A "Loan."

Q A loan or an advance, am I correct?

A That's right.

Q Now, do you have an independent recollection of the transaction, Judge Carrillo?

A Yes, sir.

MR. DOYLE: Mr. President, I would object at this point. Does it say "loan" or does it say "advance," Mr. Mitchell?

MR. MITCHELL: Ask the witness.

Q What does it say?

A Says "loan."

MR. DOYLE: It doesn't mention "advance," does it, Mr. Mitchell?

MR. MITCHELL: Well, do you want to swear me in --

MR. DOYLE: If you want to keep testifying --

MR. MITCHELL: I have no personal knowledge, Mr. Doyle. I asked the witness.

Q What does it say, Mr. Witness?

A It says "loan."

MR. DOYLE: Oh, you said "loan" or "advance".

THE PRESIDING OFFICER: Okay, gentlemen, move on.

MR. MITCHELL: Thank you.

Q Judge Carrillo, do you have independent recollection of the loan?

A No, I do not.

Q All right. Do you recall if you have any -- do you have any personal knowledge as to how it was carried on your tax return?

A No, sir, I don't.

Q All right. Now, Judge Carrillo, let me direct your attention again to the Exhibit 1556 and ask you to make an examination once again to see if there are any other transfers out of that Benavides Implement and Hardware account to you other than the ones that we've covered. And, with specific attention to the fact that whether or not that constitutes the last of the Mohicans, the last transaction.

A I haven't found any after that, sir.

Q Now, Judge Carrillo, if you'll turn with me on 1562 --

A Yes, sir.

Q -- you'll find that there was a check for \$1,000.00, that's E-74. Do you see that?

A Yes, sir.

Q And that check was dated when, please, sir?

A 4/14/72.

Q All right, sir. Let me see if I can turn to that. Now, Judge Carrillo, I don't believe I've asked you about that one, so let me -- if the Court would please turn to Page 1037. Judge, you'll have to look at this other Volume. That's in Volume Two. Judge Carrillo, let me ask you, have I asked you about that check? I believe I have -- the one appearing on 1037. If not, please inform us. I believe I've asked you about that.

A Yes, sir, you have.

Q The next in point of time is 4/14/72, am I correct? That's the date of that check?

A 4/14/72.

Q All right. And if you'll -- if you'll look to Page 1562 of Volume Three, you'll find that the next one in point of time going backwards is 3/21/72, that's the one that you previously testified to in the amount of \$1,000.00, am I correct, Judge Carrillo?

A Just a moment. Is that Volume Three?

Q Yes, sir.

A What page was that?

Q Volume Three, Page 1561. 3/28/72. Previously, I believe that's the check for \$1,000.00 that previously --

A Yes, sir.

Q All right. Now, Judge Carrillo, it would appear, then, that the last check from Benavides Implement and Hardware and the one that is endorsed -- has notation of "Loan" on it was the one that appears, 9/5/70 -- dated 9/5/72, am I correct, in the amount of \$2,640.00?

A What page is that on?

Q 1565.

A Yes, sir.

Q All right. Now, Judge Carrillo, turn with me to 1555 of the same book.

A Yes, sir.

Q Now, the checks -- the Exhibit speaks of checks made payable to various other entities, and I'm going to ask you, first of all, you do have a brother named Oscar Carrillo?

A I do.

Q And there are checks to Oscar Carrillo at least for the period of time through '72; and I ask you this, did you have any understanding with Rudolfo Couling, Cleofas Gonzalez, your brother, Oscar Carrillo, your brother, Ramiro Carrillo, as regard to any items being paid Oscar Carrillo out of the Benavides Implement and Hardware account?

A No, sir, I did not.

Q Did you enter into a conspiracy and into a wrongful combination or an agreement with Oscar Carrillo and/or Ramiro Carrillo and/or Cleofas Gonzalez and/or Rudolfo Couling and/or any member of the Commissioners Court in '71 of the follow-up Commissioners Court as regards to payment of sums through the vehicle of Benavides Implement and Hardware to Oscar Carrillo?

A No, sir.

Q I'll ask you the same questions as regards to Rudolfo Couling. There are checks payable to Rudolfo Couling. Did you have any character of understanding or agreement? Did you enter into any conspiracy with Rudolfo Couling, your brother Ramiro Carrillo, any members of the Commissioners Court, Cleofas Gonzalez, as regards to payment through the vehicle of Benavides Implement and Hardware sums to Rudolfo Couling?

A No, sir.

Q The Farm and Ranch?

A No, sir.

Q The R. Carrillo and Brothers?

A No, sir.

Q Eloy Carrillo?

A No, sir.

Q David Carrillo?

A No, sir.

Q Elroy Carrillo? I notice there is an Elroy. Is that the same as Eloy?

A That's Eloy.

Q Your answer to that would be --

A No, sir.

Q Rogelio Guajardo?

A No, sir.

Q Luis Elizondo?

A No, sir.

Q Judge, you heard the testimony of Mr. Couling as regards the \$12,000.00 paid to Alamo Iron Works, and that appears at 1559, the fact that \$500.00 was given to members of the Commissioners Court as a kickback, did you have any knowledge whatsoever of that scheme?

A Not until I heard it here. I didn't know anything about it.

Q All right. Did you have no -- strike that. One other question on this. Mr. Couling testified that some of these folks, these names were fictitious. Do you have any knowledge of any relationship between persons using fictitious names and Rudolfo Couling, Cleofas Gonzalez and the members of the Commissioners Court as regards receipt a sum, of a rip-off of sums belonging to the county, Judge Carrillo?

A No, sir.

Q Did you participate other than in those items indicating to Farm and Ranch and to you, did you participate in any of that?

A No, sir, I did not.

Q I note, Judge Carrillo, and you being a Judge and an attorney, there are no checks that I can determine to Zertuche General Store in this Exhibit, am I correct?

A Yes.

Q Are you able to discover any?

A I didn't find any.

Q And I believe the last check to Farm and Ranch is 5/31/74 at 1577. Will you double check me, please, sir?

A What page is that on?

Q 1577.

A Oh, yes, sir.

Q Were you able to determine whether any other checks were out of that account to Farm and Ranch following the ones shown at 5/31/74 to Farm and Ranch for \$1,509.76, Judge Carrillo?

A No, sir.

MR. MITCHELL: May I approach my client, Your Honor? I pass the witness, if it please the Court.

THE PRESIDING OFFICER: The Court will Stand at Ease for a ten minute recess.

Accordingly, the Senate, sitting as a Court of Impeachment, at 10:30 o'clock a.m. took recess until 10:40 o'clock a.m.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 10:40 o'clock.

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: Pass the witness, Mr. President. Thank you.

THE PRESIDENT: Mr. Doyle.

CROSS-EXAMINATION

(Questions by Mr. Doyle:)

Q Judge Carrillo, early in the direct examination, Mr. Mitchell asked you a series of questions, one of which, he asked you if you were not a member of the Bar since 1952. Is that accurate?

A I have been a member of the Bar since 1952.

Q Okay. You asked -- you remember him asking you that question?

A Yes.

Q About you being a Judge, and all that sort of thing?

A Yes, sir.

MR. MITCHELL: Well, now, wait a minute, Counsel. I don't want to appear impertinent, but the man is a Judge and he -- I think he is entitled to a little respect. "All that sort of thing" hardly characterizes a man who has been a member of the Bar for twenty-three years.

Q Isn't it a fact, Judge, that at the present time --

SENATOR OGG: For some reason, we can't hear back here. I don't know whether it is the buzz saws or your not talking into the mike, or something. But I think this is going to be very important and I would like to hear it.

MR. DOYLE: I have the mike at the same place I have had it ever since we started. It must be the noise.

SENATOR OGG: I am not criticizing you, Terry. We just can't hear.

MR. DOYLE: Can you hear me better now, Senator?

THE PRESIDENT: All right. They've got the speaker system turned up, now.

Q Judge, isn't it a fact that at the present time, the State Bar of Texas has an action pending against you to remove your license? That is, to disbar you?

A Yes, sir.

Q Now, Mr. Mitchell asked you a series of questions about your elections, and so forth. You remember those, I assume?

A Yes, sir.

Q Now, you were reelected to your second term at the General Election in November of '74. Is that right?

A Yes, sir.

Q And I would assume that you then ran in the Democratic Primary in May of '74?

A I was a candidate at the Democratic Primary in May of '74, yes.

Q And it's also a fact, isn't it, Judge, that you were unopposed in both races?

A Yes, sir.

Q No opponents?

A No opponent.

Q And the first time you ran, did you have -- back in '70, did you have an opponent then?

A No, sir.

Q So, you have never had an opponent when you ran for an election for District Judge?

A Not for District Judge, sir, but for other elections, I have.

Q Right. But, you have never had an opponent at any election at which you were elected District Judge of the 229th District Court. That is accurate, isn't it?

A That is correct.

Q That is, not in the Primary nor in the General Election?

A That is correct.

Q Now, you have been a Judge since January of 1971. Is that correct?

A Yes, sir.

Q And you described in detail for the Court the counties involved and the procedure wherein you -- you know, how you handled your court, what weeks you spent where, and so forth?

A Yes, sir.

Q You mentioned that, from time to time, the Presiding Judge, Judge Alamia, I believe, it's been ever since you have been on the Bench. Is that correct?

A Excuse me. I beg your pardon.

Q Judge Alamia is the Presiding Judge, and has been ever since you have been on the Bench? Is that correct?

A No. Judge Guerra used to be the Presiding Judge, the Administrative Judge.

Q Okay. The Administrative --

A Of the district, and Judge Alamia succeeded him.

Q Well, you indicated that -- in the introductory testimony, that from time to time, the Administrative Judge had assigned you to other areas of the state to work in. Is that accurate?

A Yes, sir.

Q Now, in the testimony which is before the Senate by virtue of the record which was introduced from the Judicial Qualifications Commission -- in that record, there is clearly reflected the fact that Judge Alamia signed a request that you resign earlier last year. Isn't that correct?

A Judge Alamia and two other, or three other judges out of the eighteen Judges in the District signed the request that I -

Q But, this same Judge that has -- that you indicated has, from time to time, assigned you to various other Benches to work on asked for your resignation last year, didn't he?

A Yes, sir, he did.

Q Now, I would like to review with you some of the testimony here today, Judge, and ask you some questions about it.

You have, in response to questions by your attorney, outlined an explanation for this money you got from the Benavides Implement and Hardware, I'm sure, to the best of your ability. Is that accurate?

A I have done my best to explain everything, Mr. Doyle. If something is unexplained, if you will call it to my attention, I will do my best to clear it up.

Q Now, Judge, when was the first opportunity you had to explain these facts about what took place with respect to BI & H and Zertuche and your Farm and Ranch's relationship with the County and the school district and the water district -- when was the first time you had an opportunity to tell that story for the record?

A The first time that I testified was at the Federal trial in Corpus Christi, Texas.

Q Well, no, sir. That was -- that trial did not cover the period 1971 to the present, did it?

A Well, you asked about the Zertuche Store --

Q Well --

A -- and I went into detail about the Zertuche Store at the case in Corpus Christi.

Q Okay.

MR. MITCHELL: Pardon me, Counsel. May I call my client's attention to the fact that at the appellate level in Dallas in November of 1974 --

THE WITNESS: Yes, sir.

MR. MITCHELL: -- or December, Judge Carrillo, you testified quite at length about the --

THE WITNESS: December 8th, 1974.

MR. MITCHELL: That's right.

Q Okay. Let me rephrase the question, Judge.

When was the first time you had an opportunity to go on the record and tell about the checks from Benavides Implement and Hardware, let's say?

A The first time that I testified about those checks --

Q Judge, isn't it a fact that the first time you had an opportunity to tell that story --

MR. MITCHELL: Why don't you give him an opportunity to answer the question, Counsel? I believe you asked him a question and stepped all over his answer.

MR. DOYLE: Mr. Mitchell, it was apparent that I had asked the question wrong -- that I had asked a question which he couldn't answer.

MR. MITCHELL: Well, I didn't mean to growl at you, but you --

MR. DOYLE: I apologize.

Q Judge -- what I am trying to get at, Judge, is this. Isn't it a fact that the first time you had an opportunity to tell your story about this money was on deposition by the Board of Examiners in the Judicial Qualifications Commission hearing? The Board of Examiners, I'm sorry.

Wasn't that the first time you had an opportunity to go on the record and tell your story about this money?

A That I had the opportunity, or that I testified?

Q No, sir. That you had the opportunity to go on the record and say under oath what happened with respect to all this money that BI & H had paid you and Farm and Ranch. That was the first time, wasn't it?

A Well, I guess so.

Q And what did you do when you had that first opportunity?

A Mr. Doyle, on the advice of my attorney, I plead the Fifth Amendment because he wanted me to testify for the first time at the trial.

Q All right. Let me ask you another question, then, Judge.

Now, the second time you had an opportunity to go on the record and tell your full story about all this money was about the first or second day of the Judicial Qualifications Commission hearing when the Examiners called you to the witness stand. Isn't that right?

A Yes, sir.

Q That was before anybody else had testified, wasn't it?

A Yes, sir.

Q What did you do then, Judge?

A On the advice of my attorney, I pled the Fifth Amendment because we were waiting to try the case the way Arthur Mitchell wanted to try it, and he had his --

Q So, Judge, it is accurate to say that you never told your story until the Board of Examiners laid out all the proof against you. Isn't that right, Judge?

A I have told my story the way it is, and --

Q But, on the two occasions that you had an opportunity to tell your side of the story, you took the Fifth Amendment. Isn't that correct?

A Yes, sir.

Q And not until after you saw the evidence, did you make any explanation, did you, Judge?

A I have answered every question that has been put to me. I have explained everything that has been asked of me.

Q But you didn't do that until after you had seen the case against you. Isn't that accurate?

MR. MITCHELL: I submit the question is argumentative, and the entire line is argumentative, if it please the Court. The record speaks that the gentleman took the stand and testified completely at the Judicial Qualifications Commission. If he wants to put at my feet the misuse of strategy, then I will take that responsibility because I wouldn't let Judge Carrillo testify at the very outset on the deposition, or at the time he was called by the Examiners.

The record does reflect, if it please the Court, full and complete testimony at the U.S. vs. Ramiro and O. P. Carrillo trial, and at the Judicial Qualifications.

The use of the strategy of Counsel in a quasi impeachment of this witness is improper, Your Honor.

MR. DOYLE: Mr. President, may I be heard?

THE PRESIDENT: The objection is overruled. Proceed, Mr. Doyle.

MR. MITCHELL: It's my objection, Judge.

MR. DOYLE: Mr. President, this is likely to come up again and I would like an opportunity to be heard at this time so I can state my position on it, if you don't mind.

THE PRESIDENT: Proceed, Mr. Doyle.

MR. DOYLE: Mr. President, it appears to me that the witness has taken the stand, and that makes him an impeachable witness, and it would appear to me that any conduct which could be considered as impeachable conduct -- I don't mean impeachable with a capital "I" like a Court of Impeachment, but I mean impeachable -- is admissible before this body.

And, it would appear to me that my question is not argumentative. My question was just to let the Court know that he had two opportunities to tell his whole story. And, I would guess -- I would assume, or I would think that that would certainly be a factor that would cast some light on his credibility as a witness.

THE PRESIDENT: The Chair has already overruled the objection, Mr. Doyle.

MR. MITCHELL: Mr. President, I don't want to be further argumentative, but may I have Counsel quote to me and the Court any case in this country that holds that the rights that a witness has to claim his privilege under the Fifth Amendment is an

impeachable transaction and incident.

May I have a quotation, Mr. Doyle, on that point of law, please, sir?

THE PRESIDENT: Proceed with the examination of the witness, Mr. Doyle.

Q Now, Judge, in response to a series of questions by your counsel you went through some of the political history of Duval County. The Commissioners Court, school district, et cetera. You remember those?

A Yes, sir.

Q Now, it's a fact that Atlee Parr passed away in mid-1967. Is that correct?

A I beg your pardon, sir.

Q Mr. Atlee Parr passed away in mid-1967?

A I don't remember the exact date, but I believe it was 1967, but he did pass away.

Q And at the time of his death your brother went on the Commissioners Court?

A Yes, sir.

Q And he's on the Commissioners Court now?

A He's on the Commissioners Court today.

Q And he's been on the Commissioners Court ever since the death of Atlee Parr, uninterrupted?

A That is correct.

Q Now, it is also a fact that you were elected County Judge in 1960?

A County Judge, no, sir.

Q County Attorney, I'm sorry.

A County Attorney in 1960. I think I took office in January of 1961.

Q Right. And you held that position until such time as you took office in January of 1971 as District Judge?

A No, sir, I resigned in 1970 to make the race for District Judge.

Q All right. So, for some time period of months in 1970 --

A Approximately ten months.

Q So, for that period of time in 1970 you were not an official -- other than that period of ten months you have been either County Attorney or District Judge of that --

A And also a member of the school board.

Q Right. Judge, it would appear from the testimony that you were a member of the school board and County Attorney at the same time. Is that accurate?

A Yes, sir.

Q Judge, did you discuss that with the attorney, Mr. Lloyd, that you said you took up the Zertuche arrangements with?

A Discussed what, sir?

Q The fact that you were holding two offices at the same time.

A No, sir, I did not.

Q As County Attorney you understood the law to be that that was all right?

A Yes, sir.

Q Now, at the time -- when did you say you all started the Farm and Ranch? '62?

A 1962, I believe.

Q And you started doing business through Zertuche in '67 when your brother went to be the Commissioner. Is that correct?

A With the school?

Q No, sir, you started doing business through Zertuche in 1967 when your brother went to be County Commissioner?

A Insofar as the County is concerned, yes, sir.

Q All right. Now, I assume that you wanted to do business with the County for the purposes of making a profit. Is that correct?

A That is the reason why we're in business, sir.

Q And you went to an attorney and discussed the propriety of that. Is that accurate?

A That is correct. And I so testified in Corpus Christi.

Q Judge, did it ever cross your mind that it might be improper for you to do business with the county, because you were the County Attorney?

A No, sir, because it is only the members of the County Commissioners Court who cannot transact business with members of the families.

Q Okay.

ANNOUNCED PRESENT

Senator Gammage who had previously been recorded as "Absent-excused" was announced "Present".

A Now, the other County officials can hire and do hire even members of the families of the County Commissioners and the law states that it is perfectly all right, for example, for the County Clerk to hire the daughter or the wife of a County Judge. And it's perfectly legal.

Q Okay. Judge, am I to take it then that Farm and Ranch, and thereby you, derived profit from the arrangement that you had after 1967 through the Zertuche Store?

A Yes, sir.

Q And that you and your brother entered into this agreement, knowingly?

A Knowingly what, sir.

Q I mean, you went down and talked to a lawyer about it.

A Yes, sir.

Q You discussed it, you knew you were going to make money and you knew you were going to make money off of the County. Is that accurate?

A Mr. Doyle, I wouldn't go into any kind of a business unless I figured I was going to make money in it.

Q Well -- Farm and Ranch, and thereby you, did realize a profit from doing business with the County?

A From doing business with the Zertuche Store, it was doing business directly with the County, yes, sir.

Q Well, the Zertuche Store was just an avenue to get around the law. Is that correct, Judge?

A It was a legal way to do a legal business.

Q And you and your brother knowingly did this?

A Yes, sir, we knew -- we talked to the attorneys, it was legal to do it and we did it.

Q Now, you described this Mr. Lloyd that you went to see to discuss this matter?

A Yes, sir.

Q Where does he live?

A He used to live in Alice, he is deceased.

Q So, Mr. Lloyd is now deceased?

A Yes, sir, but the record will reflect for years and years that he had represented my family.

Q Now, there was some discussion by you and Mr. Mitchell about the split in Duval County. That did indeed take place and you told us that story, didn't you?

A I didn't tell you all of it, sir, because you objected to it.

Q Well, you did describe for us a certain removal suit, whereby you removed the school board. Is that correct?

A Upon the request of the District Attorney, after they were destroying the records and secreting the records.

Q Well, the only testimony this Senate's heard was that the destruction of records was at the institution of your father. You're familiar with that testimony, aren't you?

A I beg your pardon?

Q Are you talking about the same records that Mr. Couling said your father ordered destroyed or some other ones?

A No, sir, when these records were destroyed I don't believe my father was even on the school board.

Q Okay. So, it was some other records?

A Yes, sir.

Q All right.

A They had -- Mr. Doyle, let me explain this to you. When the District Attorney came in with the subpoenas for the grand jury I was holding a hearing in another case.

Q You explained that.

A And all of a sudden Mr. Gilbert Sharp and Mr. Ken Bercaw, Mr. Gabriel Raymond and several individuals stormed into the courtroom and said that they needed to have an emergency hearing with me. So, I called a recess to find out what kind of an emergency they had.

Q All right. Okay. Now, Judge, now this removal action took place in 1975. Is that correct?

A Yes, sir.

Q Now, you testified concerning a split between the Parrs and the Carrillos and a bunch of things George Parr said and some elections. Do you remember all that

testimony?

A Yes, sir.

Q Now, the election that you said really broke the camel's back was the school board election in 1975. Do you remember that testimony?

A Yes, sir.

Q Now, how long after that -- you all lost that election, didn't you, Judge?

A Yes, sir.

Q The Parrs won that, didn't they?

A Yes, sir.

Q Now, how long after the Parrs won that election did you remove those school board members?

A No, the removal was before the election, sir.

Q Before the election?

A Yes, sir.

Q All right. How long before the election?

A About a month or so, sir.

Q Now, ultimately what was the disposition of your decision?

A Of what decision, sir?

Q The Court of Civil Appeals reversed you, didn't they, Judge?

A No, it was sort of a mixed decision. I read the decision. And that is a squabble that is going on back over there, because the Court did not say exactly what Court was legally -- constituted the legal board of the school district. They left that sort of in limbo. Now, insofar as -- that did not involve the removals of any --

Q Let me --

A Could I explain this, sir? The removal of those trustees shortly after I signed the removal notice, they themselves resigned from office. This involved some other people.

Q I'm familiar with that. Judge, the crux of that lawsuit was an injunction, wasn't it, to keep them from doing business as trustees of that school district?

A No, sir, as a matter of fact, even the Judge who has been holding Court since I have been suspended has heard removal proceedings over there also, sir.

Q Well, I'm going to ask you this question, Judge. Didn't the Court of Civil Appeals say in part, "The order granting the temporary injunction is hereby reversed and the temporary injunction is hereby dissolved." Isn't that true?

A Yes.

Q Okay. Thank you very much.

A You're talking about a different school board other than the one that I removed, sir. Those school board members, after the removal, resigned their positions.

Q Yes, sir, we're all aware of that.

SENATOR OGG: Could Mr. Doyle recite to us the number of that Exhibit?

MR. DOYLE: It's not been introduced into evidence, Senator. The style of the case is *Diego Saenz vs. Morris Ashby, Joe Garcia vs. State ex. rel. Jose Nichols, M. K. Bercaw vs. State ex. rel. Jose R. Nichols* --

SENATOR OGG: What's the citation?

MR. DOYLE: I don't think it has a number yet. It came out of the Court -- San Antonio Court of Civil Appeals just recently, just a month or so ago, maybe less.

SENATOR OGG: All right. Well, are you going to introduce it as an Exhibit?

MR. DOYLE: Well, I can, Senator, I hadn't planned on it. I don't see that it has much bearing, but I will be happy to tender it, if you would like.

SENATOR OGG: I would like to see it.

THE PRESIDENT: I think it would clarify the record to have that.

MR. DOYLE: Can you just make the Court's number two or whatever it might be?

THE PRESIDENT: Mr. Mitchell, do you have objection to entering into the record the decision of the Court of Civil Appeals in San Antonio?

MR. MITCHELL: No, I have no objection to the Court of Civil Appeals decision in any case in this Court.

THE PRESIDENT: It will be admitted as Court's Exhibit 4.

(Court Exhibit No. 4 was marked for identification, C-4.)

Q Now, Judge, in connection with a series of questions that Mr. Mitchell asked Mr. Couling about the school board, Mr. Couling indicated at one time the school board purchased a bunch of tile. Do you remember that?

A Yes, sir.

Q Let me ask you this, Judge. In your ranch house, I believe, you described you owned -- there was a house out at your ranch where you normally lived, except

when you were staying with your mom and dad?

A Yes, sir.

Q Is there some tile in that ranch house?

A Yes, sir, there is.

Q Does it match the tile that's in part of the school system?

A No, sir, I don't believe so.

Q Well, did you obtain -- is it your testimony that you did not obtain this tile from the same stores at the same time that the school district got their tile?

A I bought my tile, sir, in Monterrey, Mexico. I think the house, say, would be approximately -- let's say 40 -- about 40, approximately 40 square feet, which would be -- what is it, 116 -- 1,600 square feet. I bought the tile in Mexico, it cost approximately -- I think, it was \$.17 a block.

Q It's a two-story house, isn't it, Judge?

A Yes, sir, but there's no tile on the second floor, sir, it would be too heavy.

MR. MITCHELL: Pardon me, Mr. President for the inquiry. But I read the Articles of Impeachment again to determine whether we're charged with buying tile and I see nothing about that in the Articles of Impeachment. They're wholly outside -- the question is wholly outside of the scope of I and VII, I submit.

MR. DOYLE: Judge, Mr. Mitchell brought this up, I think I have every right in the world to cross-examine on it.

THE PRESIDENT: Proceed with your cross-examination.

Q Well, Judge, what color is this tile?

A It's gray.

Q What color is the tile in the school?

A I think it's white.

Q Did you color yours?

A No, mine's gray.

Q Did you color it?

A Did I color it?

Q (Nodding head affirmatively.)

A No, sir, I bought it was -- you see, if I might explain, this was an old house, as a matter of fact my father was born there in 1896. And I remodeled it and the

remodeling was done in 1964.

Q 1964. Now, at that time you were a member --

A '63 and '64, I believe.

Q At that time you were a member of the school board?

A Yes, sir.

Q And it's your testimony that you purchased that tile down in Mexico?

A Yes, sir, I believe the whole tile didn't cost over \$300.00, \$350.00, something like that.

Q I assume then you would have a cancelled check to show the Senate where you bought that tile?

A Mr. Doyle, have you ever been to Mexico and tried to cash a check over there?

Q Well, do you have some proof, Judge, that Mr. Couling is not telling the truth about that tile?

MR. MITCHELL: In 1963, Counsel? We will try to dig it up for you, 1963.

A In Mexico, sir, if you don't pay cash you don't get anything.

Q Well, the school board bought that tile down there too, according to Mr. Couling, it's accurate. You were a member?

A I believe the tile that the school bought was bought in Nuevo Laredo, Mexico. As I recall the contractor -- I suggested -- see, the schools weren't built until much after the time the tile was placed in my house. And they were talking about placing rubber tiles in the schools and the wear and tear in the halls. I was president of the school board at the time.

Q Right.

A And I talked to the contractor. And I suggested that the halls have this tile, because I found that it was very cheap to obtain in Mexico.

Q Who was --

A And I was overruled.

Q Who was this contractor?

A He's from Austin, I forget his name. As a matter of fact --

Q Well, now is it your testimony that he purchased the tile and you all just paid him, the school board?

A It was all let out on a contract. As a matter of fact this contractor -- it led to my resignation from that board, because the contractor who was hired to build that school was using what I call second-class materials.

Q When did --

A Not doing things right. And he was running up and down trying to get checks and getting paid and I was refusing to pay him. And I caused him to completely tear down all of the paneling of the Benavides High School auditorium. And we had a big blow-out and Mr. Parr took the contractor's side of it and I resigned and got off the school board and they had to go get me back in there and make arrangements for that contractor to fix that auditorium.

Q When did you get off the board, Judge?

A I got off the board -- I don't know, the records will reflect that. I resigned and came back on again.

Q Well, when was it that you resigned?

A I forget. That was the time --

Q Well, how long were you off?

A I was off, just like I say, just one day. I went in to resign, I said, "If that's the way you all are going to work these things I'm not going to sign the checks and I quit." And I resigned.

Q Somebody else signed the checks?

A And my father --

Q Is that right?

A -- it was opposed for him to be put on the board in my place.

Q Well, did somebody else sign these checks while you were gone?

A No, sir, like I say, it was going to be a big stinkaroo why I was resigning.

Q You don't know whether anybody else signed the checks or not?

A I think after that my father started signing the checks.

Q Well, now the checks that he signed, did they pay for the tile?

A The school was built in 1968, I believe. This tile was bought in '63 or '64, the tile for my ranch. It has nothing whatsoever to do with it. As a matter of fact, I brought this tile over in a pickup. We're not talking about a great big deal of tile.

Q Now, while we're on the subject of the school board, Judge --

A Yes, sir.

Q Mr. Couling testified that he destroyed those records with Rogelio Guajardo?

A Yes, sir.

Q At the instructions of D. C. Chapa?

A Yes, sir.

Q You have had an opportunity to see both of those gentlemen called as witnesses in this matter, haven't you?

A Yes, sir.

Q What did they do when they were called as witnesses?

A They have pled the Fifth Amendment.

Q They refused to testify on the grounds that anything they might say might tend to incriminate them?

A Yes, sir. I called them, Mr. Doyle. I called them to testify. Now, you all haven't called them. You have never called them. I called them to testify. I wanted their testimony.

Q But they refused on the grounds that anything they might say might tend to incriminate them?

MR. MITCHELL: And the record should reflect that the examiner objected to the grant of immunity so that they would be able to testify after I subpoenaed them.

Q They have refused to testify?

A They have, Mr. Doyle, because the Attorney General who went down there taking instructions from Archer Parr in this case has been down there with his eyes set to get all of the Carrillos, sir, and that is the main purpose. Everyone knows it. It's common knowledge back home, sir.

Q So, it's your opinion the Attorney General has been on a huge scheme to wreck you and your family? Is that correct, Judge?

A Yes, sir, I accuse, definitely do make the accusation that the Attorney General of the State of Texas, Mr. John Hill, has made agreements and gotten together with Archer Parr and went out there to help them control and take over, like I said yesterday, the water district. And they have not -- Mrs. Atlee Parr is on record as having borrowed \$50,000 from the water district, and the Attorney General has done absolutely nothing. Mr. George Parr took \$120,000 and so testified. And the Attorney General has done absolutely nothing about it. The First State Bank and Trust Company of San Diego has taken over \$500,000 out of it. It is owned and controlled by the Parris, and the Attorney General has done absolutely nothing about it.

Q You would agree with me, Judge, that George Parr is dead?

A But his hand is still there.

Q On the subject of immunity, Judge, since Mr. Mitchell brought it up, Rogelio Guajardo took the Fifth?

A Yes.

Q D. C. Chapa took the Fifth?

A Yes.

Q Ramiro Carrillo took the Fifth?

A Yes, sir.

Q Oscar Carrillo took the Fifth?

A Yes, sir.

Q Tomas Elizondo took the Fifth?

A Yes, sir.

Q Jose Saenz took the Fifth?

A Yes, sir.

Q Jose Saenz took the Fifth after he was granted immunity by the House Impeachment Committee, didn't he?

A He was granted immunity by the House Impeachment Committee one day, and he was indicted three days later back in Duval.

Q Well, I think if you'll look at the records, Judge, you'll see that he was indicted in Jim Wells County.

A Well, he was indicted somewhere. Wherever it was, he was indicted.

Q As a matter of fact, he has not been indicted by the County, by the grand jury in Duval County, has he?

A I believe you're right, sir.

Q Nor has Rogelio Guajardo?

A No, Rogelio Guajardo has been indicted by the -- my nephew was indicted by the grand jury that I --

Q In Duval County?

A In Duval County, yes, sir.

MR. MITCHELL: Five times.

Q Now, let me go back and straighten up one thing you said, Judge. In fact, didn't the examiners in the Judicial Qualifications Commission hearing, didn't they call

Ramiro?

A Yes, sir.

Q And what did he do when they called him?

A He pled the Fifth Amendment, sir, because they were getting ready to go to trial in Corpus Christi, and he wanted to testify --

Q Who represents Ramiro?

A He was represented by Mr. Mitchell. Mr. Mitchell has since disqualified himself. And some other attorney represents him.

Q Okay. Judge, there was one other person who took the Fifth in that Judicial Qualifications Commission hearing.

A Mr. Couling.

Q No, Mr. Couling testified, didn't he?

A No, Mr. Couling pled the Fifth Amendment. He didn't testify until --

Q In the Judicial Qualifications Commission hearing, Judge, didn't Mr. Manges take the Fifth Amendment?

A Yes, sir.

Q Who called him?

A We did. Those folks were subpoenaed by us.

Q Seems to me like Mr. Manges took the Fifth earlier than that, Judge. Wasn't he one of the ones that was subpoenaed to testify by the examiners of the Judicial Qualifications Commission?

A It's possible, sir, but I think we called him too.

Q And took the Fifth Amendment concerning, I think, the Cadillac purchase, wasn't it?

A It's possible.

Q He did buy a Cadillac for you, didn't he?

A No, sir.

Q Now, one more question on this Fifth Amendment stuff, Judge. Ramiro has taken the Fifth Amendment three times, has he, Judge?

A That's his privilege, sir.

Q It's accurate, though, isn't it?

A I don't know.

Q Well, he took it on his deposition, did he? That's in the record, isn't it?

A I was not present in his deposition. It was private, sir.

Q Well, I say that the depositions are in this record that you all introduced, isn't that accurate? And this record reflects he took the Fifth Amendment when he was

--

A I don't know that the depositions were introduced anywhere in this record. They might have been. I have no knowledge of it.

Q Okay. Let's assume that they are.

A No, I'd like to see them.

MR. MITCHELL: Mr. Doyle, maybe I can assist. Is it the question that Ramiro Carrillo took the Fifth Amendment at the time that his deposition was taken by the examiner prior to the Judicial Qualifications Commission?

MR. DOYLE: That was exactly my question.

MR. MITCHELL: I think I represented him and I told him to do it.

Q So, Judge, you would agree with me that on that occasion, Ramiro did take the Fifth Amendment?

A I was not present.

MR. MITCHELL: It was a secret proceeding, Mr. Doyle. Mr. Carrillo was not present. Under the law, he couldn't be present.

MR. DOYLE: Well, Mr. Mitchell, I don't want to argue with you or take issue, but this record was introduced into evidence by you all some two weeks ago, and I assumed he looked at it.

MR. MITCHELL: I have no quarrel with that point either. I don't see the significance of a man who will adopt the right given to him by the United States Constitution. And I object to it. I'll admit it. I asked him to take it and instructed him to take it.

Q Now, he took the Fifth Amendment again when he was called to the stand in the hearing by the examiner, didn't he?

A Yes, sir.

Q And he took the Fifth Amendment again when he took the stand at the insistence of you and your Counsel?

A When we called him, yes, sir.

Q Now, you're aware, of course, that no one subpoenaed him up here, is that correct?

A That's correct.

MR. MITCHELL: Now, wait a minute --

Q It would seem pretty futile, wouldn't it?

A I don't know.

MR. MITCHELL: Excuse me. That's not correct. Subpoena Number 24 was issued on 10/9/75 -- I mean, 10/6/75, Mr. Doyle, by you. It was issued -- he was up here 10/9/75, Mr. Ramiro Carrillo.

MR. DOYLE: You'll find, Mr. Mitchell, it was never executed.

MR. MITCHELL: Well, you've issued it.

MR. DOYLE: But it was never executed. That was before he took the Fifth down in the Judicial Qualifications Commission, Mr. Mitchell.

(Senator Hance in Chair)

Q Now, I want to go through a series of questions that Mr. Mitchell asked you on direct about your activities from the time you got out of law school until the time you got back to Duval County, Judge.

A Yes, sir.

Q Not right during that series of questions, but at a little bit later time in response to one of Mr. Mitchell's questions, you said something about a case back in the '50's, a Federal case back in the '50's. What was that, Judge?

A That was a Federal mail fraud case.

Q Were you a defendant in that case?

A I was, sir.

Q Were you convicted in trial court?

A I was acquitted, sir. There were twenty counts against me and I was acquitted on seventeen -- I mean, on nineteen, and the Supreme Court ruled in my favor on the 20th.

Q Well, you were convicted in the trial court, is that correct?

A On one count, yes, sir.

Q And the conviction --

MR. MITCHELL: Your Honor, I'm going to object. I don't believe I have ever heard such improper questions. I don't believe I have ever heard of such a breach of the rules of evidence as Counsel is now demonstrating before this body. He knows full well that conviction was remote. He knows full well the Supreme Court of the United States reversed it. And I suppose he's going to be of the school that doesn't

believe in the Supreme Court of the United States no more than he does the Fifth Amendment. Now, I'm going to object. I think it's the most improper line of questioning I have ever heard Counsel --

MR. DOYLE: Judge, Mr. Mitchell brought this up on direct examination. And I'm just inquiring of the same thing he brought up on direct examination. I'll be glad to go through the record and find where they discussed the conviction of the '50's, which is what I'm asking.

MR. MITCHELL: And that is not true, Mr. Doyle, and you know it. I did not ask this witness about any conviction in the '50's because I knew it was improper. That conviction was reversed by the Supreme Court, and you full well know it.

MR. DOYLE: Well, he sure testified about it, Mr. President. I think everybody remembers it.

MR. MITCHELL: Mr. President, I still say that's the most improper conduct I have ever witnessed from a Counsel of this State.

THE PRESIDING OFFICER: I'll sustain the objection. Proceed.

Q Now, you testified on direct that you worked for Percy Foreman in Houston, is that right, Judge?

A No, sir, that I worked for him. That I associated in cases with him.

Q How many cases?

A Many cases. Several cases.

Q Many --

A As a matter of fact, most all of the cases, I think Senator Moore at one time was an associate along those series of cases when -- before Percy Foreman came in, and Judge M. J. Raymond was handling some of those cases.

Q Did you live down in Houston?

A Yes, I stayed at the Shamrock Hotel with Mr. Percy Foreman.

Q I'm sorry. I couldn't understand you.

A I stayed at the Shamrock Hotel with Mr. Percy Foreman and at the Texas State Hotel right across the street from the Courthouse there in Houston.

Q Your testimony was you were down there from '56 to '59. Did you live in those hotels for three years, Judge?

A Yes, sir.

Q And then I think you said you worked in Washington. With Abe Fortas for two years?

A I was associated with them when they were working on those cases over there with Mr. Abe Fortas.

Q What cases?

A That was the Parr case.

Q I see. So your only connection with Mr. Fortas was that one case that you testified to about earlier?

A That is correct, sir.

Q And was there some connection with Mr. Mitchell other than the trial of that case?

A With Mr. Mitchell?

Q Excuse me, with Mr. Foreman.

A With Mr. Foreman?

Q Yes.

A With Mr. Foreman, I actually lived together with him at the Shamrock Hotel. And --

Q You lived in the same room with Mr. Foreman?

A I did, sir. Yes, sir.

Q All right. For three years?

A And --

Q For three years, Judge?

A No, not all the three years, because sometime during the time I was there, he married Marguerite and he went on to his home, and I stayed at the hotel.

Q Okay. But your only connection with Mr. Fortas was just that one case?

A Yes.

Q And your testimony was that you had lived in Washington for that two years? Is that accurate?

A Yes, sir. I used to come in about every two or three weeks, and I used to stay at the Du Pont Plaza Hotel in Washington, D.C., sir.

Q For two years?

A Approximately.

Q On one lawsuit?

A Yes, sir.

Q Was Mr. Manges a defendant in that case?

A Who?

Q Mr. Manges.

A I didn't even know Mr. Manges at that time, sir.

Q Now, Mr. Mitchell asked you a series of questions about property that you own, Judge.

A Yes, sir.

Q Or ranch property. Do you remember that series of questions?

A Yes, sir.

Q You said you owned some property down in Florida, is that correct?

A No, sir. The name of the ranch is La Florida, which is also exactly the same as Florida. It is spelled, F-l-o-r-i-d-a. And it's in Jim Hogg County, sir.

Q Right. You owned the Florida ranch in Jim Hogg --

A La Florida ranch. Which is the Florida ranch.

Q Where is this land that you leased from Mr. Manges?

A That is over in Starr County, sir.

Q And what ranch is that?

A That is part of the Guerra ranch. It's called El Puerto.

Q Is it adjacent to some ranch that you own over there?

A No, sir.

Q You just lease it all by itself?

A That's right, sir.

Q Do you still have it under lease?

A Yes, sir.

Q Okay. Now, you listed in response to Mr. Mitchell's question, the Florida ranch, some that your mother gave you, some that you bought under the GI Bill, the Calvin North ranch, some in Zapata County and some in Jim Wells County you got on a fee.

A Yes, sir.

Q And some you bought from the Cuellar family?

A From who?

Q Cuellar, yes, sir.

A Cuellar. And some land that I bought from Mr. Viggo Gruy.

Q Mr. who, please?

A Viggo Gruy.

Q Now, how large did you say the Borjas Ranch was?

A The Borjas Ranch, originally, by itself, is approximately 1500 acres.

Q Now, since the time you got it, you bought a thousand acres next to it. Isn't that right?

A I bought a thousand acres adjoining it and two thousand acres, also from Mr. Gruy, but that is about eight miles from Borjas.

Q But the thousand acres that adjoins it, when did you buy that?

A 1972, I believe it was.

Q When? Do you remember what month?

A No, I don't, sir.

Q Who did you buy that from?

A Viggo Gruy.

Q Could you spell his last name, please?

A G-r-u-e-y, or U-r-u-y. I think it's G-r-u-y.

Q And his first name?

A Viggo; V-i-g-g-o.

Q Judge, do you run cattle on all of these ranches?

A Yes, sir. I run approximately -- I have between 600 and 700 mother cows and approximately 100 bulls.

Q You owned all of these --

A Own all of that. It is approximately -- close to 800 heads of cattle.

Q Where is the land that you leased from Mr. Manges?

A That is over in Starr County, sir.

Q Is it the only land you own over in Starr County?

A I don't own it. I lease it, sir.

Q Or, lease it. I'm sorry.

A Yes, sir. That is all the land that I lease over there.

Q How many cattle do you run on it?

A Over there? I would say I have approximately 300, 350. Something like that. I don't know, sir. We move the cattle back and forth.

Q So, you have half the cattle that you own on that one piece of property?

A I beg your pardon?

Q Your testimony was you had about 600 head of mother cows.

A I would say between 600 and 700 mother cows and 100 bulls.

Q All right. So, do you keep half of them on that land you rent from Mr. Manges?

A In the cattle business, Mr. Doyle, we have to go where the grass is greener, you know. We transfer from one pasture to another, from one ranch to another. We move around. I might have 400 head of cattle at one ranch today, and by two months from now, it might be reduced in order to let the grass come back on it. We -- we rotate.

Q How much did you pay Mr. Manges for this lease?

A I paid him 100 certified Beefmaster heifers and \$5,000.00, sir.

Q When did you pay him that?

A Last July.

Q And that lease is good for what? A year, or two years, or what?

A We have it on a sort of 90-day notice, sir. If he decides to sell or clear the brush, he will give me 90 days in which to move out. Of, if he decides he wants it back, he will give me 90-day notice.

Q So, this -- you leased this land in July of '75? Or '74?

A No. Well, I have had it for several years, and it was originally leased for three years, I believe.

Q What was the original lease?

A When was the original lease?

Q Yes.

A Back, I guess, in '71, I believe.

Q Is that lease recorded at the Courthouse?

A No, sir. It is an understanding between Mr. Manges and myself.

Q It is not in writing, either?

A It is not in writing. We are both gentlemen and we honor our word.

Q So, you have had this land since 1971 sometime?

A Yes, sir.

Q Now, you testified that in July of last year, you paid him 100 heifers and \$5,000.00. What did you pay him back in '71?

A No, sir. The original agreement was that I would lease the land and at the termination of the lease, he would have the option of either taking his money in cash or taking his money in cattle because, you know --

Q How much money?

A It was at a dollar an acre.

Q A year?

A Yes, sir.

Q And that was for -- in 1971?

A Approximately, yes, sir.

Q And you paid him \$5,000.00 in '75?

A Yes, sir.

Q Well, that would be a dollar an acre for four -- for the five years, wouldn't it?

A That would be about one year.

Q Sir?

A That is approximately one year's rent. It is approximately 5,000 acres.

Q Oh. I thought you said it was a thousand acres.

A No, sir. Five thousand acres.

Q Five thousand acres?

A Yes, sir.

Q Well, did you pay him \$5,000.00 in '71?

A No, sir. I paid him -- like I said, he took a choice of taking 100 certified Beefmaster heifers.

Q In 1971?

A No. His choice was to be -- when the rent was due he was going to decide whether he wanted cash money or whether he wanted cattle. Mr. Manges has, since that time, bought approximately 150,000 acres. He is trying to stock his ranches with cattle and he decided to take cattle.

Q Well, did he take heifers -- did you pay him in '71 or '72?

A I paid him July of this year, sir.

Q For the whole four years?

A Yes, sir.

Q So, four years at \$5,000.00 a year, that would be \$20,000.00. Is that right?

A Yes, sir.

Q And you paid him \$5,000.00 in cash?

A Yes, sir.

Q And 100 heifers?

A Yes, sir.

Q So, we are to take it that the 100 heifers were worth \$4,000.00?

A Well, we came to an agreement that, for the rent that I owed him, I would give him -- he would take the 100 heifers and his brother came and made the selection, and he got them.

Q And that's all you have paid him?

A That is all I have paid him, sir. That's enough, too.

Q Judge, I am going to hand you what's been marked as Examiners' Exhibit, Volume One, and I'm going to show you, or direct you to a portion of that Exhibit which is a portion of the record in Manges vs. Guerra.

A Yes, sir.

Q You are familiar with that?

A Yes, sir. I am.

MR. MITCHELL: Mr. President, I don't have any objection to all the questions he wants to put to him about the Manges vs. Guerra, but that's the subject matter of Article II. And all this testimony about the lease and the arrangement with Mr. Manges deal with Article II.

Now, if we are going to be put to trial on Article II, fine. I am prepared to meet it. But, I think you ought to proceed orderly. He announced he was going to trial on I and VII, and we are going to object. He has spilled over on Article II, and has been, for that matter, the last fifteen minutes. I have resisted the temptation to interrupt him hoping he would move on. But, now, he has asked him directly in the teeth of Article II, beyond the scope of what his word was to this Court, that he would go to Article I and Article VII, if it please the Court.

THE PRESIDING OFFICER: Mr. Doyle, for what purpose?

MR. DOYLE: Mr. President, Mr. Mitchell went into great detail with Judge Carrillo showing what lands he owned, and he asked him about various ranches he owned, and properties that he held. And, he took considerably more than fifteen minutes to do it. He opened the door just as wide open as he could, and I am asking questions about the land that the Judge owned.

THE PRESIDING OFFICER: You are doing this solely for the purpose of impeachment?

MR. DOYLE: Yes, sir.

THE PRESIDING OFFICER: Okay. Proceed.

Q Now, Judge, I'm going to hand you --

MR. MITCHELL: Excuse me. Mr. President, as long as he doesn't squeal when I take him back.

THE PRESIDING OFFICER: Proceed.

Q I'm going to hand you this record, Judge, and refer you to part of the record where you were -- well, let me just let you read that.

These are questions that were directed at you, I believe. Is that correct, Judge?
On Page 115.

A Yes, sir.

Q Now, I would like for you to read this question about halfway down the page, beginning, "Now, Mr. Manges testified I believe..."

A Yes, sir. It says, "Now Mr. Manges testified, I believe..."

MR. MITCHELL: Excuse me, Judge Carrillo. Excuse me. Where are you reading from, please?

MR. DOYLE: Page 115.

A It's Volume One of the Examiners' Exhibits, Page 331.

It says, "Now, Mr. Manges testified, I believe, that you were in sort of a jam at one time on grazing land for some cattle, and he had permitted you to graze from a thousand to 1300 acres, or some substantial acres." "Yes, sir."

Q Well, now, is that an additional 1300 acres he is talking about, Judge, or is there a conflict between the 1300 and the 5000?

A No conflict whatsoever, sir. The first agreement that we had, the land covered approximately twelve or thirteen hundred acres. The understanding that we had was that if he was to sell or clear the lands, he would give me notice. Mr. Manges sold this 1300 acres to Mr. Lloyd Bentsen, Sr., and we moved over -- our grazing lease over to a 5000-acre tract and abandoned this other 1300-acre tract which was called -- that pasture was called -- well, it was another pasture.

Q So, at first you had 1300 acres from Mr. Manges.

A For about three or four months, and then he sold it to Mr. Lloyd Bentsen, Sr., and we moved over to another pasture.

Q Do you remember when that was?

A I believe it was '71, sir. We were there for a very, very short time when he sold that piece of property.

Q Now, the next thing Mr. Mitchell asked you about, Judge, was the acquisition of the Vaello Sales Building.

A Yes, sir.

Q When did you say you bought that?

A I believe it was approximately 1962, sir. I don't remember the exact date.

Q And immediately thereafter, leased part of it to Zertuche Store, or did it start -- no. I believe you said that again in 1964. Is that correct?

A Yes, sir. First of all, I remodeled part of it and -- for the drug store, sir.

Q Now, you made -- what did you pay for that Vaello Sales Building?

A I don't remember, sir. I think it was approximately \$7,500.00 or \$10,000.00; something like that. I don't remember.

Q \$7,500.00 to \$10,000.00?

A Yes, sir.

Q Now, I believe you described it as a very large building.

A It is.

Q It is the largest building in town, isn't it?

A Just about.

Q And you described it as covering a great portion of a square block?

A Yes, sir. That, and the Vaello Lumberyard. Both of them are very large places.

Q Right.

A But, you do get bargains at bankruptcy sales.

Q Now, just after you bought the Sales Building, you tried the drug store venture. Is that correct?

A Yes, sir.

Q Now, was there a drug store in that building before you bought it?

A No, sir.

Q So, you started that thing from scratch?

A Yes, sir.

Q Did you make any improvements to the building in connection with the starting of the drug store?

A Yes, sir.

Q Like, for instance, what?

A Like, for instance, partitioning part of the building; setting up --

Q Put up walls? Is that what you mean?

A Yes, sir. Putting up walls. And put up the different water sinks; put up an office; put up the necessary things that were going to be needed for a drug store, you know, and --

Q Right.

A -- getting cash registers and counters.

Q What had the store been used for prior -- the building been used for prior to the time you bought it?

A It had been a furniture and appliance store, sir.

Q That's what --

A The Vaello Sales was.

Q And somebody named Vaello, I guess, ran it, or something. Is that right?

A Yes, sir. They owned it.

Q And so, you attempted to convert, or converted part of it over to a drug store?

A Yes, sir.

Q Well, did you ever stock drug supplies in there, or drugs?

A We went -- we came over here and we got the license, sir, and Mr. Emilio Salinas -- as a pharmacist, there is a requirement that a pharmacist, before you can get a license for a pharmacy, a pharmacist has to sign with you. Mr. Emilio Salinas signed the application. Mr. Freddie Garcia from Alice made out the list of the -- from the druggist friends, that we had to order. And, we got in the pharmacist that came down there and -- as a matter of fact, I have, in the 1963 annual, which is right here, Mr. Doyle, sitting on my briefcase over there in that back -- if we may, I will show you. If you will be patient with me just a second.

Q Well, my question was did you stock it with drugs and aspirins and that sort of thing?

A We ordered everything -- we ordered the supplies and we ordered everything and then I couldn't get a pharmacist -- we started out -- I couldn't get a pharmacist to stay down there. One came down there and wouldn't stay down there. And my friends -- this merchandise that we were getting insofar as the drugs were concerned, and what have you, took that, sir. But a lot of people are forgetting a lot of the businesses that I had when things were helpful and they remember things that --

Q Well, Judge, either you stocked it or you didn't stock it, that's my question to you.

A I bought the stock and then it was taken over by another pharmacist, sir, and we closed it.

Q So, you bought the stock and turned it over to some other person?

A Yes, sir.

Q Who did you turn it over to?

A Mr. Freddy Garcia was the one that had -- the pharmacist, he owns a drug store over in Alice and he's the one that filled out the -- here's the annual, sir, here is the ad that we had congratulating the seniors from O. P.'s drugstore.

Q Oh, that's a high school annual?

A 1963 annual.

Q So, that would have been the annual for the people that graduated from high school in '63. Is that right?

A Yes, and that's an advertisement that we have in the school annual.

Q Oh, I see. So, you even went to the extent of buying an ad?

A I went to the extent of remodeling the whole place and of getting a pharmacist and getting a license and getting everything ready to go, except that I couldn't operate a drugstore without a pharmacist, so, I had to close down.

Q And you sold what you had in there to some other pharmacist?

A Yes, sir, the order was coming from Garcia Pharmacy, over in Alice, a friend of mine who was helping me get started with it.

Q And did he buy the stuff you purchased and attempt to sell it in Benavides or did he ever even open up the doors for business?

A No, we didn't -- that's what I mean, it never -- like I said, it never really got off the ground.

Q So, it never opened the doors for business. Is that accurate?

A That is correct, sir.

Q All right. Now, you bought -- well, did you buy that counter at that time or did you buy that at some other time?

A No, the counter -- when I bought the Vaello Sales Building it included everything that was inside that store. And that included that counter that I sold Mr. Couling.

Q Oh, I see. So, that counter was already in there?

A Yes, sir.

Q And the Vaellos had used that counter, I guess, for some time also?

A I don't know how long, sir. It was a nice counter.

Q Now, you bought this building in '62 and that counter was in there?

A Yes, sir.

Q And you sold it, according to your testimony, in '71. Is that right?

A Yes, sir.

Q And you sold it for a thousand dollars?

A Yes, sir.

Q And you only paid \$7,500 to \$10,000 for the whole building?

A Yes, sir.

Q Did you make any other sales that good, Judge, out of that equipment that was in that building?

A I bought this thing, like I said, at a bankruptcy sale, sir, and they were selling everything down there and

Q Well, my question to you was did you sell any of the contents for as much as a tenth or a sixth of what you paid for the entire building?

A As a matter of fact, sir, I paid -- those thirty-six acres that I bought, I think I paid \$2,500.00 for them and then I sold one acre for \$1,000.00 and divided the rest into lots, which I was going to put up for sale and I think I could have cleared about -- out of those, approximately \$3,500.00 that I bought if I were to sell those lots, I thought I'd make about \$35,000.00 on it, sir.

Q So, your testimony is that you paid \$7,500.00 to \$10,000.00 for a whole building and all the contents and then nine years later you sold one counter out of that building for a thousand dollars?

A Yes, sir.

Q All right.

A I remember the day when I walked to receive the store and Mr. Jimmy Vaello was there and we sat down on one of the chairs that was there to furnish the store and he was crying and he said, "O. P., you literally stole this --"

Q Well, how big is that counter?

A Huh?

Q How big is that counter?

A How big is that counter?

Q The counter, the one you sold for \$1,000.00 after holding it nine years, how big is it?

A I don't remember the exact size of the counter. I can't -- I would say as big as this desk here where Mr. Mitchell is.

Q Well, did you deliver that counter down to Mr. Couling?

A No, Mr. Couling came over and picked it up, as I recall.

Q And when was that, around the date of that check?

A No, sir, I don't remember.

Q Well, did he pick it up before you paid him, before he paid you or after he paid you?

A I don't remember, sir.

Q Well, he didn't pick it up in 1964 or '63 when that drugstore went under, did he?

A No, sir.

Q Judge, this is a picture of that counter, isn't it?

A No, sir.

Q How about this, isn't that a picture of that counter?

A No, sir, this is a section that was remodeled for the drugstore, which later served as the Zertuche General Store, but it does not show the counter here, sir.

Q Well, now, I believe when I asked you about what that counter looked like you said you didn't remember. Is that right?

A No, I said it was approximately as big as that -- I can't describe the exact -- it's a demonstration -- demonstrator counter, sir.

Q It's a demonstrator counter?

A Yes, sir.

Q What does that mean?

A Well, you place things --

MR. MITCHELL: Talk your best English, Judge.

A It's a counter where you place articles that are going to be for sale and can be viewed by the person whose going to be buying them.

Q Oh, I see, it's got glass in it?

A Yes, sir.

Q You can see through it?

A Yes, sir.

Q Big as that desk?

A Yes, sir.

Q It was worth a thousand dollars?

A It was to me and it was to him and we had a meeting of the minds, he bought it and I sold it and he paid me for it and he took it.

Q And your testimony is that neither one of these pictures is that counter?

A No, sir, that is -- what you're showing me there, sir, was what was going to be the drugstore and later turned out to be the Zertuche General Store.

Q Well, you recognize, then, these pictures that I showed you as counters that you had in there for the purpose of just putting stuff on for sale. Is that right?

A Yes, this was part of the remodeling. You can see over here where the wall was closed in -- see, this was part of going into the other -- into the rest of the building.

Q What is this arch door right here?

A That's exactly what I mean. This -- you actually walked through halls or rather aisles where you would walk into the whole Vaello Sales Building. And this was a part that was partitioned and cut off to be the O. P.'s Drugstore.

Q And this counter -- these shelves that are in the lower portion of that picture, were they in there when you bought that building too?

A No, sir, this is part of what I remodeled and later became the Zertuche General Store.

Q Okay. Now, this is the same remodeling that you did with those shelves, just from a different view?

A Yes, sir, behind here we have the water sinks and the things that need to be. And then over here is the door of the entrance to the office to that section.

MR. DOYLE: Mark these please.

(House Exhibits No. 32 and No. 33 were marked for identification,
H-32 and H-33.)

MR. MITCHELL: Terry, I wonder if you would also have that advertisement of that O. P.'s Drug marked, I would like to have that a part of the record or if you want to make it in yours I --

MR. DOYLE: You can do that.

MR. MITCHELL: All right.

I have no objection to the introduction as long as the Judge recognizes these two.

Q Now, Judge, just so we can get the record straight. The questions I asked you about the picture that showed the arch door has been marked as H-33. Is that correct?

A Yes, sir.

Q And the picture that I showed you that you said was a view of the same shelving from another angle has been marked as H-32?

A Yes, sir.

Q Now, Judge, this picture is a picture of the exterior of that building, isn't it?

A Part of it, sir.

Q Well, which part does that show?

A It shows part of the front of the store and the section where Zertuche General Store used to be located.

Q Okay. So, that is part of the Vaello Sales Building?

A Yes, sir.

MR. DOYLE: Let me get that marked too, Judge.

(House Exhibit No. 34 was marked for identification,
H-34.)

Q Okay. Now, Judge, you have identified what's been marked as --

MR. DOYLE: Now, Arthur, what are the numbers on that, 32 and 33?

MR. MITCHELL: H-32 and H-33, yes.

Q Okay. I'm going to show you -- this has been marked as H-34. That's the picture of the exterior of that building, isn't it, Judge?

A Yes, sir.

Q Now, Judge, would north be toward the top of that picture?

A I beg your pardon.

Q North, the direction north, wouldn't that be towards the top of that picture?

A Yes, sir.

Q And the east would be to your right?

A To the right.

Q And west to the left?

A And west to the left.

Q Mr. Mitchell, do you have any objections if I just note that on here so we --

MR. MITCHELL: Absolutely not.

Q Okay. So, south's going to be down here, huh, Judge?

A Yes, sir.

Q And then west is going to be over here?

A Yes, sir.

Q And east is going to be over here?

A Yes, sir.

Q And north would be like it's supposed to be at the top?

A Yes, sir.

MR. MITCHELL: I have no objection, if it please the Court to H-34 or 32 or 33.

THE PRESIDING OFFICER: So admitted.

Q Now, Judge, one more question and then we will go eat. H-34 is the exterior of the Vaello Sales Building --

A Part of it, sir, there's quite a bit.

Q I'm going to ask you a question about that. There appears to be slightly to the left of the center some double doors?

A Yes, sir.

Q Now, where did those double doors lead, oh, let's say in 1973?

A In 1973 they lead into what used to be the Zertuche General Store.

Q Okay. Now, it went out of business in --

A In 1970.

Q Okay.

A But it moved from here in September of 1967.

Q Okay. So, before September, 1967, -- let's say in July of '67?

A Yes.

Q If you went in those double doors that are slightly to the left of center in that picture you would have been walking into the Zertuche Store?

A What used to be and also what was going to be O. P.'s Drugstore.

MR. DOYLE: Thank you, Judge. This is a good stopping place.

THE PRESIDING OFFICER: Senator from Jasper.

SENATOR ADAMS: Mr. President, I would like to move the Court stand recessed until 1:30 p.m.

THE PRESIDING OFFICER: Motion is the Court stand recessed until 1:30. All those in favor say "Aye," all those opposed say "Nay," the "Ayes" have it.

Accordingly, the Senate, sitting as a Court of Impeachment, at 12:00 o'clock m. took recess until 1:30 o'clock p.m. today.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 1:30 o'clock p.m.

THE PRESIDENT: The Court will come to order.

MR. MITCHELL: Mr. President, if I might be permitted, I have received a copy of the pleadings in the case called for by the Court earlier. I would like to deliver them to the Court, and have them made a part of the record subject, of course, to the Court's right to review those pleadings. I handed them to the Court, I believe, prior to going on record.

THE PRESIDENT: All right. Mr. Mitchell, I would like a moment to look at the pleadings, and then Mr. Doyle would too, so we'll take just a few minutes.

MR. MITCHELL: All right, sir.

(Senator Brooks in Chair)

MR. DOYLE: Mr. President, are we ready to proceed?

THE PRESIDING OFFICER: The Court will come to order.

SENATOR MAUZY: Mr. President, before we proceed, there is one matter in the record this morning I want to clarify, if I might address Counsel.

Mr. Doyle, I checked the record, and it appears you issued a subpoena for Commissioner Ramiro Carrillo on October 6, 1975, and the record shows that the subpoena was not executed. I wonder if you can enlighten us as to who it was that caused that subpoena not to be executed?

MR. DOYLE: There was an adjournment then, Senator, and, if you'll remember, we didn't know how long we would be away from here.

SENATOR MAUZY: Well, is that subpoena still outstanding?

MR. DOYLE: No, I see no reason -- since that was issued, Mr. Ramiro Carrillo has taken the Fifth Amendment on each occasion that he's been called to testify, and I frankly didn't see any use in issuing another subpoena.

SENATOR MAUZY: Therefore, you do not intend to pursue it?

MR. DOYLE: I think it would be a waste of the taxpayers' money, Senator.

MR. JAWORSKI: Terry, did you want to offer this document?

MR. DOYLE: Mr. Mitchell ordered this at the Court's request and has tendered it, and I have no objection.

ASSISTANT SECRETARY: Introduced in evidence as Court's Exhibit No. 5, Joe Keller et al vs. Rudolfo Couling, Business Manager and Tax Assessor-Collector,

Benavides Independent School District.

(Court Exhibit No. 5 was marked for identification. C-5.)

THE PRESIDING OFFICER: The document has been examined by Counsel for both sides, and there being no objection to its introduction at this time, it's entered into the official Court record.

Now, the Counsel will proceed.

Q Now, Judge Carrillo, if you will recall before the lunch break, we were talking about the Vaello Sales Building and a certain counter in there, very valuable counter in there.

A Yes, sir.

Q Judge, do you have any written proof that you sold that counter to Mr. Couling?

A Yes, sir.

Q Besides the check?

A The check.

Q Well, did you perhaps give him a receipt for that and keep a copy of it? Or was there an invoice or was there -- is there anything you can show the Senate besides the check that that's what that \$1,200.00 was for?

A No, sir, the -- he took possession of the property, and his receipt would have been his cancelled check, which we have here.

Q Where did he take the counter? Do you know that?

A I guess he took it to the store.

Q Well, have you attempted to learn whether or not it's there?

A I have only been at the Benavides Implement and Hardware Store once in my life, like I've testified, and that is all.

Q Did you sell any of the contents of that store to anybody else?

A A lot of people have been -- have talked to me --

Q Judge, I just asked you a simple question, and I would appreciate it if you would answer my question.

A I'm trying to answer it, Mr. Doyle.

Q I asked you, did you sell any to any other persons? Either you did or you didn't.

A No, I have not.

Q According to your testimony, you bought that thing about 1962?

A Yes, sir.

Q And you sold that counter in '71?

A Possibly, sir.

Q Was there any reason for you to wait that long?

A Mr. Doyle, Mr. Couling wanted to buy the counter. We agreed on the price. I liked the price. I sold it to him. I delivered it to him. And I still have other things there, and if anybody is interested and wants to come by, I will be glad to show them, and if they want to buy anything at this late a date, I'll still sell some of the stuff if the price is right.

Q Now, I would like to -- isn't that Volume Three of the Examiner's Exhibits right there? You have it up there, don't you?

A Two.

Q It that Three you have there?

A Three, yes.

Q I believe the E-192 is on Page 1555, is that the page that Mr. Mitchell referred to?

A Yes, sir.

Q Would you turn to the first page of that? Do you have that page --

A 1555?

Q Is that the first page of Exhibit 192?

A Yes, sir.

Q Up at the top of that page in the upper left-hand corner, the date 4/16/71, is that the page you are on?

A Yes, sir.

Q Okay. Now, let's look down to the middle of that page to where we find that \$1,200.00 check to you.

A Yes, sir.

Q It's issued on the 21st day of June, wasn't it?

A That is the third item, I believe, from the bottom, is that correct, sir?

Q Well, it's 6/21/71, \$1,200.00, O. P. Carrillo, Number 131.

A Yes, sir.

Q All right. Now, what is the next item right below there? That's June 24th, 1971, a check to the Farm and Ranch Store, right?

A Yes, sir. June 29th. June 29th, 1971.

Q Oh, I'm sorry. It is a nine. It looked like a four. Could you tell us what that payment was for, Judge?

A No, sir, I did not have anything to do with the running of the Farm and Ranch Supply Store whatsoever. As I have stated before, I only visited once every month or so at the store, and I couldn't tell you what that item was for, sir.

Q Well, on the left there, Judge, we see a series of checks coming into Benavides Implement and Hardware from the County, don't we?

A On the --

Q Right above there, starting -- well, in -- see where the month of June starts?

A Yes, sir.

Q The first entry is June 17th?

A Yes, sir.

Q And then you have got "water district" there, "water district", "school district", "school district," and then we get a County check, Judge, don't we?

A Yes, sir.

Q Now, there is a County check down there on the 30th for \$982.65, and Mr. Couling showed us where that money went, didn't he? There is a line going down to your name, isn't it?

A \$98.65?

Q \$982.65, -- on the 30th of '71, the money came in from the County.

A And there is a line going down to --

Q July 2nd, \$982.00 going out to you. Do you see that?

A I see the \$982.65, and a line going down, and it doesn't show where it's going as far as I can see.

Q All right. So, the line goes down to a check for \$982.00 -- going to you.

A Yes. I'm sorry, the -- by turning the page, the line continues to --

Q I'm sorry. I'm looking at the Exhibit, Judge. Can you -- well, can you or can you not tell me that's where the lines goes, Judge?

A Yes, sir.

Q All right. Now, Judge, let's look at the rest of those checks.

A All right, sir.

Q You've got one for \$293.00, one for \$845.00.

A Could you tell me where it is on --?

Q Starting, the first checks from the County in June.

A First check from the County in June. \$982.65 -- no, wait a minute.

Q The first checks from the County, Judge. Starting the first one is June 29, '71, \$293.00?

A \$293.00.

Q Yes, sir. And there is another one from the County for \$845.00?

A Yes, sir.

Q And there is one for \$102.00?

A Yes, sir.

Q And there is one for \$710.00?

A Yes, sir.

Q One for \$562.00?

A Yes, sir.

Q Have you ever totaled those up?

A Have I ever totaled those up? No, sir.

Q Well, when I add them up, I get \$2,512.00. Is that what you get?

A I don't get anything. I haven't added them up.

Q Well, assume that the \$2,512.00 is accurate, just for a moment, Judge, that comes within some \$50.00 of the amount of monies paid out to Farm and Ranch and O. P. Carrillo on the 21st and 24th day of June, doesn't it?

A I don't know.

Q 29th day of June. I'm sorry.

A I don't know.

Q Well, on the 21st, was a check to O. P. Carrillo for \$1,200.00 and on the 29th, there was a check to Farm and Ranch for \$1,262.00.

A Yes, sir.

Q That's a total of \$2,462.00, isn't it?

A And 18 cents, sir.

Q And we just got through adding them up, and I rounded them off, Judge, but I got \$2,512.00, slightly over \$2,500.00, that was paid out -- that came in, rather, from the County in that same period of time. Did you ever check those figures like that, Judge?

A There was some kind of a -- I don't know whether it was these figures or not that were added up in a schedule that was worked on by me and my staff at my office. I don't know whether it covers the same ones or not, sir. I don't have it before me.

Q Right, sir. Well, Judge, on that whole first page --

A Yes, sir.

Q Do you see any check for any figure -- do you find any more than the two checks, one in each column, with the amount \$62.00 in it? See, you have a \$562.00 on June 30th, coming out of the county.

A Yes, sir.

Q And then a \$1,262.18 going to Farm and Ranch the day before, don't you?

A Yes, sir.

Q Well, they are odd figures, aren't they, Judge?

A Well, there is a check to Farm and Ranch before the money came out of the County, if that's what you're talking about. Mr. Couling was writing these checks before he received the money? Is that what you're saying?

Q Well, I guess you could draw any conclusion you wish, Judge. A check went out the 29th -- I mean, a check went to Farm and Ranch on the 29th and one, two, three checks came in from the County on the 29th, didn't they?

A Four checks came -- three checks came out of the County on the 29th.

Q Okay, Judge. I just was -- I thought maybe you might could shed some light since you were the owner of Farm and Ranch on what that \$1,262.00 was for, and if it had any connection with the other check that was issued to you, or the check that came out of the County.

A No.

Q You obviously don't know anything about that?

A No. Like I have stated, I didn't have anything whatsoever to do with the management, the running of the Farm and Ranch Supply store, whatsoever. As a matter of fact, Mr. Cleofas Gonzalez was the one that ran the whole store, made all of the deposits, received all of the checks, and wrote out the checks that had to be written out, bought the merchandise, sold the merchandise, and everything.

Q So, you just -- you just took your share of the profits. That's all you did with Farm and Ranch. Is that right, Judge?

A The way it is reflected, and the way, I think, it has been shown both by the testimony of Mr. Cleofas Gonzalez and by the testimony of Mr. Oscar Kirkland, my auditor. At the end of the year, Mr. Cleofas Gonzalez would make a tape of all of the money that was received by the Farm and Ranch --

Q Okay.

A -- he would figure out the expenses, he would figure out the total amount of profit, and everything, and he would take all of that to Mr. Kirkland, the auditor. Mr. Kirkland would look that over, divide that 50-50 and put my share of it under the partnership of O. P. and Ramiro Carrillo.

Q Now, Judge, on the money that you all made off the Farm and Ranch, you reported that on your income tax, didn't you?

A I sure did.

Q Mr. Couling testified about the sums of money he paid Farm and Ranch. Like, I know -- well, one year, it was sixty some odd thousand dollars. You remember that, don't you?

A I don't remember that particular figure. I know what he has testified.

Q Well, one year it was twenty-seven something, and one year -- I remember in '73, he said it was sixteen-nine. Substantial sums of money were going from Benavides Implement and Hardware to Farm and Ranch. You agree with that, don't you?

A Do I agree that it went to the Farm and Ranch, or do I agree with Mr. Couling?

Q Well, Mr. Couling's testimony, as well as the checks that we have introduced here into evidence, Judge --

A Yes, sir.

Q -- show tens of thousands of dollars a year going from Farm and Ranch -- excuse me -- from Benavides Implement and Hardware to Farm and Ranch. You agree with that, don't you?

A Yes, I believe they are in evidence.

Q All right. Now, we asked Mr. Couling --

A But, I would not say tens of thousands. I would say there were some checks that were going in there. I don't know the amounts.

Q Just a minute, Judge.

A Yes, sir.

Q I don't have all four years. I think Mr. Odam might have all four years.

A All right, sir.

Q Okay. In response to a series of questions, Mr. Couling testified that in the year 1971, the exhibit that you have in your hand reflects \$27,817.00 going from Benavides to Farm and Ranch.

A All right.

Q And for the next year, it was \$68,000.00 -- no -- \$45,226.14. That would be '72. Do you remember that?

MR. MITCHELL: \$45,026.14, I believe, Counsel. Not two hundred twenty-six.

MR. DOYLE: Oh, I'm sorry. It's 026.

MR. MITCHELL: That's right.

Q \$45,026.14. Do you remember that?

A I don't exactly remember it, but whatever --

Q \$16,945.00, I believe, is what it was in '73.

A All right.

Q And in '74, it was \$4,039.00, I believe.

A All right, sir.

Q Let me ask you a question about the \$45,000.00 year, Judge. I believe that was 1972.

The testimony of Cleofas Gonzalez was that the cost of doing business was quite low on the Farm and Ranch since it didn't have any overhead. How much income did you show that year?

A I believe that my income tax return for that year is in evidence -- rather, is in evidence. I don't remember. I don't think that we ever made any kind of a profit like that, sir.

Q Well, I am looking at a copy of your '72 return --

A Yes, sir.

Q -- Judge. It's Examiners' Exhibit 184. It's on Page 1114 of that same book.

A Of this same one?

Q Volume Three.

A What page was that, sir?

Q 1114; one, one, one, four.

A Yes, sir. I am turning to it.

Q I believe it is 1106, Judge, the one I'm asking you about.

A All right, sir.

Q Now, where on that return does it show how much you earned out of Farm and Ranch that year? That's your '72 tax return, Judge.

A Yes, sir. I think this is the return for the Farm and Ranch as to my share. It would probably be shown somewhere else. I can't --

Q Oh. That's right. What I have asked you about is the partnership return.

A Yes, sir.

Q Well, let me just take a minute here and find your individual return, Judge.

MR. MITCHELL: It's on Page 1072, I believe, Counsel.

MR. DOYLE: 1066.

MR. MITCHELL: It's carried forward --

MR. DOYLE: 1106 -- no, that's the partnership.

MR. MITCHELL: No. Ten seventy-two four seventy-two shows the income to, if you will permit me, to the partnership. I believe that's what you are looking for. Income or losses from the partnership.

MR. DOYLE: Okay. I've found it.

Q Judge, would you turn with me to Page 1072?

A Yes, sir.

Q You see on that page where it says -- down about -- right down about the middle of the page -- "O. P. --"

A O. P. and Ramiro D. Carrillo.

Q "-- and Ramiro D. Carrillo, \$5,894.00."

A Yes, sir.

Q That was your total income from that Farm and Ranch.

A Yes, sir.

Q Well, now, we know that Farm and Ranch got from Benavides, the year, \$45,000.00.

A Yes, sir.

Q And we know that Mr. Gonzalez testified that your cost of doing business was quite low. You didn't pay him a salary, did you, Judge?

A No, sir.

Q The County paid him.

A My brother was the one that made the arrangements with him. I don't know.

Q Well, you know for a fact, don't you, that all the time that Cleofas Gonzalez ran that store, that the County was paying him, don't you?

A Yes, but I also questioned very closely whether or not he was paying himself to a certain --

Q Well, in any event, Mr. Mitchell indicated that at one point in time, you and your brother had all these records from the Farm and Ranch.

A We had all -- we have all the records.

Q You still have them all?

A Yes, sir. They are in the hands of -- I think they are probably in evidence at Federal court. We made them available -- on December 8th, 1974 -- we made all of those records available from the Farm and Ranch Supply to the Internal Revenue people.

Q Let me just -- I can sum up my line of questioning, I think, Judge, at this point.

The total income that you derived from the Farm and Ranch in '72 was \$5,800.00 plus. Is that right?

A Yes, sir.

Q That's what you put on your income tax return.

A That's what Mr. Kirkland put on there.

Q Yeah. And that's really about all you know about it. Is that right, Judge?

A That's all I know. That is what I was trying to explain to you, Mr. Doyle, that Mr. Gonzalez would take all of the checks and run a tape on them, and put down expenses and, you know, take checks -- item by item and divide them up. Then, he would take them over to Mr. Kirkland and Mr. Kirkland would figure out the whole matter, and figure out what kind of a profit Farm and Ranch had had, divide it 50-50 and put 50 percent of that on my income return and the other half --

Q Right. Yes, sir. I think the Court understands all of that.
Now, the next thing Mr. Mitchell talked to you about, Judge, was the Zertuche Store, I believe.

A Yes, sir.

Q Now, I believe that your testimony was that the Zertuche Store began operating in 1964 and paying you rent at that time. Is that correct?

A Yes, sir.

Q And it was then owned and operated by who?

A When it first started, it was operated by Hector Zertuche.

Q Your first rental agreement, then, was with Hector. Is that right?

A Well, my agreement was with Hector and -- Hector Zertuche was --

Q Hector.

A -- was the first owner of the store.

Q Right. And then you did business with Hector until when?

A He got married and went into the service at the end of 1966 and Arturo Zertuche took over the ownership of the store on January of 1967.

Q And so, Arturo and you had a rental agreement from January of '67 until when?

A He went out of business December of 1970.

Q December of 1970. And, for that period of time -- from January of '67 until December of '70 -- where was -- were they in the drug store thing that I showed you the picture of this morning?

A From 1964 until September of 1967 --

Q '67?

A -- the Zertuche Store was located there on -- during September of 1967, we had the hurricane and -- that practically destroyed the store building, and it became necessary to move the store to some quarters promptly because the windows were broken.

Q And that's when they moved down to where the Farm and Ranch Supply.

A To the Farm and Ranch Supply, yes, sir.

Q And they operated there until when?

A Until December of 1970.

Q Judge, how is it that you are so sure that they went out of business in 1970? Was that a -- I mean, is there something that you can tie that to? Is that when they quit paying you or what?

A No, not necessarily, because they -- they went out of business in December of 1970. I believe that there are possibly some things left over. As a matter of fact, I think there are still some matters -- I know there is a marble top that goes to a table that belongs to the Zertuche Store that is still there.

Q Well, they haven't paid you any rent since then?

A No.

Q And as of then, the Zertuches quit coming around there, and that sort of thing. Is that what you mean?

A No, they didn't quit coming around there. I knew -- I know the family very well.

Q Right.

A I know the boys well. I know for a fact --

Q Well, what do you mean -- you have testified several times that they went out of business in December of 1970?

A Yes, sir.

Q And your attorney has made a big issue of that and I'm curious, you know, what indicated to you that the Zertuches were no longer in business anymore in December of 1970?

A Oh, the fact that Arturo married on December 28th or 29th or 30th, or something like that of 1970 and he went on his honeymoon to Mexico City. I took my oath of office on January the 2nd, 1971, he wasn't there, because he was honeymooning in Mexico City. And they came back, him and his wife, to Harlingen, where they were going to be school teachers and that's the reason why I remember it so clearly.

Q I see. So, the proprietor just moved away from there then?

A Yes, sir.

Q And he's gone?

A Yes, sir.

Q So, they didn't -- and they quit doing business then?

A Yes, sir.

Q Wasn't anybody there?

A Yes, sir.

Q Now, I believe it's been your testimony throughout that you had no relationship with the Zertuche Store. Is that correct?

A Insofar as the running of the store, the managing of the store or anything like that, I didn't have anything whatsoever to do with it.

Q Well, what -- other than doing business through that store with the county, what other connection did you have with, it Judge?

A With the Zertuche family?

Q Yeah -- no, no, not the Zertuche family. My question is the Zertuche Store, Judge?

A With the store itself I have nothing whatsoever to do with it. Cleofas Gonzalez was running the Zertuche Store.

Q When was Cleofas running it?

A He was running it when it was moved over to the Farm and Ranch Supply. Cleofas was very possessive and he didn't want anybody around him. There was a lady by the name of Elvira Rodriquez who worked, I believe, for --

Q Well, now, when Cleofas testified then that he would make up these phony invoices with respect to Zertuche, then that was truthful, you think?

A I wouldn't believe Mr. Cleofas Gonzalez on a stack of Bibles. I think he will testify according to whatever wishes you all desire him to do so and he will do so very freely.

Q It never has occurred to you, Judge, that Cleofas Gonzalez keeps telling the same story because it's true?

A Mr. Cleofas Gonzalez has --

Q Am I to take your answer, Judge, to mean that we are prompting Cleofas Gonzalez to lie?

A Would you repeat that question?

Q Your answer indicated that you perhaps thought we were prompting Cleofas Gonzalez to lie. Is that what you think?

A If it indicated it, I would like to state it, as a fact, I think, yes, sir.

Q You think that I'm --

A I think that someone will come out and prompt Mr. Gonzalez to say something and like a little computer he will spit it out.

Q And you think John Odam and John Hill and myself were just, you know, telling old Cleofas what to say and he's coming up here and just perjuring himself right and left?

A Well, I have got to know Mr. John Odam very well in the last two or three months and I don't think Mr. Odam would do anything like that.

Q Well, that leaves it down to me, Judge.

A But I don't know you that well, Mr. Doyle, and I will not say anything like that.

Q Well, now I want to get this straight. Now, Cleofas' testimony was that there wasn't any Zertuche Store. Is that right?

A Yes, sir.

Q And Cleofas' testimony was that the Zertuche Store consisted only of an invoice machine that he wrote orders off of. Is that right?

A Yes, sir.

Q And he testified that they didn't have any merchandise. Is that right?

A Yes, sir.

Q Now, your testimony is that Arturo wasn't there while Cleofas was running the show?

A Arturo was going to school. That's correct, sir.

Q So, Arturo Zertuche had just turned everything over -- when did he do this, Judge?

A Well, it came over when we moved over all -- what was over in the store when the hurricane hit and it went over there.

Q Right. And right about that same time Arturo just went off to college?

A No, sir, Arturo graduated from high school in May, I believe, of 1964.

Q Right?

A And he went off to college then. And he was going to college at the time. And his brother, Hector, also, was going to college. And the purpose of the Zertuche General Store was set up -- was in order to assist these young men to go to college, that was the purpose of the store.

Q Okay, Judge, now you say in the fall of '67 you all moved Zertuche's inventory, whatever it was, down to the Farm and Ranch?

A Yes, sir.

Q Now, from that point forward was Cleofas running the show?

A Yes, sir.

Q All right. Now, Cleofas was there everyday, wasn't he?

A With the exception of the thirty days that he took off and went to Page Aviation in Corpus Christi, as far as I know he was there, he had the keys and everything to the store.

Q Okay. Now, you say you had nothing to do with Farm and Ranch?

A No, sir.

Q And you had nothing to do with Zertuche Store?

A No, sir.

Q And Arturo Zertuche has not testified?

A I think he testified before the Internal Revenue folks, he's made several statements, yes, sir.

Q No, he didn't, Judge, as a matter of fact.

A Beg your pardon?

Q His case was split off from yours, wasn't it?

A Yes, sir, but he made a statement to the Internal Revenue people and to the Federal District Attorney.

Q Yeah, he did, he did make a statement, that's right. But he has not testified in this trial, has he?

A No, sir.

Q All right. Now, you don't know nothing about Farm and Ranch or Zertuche, the store operations?

A I know that the stores were there, I know that they existed, just like I know --

Q Well, let me ask you this, Judge, perhaps it would be easier if I framed the question this way. Do you know anything about the day-to-day operation of the Farm and Ranch?

A No, sir.

Q Did you know anything about the day-to-day operation of the Zertuche General Store?

A No, sir.

Q Arturo Zertuche was away in college?

A He was in school, yes, sir.

Q And Cleofas Gonzalez ran the whole show?

A Yes, sir.

Q Now, we know what Cleofas Gonzalez has testified to, don't we?

A We sure do.

Q What evidence does the Senate have to believe besides what Cleofas Gonzalez has told us?

A Mine.

Q You don't know nothing, you just got through telling us.

A I know it was there, for example, I know that in San Antonio there is a Sears store. I know it's there, I don't own it, I don't have anything to do with running the business, but I know it's there.

Q Sure, that's correct, but now the guts of this case is whether or not -- or this point is whether or not Zertuche had anything on whether or not it was just selling farm and ranch stuff out of another invoice box, isn't that right, Judge?

A I didn't quite get that question, sir.

Q The problem with this point in this lawsuit is whether or not Zertuche had inventory or didn't have inventory, correct?

A Yes, sir.

Q All right. You knew nothing about the day-to-day operations?

A That is correct, sir.

Q Arturo Zertuche has not testified?

A Arturo has made statements, but Mrs. Elvira Rodriguez has testified and Mr. Arturo Lozano who works for the State Comptroller has testified.

Q Yeah, but the State Comptroller fellow, he wouldn't hardly know about the day-to-day operations, would he, Judge?

A He was in the store.

Q He was in the store, what, two or three times. And that was -- we're not sure about what year that was.

A Well, but they didn't open the store just on that day that he was going to show up just so that he could go in there --

Q Would you agree with me, Judge, that the person who had absolutely the most knowledge about this operation was Cleofas Gonzalez?

A Yes, sir.

Q And, of course, we have already agreed about what his testimony was.

A I heard his testimony, I don't agree with his testimony.

Q Now, the testimony that Cleofas gave up here, Judge, that you heard, wasn't it essentially the same testimony that he gave in the Judicial Qualifications Commission hearing?

A Yes, it was, but by then you must remember that he was being talked to for about a year before that.

Q Right. Now, wasn't it the same testimony on this particular subject that he gave down in Corpus Christi in the Federal tax trial?

A No, there are quite a few changes in his testimony. If you look at them -- he's always managed to say, "Well, I didn't exactly mean that, I meant something else" or, "When I said this I didn't mean it that way, I meant it to be something else" or what have you.

Q Now, Judge -- but Cleofas Gonzalez was a witness in the tax trials?

A Mr. Cleofas Gonzalez has been a witness in every case in which I have been a defendant, without exception.

Q Now, I recognize that the testimony was somewhat different, but he testified again in the Judicial Qualifications Commission hearing before Judge Meyers, didn't he?

A Yes, sir.

Q And --

A And it was somewhat different, just like you say.

Q Well, it was different subject matter, isn't that it, in all fairness?

A No, the subject matters are the same, there's different wording and different -- and nowhere did he say, "I really meant yes".

Q Well, Judge, isn't it a fact that you weren't on trial in Corpus for the tax years '71, '72, '73 and '74?

A I beg your pardon?

Q You were not on trial in Corpus for the tax years '71, '72, '73 and '74. Most of that -- 99 percent of that lawsuit was about the tax years prior to that. Isn't that accurate?

A It was in the indictment, the case was there. I'm not going to say that I wasn't going to be tried for those years, because they will probably come back and try me again. I was tried and if they try to try me again I will claim double jeopardy.

Q Not for the years -- not for filing fraudulent income tax returns for the years '71, '2, '3 and '4, that was not an issue, was it, Judge?

A It was under the conspiracy count, sir.

Q Right, but it was not an issue with respect to beating the government out of money for those years, now, was it? Judge, I can get --

A If I'm charged with a conspiracy to do something, I guess -- I don't know what they meant.

Q Okay. But Cleofas Gonzalez testified in both those -- in the Judicial Qualifications Commission and at the income tax trial, isn't that correct?

A And at the hearing of the Select Committee.

Q Now, we already know what the verdict was down at the tax trial, don't we, Judge?

A Yes.

Q Judge, so that the record will be abundantly clear, you were a partner in the Farm and Ranch?

A I am a partner.

Q Still are?

A Yes, sir.

Q Okay. I wanted to be sure about that.

Judge, how are you so sure about Mr. Gonzalez' testimony being wrong about this inventory of the Zertuche Store that he says didn't exist? What are you basing that on? Is there anything --

A I have known Mr. Gonzalez since he was born. I have known him all my life.

Q Well, isn't it a fact, Judge, that up until a year ago, with respect to a partnership which grossed some sixty or seventy thousand dollars in 1972, he ran the whole thing with your absolute approval?

A It was more than that. And Cleofas and I never really got along together.

Q I see. Well, in any event -- for one tax year we know you made six thousand -- almost six thousand dollars off of that partnership and he ran the whole works, didn't he?

A Yes, sir.

Q Now, how do you know, when you tell us you don't know nothing about the day-to-day activities of Farm and Ranch or Zertuche -- how do you know that Cleofas is not telling the truth? What do you have that you can show this Senate to indicate that he's not telling the truth?

A I know the way Mr. Gonzalez feels about me, not only about me, if you will read the Judicial Qualifications Commission transcript he testified that my mother was the one that stole thirty or forty acres or something like that from his family way back in the thirties --

Q Judge, I respectfully suggest to you that that doesn't answer my question. Do you have any evidence, do you have anything that you can give the Senate to back up the position that you're taking that Cleofas Gonzalez is a liar? He says there wasn't any inventory. Do you have any records to show that there was an inventory?

A Certainly, the records that the store had over there.

Q Well, where are they?

A Well, they're --

Q Where are the Zertuche Store records? We have had an income tax thing that Mr. Mitchell has tendered and --

MR. MITCHELL: Your Honor -- excuse me, I hesitate to interrupt Counsel, but he's sitting on copies of the tax returns of Zertuche General Store from '64 to 1970, December. And in those tax returns are those invoices and but for the technical objection they would be before the Senate. I think it's bad faith for him to continue to badger this witness sitting on that type of documentary. In addition, Your Honor, he's sitting on a store license. I'm going to object that unless he comes clean with the records, allows that evidence to come in those questions are in bad faith. We object.

MR. DOYLE: Well, Mr. President, I was -- if Mr. Mitchell had not interrupted I was qualifying my question with those exceptions.

THE PRESIDING OFFICER: Counsel, of course, has the right to appropriate cross-examination and to delve into those areas. The Chair will withhold a ruling on the objection temporarily.

Proceed, Counsel.

Q Now, Judge, the Farm and Ranch records -- to show what they paid out to persons for inventory, or what they paid Zertuche for inventory -- you don't deny that you all have those. You or Ramiro one?

A No, they were introduced in the Federal case in Corpus Christi.

Q The next thing Mr. Mitchell asked you about, Judge Carrillo, was the confrontation between you and Cleofas Gonzalez which you say arose over some bills not being paid, is that correct?

A Yes, sir.

Q I believe you said you discovered that as a result of a trip to Alice?

A Yes, sir.

Q What business was it that you were in down there that said Farm and Ranch owed you some money?

A Leroy Auto Parts.

Q Leroy Auto Parts. Of course, you didn't know whether or not they owed any money or not, did you, Judge?

A No, I just walked into Leroy Auto Parts, and I was advised that Farm and Ranch had some bills that were outstanding, and I came over to find out what was wrong.

Q Now, when did that confrontation with Cleofas take place?

A I don't remember the exact date when it was.

Q What year? Do you remember what year?

A Again, Cleofas says it was 1972. I have often thought about why -- of course, I haven't had that much time; they've kept me on the road all the time -- why I really didn't go to Page Aviation, to find out exactly when he was paid, and then it would set the date straight.

Q Now, when did that conversation take place? Do you remember that?

A I don't remember. It took place at Farm and Ranch, but --

Q All right. Now, the reason I asked you those questions, Judge, Mr. Mitchell, when Mr. Gonzalez was on the stand, made much about Mr. Gonzalez not being able to remember the same things you can't remember. Do you remember that? Don't you remember Cleofas Gonzalez said, "I had a confrontation with him. I don't remember exactly when it was"?

A He admitted to the fact that we did have a confrontation.

Q Right. He testified exactly the same way you did, didn't he?

A Yes, sir, because it happened.

Q He said, just like you said, "It took place at the Farm and Ranch. I don't remember the year, and I'm not sure about the time of year."

A Yes.

Q Which is exactly what you're testifying to.

A Yes, sir, but in the impeachment hearings across the hall, he testified that he hadn't spoken one word to me ever since it happened. And, since then, it has become necessary for him to be talking to me, so he has been changing his mind and his testimony ever since.

Q What are the facts about that, Judge? Mr. Mitchell asked that question several times. When was the last time you talked to Mr. Gonzalez?

A That was the last time I talked to him, and I haven't talked to him since.

Q When he was tendered the record at the end of the year, you wouldn't be concerned about how much money you would make out of that thing?

A He tendered the records to Mr. Kirkland, and Mr. Kirkland handled it. Personally, if you want to know the truth, Mr. --

Q My question to you, Judge, is if you could remember --

A If I can explain something, you know.

Q Well, if you'll just answer my questions, Judge, it will take a lot less time.

A Yes, sir. I understand, sir.

Q Judge, the next series of questions Mr. Mitchell asked you about had to do with some of the Duval County history, and some of those I would like to ask you some questions about. I believe you said your family had been in politics for years down there, is that correct?

A Yes.

Q And that there was a split developed, that first started in the Benavides Independent School District election of 1974, is that accurate?

A Yes.

Q When would that election be held? In the spring?

A April.

Q April? Okay. And, as a result of that election, there was some bad feeling between the Carrillo family and the Parr family, I believe that was the substance of your testimony, is that right?

A That's correct.

Q Now, there was obviously, if there was a split over the election, each side supported somebody?

A Yes, sir.

Q And that's the '74 election I'm asking you about?

A Yes, sir.

Q Who did the Carrillos support in that school board election?

A The Carrillo family was supporting Al Schueneman from Freer. I myself personally stayed out of it completely.

Q Al Schueneman?

A Al Schueneman.

Q All right. And who were the Parrs supporting?

A The Parrs were supporting Mr. Morris Ashby.

Q Who is Morris Ashby?

A Morris Ashby is an accountant who worked for Duval County Ranch Company.

Q Who owns the Duval County Ranch Company?

A Clinton Manges.

Q Who won that election?

A Al Schueneman.

Q Was he one of the ones removed by you later?

A Al Schueneman? Yes, sir. As a matter of fact I supported him, on petition of the District Attorney, I removed him, and then I appointed Mr. Morris Ashby who had run against him and whom I had opposed.

Q So, what does Mr. Schueneman do?

A He owns the Ford Motor Company in Freer, Texas.

Q Well, now, there were just those two candidates. Is that all that was in that election?

A Those are the only contested, the only contested race.

Q Now, I believe you said that split continued, and was followed up by another school board fuss the following year which really just blew everything all to heck, is that right?

A Yes.

Q And that next one I guess was in April of '75?

A Yes, sir.

Q So, there was very bad blood between the Carrillos and the Parrs, starting, I guess, campaign time '74?

A Well, I worked real hard at trying to get everybody in a peaceful mood again, all during that one year.

Q Yeah.

A And I couldn't do it and I wasn't successful, and shortly before the election, we had an explosion.

Q Now, in this removal action that followed that second, or preceded that second election, was that the one that was bought in the name of Jose Nichols?

A Jose R. Nichols, yes.

Q Who is he?

A He is a gentleman from Freer, and works for Mr. Clinton Manges at Duval County Ranch.

Q He worked for Mr. Manges also?

A Yes, sir.

Q He is the one that filed the removal action against those school board members?

A The District Attorney filed them.

Q Well, it was on the recommendation of Nichols?

A On the recommendation of Nichols.

Q You've got to have somebody who's willing to put his name down there, don't you, Judge?

A Yes, sir.

Q And it was Mr. Manges' employee that did that to remove that school board, is that right?

A Yes, sir.

Q I believe that petition was ultimately granted and you removed them, is that right?

A Well, the petition was presented and I looked it over and I granted it.

Q Right. Now, that's the one that was ultimately reversed by the Court of Civil Appeals as we got in the record earlier today, is that right?

A No, sir. That's where you're very much confused. Those removal cases became moot because the gentlemen that were removed resigned from office. What has been brought out in the Court of Appeals is the successors, after the resignations, there is a problem as to who can name the --

Q Well, Judge, the record will speak for itself.

A All right, sir. I'm sorry. I just didn't want to be left with the idea that case for removal was reversed, because the Court sustained every action that I took insofar as those cases were concerned.

Q Now, Judge, next you testified about a problem the water district had, and a deal between Archer Parr and John Hill, is that correct, Judge?

A Yes, sir.

Q Were you a party to that conversation?

A I was a party to the fact that Mr. Archer Parr came back from Austin and told me that he had visited with John Hill. There was a --

Q Well, so, Parr told you of the visit that he had with Mr. Hill?

A Yes, sir. Which turned out to be correct and true.

Q Sir?

A It turned out to be true.

Q And there was a -- what was the problem with the water district, Judge? Are you familiar with that?

SENATOR MAUZY: Mr. President.

THE PRESIDING OFFICER: Senator from Dallas.

SENATOR MAUZY: I would like for the witness to answer the question. Counsel asked him if the conversation took place and what it was, and I would like for him to tell us.

MR. DOYLE: Judge, that would be hearsay. I certainly wouldn't want to --

SENATOR MAUZY: It's not hearsay, Counsel. He's testifying to a conversation he had with Archer Parr.

THE PRESIDING OFFICER: The Chair agrees. The witness will be allowed to answer the question.

Q Judge, I apologize to you if I didn't give you time to answer my question. My question to you was, was there a conversation with you -- my question to you was, were you a party to the conversation between Archer Parr and John Hill?

A No, sir. I was in a conversation with Archer Parr who had had a conversation with John Hill and told me about it.

Q I'm sorry. I can't understand you, Judge.

A Well, Archer Parr came to Austin because the water district was a problem, and he was afraid that it was going to go into receivership or something was going to happen, that the State would come over and take it over, and he wanted to keep control of it. So, he made a hurried trip over to Austin, met with John Hill, agreed that John Hill would file a petition as Attorney General in the State of Texas asking the 229th Judicial District Court, which was me, sitting as the Judge, asking that a receiver be appointed, and that after the hearing, I, as Judge, would name Judge Gilbert Sharp to be the receiver, and he would take over the water district and control it and run it. And he had told me that.

Q All right. Now, Archer Parr, you're saying that Archer Parr told you these things?

A Yes, sir.

Q You're not saying John Hill told you these things?

A No, Archer Parr told me; and it happened, you know, Gilbert Sharpe was named.

Q By whom?

A Well, what happened, like I stated, he told me that I was supposed to do the appointment, and I didn't appreciate that. That Mr. Hill and Mr. Parr would be taking me to be a puppet, and so I went over, immediately as it happened, I went over, and Judge Sharpe, he's a District Judge now, and he used to be in the Court of Civil Appeals also, and he's a distinguished individual. And he's in Brownsville. So, then, I motored to Brownsville immediately. I didn't like the idea, and I started checking into it. And I went over to Judge Sharpe in Brownsville, and I asked him, I said -- I wondered what happened. I said, "Have you heard anything?"

Q Judge, I don't want to interrupt you. The question I asked you was a predicate to another question only, and I just want to be sure that you were familiar with the area that I was fixing to ask you about.

A Well --

SENATOR MAUZY: Your Honor, may the witness be allowed to answer the question that Counsel is asking, please?

MR. DOYLE: Mr. President, might I be heard on that, please?

THE PRESIDING OFFICER: Counsel.

MR. DOYLE: Mr. President, I have this witness on cross-examination. His Counsel, as well as any Member of the Court that wishes to ask questions, will have every opportunity in the world to do so. I was asking a predicate question to my main question. The answer that I needed from the witness was, "Yes, I am familiar with that fact." And then I was going to go ahead and proceed to ask the question that had to do with what I was asking this gentleman about. And I don't need a thirty minute dissertation on a conversation with Archer Parr or, you know, the history of the County.

THE PRESIDING OFFICER: Based on your explanation of your intent and your procedure, the Chair would agree with Counsel.

Q Now, Judge, there was a problem, then, in the water district, is that correct?

A Yes, sir.

Q And was the nature of the problem the fact that it was broke?

A Yes, sir.

Q The problems were financial problems?

A There were financial problems.

Q Now, this arose at what time? This was in 1974, wasn't it?

A This was in 1974, yes, sir.

Q Now, Judge, I'm going to ask you to turn back to 1155, Page 1555 in the Respondent's Exhibits there, Volume Three. That's Exhibit 192.

A All right, sir.

Q Now, Judge --

A Yes, sir.

Q Look on the first page of that --

A Yes, sir.

Q -- on the left-hand column there, you see a \$750.00 check coming into the BI & H from the water district.

A Yes, sir.

Q \$594.00 from the water district.

A Yes, sir.

Q And coming right on down the page, you see another one for \$750.00 and another one for \$737.00.

A Yes, sir.

Q Just take a moment there, Judge, and look through those pages and see if you don't see a number of checks from the water district going into Benavides Implement and Hardware.

A Yes, sir.

Q 1972 there's some -- lots of checks going into BI & H from the water district.

A Yes, sir.

Q Now, Mr. Couling's testimony was that money was going into the water district -- coming out of the water district to BI & H, and was in turn being paid out to members of your family. Is that correct?

A That is what he has testified.

Q Now, that would amount to many thousands of dollars that had been taken out of that water district, wouldn't it, Judge?

A I don't know how much money they are talking about or what there were.

Q But it appears --

A -- but what the water district's problems were was the money that Archer Parr and George Parr had taken through what was called the Special Fund that was held at the First State Bank of San Diego, and --

Q Well, Judge, does it appear to you that this money that came out of the water district and went back to Rogelio Guajardo, and D. C. Chapa and Oscar Carrillo -- does it -- or, at least that's what Mr. Couling testified to. Do you think that perhaps that contributed to the financial downfall of the water district?

A I would say that even taking all of this into account and taking all of Mr. Couling's testimony to be true, which I doubt very seriously, but, taking it all into account, this would be peanuts compared to the money that was being taken by Archer Parr and George Parr from the water district, buying helicopters, flying all over the country, and they were using it -- not going to the water district. This was--the testimony that was elicited from my father at the Parr case -- and that's the reason why he got so mad because there was a fund which was set up at the First State Bank of San Diego called the Special Fund --

Q Yes, sir.

A -- of which the directors of the water district had no knowledge of.

Q Well, Judge, I would --

A Mr. Parr, through the bank, was taking all this money out.

Q I would agree with you 100 percent, Judge. What they were taking was peanuts compared to what the Parrs were taking. I agree with you 100 percent, but my question to you is, and I think you have answered it, and if you haven't, I am going to ask you to do so.

Do you think that this flood of money that was leaving the water district and going to the -- what we have here on Page 1555, Exhibit 192, had anything to do with the financial collapse of the water district?

A I don't know. All I can tell you, Mr. Doyle, is what I did myself. Now, if I am going to be tried and convicted for everything that went wrong in Duval County, well, fine. I can only tell you what I personally did and know, and that is exactly what I am doing. And, I have no knowledge of anything that went on at the water district. I have testified before that I only attended one meeting --

Q Right.

A -- of the water district during my lifetime, and that was to go in there and ask for a fire engine for the City of Benavides.

Q Right. Now, Judge, as a matter of fact, isn't there a civil suit pending by the water district down there, trying to get some of this money back?

A Yes, sir.

Q Haven't you been sued?

A Yes, I have been sued.

Q Ramiro has been sued?

A I have also filed a general denial there.

Q Hasn't D. C. Chapa been sued?

A Everybody has been sued except Mrs. Hilda Parr and the bank, and those people, like I stated before.

Q Now, Judge, while we are on the subject, let me just ask you a question. I didn't mean for it to go this far afield, but it has.

There are a number of civil suits that you are aware of that have been filed down there in an attempt to recover monies that were wrongfully taken over this --

A I am aware of the suit that was filed against me.

Q I see. Well, you are not aware --

A Insofar as I have --

Q Are you aware of the suit, for instance, to get the helicopter back? You didn't know about that one?

SENATOR OGG: Mr. President, they say it has gone far afield, and they may be sorry about it, but I think it is not material to what we have to listen to, and I don't see what it has to do with counts I or VII.

MR. DOYLE: That is a valid criticism and I apologize to the Court.

THE PRESIDING OFFICER: That is a valid objection, Senator Ogg.

MR. DOYLE: That is a valid criticism and I apologize to the Court, Mr. President.

THE PRESIDING OFFICER: Please confine it to the area relevant.

Q Now, the next thing that you went into with Mr. Mitchell, Judge, was a call from Representative Canales, and I want to be sure we have the time right on that.

Now, we know that HSR161 was introduced on May 15th, 1975. Is that correct?

A Yes, sir.

Q And I want to be sure. Your testimony is that three or four days prior to that --

A Something like that, sir. As a matter of fact, when he introduced the resolution, as I recall reading in the paper, he made the statement: "I have talked to the man and he refuses to step down."

I think the press covered that statement.

Q Okay. So, then that would have been an accurate statement at that time. He had asked you to step down.

A Yes, he called me.

Q Now, did he -- in the conversation you had with him, was the pending criminal case in the Federal -- the Federal tax case, was that discussed in that telephone conversation, Judge?

A He mentioned that, using that as a vehicle trying to get me out of there, but he wanted me -- he did not want me to resign. He just wanted me not to hear the cases involving -- as I took it, involving the Parrs.

Q Well, if he asked you to step down, you couldn't hear any cases, could you, Judge?

A Not necessarily.

Q Well I thought that's what your answer to my question was.

A I can -- I can refuse to hear certain cases and hear certain cases. I can recuse myself in certain cases, disqualify myself in certain cases and hear certain cases, or completely take a leave of absence, or whatever.

Q Well, what was it -- let me just ask you this. What was it that Mr. Canales suggested? Did he suggest that you step down temporarily, or did he suggest that you not hear the Parr case, or did he do both?

A I -- from the tone of his conversation, I took it that he was trying to get me -- as several motions had been filed -- he was trying to get me not to hear the Parr cases. That is the way I understood it.

Q Well, okay. Now, you said that he did mention the fact that you were under indictment for income tax problems.

A Yes.

Q You said he mentioned that. Right?

A Yeah, I believe he did.

Q Well, what could that indictment have to do with you hearing the Parr case and all the rest of the cases?

A Ah, but he didn't say that. He said that if I wouldn't hear these cases, that he would not introduce the impeachment thing. I mean, that was not what he was referring to.

Q I see.

A I mean, if he was just going on the indictment, then --

Q Where were you when you talked to him on the phone?

A I was holding court in Jim Hogg County at the Courthouse in Hebbbronville, Texas.

Q Did you call him or did he call you?

A No. He called me.

Q Now, in response to some questions by Mr. Mitchell about this subject matter, he asked about the Parr cases. Now, previously you had discussed George Parr's case and Archer Parr's case. They both had cases pending in your court earlier. Isn't that correct?

A Yes.

Q Now, at the time of the conversation with Mr. Canales, George was dead, wasn't he?

A Yes, sir.

Q So, all that was left was Archer's case.

A Archer's case and the -- civil cases. The removal case and the -- and the disbarment case.

Q Right. Well, was Mr. Canales representing Mr. Parr in both of those cases?

A No, sir. He came into the disbarment case. He did not file a motion for a continuance in the other case because --

Q Who represented Mr. Parr in the removal case?

A Marvin Foster.

Q Marvin Foster was his lawyer, wasn't he?

A Yes, sir.

Q And I think he was also your lawyer, wasn't he? Well, I would like to ask you a question about that, Judge. Thinking for a moment about your discussion about Mr. Hill a while ago, Marvin Foster just got nine years down in the state court, didn't he?

A Yes, sir.

Q He was convicted by a State court jury, wasn't he?

A Yes.

Q Who prosecuted that case? Are you familiar with that?

A Arnulfo Guerra, District Attorney.

Q Now, in response to another question by your Counsel, you said that you had a later conversation with Archer Parr when Archer told you if you would get out of that case, he would talk to Mr. Canales about not impeaching you. Do you remember that?

A Yes, sir.

Q And in response to a question right after that, you told Mr. Mitchell that if -- you thought if you had obeyed that request that all of this stuff would have gone away. Is that right?

A Well, no. I think the question came this way. If I had agreed with Terry Canales, I wouldn't be sitting here today.

Now, insofar as the case, when Archer Parr talked to me, I told him that he had to talk to the District Attorney -- number one, he had to talk to the District Attorney.

Secondly, I did not think that he could control the Legislature of the State of Texas, but he said he could.

Q So, if indeed, you had done as Mr. Parr wished --

A Yes, sir.

Q -- you still would have had some problems, wouldn't you, Judge?

A If I had done everything that the Parrs wanted me to do without shaking a head, never looking forward and never saying no, and just being a yes-man and a puppet all of the time, my only problems would be with the Internal Revenue, and I wouldn't have any other problems.

Q Well, how about the Judicial Qualifications Commission, Judge? Are you suggesting that the Parrs had control over that also?

A I think that the Judicial Qualifications -- I think the accusations that have been made over here by the Members of the Senate and the press of the fact that the Judicial Qualifications -- they had talked to me and asked me --

Q Judge, you were --

A -- about things that had gone on, I don't think they moved until they were forced to move by the action taken by the Senate and the action taken by the press.

Q Well, Judge, you would still have had the matter of the criminal indictment down in Jim Wells County, wouldn't you, and you would still have the matter of the action by the State Bar of Texas to take your license away from you, wouldn't you, Judge?

A The indictment in Jim Wells County, as I am sure it will be proved out, is nothing but a farce. It was something that had to be done. I am still trying to find out what it is that I am indicted for.

Q Well, you would have still had the matter of the State Bar of Texas moving against you on your lawyer's license, wouldn't you, Judge?

A Yes, sir.

Q You are not suggesting to the Senate that the Parrs control all these matters, are you, Judge?

A That the who?

Q You are not suggesting to the members of this Court that the Parrs controlled all these people, are you?

A I am not suggesting anything about the Senate whatsoever, and I haven't said a word to that effect at all.

As a matter of fact, like I have stated, even insofar as the House was concerned, when Archer said that he could stop that thing going over there, I told him that I didn't think they could. I believe that this is an honorable Body that are going to make up their own minds and do exactly the way things ought to be done. I'm not suggesting anything as far as the Senate is concerned.

Q Judge, there's only one other question I would like to ask you about. Do you really think that all of these things that we have discussed, the disbarment action, the JQC action, the indictment in Jim Wells County, the impeachment, the lawsuit against you by the water district -- do you really think all of these things came about because of some big conspiracy between Archer Parr and John Hill?

A I think that John Hill, who is running very strongly for Governor, was looking after the Parr votes down in that area, which at one time were considerable.

Q How many people live in Duval County, Judge?

A Duval County is just a small section of --

Q Eleven thousand, right?

A I beg your pardon.

Q Eleven thousand, approximately?

A Something like that.

Q And there's what, twelve million in Texas? Is that right, Judge?

A Yes, but every -- you know, I run for office myself and it's just like in this Senate, every vote counts.

Q Judge, are you aware of the fact that the Attorney General has filed a lawsuit against Archer Parr seeking three or four hundred thousand dollars worth of damages for the monies that he allegedly took down in Duval County?

A Yes, sir, it sort of like closing the gate after the cattle have left the pens, you know. Everything is gone, limitations is running --

Q Well, Judge, were you aware of the fact that this Special Fund that you mentioned awhile ago and that all this stuff by the Parrs was going on over the years?

A I became aware when it was brought out at the Parr trial in Corpus Christi, then I really became aware during the removal proceedings of Archer Parr when the

hearing was held, when the treasurer came in and I didn't know anything about it. And when I found out that the bank had taken \$100,000 from the interest in the sinking fund, which is supposed to be untouched and it was taken and used by the bank for other purposes. And had been used by them for about four years or something like that. And when the government found out they came in and paid, I think, it was about \$5,000 interest and \$100,000 for about four years and --

Q Well, Judge, you were -- you became aware of these things while you were District Judge then. Is that your testimony?

A At the tail end -- just before I was suspended, yes.

Q And did you take any action to report these matters, to tell somebody about these bad things these people had been doing?

A Well, the Attorney General went over there and he said he was going to investigate and be fair and let the chips fall where they may. And I thought he was going to do a good job, but evidently he wasn't doing that. I mean, he was looking sort of like this, just one way.

Q You're telling the Senate that this is the first time you became aware that the Parrs were stealing money. Now, I want to ask you one question, Judge, on that issue. Isn't it a fact that in the previous Federal criminal case that you and George Parr were co-defendants, back in the fifties?

A It is a fact --

Q Thank you, Judge.

A -- that George Parr was just like a father to me and I don't believe that George Parr would have acted towards me the way he did up until the end with the very exception that I do believe Mr. Parr was a sick man.

SENATOR OGG: Mr. President.

THE PRESIDING OFFICER: Senator Ogg.

SENATOR OGG: With all due respect I think that most of us here have heard the objection about remoteness, I think both of us know what an appeal to the Supreme Court is and what that decision is. I think most of us have read the Constitution of the United States about the Fifth Amendment and I don't see why we need any further references. I think we understand what's going on without Counsel trying to lead us into seeing what's been going on in Duval County or who's been under indictment about things that do not count. And I wish that they would stop the reference to that. And I do not think it's unfair for the Chair -- to ask the Chair to instruct them to refrain from the type of things that people can legally do, like taking the Fifth Amendment, to refrain from mentioning something where a man has on appeal where the Supreme Court has held that he was not guilty, to refrain from mentioning things that are so remote in time that we are not to consider. And if the State doesn't know to do that I wish the Chair would instruct them not to.

MR. DOYLE: Mr. President, for the Court's information, I'm through with that line of questioning and I was about to proceed into Article I.

THE PRESIDING OFFICER: All right.

Q Now, Judge --

THE PRESIDING OFFICER: Excuse me, Mr. Doyle, before you start on a new line of questioning, the Chair will declare a ten minute recess. The trial will reconvene at 3:10.

Accordingly, the Senate, sitting as a Court of Impeachment, at 3:00 o'clock p.m. took recess until 3:10 o'clock p.m.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 3:10 o'clock p.m.

MR. DOYLE: Are we ready to proceed, Mr. President?

Q Now, Judge, the next thing Mr. Mitchell went into with you was questions relating to Article of Impeachment I, that is the Article that alleges you took money from the county over a period of time to the tune of \$300.00 a month in free groceries. Remember those questions?

A Yes, sir.

Q All right. Just as a prelude to that area of his questioning, Judge, he asked you about some folks who testified previously against you, Vincente Chapa, Ruben Chapa, Francisco Luis and Cleofas Gonzalez, do you remember that series of questions?

A Yes, sir.

Q Okay, Judge. He asked you a question about these people and their political affiliations, you remember that?

A Yes, sir.

Q Okay. Now, Judge, the first witness that testified here on Article I, as I remember, was Walter Meek, the County Auditor. Is that the way you remembered it?

A Yes, sir.

Q Mr. Mitchell left him out of that series of questions. Is he aligned politically against you also, Judge?

A I don't know.

Q Okay. Well, if you don't know, Judge, could we take it, then, that perhaps it's not an issue?

A As to whether to Mr. Meek is aligned for or against me?

Q Well, you don't know, I mean --

A I don't know.

Q You've known the man for how long? Thirty years? Twenty years?

A I've known him for a long time.

Q Okay. Now, the next person that testified, as I remember, was Rudolfo Chapa?

A Yes, sir.

Q And he's one of the ones you said was lined up politically against you, is that correct?

A Yes, sir.

Q The next person that testified was Mrs. Lauro Yzaguirre?

A Yes.

Q How long have you known her, Judge?

A I would say twenty, twenty-five years.

Q Have you considered her a friend of yours over the years?

A Over the years, everyone was friendly with everybody.

Q Right. Well, now, was she a member of the Old Party?

A Everybody was a member of the Old Party. It seems a hundred percent.

Q Well, you've known this lady for twenty or twenty-five years, Judge. Have you known her to be a truthful person or an untruthful person?

A I am surprised now that you've asked this question. Let me answer it this way. I know that I paid for my groceries, and I think very strongly that Mrs. Yzaguirre and Cleofas Gonzalez or somebody had something going that I wasn't aware of.

Q Well, Judge, you just didn't answer my question. Have you known her over the years to be a truthful person or an untruthful person?

A I thought she was a truthful person until I started to hear her, what her stories were, then --

Q Judge, let me ask you this: Has she been politically active over the years?

A I would say that she is very close to Mrs. Rudolfo Couling and that family --

Q Judge, could you -- I don't mind you saying these things except the Senate has cautioned me about going far afield. Could you just answer my question?

A You asked me a question how she is politically -- and I'm going to tell you, you know, like I said before, there is an old saying that says -- Spanish saying that says, "If you'll tell me who you run around with, I'll tell you who you are." Now, if I tell you who Mrs. Yzaguirre runs around with, then you make up your own mind on what side she's on.

Q Well -- Okay. Go ahead, if that's the way you want to answer it.

A Well, I'll tell you that she runs around -- is very close to Mrs. Rudolfo Couling, Mrs. Gordon Ross and those folks who are strong political enemies of ours.

Q Well --

A And, therefore, if --

Q Would you add her to the list of those that Mr. Mitchell asked you earlier about, the ones that are now aligned with the Parrs against you?

A Yes.

Q Well, isn't it a fact, Judge, that Mrs. Yzaguirre has for many, many years been a very, very close friend of Ramiro's wife?

A Like I said, Mr. Doyle, up until about a little over a year ago, everybody was friends with everybody. It was when the trouble began that we -- everybody decided to take their own roads.

Q Okay. Well, they had -- she was very dear, dear friend for many, many years of Ramiro Carrillo's wife, isn't that an accurate statement? Mrs. Yzaguirre?

A I think you had better ask her about that. I don't know.

Q All right. I'll be glad to. Now, the next person that testified with respect to Article I was Patricio Garza, is that right?

A Yes, sir.

Q How long have you known Patricio Garza?

A Oh, I've known Patricio for many years.

Q Well, is he a truthful man or an untruthful man?

A He is a truthful man, but he is a man with a very limited education who has -- I don't -- because I had that trouble with him at the Bench, who has trouble understanding questions and remembering things.

Q Well, Judge, the questions we asked him now were about whether or not he got any free groceries. You think he's smart enough to understand that question?

A That's right.

Q He answered that "No," didn't he?

A I know that he answered it "No." I know that we talked about it, and he remembered the fact that I had given him at some time some orders. I also know for a fact that his wife remembered it. She was called over here to testify, and that fact was discovered, and she was not placed on the stand.

Q Now, Cleofas Gonzalez was the last witness that testified on Article I, isn't that right, Judge?

A I guess.

Q Now, Cleofas Gonzalez has worked for you at the Farm and Ranch Store since when? '62, I believe you said?

A Yes, sir.

Q So, we know that for a number of those years, he absolutely ran the whole show and just gave you your share of the profits at the end of the year, isn't that right?

A Yes.

Q Let me ask you this, did you know Cleofas Gonzalez over the years as a truthful man or as an untruthful man?

A I started to answer that question a little while ago, and you cut me off. And I'll be happy to try again.

Q Not about Cleofas Gonzalez, I didn't ask you.

A Yes, sir. As to how truthful he was, and honesty and so forth. I started to tell you that I just couldn't understand how a man who was making \$225.00 a month was able to live at the home -- you know, he says it's a thousand dollar house. You can go down there and take a look at it. He has remodeled it. He has paneled it. He has bought a station wagon, he has bought a pickup, he has bought eighty acres, he has bought cattle, he is sending his kids to school, him and his wife, they all dress very nicely, and that's doing pretty good on \$225.00 a month.

Q Well, Judge, that still doesn't answer my question. Over the years, now, for this period of time --

A Over the years, Mr. Cleofas Gonzalez, I am certain, has been stealing from the Farm and Ranch Supply and from us.

Q Well, did you know him as a truthful man or an an untruthful man?

A I have already stated that Cleofas and I never got along together. I don't talk to him and he doesn't talk to me. I don't like him, and he doesn't like me. I am saying bad things about him, he is saying bad things about me, and that's the way we are. That's the way it goes.

Q All right. Judge, do you have a copy of the transcript up there?

A Which one, sir?

Q Not the Exhibits. The regular old transcript of the Senate proceedings. I am going to ask you some questions about that and I thought it would be easy to work from that.

A No, sir. I don't have one.

Q Okay. Let me see if I can find what I need out of here.

(Senator Harrington in Chair)

Q Now, Judge, there has been a lot of testimony about the fact that you were quite familiar with how the welfare system worked. Is that correct?

A I think I am.

Q Okay. Now, I am just going to take out one at random. This is House Exhibit I, part one, and it's a claim jacket from the Cash Store to the County. Is that correct?

A Yes, sir.

Q And the contents of that consist of a series of white pieces of paper upon which Mrs. Elvira de Leon has signed her name indicating that these persons obtained money, or obtained groceries from the store and that the county ought to pay them that bill. Is that right?

A Yes, sir.

Q All right. Now, the witnesses, Walter Meek and Mrs. Yzaguirre, testified essentially about how that system worked. Is that right, Judge?

A Mr. Walter Meek, I believe did. I don't think Mrs. Yzaguirre knows how this particular thing works except that she sells groceries.

Q Well, she knew what function she -- what mechanics she went through in order to get paid for her groceries that had been delivered to needy recipients. She testified about that part of the system. Isn't that right, Judge?

A Yes.

Q All right. Now, you testified in response to questions from Mr. Mitchell about your knowledge of the welfare system and how it worked. Is that right, Judge?

A Yes, sir.

Q Now, is there any basic difference between how the welfare system is set up and supposed to work -- between what you said and what they said?

A I say that a person goes to the store --

Q Right.

A -- he has a welfare order, or does not have one and the storekeeper will call whoever is in charge of giving out the orders. The order is given, he is put on -- a ticket

is written out for him. Then, at the end of the month, those tickets are taken out to the welfare officer. He prepares an order. It is signed by the Commissioner and is taken to the Commissioners Court. The Commissioners Court meet --

Q Right.

A -- a jacket is made out by the Auditor, and the Commissioners Court approve or disapprove the claims, and that's -- then if it is approved, it goes back and a check is made out and is sent back to the --

Q All right. And that is essentially what Mrs. Yzaguirre testified to and what Walter Meek testified to. Isn't that correct?

A Yes.

Q All right. Now, those chits, those books of chits that you introduced into evidence -- you had some forty of them over there.

A Yes, sir.

Q That -- could we call that the originating document, Judge? That's what the person is given to take to the store. Is that accurate?

A Sometimes, and sometimes the storekeeper will call and then the order is given over the telephone, you know, and then it's sent in.

Q Okay. That's right, Judge. But, the system is designed to be sure that nobody gets something for nothing. Isn't that right, Judge?

A Supposed to be.

Q All right. So, the needy person is supposed to go to whoever has authority and get permission to go to the store and get something.

A Yes, sir.

Q All right. And the store owner is supposed to keep proof that they gave out those groceries.

A I imagine so.

Q And would you show what it is in that instrument that the storekeeper keeps to furnish to the county to show, "Here. You owe me this money."

A Well, all we have here is a list with some names signed by Abel Yzaguirre. And they are attached to another Duval County welfare order which is written out by Mr. Cleofas Gonzalez' writing. It is approved by Ramiro Carrillo and these four were placed in the jacket. And, it sort of confirms what I have been stating, that the orders that were sent, for example, to the Cash Store here for these individuals to get the groceries, were not sent to the County, to the Auditor, to the Welfare Officers. Those were sent back. Those were destroyed and there are none in here. And this is the point that I have been making.

Q But, Judge, the system is designed -- that's my question to you. The system is designed to keep somebody from getting welfare who is not entitled to it, and that part of the system is where a welfare official, a County Commissioner or someone so designated by him, must pass on the question of whether or not that person is entitled to receive free groceries.

A Yes.

Q That is the first check, isn't it?

A Yes, sir.

Q All right. Now, the next place where any -- where you need a check is to be sure that the grocery store operator is not charging for goods he didn't sell. Is that correct?

A Well, I would imagine that that would be.

Q All right. Now, once the County issues that check, the system is designed so that the County will see who authorized John Doe to get groceries.

A That's right.

Q And it's also designed to show that, indeed, John Doe got the groceries from the grocery store.

A Yes.

Q All right. And I would -- I think we would agree that the same system would apply for medical supplies, or whatever it might be.

A Yes.

Q Is that accurate, Judge?

A Yes.

Q All right. And that is essentially what you testified to, and what Mrs. Yzaguirre, and what Mr. Meek testified to.

A Yes.

Q That was -- that was how the system was supposed to work?

A Yes.

Q Is that correct?

A Yes, sir.

Q All right. Now, Judge, I'm going to just ask you -- this instrument is signed by Mrs. -- well, it's signed by Ramiro Carrillo?

A Yes, sir.

Q Where Mrs. Elvira de Leon was supposed to sign indicating that -- now, what is that instrument that Ramiro signed here?

A That is a Duval County welfare order.

Q Now, is that the order that is prepared by the storekeeper, or is that the order that is prepared by the Commissioners office?

A No, sir. This County welfare order is prepared by the welfare officer authorizing his orders. In this case, it was prepared -- the handwriting is by Mr. Cleofas Gonzalez and it is signed by Ramiro Carrillo.

Q Now, that is not the instrument that the person takes to the grocery store with him, is it?

A No, sir.

Q Right.

A That --

Q The instrument that the person takes to the grocery store with him are the chits that you described earlier and the Senate has seen and is in evidence.

A Sometimes you send chits, sometimes you send a telephone call.

Q Right. All right.

Now, did you understand Mrs. Yzaguirre's testimony to be that the welfare order, that is the order that I just showed you with Ramiro's name on it --

A Yes, sir.

Q -- is the instrument that was used to get the monies from the County to apply to your grocery bill and the grocery bill of Ramiro Carrillo.

A I heard the testimony. I know it is not true, but what I -- my impression is this:

For example, if I give an order to the Cash Store to give Mrs. X \$20.00 worth of groceries, the Cash Store is going to make me responsible for those \$20.00 worth of groceries that I told them to let Mr. or Mrs. X. have.

Q All right.

A And if the County does not pay for them, then I have to pay for them. So, in effect, what they do is, you give an order for Mr. X to get -- \$20.00 worth of groceries. They charge that to me.

Then, when they get their money from the County, they give me credit for those \$20.00 that "X" received in groceries.

Q Now, is it your position that that's what took place on these orders that we have up here on -- that we have introduced into evidence?

A My position is that I was flabbergasted when I heard what Mrs. Yzaguirre was trying to say because time after time -- I know I had my personal account. I would go in there. Sometimes I would pay as I bought certain groceries; sometimes I paid weekly; sometimes I paid every fifteen days; sometimes I paid monthly. As the money was there and as the bills were there, I would come in: "How much do I owe you?" "So much." I would write out a check, pay out what I owed, and that was it. I took the bills and went on home.

Q You mean you got a bill from her?

A We would get those little tapes that she's talking about.

Q Now, that part of her testimony then, is accurate.

A She works that with everybody. I mean, that's the way it's worked.

Q Right. Well, now, let me ask you this, Judge. The part of the testimony that she testified to about how the system worked and where she fit into the system, that was accurate.

A Well, that is the way the system is supposed to work. Now, whether she was working it -- I have a very strong suspicion that something was going on there that I don't know anything about.

Q Well --

A But, I can't prove it and I am not going to insinuate it.

Q Well, Judge, my question to you is: that part of her testimony wherein she described what she did -- you know, fitting into the system, you will agree with me that that testimony was accurate. Is that right?

A The procedure.

Q Right. That's what I am asking you.

A The procedure is supposed to be -- that is the way the procedure is supposed to work.

Q All right.

MR. MITCHELL: Excuse me, Counsel.

Judge, I'm going to ask you -- as your attorney, I am going to instruct you not to speculate on what Mrs. -- what is her name?

THE WITNESS: Yzaguirre.

MR. MITCHELL: Yzaguirre -- testified to unless those facts are within your personal knowledge.

THE WITNESS: All right, sir.

MR. MITCHELL: And I will ask you to please refrain from guessing or speculating or engaging in conjecture.

THE WITNESS: Yes, sir.

Q Now, Judge, Mrs. Yzaguirre testified that you were a regular customer at the store. Is that accurate?

A I was a customer at the store. I used to buy --

Q Well, I believe you said --

A I used to buy at several places.

Q Well, I believe you said you had been doing business there for twenty years or so. Is that right?

A Yes, just like I have been doing business at other places.

Q All right. So, that part of her testimony is accurate, that you were a regular customer?

A Not confusing a regular customer with being the -- you know, that I exclusively bought everything there.

Q No. No, sir.

A I have, off and on for the last twenty years, been buying --

Q Right. All right.

Now, she also testified that it was a common practice for other persons to pick up groceries and charge them to your account. And, she listed some of them and some, I believe, signatures you have identified. Patricio Garza.

A Yes, that's right.

Q Tomas Elizondo.

A Yes.

Q Roberto Elizondo.

A Yes, sir.

Q Okay. She said it was a common practice for other persons to pick up groceries and charge them to your account. Is that also -- is that part of her testimony accurate?

A Yes.

Q That was accurate?

A That's right.

Q All right. Now, her testimony was that you purchased approximately \$300.00 a month worth of groceries from her store, year in and year out. Would that be accurate or not accurate?

A I don't know how much I purchased from her and from the others combined. See, these groceries were mainly for use at the ranch.

Q I understand that. Everybody does.

My question to you, Judge, is she says, in the neighborhood of \$300.00 a month. Is that high or low, or do you have any idea?

A I don't know.

Q All right. Now, is it your position, Judge, that whatever groceries you purchased from that store, you paid for and that these checks represent what you paid.

A Part of those checks. In other words, perhaps if I owed \$83.00, I would make a check out for \$85.00. Perhaps if I owed \$90.00, I might make out a check for \$100.00, or something like that. But -- and perhaps there is one or two checks in there that I actually cashed for -- for my own personal use, but mostly, those checks are for the payment of my own personal groceries.

Q Now, Judge, you did purchase groceries at the Cash Store?

A Yes, I did buy groceries there.

Q And you did send other persons down there to make such purchases for you?

A Yes.

Q Now, the checks that have been introduced in evidence -- and I'm going to show them to you -- are they the only checks that you have that reflect monies you paid to the Cash Store for these groceries? Now, you can answer that after I hand you the checks.

MR. DOYLE: These are R-1, Mr. Mitchell.

MR. MITCHELL: Yes, thank you.

A These are checks for the years 1972 and 1973.

Q Okay. Now, how about '71, did you introduce any of those or do you have any or what are the facts?

A Yes, I'm bound to have some somewhere.

Q And how about '74? Are there some in existence?

A Yes, there's got to be some.

MR. MITCHELL: Excuse me, Mr. Doyle. I think there's a Series R-1, 2, 3, 4 and 5.

MR. DOYLE: That's all of them.

MR. MITCHELL: Yes, he's got all of those.

MR. DOYLE: I believe that's the whole thing.

Q Isn't That R-1, 2, 3, 4, 5, Judge?

A This is 1, 2, 3, 4, 5, yes, sir.

Q Okay. Now, is it your position that that's all the money that you paid to the Cash Store for groceries during the years 1972 and 1973?

A Mr. Doyle, these checks have been going up and down the country. And they have been handled by different people since I turned them over to Mr. Mitchell over a year ago. And I do not know, they were separated and I don't know whether we have all of them here or whether we don't have all of them. I know there's some for other years.

Q Well, the ones you have for the other years, did you tender those to your Counsel, also, like '70, '71, '72?

A My attorney had them -- I had an accountant in the Valley who had them, I had my accountant in Alice who had them. We now have an accountant here in Austin who's had them.

Q Well, let me ask my question this way, Judge. Would there be any great variance in the amount of money you spent there for groceries say, in any given month over the last four or five years?

A Except for -- looking through this -- these are all checks just to the Cash Store. Is that correct?

Q Well, that's your Exhibit and that's how you introduced it.

A Well, there's bound to be other checks made out to other stores.

Q I understand that. My question to you -- see, we were talking about how much money you spent there a month, Judge. Mrs. Yzaguirre said in the neighborhood of \$300.00 a month. And what I'm trying to determine, did you spend money at the Cash Store on some consistent basis?

A What do you mean consistent basis?

Q Well, would you likely go six months without buying anything there?

A Well, let me tell you, whenever I had a chance to buy groceries at Kroger's, for example, over in Alice, I would do so, because the savings were great. Prices in Benavides are rather high. And like I say, I bought at the Value Mart, I bought at Kroger's, I bought at Stockholder's Exchange over in Freer, at the Hillcrest Grocers over in Hebbronville, at Ramiro's Drive-In Grocery over in Benavides -- several different places.

Q Okay. Judge. Now, the checks that you have there -- is it your position that those checks were the ones you issued to the Cash Store in payment for any groceries that you purchased there during any given month?

A Yes, sir.

Q All right. Now, I'm going to ask you to take a look at those with me just for a moment. Would you take the ones R-1?

A All right, sir.

Q And the first check appears to be dated December the 14th, 1972. Is that accurate?

A December the 19th, 1972.

Q I'm sorry, the 19th. I may get these dates wrong, because the copy is not near as clear as the check you have in your hand, Judge.

A Yes, sir.

Q All right. December the 19th, 1972, you paid -- you wrote a check for \$150.00?

A Yes, sir.

Q All right. Would that indicate that you owed that much money?

A It would indicate that I owed something in that neighborhood at the time or that I gave this as part payment. If I owed more I might have just given them \$150.00 towards my account.

Q All right. Now, the next check R-1(2) is dated January the 6th?

A Yes, sir.

Q All right. That's about fifteen days between that -- between those two checks. Is that correct?

A Yes.

Q And it's in the amount of \$100.00?

A Yes.

Q Well, would that indicate that you have used approximately \$100.00 worth of groceries in that fifteen-day period?

A Again, like I say, if I owed -- for example, if I owed on December the 19th, if I owe four or five hundred dollars I might have given them \$150.00 and later given them so much.

Q Okay.

A See, I have the money, I make my payments.

Q Let's look on down here, the next check is dated what, Judge, I have difficulty reading it, Number R-1(3)?

A January 12.

Q Well, so six days later you gave them another \$150.00. Is that your testimony?

A It's possible, it's quite possible.

Q None of these checks -- I just want to make it clear to the Senate now, your testimony is that these checks were payment on a bill and you didn't cash them -- just go in there and cash checks to get cash?

A No, wait a minute, I just made that particular and very exact statement no more than ten minutes ago. I said some of these checks were for the payment of the groceries in the approximate amount and some I might have taken -- like I say if I owed \$90.00, I might have made a check for \$100.00 and taken \$10.00 in change. Also, that there might be some checks in here, one or two that I actually cashed and took the whole cash for it.

Q Right.

A I have testified to that.

Q You're familiar with the fact that Mrs. Yzaguirre says that virtually every one of these checks were just for cash. Do you remember that?

A Well, that is not correct. She's talking about -- she says that she cashed a lot of checks for a lot of people. I cashed my checks elsewhere, not only at my office just down the street from the bank, I was also a director and a stockholder of a bank that I visited quite often and I used to carry my cash around.

Q Now, Judge, would you look right on down. The next one is January the 16th, four days later, another \$50.00. Is that right?

A Yes, sir.

Q Would that indicate that you -- would that indicate that you paid another bill for that amount of money?

A I might have given another part-payment. I might have bought \$50.00 worth of groceries that one day, I don't -- I can't remember the exact transaction for each one of these checks, sir.

Q Okay. So, the check on the 25th, the difference there, nine days, wouldn't indicate then that you have used \$100.00 worth of groceries in that nine day period, Judge. Is that correct?

A In January, for example, '73, we would have checks totaling the amount of \$300.00, exactly.

Q Well, would that indicate that's how much money you spent there that month?

A I don't know. Like I say, it could have been all of it, it could have been part of it. I think while I was doing business in that manner -- at least I do and most folks at home do. If you carry an account at some particular place and you go in and you

can either pay it all or pay part of it and sometimes you keep the check in round numbers and write it as such and what have you, that's a practice that --

Q So, now, I will ask you, again, now, that you have had an opportunity to look at those checks, Judge Carrillo, is it accurate where Mrs. Yzaguirre testified that you were a regular customer and that you purchased approximately \$300.00 worth of groceries each month? Can you tell us whether that's an accurate statement or --

A I don't know. I don't know how much I bought from the Cash Store each month. I didn't have an amount set to say I'm going to trade with the Cash Store and just buy so much a month.

Q Well, let me ask you this, Judge, was it about the same each month?

A The amount of groceries that -- my grocery bill is going up like everybody else's.

Q But I mean -- my question to you is, did you purchase approximately, or nearly, or anywhere close to, the same amount of groceries each month from the Cash Store?

A I had no set figure or anything. Like I say, if we were going to --

Q All right.

A -- be working close to Benavides we would buy in Benavides. If we were going to be working at the ranch close to Freer we would buy over in Freer or in Hebbbronville we would buy over in Hebbbronville, or in the Valley we would buy in the Valley.

Q All right. That's fine. Now, your testimony is that these checks were given in payment of whatever money you owed the Cash Store for groceries that you used for your own benefit. Is that correct?

A As close as I can figure, yes.

Q Now, Judge, I'm going to ask you to turn with me to the next group of checks you have there. I believe they're going to be R-2 checks.

A Yes, sir.

Q Now, these are '72 checks. Is that correct?

A Yes, sir.

Q It's somewhat awkward, but evidently the later year got introduced second, is that right?

A R-6 -- let's see -- R-2, R-3, 4, 5, and 6 are '72 checks.

Q Right. Okay. Now, do you have those checks here?

A Yes, sir.

Q Now, they don't appear to be -- well, there's some order, I guess, isn't there? No, these are not in order -- they're not in chronological order, are they, Judge?

A Yes, sir.

Q They're not in chronological order, are they?

A No, sir.

Q All right. Now, I'm going to ask you if there were any checks that you can find there in '72 for the months of February and March?

A I don't see any, sir.

Q Are there any checks for the month of June?

A I don't see any, sir.

Q Now, let's look at July, Judge. I think you will find three in there for July. Is that right?

A Yeah, there's some here for July.

Q Three of them, is that right?

A Yes, sir.

Q Now, those three July checks --

A Yes, sir.

Q \$9 --

A \$43.00 and \$31.00.

Q Right. A total of \$83.00 worth of checks. Is that right?

A Yes, sir.

Q For the whole month of July?

A Yes, sir.

Q What are the dates on those July checks?

A July 12, July 24 and July 24.

Q So, two of those checks were written on the same day?

A Yes, sir.

Q What are the amounts of those two checks?

A Nine twenty-four and \$31.00.

Q Now, Judge, I want you to look and see how many checks you can find that you wrote to that store between August and November.

A I don't see any, sir.

Q There is one in there for December, is that right, Judge?

A Yes, sir.

Q How much was it?

A \$150.00.

Q Now, is it still your position that these checks are the checks that you used to pay your grocery bill on a monthly basis at the Cash Store?

A Yes, sir, and I can explain these very easily, sir, if you'll allow me to do so.

Q I'm just dying to hear the answer, Judge.

A Yes, sir. You see, when I moved my cattle to the Starr County Ranch, I moved -- that was when I was having trouble, you will recall, I was having trouble with grazing. We were having a dry spell over there. And I moved all of my cattle over to the 5000 acres over in Starr County, and all of the work was being done down in the Valley, and all the groceries, or most of the groceries were being bought down in the Valley. Like I stated --

Q This was the 5000 acres you said you got from Mr. Manges?

A That's correct, sir.

Q And I believe you testified this morning that you got that original land from Mr. Manges in 1971?

A Yes, sir.

Q And I believe your testimony this morning was that those cattle only stayed at the original 1300 acre site for about two or three months?

A Then they moved within Starr County to another pasture, 5000 acre pasture.

Q You moved them?

A Yes, sir.

Q Now, that's not what you told us this morning, Judge. Now you're telling us you moved all your cattle down there?

A That -- at that time.

Q All of them?

A That is right.

Q That's all the cattle off the --

A And I started -- and I started clearing with the bulldozers all of the other land, and all of the other places, and there was nothing to eat, and we had all our cattle over there. And as we cleared and the grass came up, we moved them back.

Q Now, this is the Borjas Ranch you were clearing?

A We were clearing the Borjas Ranch.

Q And this was in early 1973, is that what you're telling us?

A That's correct.

Q According to the testimony that you gave us on the Caterpillar deal, you got the Caterpillars in January --

A '73.

Q Of '73.

A That is correct.

Q All right. Well, now, the gap in your checks come -- from August to November.

A Like I say, during that time, we had our cattle over there. We were working our cattle over there. And we worked -- the reason why my herd has increased was because I have been keeping the females, selling the males and keeping the females, I mean, the bulls that were of such a quality as to be sold for breeding purposes. But I was not selling any females. And they do increase. And I had all of my herd over in Starr County.

Q All right. So, your explanation is, then, that the reason that you weren't buying any groceries from the Cash Store is that all of your cattle off all of your ranches had been moved over to Starr County? Is that your testimony?

A Yes, sir.

Q All right. Now, Judge, this period we're talking about now is of '73, is that right?

A Which one, sir?

Q Where you moved all your cattle and quit buying at the Cash Store.

A No, we moved our cattle over there -- we started moving when I made my grazing lease in 1971, and we started moving our cattle over there so we could give our other pastures a chance -- see, this was leased land. We didn't know how long we were going to keep it, and we were trying to graze it, so, and let our own personal land get in good shape.

Q Okay. Judge, I'm going to hand you now what's been marked H-3 and ask you to take a look at that.

A Yes, sir.

Q That's been introduced in evidence.

A Yes, sir.

Q Now, would you open that up and tell us what's inside of that?

A This is some bills.

Q Well, that's those tapes from the Cash Store, isn't it?

A Yes, sir.

Q And I believe Patricio Garza testified that that was his signature on some of those, is that right?

A Yes, sir.

Q And that the groceries that he purchased when he signed those were for you, isn't that correct?

A Yes, sir.

Q And that those groceries were purchased from the Cash Store, isn't that correct?

A Possibly so, sir.

Q Well, are you disagreeing that he testified that on the occasion when he signed your name, it was groceries for you out at the ranch?

A Yes, sir.

Q That is what he testified to?

A That is what he testified.

Q All right. Now, what month of those -- what month is it that those groceries were purchased in?

A According to this, it was 8/19/72.

Q What year?

A '72.

Q Well, Judge, that's -- 8/19/72, that's -- that when you didn't pay them any money. That's when your cattle were all down in Starr County, isn't that right?

A Well, I had a charge account there, sir.

Q Well, I know, but I asked you if there was any checks from August to November in that stack that you had there, and you said there wasn't any, is that right?

A I didn't find any, but, like I say, I don't know if those are all my checks or not.

Q But, Mrs. Yzaguirre and Pat Garza indicate that \$300.00 worth of groceries went from the Cash Store out for your benefit in August of '72, don't they? And here is the tapes, aren't they, Judge?

A I don't know what that totals up to, sir.

Q Well, I believe we ran a tape on them when we introduced them. I'll tell you what, Judge, I'm going to do. I'm going to check this and run a tape to be sure, but you'll agree with me that that's Pat Garza's signature? You heard him testify to that?

A Yes.

Q That's the date of August '72?

A That's what it says there, sir.

Q And you'll also agree with me that you didn't pay any money to the Cash Store that month, isn't that right?

A No, I don't agree to that, because, like I say, I don't know whether all my checks are here or whether they are not all here.

Q Now, Judge, that's H-3(1). That's the ticket that was on top, or supposed to be?

A Yes, sir.

Q And is a total of the rest of these tickets?

A Yes, sir.

Q What is the total it adds up to?

A \$302.27.

Q You don't have a check going to the Cash Store for \$302.00 for the month of August, '72, do you?

A I don't know whether there's one or not.

Q Well --

A And I don't know whether that -- things that were charged in August would have been paid at a later date.

Q Well, Pat Garza said that's what they were, didn't he? He is your employee, isn't he?

A I don't remember what he testified as far as those.

Q That's his signature. You told us that.

A That's his signature, yes, sir.

Q Now, Judge, do you still want to take the position that the checks that you've introduced as R-1, 2, 3, 4 and 5 are the monies you paid the Cash Store in payment of your grocery bill?

A Yes, sir.

Q Well, Judge, according to what you just told us a moment ago, from August on -- no, we can go back further than that. Well, from August on, or from -- before that. Let's see. From August through November of that year, you don't have any checks showing you paid him anything, is that right?

A There might be. I don't know where everything is, sir. As a matter of fact, I didn't even know where those were or how they came to being there.

Q Well, as best I can tell, Judge, they were introduced into evidence by your attorney in the Judicial Qualifications Commission hearing.

A Possibly so.

Q And -- no, those were introduced --

MR. MITCHELL: No, they were introduced here.

MR. DOYLE: They've been in custody here since they've been introduced here, whatever date. I didn't notice what the date was. Whatever date they -- was on that Exhibit.

A Yes, sir.

Q Now, prior to that, they may have been somewhere else. Let me ask you this, Judge: I would assume that you've looked at your bank statement for these periods, haven't you?

A Again, those are in the custody of some accountant or someone.

Q Well, did you hire an accountant for the purposes of defending yourself in the income tax trial, for instance?

A I have an accountant who prepares my income tax record. I hired a specialist for the meeting with the Internal Revenue people on December 8, 1974 in Dallas, and then in preparation for the Federal trial over in Houston.

Q So, you have two accountants that you had working on these matters, is that accurate, Judge?

Three, three accountants. And you've had two lawyers that we know of working -- three lawyers. You had another fellow down in Corpus. Three lawyers that you've had actively working on your defense in these last several months, is that accurate, Judge?

A Four.

Q Four lawyers. Well, Judge, is it your position that with three accountants and four lawyers, that you might have lost some of the checks that had to do with your defense in an impeachment case?

A Since hiring my three accountants and four lawyers, I don't even want to look at my bank statements.

Q Well, are you suggesting that perhaps something has been overlooked that might tend to discredit the Yzaguirre story?

A No, I'm saying that in the handling of all these papers and records and what have you, that it has happened to us many, many times. We discover that a piece of paper that we need here is somewhere else, and we have to send a car or somebody out to get it, and we have records scattered from Harlingen, Alice, Austin, Houston, Corpus Christi, and over here.

Q Well, Judge, you understand that Mrs. Yzaguirre and Cleofas Gonzalez described in great detail how you got the \$300.00 a month, how they --

A Oh, they took pains to do so, yes.

Q And you understood their testimony?

A I heard their testimony.

Q And I know for a fact you heard it back last spring in the House of Representatives across the hall, didn't you?

A I know for a fact that when the testimony started in the impeachment proceedings, Cleofas Gonzalez said that all his dealings were with Mr. Lauro Yzaguirre, that Mr. Lauro Yzaguirre came over and began testifying, and he testified, and it is in the record that he had handed these groceries to the people. And Mrs. Yzaguirre stood up in the audience and asked that he not be permitted to testify, that she was the one that wanted to testify. And they allowed her to do so, and they changed places, and she took over, and we have never seen Mr. Lauro Yzaguirre since then.

Q All right, Judge. My question to you, though, is, you have known for months exactly what these people said you were doing, haven't you?

A Yes.

Q Are you now telling the Senate that maybe somewhere there is some more evidence of other payments that you made to the Cash Store, or are you saying "This is all I've got"? Which is it?

A I can't tell you exactly. What I'm saying is that Mrs. Yzaguirre and Mr. Gonzalez have lied to this Body of men here.

Q Well, Judge, do you have any more checks to show that you paid for groceries that you say you received from the Cash Store?

A Again, Mr. Doyle, like I say, that might be all. I don't know. There might be more. I don't know.

Q All right. Have you personally made any attempt to find out whether there is any more that would show Mrs. Yzaguirre, Cleofas Gonzalez, Patricio Garza, all of these people are liars?

A I didn't say Patricio Garza was a liar. Let's not go that far. I tried to -- you are trying to put words in my mouth.

Q Well --

A I'm saying that Mrs. Yzaguirre and Cleofas Gonzalez have lied to the Senate. I did not say that Patricio Garza lied.

Q All right. But, can we take it that you know of no other checks to the Cash Store other than the ones which you've introduced in the Senate?

A I wasn't even aware until just now that you asked me. I'll go out and try to check and find out.

Q Now, Mrs. Yzaguirre's testimony was that each month she credited your account with \$300.00 of the money that the County sent her.

A Yes.

Q Do you agree with that?

A Yes, sir. That she testified to that. I don't agree that that is a fact.

Q No, sir. I understand that, but you agree. That's what she testified to.

A She testified to that.

Q Now, she and Cleofas Gonzalez both testified that they participated in making up phony bills, welfare bills to facilitate that debt.

A Well --

Q Do you agree with that testimony?

A No, I don't because Mr. Cleofas Gonzalez has stated that all of his dealings were with Mr. Lauro Yzaguirre and not with Mrs. Yzaguirre.

Q Well, do you agree that their testimony -- that of Mrs. Yzaguirre and Mr. Gonzalez was that a phony bill with a phony list of names was submitted to the county wherein the county would submit a check to the Cash Store which she would apply to your account.

A I don't know that it was phony. I don't know that it was not. I know that the first time that they testified, there was a conflict between the testimony of Mr. Cleofas Gonzalez and Mrs. Yzaguirre, and that the next day --

Q Judge, I --

A -- over in Benavides, they almost had a --

Q Judge, I promise you, I am not trying to trick you into anything. I am asking you this question to lay a predicate for another question.

A Mr. Doyle, I am only trying to answer your questions truthfully, to the best of my ability.

Q Is it your understanding?

A If you don't like my answers, I'm sorry.

Q No, sir. It's not that at all. I just want you to understand that I am looking for the truth, Judge.

A And I am trying to tell you the truth, sir.

Q Mrs. Yzaguirre and Mr. Gonzalez both testified that you obtained monies unlawfully. You and I will agree with that, won't we?

A Yes.

Q All right. They both testified that the method that you used was to take monies from the welfare funds of Duval County.

A As a matter of fact, I think they said that they didn't have any dealings with me, that they was with my brother.

Q Right. But funds that they alleged were misused were welfare funds of Duval County. That's what they both testified to. Is that correct?

A Yes.

Q Now, the vehicle that they both say was used was this instrument, or instruments like this which are styled at the top "Duval County Welfare Department", and which are supposed to be signed by Mrs. Elvira de Leon, but which are, in fact, almost everyone signed by Ramiro Carrillo.

A That -- you know, that is the second time that you have mentioned that, and I might state that Mrs. de Leon -- you will notice that even back in '63 and '64, those booklets -- Mrs. Elvira de Leon is the Welfare Officer, but whoever authorizes these particular orders is the one that signs the name there.

Q Yes, sir. I understand that. But, both of them have testified that these instruments of this type --

A Yes, sir.

Q -- were the instruments that were used to get the money out of the County. Is that accurate?

A They have testified to that.

Q All right. Now, both of them testified that the way that came about was that the names of persons would be written down on these pieces of paper that in fact, did not receive groceries. Is that accurate?

A That some of them did not.

Q Well, \$300.00 bucks worth a month, in your case. Is that what their testimony was?

A That is what their testimony was.

Q All right. That's all I want you to -- sometime it is hard to get you to agree with me, Judge.

But, that is what their testimony --

A What I'm trying -- what you are trying to do is to try to get me to agree to a bunch of lies and I am not going to do that because --

Q No, sir.

A -- they are not correct.

Q No, sir. I will give you two week's notice when I am trying to get you to agree to a lie.

A If you are in search of the truth, and you will go get other witnesses --

SENATOR OGG: Mr. President, if they're not going to object, or somebody's not, I am going to object. I don't see any reason for the argumentative part here and the exchange between Counsel and the witness.

MR. DOYLE: Senator Ogg is correct, Mr. President, and I apologize to the Court.

THE WITNESS: I apologize, Senator.

Q Now, Judge, ideally, if the system is working properly, the welfare system --

A Yes, sir.

Q -- for each entry where they have "price" --

A Yes, sir.

Q -- on this instrument --

A Yes, sir.

Q -- there would be a corresponding instrument which indicated that that person had been authorized by some County official to go to the store and get that much money's worth of groceries. Is that correct?

A That is what I have been trying to say.

Q All right. Now, the testimony of Mrs. Yzaguirre and Mr. Gonzalez was that the \$300.00 a month came from the county as a result of phony names put down on those bills. Isn't that --

MR. MITCHELL: Excuse me, Counsel. Your Honor, I have listened to that, now, for thirty or forty minutes, and I appreciate Counsel's assumption of that vital issue, but that's not what the testimony has shown. Neither Mrs. Yzaguirre or Cleofas Gonzalez, I submit to this Court, possess such knowledge. And, I am going to object to that question put to this witness, now, for about fifteen times in a row assuming a controverted fact, if it please the Court.

THE PRESIDING OFFICER: Mr. Doyle, it appears that you have covered this over and over before, and the Court would appreciate you going on to some other questions.

MR. DOYLE: Yes, sir. I was just going right on to the next group of questions right now.

Q Now, Judge, you've now had in your possession, for some months, those lists of names of people who Mrs. Yzaguirre and Mr. Gonzalez say are phony names and didn't get the money. Is that accurate?

A What do you mean, I have had them in my possession.

Q Well, those instruments were introduced back when this impeachment trial started --

A Yes, sir.

Q -- back in October.

A Yes, sir.

Q At least that far back, you have known what Mrs. Yzaguirre's testimony was and what Mr. -- the input of those names, haven't you, Judge?

A Yes, sir.

Q Now, three of those persons whose names appear on that list, the phony list, time after time -- Pat Garza, Mrs. Chapa, and Mr. Chapa -- all testified that they never got any free groceries. Isn't that accurate?

A No, that they got some groceries sometimes.

Q Well, you're right. The Chapas did, on an occasion or two, get some. You're correct.

A Yes, sir.

Q And they say they got some back in the early '60s, sometime, I believe.

A Yes, sir.

Q Now, Mr. Garza says he never did. That's accurate, isn't it?

A Yes, sir.

Q And you remember us pointing out the number of times his name appeared.

A Yes, sir.

Q Judge, do you have anything to show the Senate that would indicate the testimony of those persons who said those were phony names, phony lists -- do you have anything you wish to offer to indicate that they are not telling the truth?

A I think my attorney would be the best one to answer that question, although I don't think he is listening. But, I believe that the burden of proof, Mr. Doyle, is on you all, not on me.

THE PRESIDING OFFICER: Judge, I don't believe your attorney heard you. You might --

MR. DOYLE: May I have about one minute, Mr. President?

THE PRESIDENT: You want a recess?

MR. DOYLE: No, I don't want a recess. I just want to stop and check my notes here before I go on to the next --

THE WITNESS: The President advises me, if you would like to answer that question.

MR. MITCHELL: Yes, I would, so that the record reflects I was -- a member of the Court has directed a question to me and I was in the process of answering that question and missed that answer. I don't want the record to think I was daydreaming.

I would like to have the answer -- the question and the answer read back, if it please the Court, without imposing on the Court.

MR. DOYLE: I will be happy to restate the question, Mr. President.

THE PRESIDING OFFICER: What was that?

MR. DOYLE: I will be glad to restate the question.

THE PRESIDING OFFICER: Please do, Mr. Doyle.

Q Judge, my question was --

MR. DOYLE: Mr. Mitchell, I had recited -- we had been briefly through, and you feel not so briefly through, the allegations and the proof we have introduced with respect to those allegations. That was the preface to my question.

And my question was, after hearing the testimony of the three witnesses who say that their names were used and they didn't receive any groceries -- my question to the Judge was if he had anything that he wanted to tell us that would indicate those persons were not telling the truth.

MR. MITCHELL: Are you talking about -- are you talking about the testimony of Tete Chapa, Rosa Chapa and Patricio Garza?

MR. DOYLE: Patricio Garza, yes.

MR. MITCHELL: Well, I would first of all say that it is up to this Body to determine whether Tete Chapa and Rosa Chapa are telling the truth. Their testimony, as I recall it, is that they did purchase groceries and receive groceries.

Patricio Garza also testified, as I recall, that he received groceries. Consequently, I think your question assumes facts that are not in evidence.

I don't know what my client answered, but that would be my attitude if the question were directed to me, Counsel.

Q Now, Judge, I am going to ask you a couple of questions about the period of time when you were actively working in the -- in the distribution of welfare.

A Yes, sir.

Q Was it a habit of yours to give -- well, let me ask you this.

Was it customary for you to authorize welfare distribution to large groups of people at the same time?

A No. To begin with, the policy of the welfare distribution is set up by the Commissioners Court as a body. We only carry out their wishes.

Now, what you are saying, was it done at a -- for example, several orders on the same particular day --

Q Yeah. Would it be -- would it be common for, say, three or four ladies to come in at one time and you authorize ten for one, twenty for the next one, thirty for the next, and send them all down there together?

A Yes, I understand your question. The trouble -- when you find that it was because sometimes I was out of town and not available, and Mr. Couling or Mrs. Casas or Mrs. Garcia, or somebody in the office -- or, George Zertuche -- would give out this order to Mrs. -- to the different people. Then, when I came in, they would tell me "Look, we have issued these orders to these people." And I would sign the orders on that particular day for several people. It was not necessarily issued on that one day. It might have covered a period of three or four days.

Q But, in the ordinary course of things, wouldn't you just issue an order, "Give John Doe thirty dollars worth of groceries"?

A I was hardly handling the welfare orders myself. Other folks were handling it for me, and those records there indicate that during those years, that most of those orders were actually given out by other people other than myself because I didn't have the time to attend to it.

Q Well, then, is it your testimony that you are not familiar with that box of forty-four books over there that you --

A Oh, I am very much familiar with it. They made me go through it, spent one whole night looking at it, and I -- I am very much familiar with it.

Q Well, would the great majority of those chits indicate that one person got an order and took it to the store and got it filled, or would that not be the case?

A Those records there indicate that -- I would say 85 percent of those orders were given out by somebody other than myself.

Q Well, were they given to one person, or four or five or eight?

A Different persons; different persons.

Q The great majority of them were one person getting an okay from an official and going to get his groceries and going on home. Is that right?

A But what happens is most of these people that -- you know, that get on the welfare program, they come in every month.

In other words, if you have a Mr. A, Y and Z who are taking -- getting welfare orders in March, they will come back in April for some more, they will come back in May for some more, they will come back in June for some more. And it is the same people coming back and forth all of the time. And, generally, those people have, within the County, the individuals that they go to, and that's the one that they go to every month because they know that they can get the order from them.

Q Now, Judge, the ultimate determiner -- the person who made the ultimate decision of whether or not to pay these claims, issue a County check, that was the County Commissioners Court. Is that accurate?

A Yes, sir.

Q And, I believe the testimony is that Ramiro's been on that Court since 1967?

A Yes, sir.

Q Now, Judge, the stuff that was introduced by the Board of Managers with respect to the Cash Store generally covers the period 1970 to 1974. And I have asked you previously -- or rather you have given us checks covering the period 1972 and '73. Are you going to check and see if you have checks for '71, '70 and '74 or are you telling us that that's all the ones you have?

A No, sir, I will check.

Q Now, Judge, the names of those persons -- and I realize it was sometime ago and perhaps I need to review them with you, the persons whose names were on those lists that Cleofas and Mrs. Yzaguirre say were phony lists, those names -- are you familiar with those names, those people?

A Some of them, yes, sir.

MR. MITCHELL: Excuse me, Counsel. There you go again. I'm going to object, he didn't say they were phony, in fact the most he could have gotten -- got out of the witness, if it please the Court, was that they lived outside of the County. At no occasion did he prove, one way or the other, that those were phony names. The only

thing -- I submit that question is unfair to the witness, it assumes a controverted fact and I would like to request the Court if I could, to ask my client to please listen to the question and exercise his judicial temperament a little more cautiously before he answers, if it please the Court.

MR. DOYLE: Mr. President, I qualified the question by asking him -- you know, my question to him was the list that Gonzalez and Yzaguirre says were not -- were phony names. And I'm not attempting to say that that's a fact, I'm just -- I asked him the question about the testimony of a previous witness, which you sat here and listened to. I'm not trying to trick him, I assure you.

(President in Chair)

Q Now, Judge, I'm going to hand you here what has been marked as H-4(1) through (15) and ask you -- I'm just going to hand you H-4(1) for instance.

A Yes, sir.

Q Now, what is that that I've handed you, Judge? Is that what we have been referring to as a chit?

A Yes, sir.

Q Now, is that the instrument that we talked about earlier, that the individual would get from some duly authorized official and take to the grocery store to pick up whatever groceries he was entitled to receive under the welfare program?

A Yes, sir.

Q All right. Now, who signed that one, Judge?

A I did.

Q I ask you to look at the rest of these here in H-4, Judge. Who signed all of those?

A These chits show my initials.

Q All right. Did you place them on there?

A Yes, sir.

Q Okay. So, it is your handwriting?

A Yes, sir.

Q You're not taking the position that some other person executed these instruments, you know, forging your signature, your initials or anything like that?

A No, sir.

Q You actually signed these?

A I did, but that was done back in the '60's, Mr. Doyle.

Q Okay. Your position then is that the chits -- that you have not signed any chits since the time that you were County Attorney and authorized to do that sort of thing by Mr. Atlee Parr?

A That is correct, sir.

Q And we all know he died in '67?

A Mr. Atlee Parr died in 1967 and my brother took over, really handling the whole program with Mr. Cleofas Gonzalez handling it. I did give out some orders up until about 1970 when I resigned as County Attorney.

Q Now, those chits that I just showed you, Judge, when did you sign those?

A Those were back in the '60's, because those were mimeographed at the tax office, the school district -- Benavides Independent School District Tax Office.

Q On those ones that I gave you there, Judge, they were all just authorizing one person each?

A Yes.

Q To get groceries. Isn't that right?

A Yes, sir.

Q Now, there are some others, I believe there are some thirty or forty like that with your signature on them in evidence. Isn't that right?

A Yes, sir.

Q Are there any of those wherein more than one person is authorized to go receive monies?

A I beg your pardon, sir, I didn't --

Q Are there any of those that bear your initials that you executed, that authorize half a dozen people or more than one person to go get groceries?

A Not to my knowledge.

Q Now, how is it that you're so certain that the ones that I showed you were ones that you executed back in the '60's?

A Because that's when we did that to begin with. And that was when I was handling some of that portion of that welfare program and I almost discontinued having anything to do with it back in '67 and then just didn't have anything to do with it -- anything with it after 1970 when I resigned as County Attorney.

MR. DOYLE: Okay. Mr. President, the Lieutenant Governor indicated that the Senate had something else it perhaps wants to take up. I am now finished -- as far as I can tell at this point, I am now finished with all the questions in response to Mr.

Mitchell's questions on Article I. I now am fixing to start questions on Article VII. If you want me to proceed at this time I will be happy to do so. If you're anticipating breaking early for some other purposes it seems to me this would be the logical time to take it.

SENATOR MAUZY: Mr. President.

THE PRESIDENT: Senator from Dallas, Senator Mauzy.

SENATOR MAUZY: I had earlier submitted two written questions to be propounded to this witness, but I think the continuity of his testimony would best be served if those could be asked now in view of Mr. Doyle's statement that he's prepared to move to his next point.

MR. DOYLE: I have no objection if his attorney doesn't.

MR. MITCHELL: I have no objection.

THE PRESIDENT: Senator from Dallas asks unanimous consent to suspend the necessary rules in order to permit two questions relating to Article I of the impeachment charges to be propounded by the Chair at this time. Is there objection?

Chair hears none.

Senator, do you have a preference as to which one be asked first?

SENATOR MAUZY: No, it doesn't matter.

THE PRESIDENT: Judge Carrillo, this is a question sent up by Senator Mauzy to be propounded by the Chair.

"Mr. Doyle asked you what you based your opinion on that Mr. Gonzalez was not truthful, then he cut you off and would not permit you to answer. I want to ask you now, what do you base your opinion on as to Mr. Gonzalez' credibility, tell me everything and go back as far as you want and take as long as you need to explain it fully."

THE WITNESS: All right. Now, I know for example that -- and it is in the record, although he has been trying to make the acres be reduced and the first time that he testified that he had bought eighty acres of land. I know that he testified that he was at the time getting approximately \$250.00 a month, I believe. I know for a fact that I have known the man, I know his style of living. I know the facts as they exist back home. I know the way -- I know his children, his wife, the house that he has, the fact that he bought the property from his mother. The fact that he bought some property from some relatives, that he has bought some cattle, his style of living at home, the fact that he has now ended up owning a hardware store, which has an inventory greater than what they say it's supposed to have. And I know the facts as they existed in -- within the Farm and Ranch Supply. I know that there were things missing, I know that he has testified that he has taken merchandise that he felt that he was entitled to from the Farm and Ranch Supply, without an okay from either my brother or myself. And I know that there was money missing from our accounts and I know that he took it and I know that he has been lying.

I know that he -- at first he testified that he had received -- that he had taken purchase orders from the Zertuche General Store to Mr. Couling before 1970 so that he could make several invoices on them and never mentioned the fact that he at the same time had invoices from the Benavides Implement and Hardware Store, which is the same store that he now owns back over there also making invoices with them. I know,

for example, that he testified that I had brought those invoices over to him and Mr. Couling testified that he had given those invoices to Ramiro, that he could take over there and they got their wires crossed over there.

And I know that he has been lying all through this trial. I know the man, I have known him all my life. All of you gentlemen know people and you know events that have happened within your lifetime. And I have lived down there all of my life, I have known this man all of my life and I know what I'm talking about.

THE PRESIDENT: Judge Carrillo, this is another question sent up by Senator Mauzy.

"Please relate the full substance and context of the following conversations, identifying each conversation as nearly as you can as to date, where the conversation took place and who was present. The first conversation that you're asked to describe is your conversation with Archer Parr when he returned to Duval County from his meeting with Attorney General John Hill in Austin. You're asked the full substance, the date, where the conversation took place and who was present."

THE WITNESS: All right, now, when Mr. Archer Parr returned from Austin he advised me in talking to me that he had talked to John Hill, that John Hill had agreed that he would file a petition to place the water district into receivership and that both him and John Hill had agreed that Judge Gilbert Sharpe from Brownsville would be the logical person to run the thing and that he was a good friend of his and that he knew that Gilbert Sharpe would run the water district to suit his likings.

I didn't like being used either by Governor -- I mean, by Attorney General Hill or by Archer Parr. I was taken by surprise and what I did, immediately I called Judge Sharpe and made an appointment with him in Brownsville. My court reporter and I went over to Brownsville and I talked to -- I was escorted into the office of Judge Sharpe. He was then off the Bench, he had been on the Court of Civil Appeals. He has since then been appointed District Judge.

At any rate, we had a conversation. The first thing that I did, not knowing whether he knew what I was there for or not I said, have you -- but I understood that he had been contacted, so I said, "I guess you know why I'm here", or something to that effect. And he said, "Yes, I had a call from the Attorney General and from the people in the Water Board over in Austin. And it is understood that John Hill is going to file a motion to place that water district into receivership and that you will name me as the receiver." I said, "Well, Judge, does this mean that you're going to take your orders directly from Archer Parr?" And he said, "No, it does not, I'm going to be my own man. I think I can do a good job with it."

Then, it was close to lunchtime, so we went over to a seafood place to eat that Judge Sharpe knew quite well. He took us both, Robert Elizondo, my court reporter and myself and Judge Sharpe and we went over there and we continued our conversation over at the restaurant of what was going to happen. And I was -- I was playing along, I didn't know exactly what to do or what not to do. So, I left Brownsville, I came back through Edinburg. I stopped over at Judge Alamia's office in Edinburg and told him exactly what happened, these very facts.

I told Judge Alamia and this was before Judge Sharpe was appointed to the water district as conservator -- I told him what had been suggested, what my feelings were, up to a point. I said, "I do know Judge Sharpe, I do know that he's an honorable man. I think that he could do a good job." But I didn't like the way it was being set up and I didn't like the way I was being used, I hadn't been used like that before. And, so, Judge Alamia told me, he said, "Well, to begin with, O. P." he said, "Let me give you a piece of advice." He said, "Judge Gilbert Sharpe was one of the attorneys who represented you and George Parr and all of the rest back in those days when you all had your troubles of the '50's." He said, "Now, if you as a Judge that appoints him to

be the receiver of the water district, which is in trouble and which has had a lot of publicity you are going to be criticized quite a bit. And my recommendation to you is to get somebody else and not appoint Judge Sharpe."

I told him I would think about it and I did on the way. And I decided I was not going to appoint Gilbert Sharpe as receiver of the water district. And, so, when I came back I told Archer Parr that I don't know what arrangement him and John Hill had made, but I was not going to be a party to it and that if they filed a petition to place the water district in receivership the decision of who was going to be the receiver was going to be entirely my own and I would not announce it until the appointment was made. He argued with me, Archer argued with me. And I told Archer, I said, "Now, look, Archer, I believe that you been reading the newspapers a little too closely. This is the second time that you have tried to tell me how to act as a Judge and what to do. And I don't know whether you're beginning to believe the newspaper articles that you own me and that anything you want done all you have to do is come to me and I am going to do it. And I am not. And if you don't like my decisions that's just too bad, but that's just the way it is." So, we had an argument and that was the extent of it and the next thing I knew it was the decision not to go along through the receivership route. They decided that the Water Board would be the one who would appoint a conservator instead of going through the District Court and the Water Board did appoint Judge Sharpe to be the conservator of the water district.

THE PRESIDENT: Judge, going back to your conversation with Archer Parr, what, as nearly as you can remember, was the date of that conversation?

A That conversation, and Judge Alamia, if he has the record of the dates when he received people there, well, he might have it, but that conversation was had approximately thirty days before Judge Sharpe was appointed conservator of the water district.

THE PRESIDENT: What date was he appointed?

THE WITNESS: I don't recall that, sir. I'm sorry. I don't remember the date. I remember that it did happen, and that was back in 1974, I believe.

THE PRESIDENT: All right. Was it early in 1974? Mid '74? Late '74?

THE WITNESS: Governor, I don't want to mislead anybody. I think perhaps that answer would be best answered if we check the records on that. I don't have that date, sir.

THE PRESIDENT: Does Counsel for either of the parties have the records available that would identify the date on which Judge Sharpe was appointed?

MR. DOYLE: I've got it, Governor, but it was -- I don't have it here.

THE PRESIDENT: All right.

MR. DOYLE: I would like to point out to the Court and particularly to Senator Mauzy that -- Senator Mauzy's question specifically asked Judge Carrillo who was present at the conversation, and he hasn't answered that.

THE WITNESS: Yes. And I believe I did.

THE PRESIDENT: All right. Mr. Doyle will provide the Court later on the date of Judge Sharpe's appointment, and the records show that your conversation with Archer Parr came about thirty days before that appointment?

THE WITNESS: Approximately, yes, sir.

THE PRESIDENT: Where did the conversation with Archer Parr take place?

THE WITNESS: In my office, sir.

THE PRESIDENT: Who was present?

THE WITNESS: At that time, only Archer Parr and myself. Immediately upon it happening, I confided, like most Judges do in their court reporters who travel with them wherever they go, and, so, Robert Elizondo, my court reporter, was present when I did talk to Judge Sharpe over in Brownsville.

THE PRESIDENT: All right. Now, is it your testimony, Judge, that your court reporter was or was not present at the actual conversation with Archer Parr?

THE WITNESS: Not with Archer Parr, sir. He was present with the conversation that I had with Judge Sharpe.

THE PRESIDENT: Now, let's pass on to that conversation. What was the date of your conversation with Judge Sharpe?

THE WITNESS: I believe that it was either the same date that I had the conversation with Archer Parr or the next day, because I remember that I was very upset and in a hurry to get this matter straightened out, and I wanted to talk to Judge Sharpe myself immediately.

THE PRESIDENT: Where did the conversation with Judge Sharpe take place?

THE WITNESS: It took place at his office, his private law offices in Brownsville, Texas, and continued to take place at a seafood restaurant in Brownsville, Texas.

THE PRESIDENT: All right. Now, this was before Judge Sharpe, of course, he had been a Circuit Court --

THE WITNESS: He had been on the Court of Civil Appeals.

THE PRESIDENT: The Court of Civil Appeals, and this was before he was appointed District Judge?

THE WITNESS: He had been on the Court of Civil Appeals. At the time he was practicing law, and later on he was appointed District Judge.

THE PRESIDENT: All right. Who was present at the conversation with Judge Sharpe?

THE WITNESS: Roberto Elizondo.

THE PRESIDENT: Can you spell it for me, please, sir?

THE WITNESS: R-o-b-e-r-t-o E-l-i-z-o-n-d-o.

THE PRESIDENT: Who is Roberto Elizondo?

THE WITNESS: He is my court reporter, sir.

THE PRESIDENT: And no other people were present but the three of you?

THE WITNESS: Just the three of us, yes, sir.

THE PRESIDENT: Thank you very much, Judge.

THE WITNESS: Yes, sir. Thank you, sir.

THE PRESIDENT: Judge, this is a series of questions, three questions sent up by Senator Traeger.

THE WITNESS: Yes, sir.

THE PRESIDENT: "Isn't your credit good enough at the Cash Store that if you wanted to, you could go three months or longer and not pay on your account?"

THE WITNESS: Yes, sir.

THE PRESIDENT: "It is not unusual in small towns, is it, for regular customers to pay various amounts at various times?"

THE WITNESS: No, sir.

THE PRESIDENT: "Did you ever pay your grocery account with cash?"

THE WITNESS: Sometimes, yes, sir.

THE PRESIDENT: Senator Traeger, did that elicit the information?

SENATOR TRAEGER: Yes, sir.

THE PRESIDENT: Senator from Lamar.

SENATOR AIKIN: Mr. President, I ask unanimous consent that the Senate go into Executive Session at 4:58.

THE PRESIDENT: Senator from Lamar moves the Court resolve itself into Executive Session. Is there objection? The Chair hears none.

EXECUTIVE SESSION

Accordingly, the President at 4:58 o'clock p.m. directed all those not entitled to attend the Executive Session of the Court to retire from the Senate Chamber and instructed the Bailiff to close all doors leading from the Chamber.

IN SESSION

At the conclusion of the Executive Session, the President called the Senate, sitting as a Court of Impeachment, to order at 5:00 o'clock p.m.

THE PRESIDENT: Court will come to order.
Senator from Lamar.

SENATOR AIKIN: Mr. President, I'm going to make a motion in a minute to adjourn until 9:00 o'clock in the morning. But, I've talked I think with a big majority of the Members. Several have talked to you, Mr. President, and to me and to others about trying to move this thing along if we can, first discussing having night sessions. I believe it is the consensus with a vast majority that rather than have night sessions, we work straight through until 7:00 o'clock, and maybe with a ten minute break or something. Several have told me, and the Presiding Officer both their plans are already made for this evening. Well, I think Senator Mauzy told me or something that several had been committed to go to -- and, beginning tomorrow, if it's agreeable, and I'm going to move to adjourn until 9:00 in the morning, but tomorrow afternoon, we'll go straight through until 7:00 o'clock with just a break or two, if it's agreeable with the Senate.

THE PRESIDENT: Senator from Lamar moves the Court stand adjourned until 9:00 o'clock tomorrow morning. All in favor, say "aye". All opposed, "no". The "ayes" have it. Senate stands adjourned.

Accordingly, the Senate, sitting as a Court of Impeachment, at 5:11 o'clock p.m. stood adjourned until 9:00 a.m. tomorrow.

TWENTY-FIRST DAY
(Wednesday, January 21, 1976)

The Senate, sitting as a Court of Impeachment, met at 9:00 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present: Adams, Aikin, Andujar, Braecklein, Brooks, Creighton, Doggett, Farabee, Hance, Harrington, Harris, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: Clower, Gammage, Lombardino and Meier.

A quorum was announced present.

Pastor Merle Franke, First English Lutheran Church, Austin, Texas, offered the invocation as follows:

Lord, we ought to stand in these halls with awe and wonder because of the power you have given us -- power to legislate and rule, power to order and control the lives of so many of your children. And quite frankly, we cannot always comprehend your reasons for giving us such discretion over our fellow human beings. Only you. Lord, have the wisdom and the insight and the grace to deal with people with complete mercy as well as justice.

As this Senate meets, Lord, we ask for a measure of that grace, a taste of that wisdom, an offering of that justice -- all of which can only come from you. And if we accept these your gifts, perhaps then we can carry out our responsibilities with honor, and in some measure call ourselves your children. Amen.

LEAVES OF ABSENCE

Senator Gammage was granted leave of absence for today on account of important business on motion of Senator Brooks.

Senator Meier was granted leave of absence for today on account of important business on motion of Senator Farabee.

Senator Clower was granted leave of absence for today on account of important business on motion of Senator Mauzy.

Senator Lombardino was granted leave of absence for today on account of illness on motion of Senator Traeger.

APPEARANCES

Judge O. P. Carrillo, Respondent; Honorable Arthur Mitchell, Attorney for Respondent.

Board of House Managers; Honorable Terry Doyle, Counsel; Honorable John Odam, Assistant Attorney General on behalf of the Board of Managers.

THE PRESIDENT: Judge Carrillo, would you take the stand, please, sir?

MR. DOYLE: Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: Mr. President, with leave of Court, Mr. Odam will continue cross-examination on Article VII since he's been over this same area with Judge Carrillo once before.

THE PRESIDENT: Chair recognizes Mr. Odam for that purpose.

MR. ODAM: Thank you, Mr. President.

CROSS-EXAMINATION RESUMED

(Questions by Mr. Odam:)

Q Judge Carrillo, you have the books of Exhibits before you?

A I have some here, yes, sir.

Q Do you have Volume Two?

A Let me have a moment, please, sir.

MR. ODAM: For the benefit of the Court, I will be referring mainly to Volume Two and Volume Three of the Examiner's Exhibits, the green covered books -- while Judge Carrillo is getting a copy --

Q Judge Carrillo, my questions are going to involve primarily two areas, number one, where you have checks where you got money.

A Yes, sir.

Q And number two, the equipment, the Massey-Ferguson, the bulldozers and the root plows?

A Yes, sir.

Q Checks to you and then checks for equipment. Okay?

A All right.

Q We're going to start off with the checks to you.

A All right.

Q I would like for you first of all and for the benefit of the Court to turn to Exhibit 65, Judge Carrillo, this is in Volume Two.

A What number?

Q Exhibit 65 is on Page 797.

MR. ODAM: Again, for the benefit of the Court I'm referring to Volume Two, Page 797.

Q Examiner's Exhibits, Volume Two, Page 797, sir.

A All right, sir.

Q It's the green cover, Volume Two.

Judge Carrillo, for the benefit of the Court, could you explain what the item is on Page 797, first of all?

A It's a check made out -- pay to the order of O. P. Carrillo for \$1,008.00, signed Benavides Implement and Hardware Company by R. M. Couling.

MR. MITCHELL: And the date, Judge, please?

A That was on 4/16/71.

Q All right. And would you keep your -- would you dog-ear that page and keep that page, and turn back with me, please, Judge Carrillo, to Page 787. Again, I am referring to the green Exhibit Book, Volume Two.

A Yes, sir.

Q Can you describe for the Court, Judge Carrillo, what the item is on Page 787?

A That is a check, Treasurer of Duval County, paid to the Benavides Implement and Hardware Company, \$1,008.00, April, 1971.

Q Now, what is the date of the check? April the what?

A The 12th.

Q April the 12th?

A Yes, sir.

Q And what is the date of the check from Benavides Implement and Hardware to you, Judge Carrillo?

A April 16th.

Q Is it your testimony that there is no connection at all between these two checks?

A No, sir. I don't think I have ever testified to that.

Q Well, let me ask you this question. The check for \$1,008.00 from the County to Benavides Implement and Hardware on April the 12th, and four days later, there is a check written to you for \$1,008.00.

My question to you is what connection, if any, is there between the County check to Mr. Couling and Mr. Couling's check to you for the same amount?

A All I know, sir, is that the \$1,008.00 that Benavides Implement and Hardware Company paid to me was supposed to be for rental of my own equipment which was rented to Benavides Implement and Hardware.

Q Now, when did you first become aware that Benavides Implement and Hardware was renting your personal equipment?

A My equipment, sir, is --

Q Wait, just a second. My question is when did you first become aware that Mr. Couling was going to be renting your personal equipment? When did you first become aware of that?

A I was aware that he was renting some equipment from me during that time.

Q Okay. When did you first become aware of that?

A I don't remember the date, sir.

Q Can you give us the year when you first became aware of it?

A I know that during the time that Mr. Couling had his store, he used to rent equipment from me.

Q When did you first become aware -- what year did you first become aware?

A Yes, sir. That is what I am trying to tell you. If I could remember exactly, sir, I would tell you. If I were to tell you it was 1971, it might have been 1970. I cannot pinpoint the date. I just know that during that period of time, Benavides Implement and Hardware Company, through the Farm and Ranch Supply, was renting equipment from me.

Q And what -- so, you can't give us a year, as to when it was?

A If I could, I would, sir.

Q All right. But, you cannot give us the year when you first became aware of it.

Who did you instruct to start renting your equipment to Benavides Implement and Hardware?

A The equipment was, and has been for many years at the Farm and Ranch Supply.

Q No, sir. My question is who did you instruct to rent the equipment?

A I am trying to arrive at that. It has been there with instructions, with the understanding of the -- Mr. Cleofas Gonzalez, who was running the Farm and Ranch Supply, that that equipment was there for rental to whoever came by.

Q So this equipment that was at the Farm and Ranch Supply was your personal equipment?

A There was some of my equipment at the Farm and Ranch Supply, and some equipment at my warehouse.

Q Would it have been in 1968 that Benavides Implement and Hardware started renting your personal equipment, or 1969?

A I have had equipment for rent there since back in the '60's. Now, when Benavides Implement and Hardware Company began renting it, I do not know, because I, myself, was not a managing partner of Farm and Ranch Supply.

Q Now, the -- Cleofas Gonzalez was paid by the County to work at the Farm and Ranch Supply? Is that correct?

A That's the way I understand it, yes.

Q And Cleofas Gonzalez, is he the one that rented your equipment to Mr. Couling?

A Either Mr. Cleofas Gonzalez or my brother, Ramiro Carrillo, who was renting the -- was running the Farm and Ranch.

Q So it could have been Ramiro Carrillo who rented this equipment to Mr. Couling?

A As far as I know. I don't have any personal knowledge of it because I was not on the premises myself.

Q Did you authorize, or did you tell Ramiro, or did you tell Cleofas to rent your equipment, specifically instruct them to --

A Yes, sir. They knew that that's what it was there for.

Q Now, is the Farm and Ranch Supply location different from the Vaello Sales Building?

A Yes.

Q It is a different location?

A It is a different location.

Q I would like for you, please, and I refer the Court to Volume Three of the Examiners' Exhibits in the green book, and I refer -- Judge Carrillo, if you will pull Volume Three and refer to Page 1097. Do you have that page?

A Yes, sir. Wait a minute, I have 1077. I'm sorry.

Q Ten ninety-seven. Can you explain to the Court, please, sir, what the item is on Page 1097?

A 1097 is the equipment that I own.

Q All right. Now, the equipment that you own, this would be the equipment that would have been available for Mr. Couling to have been renting, presumably, apparently to the County?

A That and other equipment, yes, sir.

Q All right. Where is this Massey-Ferguson tractor located?

A There are two Massey-Ferguson tractors, I believe, that are listed on this list here. Are you talking about -- and I don't know whether -- which the first one is or which the second one is, because they are just listed as Massey-Ferguson.

Q All right. Let's take both of them, then. Let's take the one that's on the first line that was acquired on August of 1968. Where is that Massey-Ferguson tractor located?

A Actually, both of them are located right now at the warehouse.

Q Is this at the County warehouse?

A No, the County does not own a warehouse.

Q Is this at the Farm and Ranch warehouse?

A The Farm and Ranch Supply is housed at what used to be the Vaello Lumber Company. I own the whole premises. Part of it is used as a county shop as a courtesy to my brother who is a County Commissioner, and I do not receive any compensation from the County for the use of that shop.

Q Now, would these two Massey-Ferguson tractors, would they have been there at the Farm and Ranch Building in 1971? Or were they working out on the ranch?

A As a matter of fact, you know, I just made a statement that both of them were at the warehouse, and, as I recall, very vividly, two weeks ago, we moved one over to the Farm and Ranch Supply. One is over at the Farm and Ranch Supply, and one is over at the warehouse today, and I remember that because we were putting anti-freeze in those tractors, and it just occurred -- just the last couple of weeks ago.

Q In 1971, would the two Massey-Ferguson tractors have been at the warehouse or would they have been at the Farm and Ranch or would they have been out at Borjas?

A You're saying 1971, and those tractors moved around. Now, they -- during 1971, they might have been at Borjas, at the Farm and Ranch and at the warehouse.

Q Would these two Massey-Fergusons, would they have been the tractors that were being rented to the County?

A Besides -- see, we're talking about two Massey-Fergusons. There are actually three Massey-Fergusons. There are two or three Farmall tractors. There is a Ford tractor.

Q I'm going --

A Well, --

Q I'm going to go through those. My question is, would these Farmalls, or would the three Massey-Ferguson tractors, would those have been tractors that Mr. Couling was renting to the County?

A Mr. Odam, I have a lot of equipment, as you can see by the Depreciation Schedule. I have a lot of trucks, tractors, and equipment that is there for that purpose. It is not for sale. It is for rent. I do keep a lot of equipment available. And I cannot pinpoint any particular item or piece of equipment that was used by any particular individual at any particular time, because I'm never there.

Q So, the Massey-Ferguson tractors on there, and there is two there, and you say there is another one, you can't tell us whether or not those tractors were rented to Mr. Couling or not rented to Mr. Couling, is that right?

A I did not have any personal dealings with Mr. Couling, myself directly, sir.

Q That would be Mr. Gonzalez?

A Mr. Gonzalez, I would imagine so.

Q And you recall his testimony that he sure didn't rent any of your equipment to Mr. Couling, that he just faked these things up? Do you recall that testimony?

A Yes, sir.

Q Do you recall also that he said he just made it for \$1,008.00, because that sounded like a good amount, same thing he said to me down at Corpus Christi? Do you remember that statement?

A Yes, I know that he said that he was -- that he would never make a check for an even \$1,000.00 because it looked bad, but nevertheless, there is a check here for exactly -- in the exact amount of \$1,000.00.

Q I am sorry. The claims, we'll go through those.

A Well, it just happens that I noticed that in these --

Q Well, we'll pick that one up. So, the \$1,008.00 could possibly have been for the rental of these two Massey-Ferguson tractors, is that right?

A Not only that, sir. I believe that -- and you will recall that also, on my property, we have several caliche pits, which, also we do sell caliche, and also we do have a rock pit, which contains this -- I believe they call it the fire rock which is used for topping on highways and what have you and which is -- it's hard to find and in great demand. And we happen to have one of those on our place, too.

Q A caliche pit?

A Caliche -- there are several caliche pits.

Q What does that have to do with renting equipment?

A It has to do with selling caliche, also. I believe some of these invoices not only show rental of equipment, but also the sale of caliche or materials.

Q Well, we'll get to the other ones. But, right now, I'm just concerned about this \$1,008.00. I'm trying to figure out what equipment, if any --

A I have no personal knowledge of what it was. Like I say, I did not attend to that business.

Q Well, let's -- and I don't want to belabor the subject, but if you would look again on Page 1097, look at some of this other equipment that was available.

A All right, sir.

Q Where is this 1962 Chevy truck? Where was that located? Was that also available for rent?

A Yes, sir. Everything -- I'm in the business of--it's available for rent.

Q You're in the business of renting equipment?

A I'm in the business, yes, sir. Let me get that -- I lost that page. Let me get back to it. 1097.

MR. MITCHELL: That's in Volume Three, Judge Carrillo.

THE WITNESS: Yes, sir.

A All right, sir.

Q So you could have been renting him that 1962 Chevy truck?

A Oh, yes.

Q How about this house trailer? Could you have been renting him the house trailer?

A No, sir, the -- the house trailer would not have been for rent.

Q What's this next item?

A It would have been if anybody wanted to rent it, but I don't recall renting it.

Q So, we can strike it off, that was not for \$1,008.00 -- how about this, looks like the word "Chopper" what is that? January, 1969.

A Silage chopper.

Q Silage chopper. Could he have been getting \$1,008.00 if you were renting your silage chopper?

A No, sir.

Q Okay. We will strike that off.

How about this diesel tractor engine? Could he have been renting that?

A Diesel tractor equipment.

Q Oh, equipment. I'm sorry. Could he have been --

A I believe that's what it -- yes, sir.

Q Could have been renting that. How about this 1968 Bronco? Could he have been renting that?

A Yes, sir.

Q How about this 1966 Bronco, could he have been renting that?

A There are three -- I noted that there are only two Broncos reflected in here. There were three, three Bronco style pickups, four-wheel drive there, they are quite useful.

Q Why didn't Mr. Kirkland put the other Bronco on your Depreciation Schedule?

A Well --

MR. MITCHELL: Excuse me. I asked him that precise question, if you will recall, and you have chosen to refer to the Judicial Qualifications Commission. If you will recall, he told me that once the depreciation is recouped, it's dropped off the schedule, Mr. Odam.

MR. ODAM: I'm sorry.

A That was -- my answer was coming exactly to that, sir.

Q Let's have your answer.

A You have my -- all right, sir. You buy equipment, you set it up on your Depreciation Schedule. When it's depreciated, you take it off the Depreciation Schedule because you can't depreciate it any more.

Q Okay. What year was the Bronco that was no longer depreciated -- on the Depreciation Schedule?

A On the -- I don't -- I don't know. I just know that, like I've stated, stated at the Judicial Qualifications Commission, and I'm stating here, that there is a lot of equipment that I have that is not reflected on this Schedule.

Q How about this 1967 Chevy -- I can't read the last word.

A Carryall.

Q Was that available for Mr. --

A That was available -- as a matter of fact, they used to -- instead of calling it a Carryall, they used to call it a carry-everything.

Q How about this house trailer? Was that available for rent?

A No, sir.

Q And the 1972 Pontiac station wagon, did you rent that?

A No, sir.

Q Now, you say that you are in the business of renting equipment?

A Yes, sir.

Q I would like for you to look over to Page 1093, if we would skip back a couple of pages to the Supplemental Income Schedule and Retirement Income Credit Computation, Schedules E and R. Do you see that 1093?

A Yes, sir.

Q Where is all this equipment rental income on your tax record?

A Well, I don't know how Mr. Kirkland carried it, but, Mr. Odam, you will recall very definitely that when he testified and the deposit slips were compared to these checks, they were designated on the deposit slip as rental.

Q All right. This is the one that Mr. Kirkland testified to he didn't know what kind of rental income it was so he just put it under house rent?

A Yes, sir, except that he carried it on as rental -- it was shown and carried on as rental. And it is somewhere in my income tax returns.

Q Well, on the buildings for rent, did you have a building for rent that was in Benavides? Which building was that?

A Buildings for rent?

Q Yes, sir, where it says "Buildings."

A I own several houses in Benavides and in Corpus Christi, and besides my business places that are rental places.

Q Now, the \$1,008.00 check, the county check for \$1,008.00 then the check to you for \$1,008.00 four days later, you are not sure what equipment that was?

A No, sir, it's equipment that I own. I'll tell you exactly, this thing was for this particular thing as I --

Q Where would you -- did you go over to the Benavides Implement and Hardware to pick up this check, or where would he be when he would give you this check?

A Again, there was nothing, no special place set. I mean, Mr. Couling would see me, or mail it directly to my bank account or what have you, and, say "This is equipment that my store used that belonged to you, and here is your share of the rental," because -- if you'll notice, the claims, while there is this claim for rental for \$1,008.00 there are additional claims also. And he was making money and profit off of it.

Q Yes, sir. How about the -- what years were you County Attorney?

A 1961 through 1970. I mean, up until February of 1970 when I resigned to make the race for District Judge.

Q And Ramiro Carrillo is still County Commissioner?

A My brother became County Commissioner sometime in 1967.

Q Can you explain why it would be -- well, strike that. What equipment does the County have? What kind of inventory, if you know, based on your own personal knowledge from your experience as County Attorney those years and your familiarity, or being around Ramiro, what equipment does the County have itself?

A I don't know.

Q You don't have any idea?

A No, sir.

(Senator McKnight in Chair)

MR. MITCHELL: Excuse me, John. Maybe you can put it within the time frame, you said what kind of equipment did it have?

Q 2971 when the County was paying out a check for \$1,008.00 and a check to you for \$1,008.00, what kind of equipment did it have?

A I don't have the slightest idea.

Q You don't know if it had any dump trucks of its own?

A No.

Q You don't know if it had any Massey-Ferguson -- what would the County have wanted a Massey-Ferguson tractor for, if it did?

A They have had repair jobs, street repair jobs and things like that and --

Q This isn't a farm tractor?

A Farm tractor -- tractors and farm tractors can be used for many things, Mr. Odam.

Q So, the Massey-Ferguson tractor could have been used for some street repairs?

A Could be used for pulling some kind of trailer, could have been used for pulling some kind of equipment, could have been used for pulling some kind of a press on it to press caliche, could be a lot of uses.

Q How about the Broncos, what would they be used for?

A Beg your pardon?

Q Broncos, nineteen sixty --

A For hauling stuff. Remember, the four-wheel drive vehicles in bad weather or on bad roads and what have you, they do come in handy.

Q The County didn't have any trucks of its own to do hauling?

A I'm sure they did. However, it was common knowledge that most of the equipment that was owned by the County was at both Archer Parr and George Parr's ranch doing their private work over there, and when the County needed something, they had to come out and rent something to get it.

Q So, therefore, since all the County equipment was over on the Parr's ranch they rented it from you?

A I'm not saying that they rented from me. They rented -- there was quite a bit of rental through the County, not only to me. I think you can check with Mr. Meek, the County Auditor, as I now understand it. And the records are complete with records showing that the County used a lot of rental equipment.

Q There's no question about it. They charged a lot of --

A Not only from me, but from many companies not only within the County, but outside of the County.

Q So, if we can summarize as to this \$1,008.00 check, the County check for \$1,008.00 and then there's a check to you -- he must have been renting some of this equipment, you don't know exactly what it was?

A That is correct.

Q You didn't have any specific dealings yourself with Mr. Couling to have done it?

A Not on the rental or anything like that, but I do state flatly that I did receive that money and it was deposited in my bank account.

Q Well, and as a matter of fact I will ask you to turn the page, Judge Carrillo, to Page 799.

A Would that be in Number Two, sir?

Q Page 799 in Volume Two, yes, sir.

A All right, sir.

Q And this then would be the deposit slip of where you deposited that \$1,008.00 in your bank account?

A Yes, sir.

Q I would like for you to turn on over to the -- the next page is Page 801.

MR. ODAM: And I would ask the Court to also do the same. Again, I'm still in Volume Two of the Examiner's Exhibits.

A Yes, sir.

Q And could you describe for the Court what is on Page 801?

A There is a check, Treasurer of Duval County, Benavides Implement and Hardware Company for \$1,018.65.

Q What is the date of that County check?

A July -- it's hard to make it out, I think it's --

MR. ODAM: Claiborn, could you pull for the Judge, please, the original copy of E-68, so he can see the date on it?

Q While he is pulling that, if you would, turn over to the next page, Judge Carrillo, and I'm going to come back to Page 801.

MR. JAWORSKI: Counsel, what page is that?

MR. ODAM: 801 is the County check for \$1,018.00.

A Yes, sir.

Q Can you examine the copy that the clerk just gave to you as to the date, Judge Carrillo, on the County check?

A 25th of July, 1971.

Q 15th of July, 1971?

A Yes, sir.

Q And would you turn over to the next page, Judge Carrillo, and I would ask the Court to do the same thing. On Page 803, could you describe for the Court, Judge Carrillo, what is the item on Page 803?

A It's a check payable to O. P. Carrillo for \$1,018.00 signed Benavides Implement and Hardware Company, R. M. Couling on July 27, 1971.

Q This check is July 27th, the other check is July the 15th?

A Yes.

Q Approximately 12 days later Mr. Couling gave you a check. What connection, Judge Carrillo, is there between the county check for \$1,018.65 and the check to you for \$1,018.00?

A I don't know of the connection, sir, I know that I did receive the check from Benavides Implement and Hardware Company for \$1,018.00.

Q And I would ask you to turn over, Judge Carrillo, to Page 805. The next page over.

A Yes, sir.

Q Is that a copy of the deposit slip where you deposited \$1,018.00 in your bank account?

A Yes, sir.

Q So, you don't know the connection between the County check for \$1,018.00 and the check to you for \$1,018.00?

A I cannot speculate, sir, so I do not know. I have no personal knowledge.

Q Okay. What did Mr. Couling give you a check for \$1,018.00 for?

A He advised me that that was the money that I had coming from the rental equipment that he had rented from me.

MR. MITCHELL: Excuse me. May I approach my witness, Mr. President, for a minute? In connection with his last answer? May I approach the witness?

THE PRESIDING OFFICER: Yes, sir.

Q I'm sorry, now, could you restate why did he give you a check for \$1,018.00?

A Well, it's been called to my attention it doesn't show that I endorsed the check. And it could have been one of those checks that were mailed by Mr. Couling directly to the bank, I don't know. But these checks that I received from Mr. Couling, when I received them he advised me that it was for rental of equipment that he had rented from me.

Q Now, this check in July of 1971, what would be your testimony as to what equipment was rented to obtain this check?

A Again, sir, I cannot go back to 1971 and tell you exactly what equipment I was renting, because I was not on the premises at all. As a matter of fact, after 19 -- January of 1971 when I became a District Judge I was hardly ever at the Farm and Ranch Supply, because my court duties kept me busy all the time.

Q I understand. So, the equipment, if it were rented, all of that would have been rented by Ramiro Carrillo or by Cleofas Gonzalez?

A That is correct.

Q And I won't refer to Ramiro Carrillo's testimony here, but I will refer to Mr. Gonzalez. And you recall his testimony, again, on this check, that there was no equipment rented. Do you recall that testimony?

A Yes, sir, but I know that he was lying, because I know that it was rented.

Q So, Mr. Gonzalez was lying about that?

A Yes, sir.

Q He was lying about Ramiro Carrillo telling him to make it up?

A You must understand, Mr. Odam, that Mr. Cleofas Gonzalez came to Austin on a mission. And his mission to be accomplished is my complete destruction. And he would say and do anything that he could to accomplish that, even if he has to perjure himself at the request of anyone who asked him to do so.

Q I understand. And we went through that yesterday, about his mission in life. How about his mission in life down at Corpus Christi when he testified to this? Was it the same thing when he testified down there that Ramiro Carrillo told him -- that we wound him up and fed that story to him, too?

A There is no question in my mind that for the last two years, at least, Mr. Gonzalez has been out with a vendetta to be sure to see that I am completely destroyed.

Q And if Mr. Cleofas Gonzalez, that was his story as to what Ramiro Carrillo told him, the only other person we could rely on then would be Ramiro Carrillo. Is that correct?

A Well, and also the fact that I am testifying to it as it is and my records reflect that I have all of this equipment. I have documentary to back the thing up. And further, Mr. Odam, if I was going to steal \$1,800.00 -- \$1,800.00 from the County I wouldn't be such a fool as to run straight to the bank and deposit the check into my account so that the whole world could come and take a look at it. I would probably endorse John Doe's name to it, go down and cash it at the bank, of which I am a director and an officer. And just take the cash and stop the tracing it directly to me. I wouldn't be leaving big foot tracks all the way to me.

Q Well, wouldn't you agree that this is a pretty indirect manner for Cleofas Gonzalez at the Farm and Ranch Store to be making out Benavides Implement and Hardware tickets to be given to Mr. Ramiro Carrillo to be taken to the County to return to Rudolfo Couling to get you a check? I mean, that's certainly --

A Well, they were running my --

MR. MITCHELL: Pardon me, Judge Carrillo. We're going to object. That's argumentative. Counsel is arguing with the witness. The documentary evidence reflects that it is for rental in Mr. Cleofas Gonzalez' own handwriting. We object, argumentative.

THE PRESIDING OFFICER: I overrule the objection, Mr. Mitchell.

Q Objection is overruled. Let me restate the question to you. You say that you could have done it in a more secretive manner. My question to you, do you not think it's a rather indirect manner for Mr. Cleofas Gonzalez to be working on County payroll at the Farm and Ranch Store with a register from the Benavides Implement and Hardware Store, to be making up tickets for Benavides Implement and Hardware Store, which Ramiro Carrillo took to the County, according to the testimony? Ramiro Carrillo would turn around and bring the check back to Mr. Rudolfo Couling. Don't you think that might be somewhat indirect, since you were never involved in any of that process?

A Well, you know, in regard to that question, I was very much surprised to find out that Mr. Cleofas Gonzalez had invoices from Benavides Implement and Hardware Company at the Farm and Ranch. I was surprised when I found out that there were invoices from Zertuche Store at Mr. Couling's place. And it seems that Mr. Couling and Mr. Gonzalez had a very -- sort of a two-way street going back and forth with these invoices. And as it turned out to be, like I have stated, Mr. Cleofas Gonzalez who was doing business with us at the Farm and Ranch, without any notice whatsoever one day just did not show up for work and he ended up working at the Benavides Implement and Hardware Store for Mr. Couling.

Q Do you recall the testimony that Mr. Cleofas Gonzalez stated that your brother Ramiro Carrillo brought over the register box with the Benavides Implement and Hardware invoices in it? Do you recall that testimony?

A No, sir. Mr. Gonzalez stated that I brought over the box of the Benavides Implement and Hardware invoices and gave them to him. It was Mr. Couling who testified that he had given the box to Ramiro Carrillo. They had their testimony mixed up, they didn't quite get together the night before.

A All right. Mr. Ramiro Carrillo, then, could explain and tell this entire Court, then, that he did not in fact tell Cleofas Gonzalez to dummy these things up. Is that right? Couldn't he come in and explain that to us?

A I don't know what my brother can do or cannot do.

Q Well, I'm just asking you a question, is Mr. --

A Now, you are the one that has the burden of proof in this case.

Q I understand. My question, Judge Carrillo, was this. The conversation was had between Cleofas Gonzalez and Ramiro Carrillo, correct?

A I don't know.

Q According to Cleofas Gonzalez' testimony Ramiro Carrillo, your brother, told him to fake up these tickets. Do you recall that testimony? Do you recall that testimony?

A Yes.

Q Would you agree with me that Ramiro Carrillo could come and testify here? Do you agree with that, that he could come and testify?

A That he could?

Q Yes, sir.

A Why don't you subpoena him?

Q Do you recall that we did subpoena him to have his deposition taken?

A Well, why don't you subpoena him -- you know, you were complaining yesterday that I had pled the Fifth Amendment. And here I'm talking like a canary, why don't you subpoena him, he might just come on over and testify?

Q Let me back up on the questions. I don't want to get into the Fifth Amendment for fear that Mr. Mitchell might jump up and down about people taking the Fifth Amendment. My question to you -- you recall that we did subpoena Ramiro Carrillo to take the deposition before we started the Judicial Qualifications. Do you recall that?

A Yes, sir.

Q Do you recall that the second witness I called in the Judicial Qualifications was your brother, Ramiro Carrillo? Do you recall that?

A You will recall that I was not there, Mr. Odam. You will recall that I was not in the room, you will recall that I left.

Q At Judicial Qualifications at Corpus Christi?

A Oh, at Corpus Christi, yes, sir.

Q Called Ramiro Carrillo as a witness, you recall that?

A Yes, sir.

Q You recall, also, that you called Ramiro Carrillo as a witness?

A Yes, sir.

Q So, Ramiro Carrillo could shed the light on whether or not Cleofas Gonzalez is telling the truth or not. Is that right?

A Like I say, you know, I can't -- my brother is an adult.

Q My question to you --

A I cannot tell you what my brother will do or not do. As a matter of fact, I can't even tell you what I will do, because my attorney is just liable to jump at me in a little bit and tell me, "Now, look, you're going to do this or else I'm going to walk out on you." And I would have to follow his instructions, so, I cannot tell you what my brother's going to do.

Q So, you can't tell us if Ramiro could testify as to the conversation with Cleofas Gonzalez or not?

A I will say the way for you to find out, sir, is to go ahead and execute your subpoena and bring him over here and he would have to take the stand if you subpoenaed him.

Q Like he took the stand on the deposition, and like he took the stand when he was called twice in Corpus Christi?

A That's right. You know, you were very upset over in Corpus Christi because I decided to testify, and you all were very upset, also, here because I decided to testify. And, it was just a matter of my attorney advising me when and how we were going to conduct our defense. And, here I am.

Q Well, now that you are here, let's go on to another check you got.

A Yes, sir.

Q While we are doing this, I wish you would pull out Volume Three, and I would like to interrelate these checks.

MR. ODAM: And again, for the benefit of the Court, I am referring to Volume Three of the Examiner's Exhibits. I'm going to be referring to the Chart, E-192. This is on Page 1555.

Q Tell me when you have Page 1555, Judge Carrillo.

A Yes, sir. I'm coming to it, sir. This thing is beginning to come apart over here.

All right, sir.

THE PRESIDING OFFICER: Is that Page 1555?

MR. ODAM: Yes, sir. Page 1555 in Volume Three. It is the Chart, E-192. The first page of E-192.

Q Judge Carrillo, do you have a pencil or something you could make a mark on your copy?

A No, sir.

Q Let me furnish you one.
I would like for you to go down on --

A All right. I have one.

Q -- 4/16/71.

A 4/16/71.

Q And you see the check to you for \$1,008.00?

A Yes, sir, I do.

Q O. P. Carrillo, and out beside it where it says "No number", in your book, would you please put, just for future reference, the check for \$1,008.00 to you. I believe that was the first one I referred to, and that was Exhibit No. E-69.

A Yes, sir. What do you want me to do with it, now?

Q Page -- excuse me. E-65; just put E-65 out beside the check you got. E-65.

A All right, sir.

Q And across -- do you see the line going across to the County check?

MR. MITCHELL: Excuse me, Mr. Odam. We concede that the E-65 reference to the 308 is incorrect, that is immediately above it. I think it is just a transposition on Page 1555. E-65 should be where you --

MR. ODAM: Yes. E-65 is a --

MR. MITCHELL: May we concede that should have been opposite \$1,008.00 and not opposite \$308.00?

MR. ODAM: That's correct. The check to R. Carrillo and Brothers is not E-65. We might draw a line down to E-65 to the \$1,008.00 check. That's correct.

MR. MITCHELL: Thank you.

Q Now, over on the County side, or over on the source of the check where it says "\$1,008.00 check from the County", would you put out beside that, Judge Carrillo -- that is Exhibit E-57?

A I have written --

Q Okay.

A Wait a minute. Where?

Q Do you see the \$1,008.00 check says "County"?

A Yes.

Q Left-hand column --

A I have written E-65 besides that.

Q No, that is E-57. The County check is E-57.

A Oh, the County check? Just a moment, sir.

SENATOR TRAEGER: Mr. President, may I ask the prosecution a question?

THE PRESIDENT: Senator Traeger.

SENATOR TRAEGER: Who prepared this chart?

MR. ODAM: Yes, sir. The chart we are referring to here was the chart that was introduced into evidence. It was prepared -- it came in through the testimony of Mr. Rudolfo Couling.

SENATOR TRAEGER: He prepared it?

MR. ODAM: The chart was actually handwritten out by Don Lee, Liz Levatino and Max Flusche. Don Lee, at that time, of the DPS; Liz Levatino, who is an examiner in the Judicial Qualifications; and, Max Flusche, who was an examiner. Liz Levatino and Max Flusche both, Assistant Attorneys General.

SENATOR TRAEGER: Thank you.

MR. ODAM: They worked with Mr. Couling, and that's according to his testimony.

Q Now, you see the County check for \$1,008.00. Do you have that, E-57?

A Yes, sir.

Q And you have the check to you for \$1,008.00 as E-65?

A Yes, sir.

Q You skipped down to the one we just got through talking about, over on the left-hand side. I refer you to the County check. This is on the next page, Judge

Carrillo.

About the fourth check up, do you see the County check for \$1,018.65? This is on Page 1556.

A Yes, sir.

Q Out beside that County check, would you put Exhibit No. E-68?

A Yes, sir.

Q And across -- the line runs across to the check to you for \$1,018.00?

A Yes, sir.

Q And would you put beside it, E-69? That's the one we just got through talking about.

A Yes, sir.

Q The next one I would like to refer to, Judge Carrillo, is a check from Duval County in the amount of \$1,006.00, and this is on Page 808, Volume Two. I know we are going to have to interrelate these books, but I think it's necessary to cover all of them.

Volume Two, Page 808.

A Yes, sir.

Q Can you describe for the benefit of the Court what the item is on Page 808?

A It's a check, Treasurer of Duval County, Benavides Implement and Hardware, \$1,006.00, 20th of September, 1971.

Q September the 20th of 1971?

A Yes, sir.

Q That's E-74.

Now, would you turn the page, Judge Carrillo, to Page 810? Can you describe for the Court what is on Page 810?

A It's a check, but I can't --

Q Can't make it out?

A The copy is --

MR. ODAM: I will ask the Clerk to pull the original, then, out of the box, of E-75.

A Yes, sir.

Q Could you describe what E-75 is, Judge Carrillo?

A E-75 is a check payable to O. P. Carrillo, September 22nd, 1971, \$700.00, Benavides Implement and Hardware Company, signed R. M. Couling, for rent on truck.

Q And what is the date of that check?

A September 22nd, 1971.

Q And what was the date of the County check on Page 808?

A September 20th.

Q So, two days later, Mr. Couling made you out a check for \$700.00?

A Yes, sir.

Q And it says "rent on truck" on the one on Page 810?

A Yes.

Q And would you turn the page, Judge Carrillo, to Page 812? Describe for the Court what is on Page 812.

A It's a check dated October 5, 1971, payable to O. P. Carrillo for \$306.00 for rent, Benavides Implement and Hardware Company, R. M. Couling.

Q Now, those two checks, the \$306.00 and the one for \$700.00, that totals \$1,006.00.

My question to you, Judge Carrillo, is there any connection, if you know, between the check that Mr. Couling made out to you for \$700.00 and the check for \$306.00 -- any connection between those two and the County check for \$1,006.00?

A I don't have any knowledge of it, sir.

Q Don't have any knowledge at all?

A No, sir.

Q Do you know to whom the truck would have been rented that is referred to for \$700.00?

A The Benavides Implement and Hardware Company wrote me out a check for rent for it. It would have been rented to Benavides Implement and Hardware Company.

Q Do you know whether or not that truck was rented to Duval County for \$700.00?

A I don't know what Benavides Implement was doing with Duval County, sir.

Q How about this check on Page 812? It says "rent" on it. What would have been rented there?

You don't know, I don't guess? Had no personal knowledge?

A It would be rent on equipment, but I don't know what equipment.

Q You don't know what equipment would have been rented for \$306.00?

A No, sir.

Q So, you don't know to whom Benavides Implement and Hardware would have been collecting \$700.00?

A No, sir.

Q You don't know to whom they would have been renting a truck, or what day -- or where they would have gotten money to pay you the \$306.00?

A I don't have any personal knowledge of it, sir.

Q So, this truck that's referred to on the check for \$700.00, and the equipment that you say is what the check is for on 812 -- that is just some of that other equipment that was available for rent generally at the Farm and Ranch Store?

A Or at my warehouse.

Q At the warehouse. And the only documentation in support of your story on that are these two canceled checks. Is that right?

A Well, what I have is the check that was paid to me.

Q I know, sir. That's what I'm saying. These checks --

A Yes.

Q Do you have any other documentation to support your story that the trucks were rented, or equipment was rented to the Benavides Implement and Hardware? Any further entries to support your story?

A All of those records are kept by Cleofas Gonzalez at the Farm and Ranch, and I would imagine that they are over there somewhere.

Q Which records are these?

A The records of the Farm and Ranch.

Q Well, I thought these trucks belonged to you?

A They belonged to me. They belonged -- they were rented out through Farm and Ranch, though. I mean, they were doing the business at Farm and Ranch.

Q Well, I think we have the records in evidence of the acquisition of \$1,006.00 from Mr. Cleofas Gonzalez, is the ticket on Page 805, "rental equipment, contract hauling caliche", to Duval County.

A Yes, sir.

Q So, there is no connection between the County check and the other two checks you got. Is that right?

A I am not saying that there is no connection, sir. I am saying that I don't have any personal knowledge of it, sir.

Q So, you don't know what equipment, specifically, would have been rented, and you don't know anything about the dealings that Cleofas Gonzalez had with Mr. Couling. Is that right? On these two particular checks here?

A No, sir. I don't have any idea what dealings Mr. Cleofas Gonzalez had with Mr. Couling.

Q Now, the checks there -- I would like for you to return to the Volume Three, on the Chart, E-192. Let's find those two checks on the chart. I believe they appear on Page 1557.

Can you find Page 1557?

A Yes, sir.

Q The check from Duval County for \$1,006.00. Out beside that, would you mark that Exhibit E-74, the left-hand column, 9/22/71, date. \$1,006.00, County; that's E-74.

A Yes, sir.

Q Do you see the line going down to where it says, "O. P. Carrillo, \$700.00." We just looked at that check. You can put E-75 beside that one.

A Yes, sir.

Q And you skipped down -- the line runs on -- it says, "See Page 2-B", and if you turn the page over to Page 1558, you see the Check Number 306 we just looked at?

A Yes, sir.

Q And that appears as Exhibit No. E-76?

A Yes, sir.

Q Let's go to some more checks that you got from Mr. Couling. Well, first of all, I'd like -- I will ask you to turn the page in Volume Two to Page 814. Do you have Page 814?

A I'm coming to it, sir.
All right, sir.

Q Now, can you identify what that item is?

A No, sir.

Q If not, I will ask the Clerk to pull a copy of it.

A Yes, yes.

Q Can you identify that?

A Not from this thing. Not from this thing, sir.

MR. ODAM: Okay. I would ask the Clerk to pull E-77, and hand it to Judge Carrillo. E-77.

Again, for the benefit of the Court, I am referring to Page 814 in Volume Two of the Examiner's Exhibits, Admitted.

Q While you are getting that, I will lead you just a bit, Judge Carrillo, to ask you, would you agree that this is a deposit slip, a deposit of the \$700.00 and the \$360.00 in your bank account in Alice, Texas?

A It's a deposit slip, yes, sir.

Q And do you see the \$700.00 entry?

A I do.

Q What does it say out beside it? Anything?

A Where?

Q Does it say anything beside the \$700.00?

A It says "checks, \$700.00."

Q Okay. Do you see the entry of \$306.00?

A And \$306.00.

Q All right, sir. Now, I would like for you to turn the page, Judge Carrillo, in Volume Two --

MR. ODAM: I will ask the Court -- again, I am referring to Volume Two of the Examiner's Exhibits.

Q I am referring specifically to Page 815, Judge Carrillo.

A All right, sir.

Q Do you see that Benavides Implement and Hardware invoice to the County for \$995.00?

A Yes, sir.

Q Rental of equipment?

A Is that 815?

Q Page 815; yes, sir.

A Yes, sir.

Q That's an invoice from Benavides Implement and Hardware to Duval County for \$995.00?

A Yes, sir.

Q The next page is the invoice or statement for \$995.00?

A Yes, sir.

Q The next page, 817, is a County check. What is the date on that County check?

A November 9th, 1971.

Q That is made out to Benavides Implement and Hardware?

A Yes, sir.

Q I'll ask you to turn over a couple of pages to Page 820.

A Yes, sir.

Q What is the item on Page 820?

A It is a check made payable to O. P. Carrillo, November 15, 1971, \$995.00, signed, "R. M. Couling, Benavides Independent School District --"

Q Now, this --

A Benavides Implement and Hardware.

Q Yes, sir. The check to the County, November the 9th, six days later a check to you for \$995.00. My question again to you, on this particular check, do you have any knowledge as to the connection between the Duval County check for \$995.00 to Mr. Couling and the check to you from Mr. Couling for \$995.00?

A No, sir, I do not.

Q You don't know anything about it at all? This check on Page 820, it does not have a notation on it, what do you say that check is for?

A It would be for equipment rental, sir.

Q That would have been for equipment rental also?

A Yes, sir.

Q And I guess the same applies there as on the other checks, this would be some of the equipment Cleofas Gonzalez had available at the Farm and Ranch or over at your warehouse for rent to Mr. Couling?

A Yes.

Q And you don't know whether or not he in turn rented that equipment to the County or not?

A No, sir, I don't have any personal knowledge of this, sir.

Q And that -- and if Mr. Couling did rent the equipment to Mr. Cleofas Gonzalez, both of those individuals would be involved, both of whom have been called as witnesses here, is that right?

A Yes.

Q Okay. I ask you to turn the page, Judge Carrillo, to the item on Page 822.

A All right, sir.

Q Can you describe to the Court the third item down on Page 822?

A Again, I can't make anything out of this.

Q Okay.

MR. ODAM: I ask the Clerk to pull E-83. And, again, for the benefit of the Court, I'm referring to the item on Page 822.

Q Judge Carrillo, I ask if you can agree with me until you see the original copy that that is a deposit slip evidencing or showing \$995.00 deposited to your bank account in Alice, Texas, is that right?

A Yes.

Q It doesn't show up too well on the copy in our book. What does it say out beside the \$995.00?

A It says, "Benavides Implement and Hardware Company."

Q Again, you don't know any connection between this \$995.00 and the Duval County check Mr. Couling has?

A I don't have any personal knowledge of it.

Q This would be some rental of that other personal equipment you've got?

A Yes.

Q Okay. You remember that -- I would like for you to refer back to Volume Three, and let's mark this money on the chart and identify it. The date on it was November of 1971.

Judge Carrillo, this appears on Page 1559, and I refer the Court also to Page 1559. I'm looking in the Examiner's Volume Three.

Tell me when you have 1559.

A I do.

Q Can you go down and see the County check for \$995.00?

A Yes sir.

Q Now, out beside that, Judge Carrillo, would you put "Exhibit E-80" on that County check?

A All right, sir.

Q And you see the line that runs across down to \$995.00 to you, Check Number 202, and out beside that, Judge Carrillo, would you put the Exhibit Number of that one we just got through referring to, that's E-82?

A Yes, sir.

Q Again, it's your testimony you don't know anything; if there is a connecting link between that County check and the check to you?

A No, sir, I don't. I do know also, Mr. Odam, that I sold a truck to Mr. Couling.

Q Do you recall the date you sold him that truck?

A No, I don't. And I know he paid me for it. I don't remember the exact amount but I know that somewhere along the line, it has to be reflected in these checks that I received from Mr. Couling.

Q Do you recall what year you sold him the truck?

A No, I don't, sir.

Q Do you recall what kind of truck it was?

A Yes, sir, it was a 1965 or '66 three-quarter ton Chevrolet with a four speed transmission, air conditioning, radio, and it was a loaded truck.

Q So, now, this check could be for -- that Mr. Couling could have possibly purchased a truck from you or it could have been for rental, is that right?

A No, sir, what I am saying is there is a truck that I did sell to Mr. Couling, and he has acknowledged buying the truck, and I've been trying to find out or find the check where he paid me for that truck.

Q Well, with respect to this check for \$995.00, is it your testimony this check for \$995.00 might have been payment for that --

A The only reason why I said that is, when you say there is a check there that has no recital on it, and what it is for, and we're saying that it is for rental equipment, and everything was rental equipment except that I do know that somewhere along these checks, somewhere along the line, there has to be reflected one or more checks showing the payment to me by Mr. Couling for this pickup.

Q All right, sir. So, this check for \$995.00 might be for when he purchased the truck from you?

A There is no recital there. I cannot tell you, sir, what it was for. It was either for the rental lease on the equipment or for payment on the truck. I don't know.

Q Now, you recall the line of questioning Mr. Mitchell asked you, and again we're going to these checks that you received from Mr. Couling. In Judicial Qualifications, we had asked Mr. Couling if he had written any other checks to you, and I refer now, Judge Carrillo, and I refer the Court, I am still in Volume Two, I would like to turn to Page 879.

A All right, sir.

Q Do you have Page 879?

A Yes, sir.

Q Now, this is the check for \$700.00. We've already covered this one, correct?

A Yes, sir.

Q Check across the page for \$306.00, we've already covered that check, right?

A Yes.

Q Turn to Page 881. We've already covered that check for \$995.00, that's the one we just got through with.

A Yes.

Q Okay. The next check on Page 882, could you describe to the Court what that check is?

A That \$1,200.00?

Q Page 882.

A "Eighteen hundred eight-two, O. P. Carrillo, \$1,200.00, Benavides Implement and Hardware Company. R. M. Couling, 6/21/71."

Q And what is the notation on that particular check?

A "Loan."

Q And can you -- you went into this, I believe, with Mr. Mitchell. Can you tell us again what -- explain to us about this particular check, why about the loan?

A It was an advance on the rental that was owed on the water well rig, sir.

Q Oh, this is on the water well rig?

A Yes, sir.

Q So, it was not a loan?

A I guess Mr. Couling was referring to it as a loan because it was an advance. They didn't know -- they owed us -- they owed me and my brother quite a bit more money than this.

Q I'm sorry. I know Mr. Mitchell likes not to use -- not use general --

A They owed my brother and myself -- Ramiro -- and the Farm and Ranch Supply --

Q Who is "they" that owes you the money? Who is "they"?

A George Parr and Archer Parr were using this water well rig to drill water, irrigation wells on their farms.

Q And what year were they using this water well drilling rig to drill wells on their ranch?

A They took this rig back in the '60's, Mr. Odam, and to this very day, we have not received the rig back.

Q So, in 1971, it's your testimony you think they were drilling water wells out with this particular water well drilling rig in 1971?

A They had the rig. I was not at the ranch. I cannot tell you what they were doing with the rig. The rig was finally used to a point of no returning, you might say, and it had been sent over to some kind of a iron works or something over in Victoria for repairs.

Q All right. What's the connection between the Parrs now and Mr. Couling on this water well drilling rig?

A The rig was rented through the Benavides Implement and Hardware Company.

Q When would that be?

A At the time I never used it. I was supposed to -- we were asking for money, or we were asking for the return of the water well rig.

Q What date was that? Would this be 1971?

A That would -- it would be around that time, because there were several transactions regarding either getting paid or getting water well rig from those people.

Q You agree the water well drilling rig is on the Depreciation Schedule of Farm and Ranch Supply?

A Yes, sir.

Q Can you explain to me, please, sir, why that Farm and Ranch Supply would buy a water well drilling rig and rent it to Benavides Implement and Hardware and would turn around and rent it to George Parr? Why wouldn't Farm and Ranch do it

straight to George Parr?

A The water rig was originally rented to Duval County.

Q What year was that?

A Back in the '60's. And George Parr and Archer Parr just took that equipment like they took the rest of the County equipment and started using it for their own use and benefit. And it was over there on their place.

Q Benavides Implement and Hardware got involved in this --

A In order for us to get paid, Mr. Parr would use that vehicle to use County funds to pay for equipment that he was using for his own personal --

Q Well, in 1960, when did you acquire the water well drilling rig?

A Back in the '60's, I don't remember, sir. I think it was '63. But I'm not sure.

Q And how was it rented to the County then? How did the County use it then?

A They were drilling water wells for -- under this condemnation suits that they had, and there are a lot of ways -- County roads and State roads that were being built through the County.

Q And so your Farm and Ranch Supply was renting the water well drilling rig to the County in the 1960's?

A Yes.

Q Was Ramiro Carrillo the County Commissioner then?

A At the time when the water well rig first went out, Mr. Atlee Parr was County Commissioner.

Q When did Atlee Parr die? 1967?

A 1967.

Q And Ramiro Carrillo became County Commissioner in 1967?

A Yes, sir.

Q Was Farm and Ranch Supply still using -- renting the water well drilling rig to the County in 1968 after Ramiro became County Commissioner?

A The County had taken the water well rig, and Mr. Parr and Archer Parr by then were -- they had started a program between them that where they were going to clear and farm and irrigate I don't know how many thousands of acres of land, sir.

Q Would this have been 1968 that Parr started using it?

A Yes, sir. Back in those years.

Q And who negotiated with Mr. Couling for Farm and Ranch Supply to rent this water well drilling rig to Benavides Implement and Hardware? Who carried out that deal?

A I had had a conversation with Mr. Parr, and I had had a conversation also, and as I understand it, they were rented through Mr. Couling, and had a conversation with both of them.

Q Which Mr. Parr?

A George Parr.

Q The one that's dead?

A Yes, sir. That we needed to either get paid for that water well rig or we needed to get it returned, one of the two.

Q Well, my question was, when did you -- or who was it that negotiated with Benavides Implement and Hardware to get the water well drilling rig into their possession and started renting it through them?

A That was probably -- I don't have any personal knowledge of it, sir. I'm not going to speculate. I get in trouble when I do that.

Q Well, did you personally negotiate with Mr. Couling for this water well drilling rig to be rented through Benavides Implement --

A No, I was demanding payment both from Mr. Couling who was supposed to be handling the rental on it and through Mr. Parr. And we started getting paid for it.

Q Who was it -- was it Ramiro Carrillo that first negotiated with Rudolfo Couling for Benavides Implement and Hardware to start renting --

A Well, again, I have stated that, but I have no personal knowledge, sir, how it happened. I cannot tell you. All I know is that the equipment was there, and it was being used, and again we were having rental problems.

Q Do you recall that Mr. Rudolfo Couling didn't know a thing about these water well drilling rigs? It was his testimony that it came as a surprise, this story on Benavides Implement and Hardware having it?

A I recall that at first in the Judicial Qualifications Commission, he said that, and all of a sudden he made a slip and he said, "We were down there now looking for that water well rig where they were having it repaired" and Mr. Mitchell asked him, "Well, how come you didn't know that it existed, you didn't know you had it rented, what was it you were doing over in Alice and in Beeville, Texas, looking for that water well rig?"

Q What about the -- what kind of a contract or lease agreement do you have on this water well drilling rig between Benavides Implement and Hardware and Farm and Ranch?

A No, sir, we've never went into any of that.

Q Nothing in writing to support this story about leasing it to Benavides Implement and Hardware.

One final question, and you can do this while we take a break, Judge Carrillo, I would like for you to find on the chart the check for \$1,200.00, and with the Court's permission I would now turn to another subject after --

A What page is that, sir, the check?

Q This is the check on 6/21/71, so it would be on the chart on that particular date, 6/21/71.

MR. MITCHELL: It would be 1555, and it's Check Number 131. Is that correct, John?

MR. ODAM: This is the one that appears on the chart at the bottom of the first page, that's right, Check Number 131.

You can mark that, Judge Carrillo, on the bottom of Page 1555, there's a check to you for \$1,200.00. That's E-155.

And, with that, your Honor, I will turn to another matter.

SENATOR AIKIN: I suggest we take a 10 minute break until 10:30.

THE PRESIDING OFFICER: The Senator from Lamar moves we take a recess until 10:30.

Is there objection?

So ordered.

Accordingly, the Senate, sitting as a Court of Impeachment, at 10:20 o'clock a.m. took recess until 10:30 o'clock a.m.

AFTER RECESS

The President called the Court to order at 10:30 o'clock a.m.

CROSS EXAMINATION RESUMED

(Questions by Mr. Odam:)

Q Judge Carrillo, I refer back to that check on Page 882.

A All right. Now, what page was that on, Mr. --

Q Page 882, a check to you for \$1,200.00 from Mr. Couling?

MR. MITCHELL: That's in Volume Two, Judge Carrillo.

THE WITNES: Yes, sir.

Q On the left-hand side of the sheet, what are the signatures there?

A O. P. Carrillo, Jose H. Saenz.

Q Jose Saenz?

A Yes, sir.

Q Jose Saenz, is he the gentleman that I called as a witness down in Corpus Christi?

A Yes, sir.

Q Is he the gentleman that you called as a witness in Corpus Christi?

A Yes, sir.

Q Do you recall his testimony?

A Yes, sir.

Q Why would his name appear on this particular check?

A I have no recollection of why, sir.

Q You have no recollection of why Mr. Saenz' name would be on a \$1,200.00 check?

A No, sir.

Q What does the teller stamp indicate on the front of the check?

A Teller No. 1, sir.

Q Yes, sir, what does that mean?

A I don't know, sir.

MR. MITCHELL: Only if you know, Judge Carrillo, don't speculate.

A Well, I don't know.

Q Once the check was written out do you know whether or not that stamp indicates that you actually cashed the check and got \$1,200.00 in cash?

A No, sir, I don't know -- I don't have any -- I don't know, that's a banking practice.

Q So, you don't know why Jose Saenz' name would be on the back of the \$1,200.00 check?

A I don't have any recollection of it, sir, of the transaction.

Q I understand your testimony that this was actually not a loan, but this was some of this rent that Mr. Couling had collected for having rented the water well drilling rig to George Parr, right?

A It was an advance -- I guess it was considered a loan in the effect that when the total amount of the rental was paid this money would be deducted and paid back to Mr. Couling.

Q But you can't understand why -- you remember that, but you don't understand why Mr. Saenz' name would appear on the back of that check?

A No, I don't.

Q And you don't know anything about Mr. Couling, except that for a fact you think that he rented this water well drilling rig to George Parr, who's now deceased?

A Mr. Couling was making the payments, what small amount of payments were made on the rental of the water well rig to me, shown by this --

Q Check that says loan on it?

A Well, this check that appears here.

Q Okay. Let's take another check. We have already marked that on the chart, \$1,200.00. Let's turn to Page 883. This is the one where, according to your testimony, you sold the store counter. I don't want to dwell on that subject.

MR. MITCHELL: According to the recital on the check, Counsel, not just testimony.

Q Well, as you know, there's a conflict of whether or not he in fact bought a store counter, according to Mr. Couling's testimony. I will rephrase the question, Judge Carrillo, referring to Page 883. Do you see the check there?

A Yes, sir.

Q And can you tell us the amount and what the notation is on the check?

A Checks in the amount of \$1,000.00 it says "store counter from O. P. Carrillo drugstore."

Q And the date of that check?

A 6/20/71.

Q Now, I don't want to dwell on this, this is one that Mr. Doyle asked you about the other day, selling this \$1,000.00 store counter for \$1,000.00 in May of 1971. However, I would like for you to refer to the chart and let's mark that on the chart. This is the one -- the check is dated May 20th, 1971, this appears on the first page, Page 1555?

A I have 1555.

Q Do you see the check in the middle of the page 5/20/71 date, check to you for \$1,000.00?

A Yes, sir.

Q Now, as I understand our chart now, on that page we have got a \$1,008.00 check to you, got a \$1,000.00 check to you. We've got a \$1,200.00 check to you, turn the page, we've accounted to the next check to you for \$982.00 -- strike that, we haven't gotten to that one yet. The one at the bottom of the page \$1,018.00. The next one we

will come to, Judge Carrillo, is the one on Page 884. You identify your signature on the back of that check, do you not, Page 884, the check to you?

A Yes, sir.

Q Now, this check --

MR. MITCHELL: Excuse me, Counsel, I don't believe he answered the question. Did you hear the question, Judge Carrillo?

THE WITNESS: Have I located Page 884 and I said yes.

MR. MITCHELL: No, he asked you -- the question prior to that was that your signature on the back of the check as it appears on 884. I don't know whether you answered it, I didn't recall hearing it.

A What is shown here on Page 884, "for deposit only, O. P. Carrillo", that is my signature, sir.

Q Okay. Now, that check for \$982.00 -- this is the tubing that you sold to Mr. Couling?

A Yes, sir.

Q And what kind of tubing was this?

A Tubing.

Q I know, is it oil well tubing, is it water well tubing? Is it cast iron, steel, metal, plastic. What kind of tubing was it?

A We have several kinds of tubing there -- still have, as a matter of fact.

Q And what kind of tubing did you sell him for nearly \$1,000.00?

A I don't remember, except that we -- except that I sold him some tubing.

Q And do you know what Mr. Couling did with \$982.00 worth of tubing?

A Well, I know for one he built some large cattle pens at his ranch where he used tubing.

Q Did he use this tubing he bought from you for \$982.00?

A I don't know whether it's the same or not, but I know that he used quite a bit of tubing, because all of his cattle pens --

Q And this --

A -- at his ranch --

Q And this --

A -- are made out of tubing.

Q And this particular check for tubing, where is this tubing located? You say you have different types of tubing?

A I have it?

Q Yes, sir.

A I have it at the Farm and Ranch.

Q Oh, this tubing was also located at the Farm and Ranch.

A Yes, sir, it's out there on the yard.

Q So, you had \$982.00 for this?

A That's right.

Q And if I refer to Page 1556 could you mark that check, please, for \$982.00?

A I don't have a pen. Again, I have lost it. The gentleman that permitted me to borrow it took it back. All right, now, what page was that, Mr. Odam? Page 1556.

MR. ODAM: This is Volume Two, for the benefit of the Court.

A All right. I have located Page 1556.

Q And it's the first check to you on that page, 720 -- 721 -- 71 -- or strike that, 7271.

A Yes, sir.

Q And would you put out beside that E-157?

A All right, sir.

Q Now, you noticed Mr. Couling made a line from that check for \$982.00 -- he made a line over to a County check which appears back on the other page. There's a check from the County for \$982.65?

A Yes, sir.

Q Do you know anything about a connection between a County check for \$982.65 on 6/30/71 and a check to you at the first of next month -- well, that's three days later, for \$982.00? Do you know any connection there?

A No, sir.

Q Do you know whether or not the tubing could have been sold or rented or leased or loaned to the County?

A I delivered the tubing to Mr. Couling. What Mr. Couling did with it after that I don't know.

Q I understand. And Page 885 is the next check for \$267. This is the one that -- I know the previous testimony is that this is the one to pay for his share for all of these hunting supplies.

A Excuse me, before you start with your questions I would like to have the page and then be given time to locate the page.

Q I'm sorry.

A What page?

Q Page 885.

MR. ODAM: For the benefit of the Court I'm referring to Page 885 in Volume Two.

A Yes, sir.

Q And how much is that check for?

A \$267.00.

Q And it's your testimony that this check was to pay for Mr. Couling's portion of the groceries and beer for that hunting trip during the fall of 1971. Is that right?

A Yes, sir.

Q How many people went on that hunting trip?

A There were sixteen of us who had the hunting lease. And besides that we took friends with us and also those kids who were old enough to handle themselves or that the parents would like to take on a hunting trip with them.

Q As I understand you all would buy all of these groceries and supplies not for just one outing, but for a period of time. Is that right?

A Well, we would buy -- first of all, we hired a cook.

Q Uh-huh.

A And he was paid so much money. That was included, you know, in the expenses that was going to go into the kitchen part of it -- and buy the groceries.

Q Would each gentleman contribute an equal amount? I mean did each person--

A Yes.

Q -- contribute \$267.00?

A Yes, the total cost as to the groceries we bought, the expenses of the kitchen, the butane that had to go out there for the stove and everything and then it was divided up between the sixteen of us.

Q Well, if I rounded it off to \$300.00, which is rounding it off high -- but let's just do it -- if there were sixteen hunters at \$267.00 each -- I'm going to ask John Blanton to multiply that out for me. That would come to about \$4,200.00 worth of supplies you bought for the hunting trip. Is that right?

A Possibly so, sir.

Q \$4,200.00 worth of groceries?

A Yes, when you figure during the whole time you have sixteen hunters plus their families and friends, you're talking possibly about thirty or forty people, which would come to approximately \$100.00 apiece for a period of 45 days during the hunting season. And if you can get away with a \$100.00 per person for eating and drinking expenses during the hunting season you're doing pretty good.

Q Who were these other sixteen hunters that contributed \$267.00 each?

A All right. Let me try to remember them. There were sixteen of us. There was O. P. Carrillo.

Q O. P. and Ramiro Carrillo?

A Ramiro Carrillo, Vicente Chapa, Felipe Vallero, Luis Elizondo, Antonio Salinas, Juan Leal, Enrique Garcia, Arturo Zertuche --

Q Well, you mentioned a couple right there. How about Arturo Zertuche?

A Yes, sir.

MR. ODAM: Do you think if Mr. Arturo Zertuche -- when he is called as a witness for Mr. Mitchell, could you ask --

MR. MITCHELL: If I can pronounce that name I might get him up here, Mr. Odam.

MR. ODAM: Could you ask Arturo Zertuche to bring his canceled check for \$267.00?

MR. MITCHELL: Well, of course -- strike that. I will.

MR. ODAM: I'm sorry.

Q How about Hector Zertuche? Was he one of them?

A Hector Zertuche was a guest there. He used to go hunting. And George Zertuche, Jr., and -- you name it, and we had quite a few people over there.

Q How about George Zertuche? Was he part of the \$267.00?

A George Zertuche, Sr.?

Q Yes, sir.

A No, sir, he was not a part of it.

Q Well, I was just -- Luis Elizondo?

A Luis Elizondo and his two sons.

Q Well, the only one I recall that Mr. Mitchell had indicated might be called as a witness was Arturo Zertuche, and if -- I understand it might be hard to find a canceled check from those years back, but I would ask if Mr. Arturo Zertuche, when he is called as a witness, I would like to ask him if he could produce --

MR. ODAM: Mr. Mitchell, a check for \$267.00 for his share of the groceries for 1971.

MR. MITCHELL: It might be included in that one, John. I don't know. I will have to ask him, but I will make every effort.

Q Did Arturo's --

A If it would help matters any, sir, I believe there are two Zertuche -- both his share of the hunting lease and his share of the groceries were paid out of Zertuche General Store.

Q Okay.

MR. ODAM: Well, I will just ask if Mr. Arturo Zertuche could bring his payment for the groceries in November, 1971, the 267.00.
Let's move on to another one.

Q The chart, Judge Carrillo, on Page 1559, \$267.00? Do you find that on Page 1559?

A 1559; I have 1559, sir.

Q And could you mark E-158 beside the check to you for \$267.00?

A E-158?

Q Yes, sir.

Now, why would they make out a check to you for \$267.00? Would you be in charge of the trip?

A No, sir. Several of us carried out different chores.

Q I see.

A At one time or another. I didn't take care of paying for all of the groceries every year, or going down and taking the check to Mr. Finley for the lease at Callahan, or the transporting over the different things that had to be transported, and what have you. It was --

Q Well, I notice this check was paid over to Cash Store. Would you all go in and buy the \$4,000.00 worth of groceries all at the Cash Store, would you -

A It was our policy, sir, at the beginning -- a couple of weeks before the hunting season, to buy as much as we could, everything that we could -- and, all of the beer and all of the canned goods, and all of the whatever it was that we were going to take down there, and take it down and set up the kitchen and the camp, connect the electricity, connect the water, and do everything that had to be done so that when the hunting season came around, we could just move in there and start shooting.

Q All right. Let's -- do you have the one marked on Page 1559, that check for \$267.00? And, I believe, you have marked the check for \$995.00 to you. We have covered that one, right?

A Yes, sir.

Q Let's move down the page to the bottom of the page. Do you see a check to you for \$930.00?

A What page is that, sir?

Q This is Page 1559.

A I have Page 1559, sir.

Q Do you see the check for \$930.00? It's the very last entry on that page.

A Yes, sir. I see it now.

Q Out beside that would you put E-190-90?

A E --?

Q -- 190-90.

A -- 90; all right, sir.

Q I will ask you to turn over in this same volume to Page 1449?

A Yes, sir.

Q Do you have Page 1449?

A Yes, sir.

Q Do you see the check there made out to you for \$930.00?

A I see it, sir, but I can't make it out too well.

Q Now, this is a check, Judge -- that Mr. Mitchell did not discuss with you yesterday. I remember that he asked you a question, if you received any other checks and you thought that was all, and you weren't sure. I grant that. But, this check to you for \$930.00 from Benavides Implement and Hardware, what's this check for \$930.00 for?

A I can barely make out the check itself here, sir.

Q Okay.

MR. ODAM: I would ask the Clerk to pull, in the Series of E-190, the particular page which is subpart 90. It has no notation on it. That's probably not going to be much help.

The other side of the check says, "O. P. Carrillo, for deposit".

Q I am not saying that that's your signature. We will look at the check itself. But, what was the check for \$930.00 at the end of December, what was that for?

A I will have to look at the check, sir, first.

Q Okay. It's E-190-90.

MR. ODAM: For the benefit of the Court, the check itself appears on Page 1449. It's on the chart at Page 1559.

A I have the check, sir.

Q Okay. Looking at the check, can you tell us what -- or, tell the Senate, please, what the check from Benavides Implement and Hardware at the end of December, 1971 -- why did Mr. Couling write you out that check for \$930.00?

A Mr. Odam, the endorsement on this check is not my signature. It does say, "O. P. Carrillo, for deposit". It is not my handwriting or my signature.

Q I didn't think it was. Why did Mr. Couling write you out a check for \$930.00?

A I don't have any recollection of this check, sir.

Q You have no recollection at all?

A No, sir. If it -- I cannot speculate, sir.

Q Do you deny that it went into your bank account or you received the money?

A No, sir. I don't deny it; I don't confirm it. I don't know, sir. But, if it says for deposit I would imagine it did. I don't know, but it's not --

Q Okay.

A -- my endorsement on it.

Q Now, this completes the chart, Judge Carrillo on Page 1559. I will add these up a little bit later on, but I have got \$1,008.00 on the first page; \$1,000.00 -- that's \$2,008.00; \$1,200.00 at the bottom of that page. Skip over to the next page, on Page 1556, for benefit of the Court, a check for \$982.00; a check for \$1,018.00. And then, the next page is the \$700.00 check we discussed. The next page is the \$306.00 check we discussed; the next page, is the \$267.00; and the next one, \$995.00. Then this last one for \$930.00. That's all that I account for in 1971 that you received from Mr. Couling, most of which appear to be for this equipment rentals except for the ones which you don't know what they are for. Is that right? Like the \$930.00 and for the payment for this beer?

A That's a long question, Mr. Odam. Would you --

Q Okay. The check for \$1,008.00 -- let's go back to Page 1555 and we will summarize.

A All right, sir.

Q This is the one in April 16th, 1971.

A All right, sir.

Q That was for this equipment that Mr. Gonzalez rented to Mr. Couling for you. Right.

A Well, again, I will start having to look at the -- if we are going to go through it again, I will start having to look at the checks again.

Q Okay. Well, I don't want to do that. We will stand on what the testimony has been before about each one of them, and then --

MR. ODAM: Mr. Mitchell, I am going to ask Mr. Blanton to add up what the checks were for 1971, and you might want to do the same thing to check his arithmetic.

Governor Hobby, this completes the checks for 1971, and Senator Farabee indicated to me that he had a question when I got through with the checks for 1971.

THE PRESIDENT: The Senator from Wichita asks unanimous consent to suspend the necessary rules in order to allow a question to be propounded at this time rather than at the conclusion of direct and cross-examination. Is there objection?

MR. MITCHELL: No objection.

THE PRESIDENT: Judge Carrillo, where is the rental income received by you in 1971 from Duval County reported on your 1971 federal income tax return?

THE WITNESS: It is reported, sir, on the rental. Mr. O. D. Kirkland, my bookkeeper, has testified before. He understood the makeup of the federal income tax returns a little better. He has produced, and he has pointed out where the checks were deposited as rental and where they were carried on my income tax returns for those years as rentals, sir.

THE PRESIDENT: All right. Is your '71 income tax return -- is that in the documentation here?

THE WITNESS: I believe -- was that the one that we were looking for that was missing? We have located it, I believe, and we do have it for you all, sir.

THE PRESIDENT: What schedule is that? Is that Schedule C that the rental income is reported on?

MR. MITCHELL: No. The rental income, the testimony, Mr. President, revealed that Mr. Kirkland carried that as ordinary income, and his work papers are in the record showing where it --

THE PRESIDENT: What page, Mr. Mitchell?

MR. MITCHELL: Well, for the '71 return -- let me just go through here and pick those out.

The work papers, beginning at the beginning of Volume Three, Mr. President -- the work papers of the accountant -- and John, you might check me -- commence at 1079 and go forward.

Is that the work papers of Mr. Kirkland? That's behind the '71 return.

MR. ODAM: That's correct.

THE PRESIDENT: All right. Is the '71 return itself in evidence?

MR. MITCHELL: Yes, the '71 return is in the record. I think there was some question raised the other day about it not being here. It is in the record at Page 1080.

MR. ODAM: No. It was 1973 that is not in the record. Do you have -- is that 1973 you have?

MR. MITCHELL: Yes, I have all of them. I thought it was in the record. Let me check.

THE PRESIDENT: The 1970 --

MR. MITCHELL: In answer to the question, Mr. President, the work papers show, for the '71 return, as testified to by Mr. Kirkland who made them up and who was examined at length as to where those items -- where the input from these rental items were carried on his return, they appear at Page 1079 of Volume Three, 1080, 1081, 82, 83, 84, 85, 86, 88, 99, 1100, 1101, 1102, 1103, 4 and 5.

THE PRESIDENT: And Schedule E of the 1971 return appears at Page 1093. Judge Carrillo, did you have any written agreements, any written lease agreements for equipment either owned by you individually or as a partner in Farm and Ranch and leased to Benavides Implement and Hardware Company?

THE WITNESS: No, sir. Senator, I have testified to that. We were never entered into any written lease agreements. They would come -- as they needed the equipment, they would come and pick it up and take it, and return it and be billed as such for it.

THE PRESIDENT: All right, sir. Was there a bill of sale for the tubing or the counter that you sold?

THE WITNESS: There are the invoices that were going out from the Farm and Ranch to Benavides Implement and Hardware, sir, as far as I know. I did not have the actual running or the management of the store, and I couldn't point them out to you.

THE PRESIDENT: A question to Mr. Odam sent up by Senator Sherman. Is there a corresponding check from the County for \$930.00 for the check to Judge Carrillo, Number 229, at the bottom of Page 1559, Volume Three?

MR. ODAM: Senator Sherman, the check on the bottom of that page for \$930.00, there is not a corresponding check for \$930.00. I simply draw the Court's attention to the fact, on the opposite side of the entries from checks received from the

water district for \$612.00, school district checks. But, specifically, there was no check from the County or any other entity in that particular case for \$930.00. Only those checks as indicated on the left-hand side, as filled out by Mr. Couling.

THE PRESIDENT: Please proceed, Mr. Odam.

Q Judge Carrillo, in response to the question that Senator Farabee asked about the income tax return, do you recall the testimony --

MR. ODAM: And this is for the benefit of Senator Farabee, I believe, and for the Court.

Q -- that the rental income was picked up as the rent on the house because he didn't know what kind of income -- rent income it was so he just put it under "rent house"? Do you recall that testimony?

A It was shown, as I recall -- whatever the record reflects, that is what it is. I know that it was shown and reported as rental income.

Q Well, do you recall his testimony that he said that he didn't know what kind of rental income it was, so he just -- he didn't put it on -- he's not going to find it as we looked awhile ago on equipment rental on the 1971 income tax return, but that it was reported. He simply reported it as rent on buildings. Is that correct?

MR. MITCHELL: Excuse me, Counsel. I think that there were about five entries of rent, and only on one was the rental labeled "house rent" as versus the others that were labeled "rental of personal property". I asked him point-blank about that.

So, I think if you will frame your question within the constraints of that reality of Mr. Kirkland's testimony, I believe he will recall what you are asking him about.

Q Do you recall, then, that on the 1971 return, Mr. Kirkland did not set forth specifically rent on equipment, but that he did put down rent on personal property, and that is where it's picked up. Do you recall that testimony?

A Well, I remember that it is shown there as rental. I think it was even greater than what these checks here have shown. I think that it was approximately \$18,000.00 on rental for the year, or something like that. I forget.

Q Well, let me just show you --

MR. ODAM: For the benefit of the Court, I am referring to Page 1093 in 1971.

SENATOR SHERMAN: Mr. President.

THE PRESIDENT: Senator from Potter.

SENATOR SHERMAN: May I ask him, please, to direct us to the testimony of Mr. Kirkland in the record?

MR. MITCHELL: Yes, I was in the process of locating it, Senator. Then, I got caught in this other question. I thought I better listen.

I will try to get to it right away.

Q Judge Carrillo, you see --

THE PRESIDENT: Mr. Odam, excuse me just a minute. I have a follow up question from Senator Farabee.

Senator Farabee notes that he finds the work sheets for 1972 and '73, rental income. On what page is Duval County, or other rental income specifically shown for 1971?

Senator, I believe that's Page 1093.

MR. DOYLE: The work sheets for '71 start at Page 1079.

THE PRESIDENT: Yes. This is from Senator Farabee.

MR. ODAM: Senator Farabee, in the index, you will notice that the "E" Exhibits -- E-183 is the 1971 individual tax return, starting on Page 1087. And, immediately thereafter, Mr. Kirkland's work papers start E-183-A, "work papers of Oscar Kirkland for 1971 return of O. P. Carrillo." And those start on Page 1099.

Q Now, Judge Carrillo, looking at the 1971 income tax return, what are the types of rental income that you received that were reported in 1971?

A It says, "Rent houses, Corpus Christi; building, Benavides."

Q Any other rental income?

A No, I think that is reflected in the work papers, Mr. Odam.

MR. ODAM: Senator Farabee, as I recall the testimony, Mr. Kirkland testified, and his testimony is in there, that the checks that said "Rent" on them, he didn't know what kind of rent they were, so he put them down in this particular instance for 1971 as being the "Renthouse Corpus Christi", or he probably put down where it says, "Building, Benavides." Now, Mr. Mitchell referred earlier to personal property. There might be another return where he put it down as personal property.

MR. MITCHELL: And he followed the general policy throughout all the returns that where the source of income was not identified, he would always enter it as "Ordinary Income" without regards to whether there was a depreciation deduction against it or a depletion deduction against it. I think that was his testimony. where there was -- he followed that standard rule. Would you agree, Mr. Odam?

MR. ODAM: That's correct. If he didn't know what kind of income it was, generally speaking, except for some very specific examples, and you just have to read his testimony to see, I believe, Mr. Kirkland's testimony, where we went through several hours with him, and I guess we might be doing it again if Mr. Mitchell calls him. Generally speaking, if he didn't know what it was, he would throw it in if it was rent, for rental income here, or he would put in anything else that looked like income, he put down as legal fees. Just because he wanted to be sure that it was counted as being income, except that there were specific exceptions which we may get into. Does that answer the Senator's question?

Q Now, Judge Carrillo, this is in 1971 that I've been asking you questions about checks where you got a check for a certain amount of money?

A Yes, sir.

(Senator Doggett in Chair)

Q I direct your attention now, Judge Carrillo to Page 885 -- or, excuse me. Judge Carrillo, Senator Farabee has brought up the question about the work papers. I refer you first of all to the work papers on Page 1083. These are your income tax work papers. This is Page 1083.

A Yes, sir, I'm -- yes, sir.

Q Now, we keep referring to these as Mr. Kirkland's work papers. Would you agree with me that the particular papers here, as evidenced on Page 1083, there was a -- it's Mr. Kirkland's testimony that he did make some notations on the right-hand side like on Page 1083, but that the papers were actually prepared by someone else, do you recall that series of questions?

A Yes, sir.

Q Who actually prepared, if you know, this page on the left-hand side of where it says, "Pontiac Motor - Ramiro Carrillo," whose handwriting -- who actually gave him the work papers? Who figured up your work papers to give to him for your tax return?

A This is not in my handwriting with the exception of a couple of entries that I have on here, sir.

Q Well, do you know who -- do you recall who it was that supplied these papers and filled these out and kept your tax information or this information?

A No, sir.

Q -- on the First State Bank? But you recall -- the left-hand writing down the page on the lines, that's not Mr. Kirkland's? Do you agree with that? Mr. Kirkland's notations appear over the right of the check marks, et cetera?

A Well, the notation to the right are mine, sir, it says, "Refund, transfer, insurance," or "Check," or "Charge as income." That is my handwriting.

Q Well, let's take one of those, for example. Refer down to line 21 where it says, "Ramiro Carrillo," and Senator Farabee has asked about rental income, there is a check that says, "Ramiro Carrillo for \$1,016.00," and says, 'Rent' out beside it.

A Yes, sir.

Q Now, that the question has been raised, what kind of rental income was it that you received from Ramiro Carrillo?

A You will notice that they have some kind of notation there that was scratched out, whatever it was, and then there is a checkmark, and the writing on there of "Rent" appears to be Mr. O. D. Kirkland's handwriting. And I don't have any idea or recollection why Ramiro Carrillo would pay me that rent, but, evidently he did. If he used some of my equipment or something, he paid rent just like everybody else.

Q Well, the entry above where it says, "Ramiro Carrillo and Brothers" this would be the money that you received from that income trust that we referred to earlier?

A Beg your pardon?

Q It's the third entry down, says, "Ramiro Carrillo and Brothers, \$1,200.00"?

A Yes, sir.

Q Is this the money that you get from your part in the trust account?

A You will notice that is carried on as a transfer from Ramiro Carrillo and Brothers, of which I have a one-sixth interest into my account. And it would be -- the \$1,200.00, or whatever part thereof would have been reported on Ramiro Carrillo and Brothers' schedule.

Q I see.

A And we treated it as a transfer into my account.

Q What is this notation on "Pontiac Motor"? I think I am going to get into it in just a moment. Can you read the date there, that 1/14/72? That would be -- Yes, 1/14/72? Says "Pontiac Motor, \$319.45." What was that for?

A I can't --

MR. MITCHELL: What page is that on, please, John?

MR. ODAM: 1083.

A 1083? What line, sir?

Q Second one down, Pontiac Motor.

A \$314.45 refund.

Q Yes, sir.

A General Motors, you know, when you -- at that time you bought an automobile, you paid for it, and then they would send you back a refund if you bought a new automobile.

Q Okay. Well, now, they were discussing automobiles, I would like again to refer you to Volume Two of the Exhibits, Judge Carrillo.

And, for the benefit of the Court, we're now going to look at a series of Exhibits that appear on Page 823. It's in the green book, Volume Two, Page 823.

MR. MITCHELL: Excuse me. Mr. President, would it be appropriate at this point in line with the question put to me by the Court to point out that Mr. Kirkland's testimony appears in -- on Page 3342 of the Judicial Qualifications, and in this record at 2041, and it goes -- 2041. It continues for that Volume and picks up with the following Volume, O. D. Kirkland continued to Page 2103 of the Senate Journal, if it please the Court. And, if I could have the question put by the Court to me previously as regards

Mr. Kirkland's testimony, I will be glad during the noon recess to point it up. I will try to answer the question.

Q Judge Carrillo, did you have Page 823?

MR. ODAM: While he's doing that, I'll ask the Clerk to pull Exhibit E-85. Again, for the Court, while Judge Carrillo is finding it, we're going to Pages 823, 824, 825, 26, 27, 28, 29 and that Series.

A I have Page 823, sir.

Q For the benefit of the Court, can you describe what the item is, Judge Carrillo, on Page 823?

A It's a check "Benavides Implement and Hardware Company, \$5,625.00," signed "Jose Tovar," counter-signed "D. C. Chapa."

Q D. C. Chapa is your father?

A Yes.

Q He was president of the water board at that -- water district at that time?

A Yes, sir.

Q How much was that check for?

A \$5,625.00.

Q Can you identify what the item is on the opposite page, 824?

A Not from this photograph, photostat.

Q All right, sir.

MR. ODAM: I'll ask the Clerk to pull Exhibit E-85.

Q And as soon as he hands you that -- Judge Carrillo, while they're looking for E-85, let me ask you about E-84. Do you have any personal knowledge about this check from the water district to Benavides Implement and Hardware dated January 11 for \$5,625.00?

A No, sir.

Q Do you recall Mr. Couling's testimony that he didn't know anything about the invoices, that it was like this when the check came to him? Do you recall that testimony?

A No, sir.

Q Mr. Couling had testified that this check was brought to him either by you or Rogelio Guajardo. My question is, do you recall bringing this water district check to --

A I never brought this check to Mr. Couling.

Q Do you know whether or not Rogelio Guajardo, your nephew, brought him this water district check --

A I have no knowledge of it.

Q You have no knowledge of it?

A I have no knowledge of it.

Q Do you recall a conversation that you had with Mr. Couling where you told him the water district was going to buy you a station wagon?

A No, sir, I never had any conversation with Mr. Couling to that effect. Because that's not so.

Q Do you recall his testimony that you came to him and told him that George Parr had made arrangements for the water district to buy you a station wagon?

A He was talking about a station wagon. I don't remember exactly what it was that he said, but I know I never had any conversation with Mr. Couling or anybody else about that.

MR. ODAM: For the benefit of the Court, the check which is on Page E -- or the check which is on Page 824, the Clerk cannot find it right now. And what I'm going to do is to refer to testimony of Mr. Couling while they look for that, and we have another copy back in our office of this check. For some reason, it's not there, and that did not reproduce very well.

MR. MITCHELL: Is that the check payable to First National Bank?

MR. ODAM: That's right.

MR. MITCHELL: So, it's not to Judge Carrillo, as you can see.

MR. ODAM: That's right.

MR. MITCHELL: I think I recall that.

Q This is a check that was stamped, made out to the First State Bank and Trust in Rio Grande City, and I refer, Judge Carrillo, to Mr. Couling's testimony, which appeared in the Judicial Qualifications Commission around Page 3301. Do you recall Mr. Couling's testimony, while we're getting that out, that generally he stated that it was that he gave you a check which he signed, but it was stamped, "First State Bank and Trust," and later filled in for the amount of the principle of that station wagon and the interest on that station wagon? Do you recall that testimony?

A I don't remember -- I don't recall all of his testimony, Mr. Odam.

Q Well, if the Senate -- I call your attention to the Volume of testimony on December the 19th, starts in the Senate Journal on Page 1956.

MR. ODAM: Did you give him that testimony?

MR. MITCHELL: I gave him the Judicial Qualifications testimony that you referred to at -- what was the opening reference, John?

MR. ODAM: On Page 3301?

MR. MITCHELL: 3301. Yes, I had it. Yes, I handed him that testimony.

Q Again, the reason I refer to it now is because the check did not print out very clearly in the Senate Journal. Look across the page to 3304, Judge Carrillo. You see on 3304, I asked Mr. Couling, "Now, I show you, or you have in your hand there E-85, and I ask you to identify it." And Mr. Couling said, "That is the check, the First State Bank and Trust of San Diego, the First State Bank and Trust, Rio Grande City, \$5,725.34, R. M. Couling."

"Do you recall making the check out blank?" He said, "Yes."

"All right. You filled in the amount of money? Who filled in the amount of money?" And he goes on to explain there that this check, according to the testimony there, was a check that he put his name on the check, but he did not actually fill out the amount of \$5,725.34.

A As I read the answer here, sir, I said, "All right --" The question is, "All right. Who filled in the amount of money? Who filled in the amount of money?" And my answer is, "That is Mr. Couling's handwriting."

Q That's right. Now, my question to you, did this particular check that he filled out in his handwriting there for \$5,725.34, which is on Page 824, did that check go to pay on your station wagon over at the Rio Grande City Bank where you are a Director, to pay off the note?

A You will recall that I testified that I went to Mr. Couling and that I told him that I needed some money that was owed on that water well rig, but I had to take care of a note that I owed, and that I needed some money or I needed the rig, one of the two, and I was going to get them, and that I was -- and I was told that I would have some money shortly and they came out with this check.

Q That's right. Your testimony was that this particular check for \$5,725.34 was more of this rental payment on this water well drilling rig?

A That is correct, sir, because they owed us approximately \$20,000.00 or \$25,000.00 rental on that water well rig.

Q And who is "they" that owed you all this rental income?

A George Parr.

Q Who is deceased. And who else?

A And Archer Parr, who is not deceased.

Q Who's up in the federal penitentiary?

A That's right, sir.

Q So, George and Archer owed you all of this rental income for 1971 for using this water well?

A And they still had in their possession, the water well rig and I was demanding the money or the return of the water well rig. And they told me that I would have some money coming -- when you're saying that this money went to buy a station wagon that is not correct, sir, because the station wagon was bought sometime before and I had signed my own personal check to pay for that station wagon.

Q Yes, sir. And that check is in evidence, to M & R Motor Company, I believe?

A That is correct, sir.

Q So, you say they told you that you would get your money?

A Yes, that's right.

Q And who told you that specifically?

A George Parr told me -- I was complaining to both George Parr and Mr. Couling around this time about what we were going to have to do. The people -- the Farm and Ranch, my brother, Ramiro, were trying to do something about getting something done about this water well rig. And we weren't getting any results and I was finally pretty firm about it and I said, "Now, look, you all are doing pretty good with this thing, but we need our water well rig or we need our money, one of the two." And they said, "Well, don't worry, we will get you some money."

Q So, he said they would get you some money?

A Yes, sir.

Q Now, I will refer to the Chart, E-192.

A Which chart are you talking about?

Q I'm referring to the Chart on E-192 that began on Page 1557. Now, the check from the water district is January the 11th of 1972 to Benavides Implement and Hardware.

A I don't -- 1557.

MR. MITCHELL: No, that's not correct.

Q I would say go up to the top of Page 1560.

A Yes, sir.

Q Do you see the deposit into the bank account of Benavides Implement and Hardware of a check that says water district \$5,625.00?

A Yes, sir.

Q Now, out beside that, Judge Carrillo, if you have a pencil available, let's mark that Exhibit number -- that water district check is E-84.

MR. ODAM: And, again, for the benefit of the Senate I'm referring to the entry on Page 1560 of the Examiner's Exhibits. This is the check from the water district January 13th, 1972. And that is E-84, which appears on Page 823.

Q Do you have that marked, Judge Carrillo?

A Yes.

Q And do you see the line running down from the water district check?

A Yes.

Q Down to it says, First State Bank and Trust, \$5,725.34?

A Yes.

Q It says station wagon under there?

A Yes.

Q Do you recall the testimony -- it does not appear very clearly on there, but there's a notation on this check that says station wagon that was in Mr. Couling's handwriting?

A Yes.

Q Okay. And on that check there the First State Bank and Trust, 5725, out beside that would you put the Exhibit number there? That is Exhibit No. E-85.

A Yes.

Q Now, you said that Mr. Parr -- was it George or Archer Parr that told you that?

A **George.**

Q George Parr told you that. George Parr said that he had arranged for you to get all that back rent?

A Yes, sir. He said he would.

Q Now, there is this deposit of \$5,725.00 on the chart, correction \$5,625.00 -- I don't see any other large deposits, other than that water district check on January 13th. In late December, 1971, there are a bunch of small checks from the water district and the school district. And then there are all those checks of -- December 16th, 1971, that went to pay for the barbed wire. And my question to you: Is there any connection between George Parr getting that water district check that is here, deposited? Do you think he was responsible for getting this check from the water district?

A I don't have any personal knowledge of it, sir. There's different amounts, whether there was any connection to it or not, I don't know, except that after I talked

to Mr. Parr about paying the rental on that water well rig, Mr. Couling produced a check in this amount and he said, "We will still get you some more money later. We will get you all paid up. Don't worry."

Q And this is the check that's countersigned by your father, D. C. Chapa for \$5,600.00?

A Yes, sir.

Q Well, if George Parr said he was going to get you this money, all this rent, and you did get the money, but you don't know if there's any connecting length between the water district check signed by your father?

A No, I don't.

Q Do you recall Mr. Couling's testimony that he said that you said to him that George Parr was going to make arrangements to make payment on that station wagon? Do you recall that?

A No, sir, I never told Mr. Couling anything.

Q No, no. Well --

A I never talked to Mr. Couling about my station wagon or anything else like that, sir.

Q Why did he put a notation on it in his own handwriting, station wagon?

A Well, as a matter of fact, Mr. Couling said that the station wagon notation on there is not his, he doesn't know who put it on there.

Q Okay. So, the sum and substance of your testimony about this is you don't know why the water district paid Mr. Couling \$5,600.00 and you don't know of any connection between that check for \$5,600.00 and the check that he wrote out to you for -- made out to the bank to pay on that note? There's no connection as far as you know?

A I'm not saying there's no connection. I don't know of any and I can't tell you -- I don't think it's any secret, however, that Mr. Parr ran things pretty well the way he wanted. And he got funds out of whatever he wanted them whenever he wanted them.

Q Well, did you think that -- did you ever have a conversation with your father about needing money to make that note payment on the station wagon?

A Mr. Odam, the day I graduated from law school my dad said, "You're on your own." And I have never had any conversations with him about any money. When I am short of money, I am short of money and that's it.

Q So, you didn't talk to him about the water district check?

A No, sir.

Q You called D. C. Chapa as a witness down in Corpus Christi, is that correct?

A Yes, sir.

Q Do you recall his testimony?

A Yes, sir.

Q Now, the only -- we have covered the -- all of the checks in 1971, we have covered the station wagon payment -- again, not your testimony, but the testimony of Mr. Couling. By the way, on the station wagon payment, on Page 825.

A Yes, sir.

Q On Page 825 you will agree that that is a copy of your note card on that loan you got to pay for the station wagon?

A Again, we need the original here, sir, the copy is --

Q And, also, Mr. Doyle will hand you the items that appear on Page 826, that do not reproduce very well. First of all the item on Page 825. Do you agree that that is a note card from the First State Bank and Trust on your note payment on that station wagon?

A That is a deposit to O. P. Carrillo on a note of \$2,650.00 at the First State Bank and Trust Company.

Q Are you looking at E-86, the large sheet?

A That's the one that Mr. Doyle gave me, yes.

Q Well, look at E-86, first of all. It's out there on the railing, I believe.

A E-86?

Q Yes, sir. Will you identify for the Court what E-86 is?

A E-86 is liability ledger, First State Bank and Trust Company, Rio Grande City, O. P. Carrillo.

Q Does this evidence the note you took out for the station wagon?

A It has the note there, fifty-six fifty.

Q Now, the items you just had in your hand, those are marked by E-87, the small piece of paper there upon the book there, Judge Carrillo, there by your left hand?

A Yes, sir.

Q Would you refer to those? And, again, your testimony was that that is a payment -- I believe it's E-87 -- evidences the payment on the note for \$5,650.00?

A No, this is a deposit to the First State Bank and Trust Company.

Q And what does it say on the deposit? Does that indicate --

A Note fifty-six fifty?

Q Note fifty-six fifty.

A Yes, sir.

Q Was that a deposit to pay on your note for fifty-six fifty?

A That was a deposit in November of 1971.

Q Okay. Then you have the check there that you paid to M & R Motors for the Pontiac?

A There's a check where I paid M & R Motor Company \$5,631.00, I believe it was, for --

Q And I'll ask Mr. Doyle to hand you page -- what is on Page 827 and it's Examiner's Exhibits E-88 that I introduced down in Corpus Christi and ask you to identify the bank photostat copy of Item E-88.

A E-88 is First State Bank of San Diego, Benavides Implement and Hardware Company, January 13th, 1972, \$5,625.00 -- deposit.

Q Well, again, it's your testimony that there's no connection, as far as you know, between the water district check, which appears in the Exhibits as --

A I have no personal knowledge of any, there might be some connection. I don't have any personal knowledge and I'm not going to speculate on it.

Q And who would we have -- who/could testify as to this transaction with regard to the checks? D. C. Chapa? Could he testify with regards to the water district check?

A I guess he could.

Q Jose Tovar?

A Mr. Tovar is dead.

Q Oh, he is. But, D. C. Chapa could testify to it?

A Yes, sir, he's dead, you knew that.

Q I'm sorry, I don't know Jose Tovar. I didn't mean to act surprised, I just don't know Jose Tovar. So, D. C. Chapa could testify to it?

A Yes.

Q Or Rudolfo Couling could testify to it?

A If you can believe him he can testify.

Q Well, you know I believe him.

A I beg your pardon?

Q You know I believe him.

A You know you believe him?

Q That's correct.

A That's great.

Q That's right. On Page 830, Exhibit E-90.

A 830 -- yes, sir.

Q That is the papers evidencing the title of the station wagon to you? Is that correct?

A Yes.

Q Now, Judge Carrillo, I think that covers all the checks in 1971. That covers the check from the water district and the checks to pay for the station wagon or to make the payment of the note on the station wagon in 1972, January, 1972. Now, Judge Carrillo, I would like for you to refer back -- we're going to move into 1972 as to some other checks you got, some of which were covered by Mr. Mitchell and some were not. And on the chart and for the benefit of the Court I'm referring to Volume Two of the Examiner's Exhibits. It's Page 1560, 1560. And I will wait until you get to that, Judge Carrillo, Page 1560.

A Yes, sir.

Q Now, you see the entry there on January 4th, 1972?

A Where is that, sir?

Q January the 4th, 1972. It's the second check down.

A 1560?

Q Yes, sir, 1560, second column over checks paid out, January 4, 1972.

A Oh, yes, sir.

Q And what is that amount of the check to you?

A \$77.00.

Q And there's a line going over to an entry in the bank account of \$77.06. He does not indicate the source of that money.

Now, Judge Carrillo, I'm going to ask you to turn to Page 1043 to look at that check. And this is in the same volume -- well, strike that, it's not in the same volume. It's at the end of Volume Two, Page 1043. I don't believe Mr. Mitchell covered this particular check with you.

A Yes, sir.

Q This is January 4th, 1972. And could you describe to the Court what this check is?

A I don't have any recollection whatsoever.

Q Well, first of all, the amount of money and who it is made out to, et cetera?

A The check is "O. P. Carrillo", signed Benavides Implement and Hardware Company, R. M. Couling, for \$77.00 and I don't know -- I don't have any special recollection of that \$7,700.00 check -- I mean, \$77.00 check.

Q You don't know why Mr. Couling would have written out a check to you for \$77.00?

MR. MITCHELL: Excuse me, Counsel. Maybe I can assist. If you will look on that back side of it, it's one of those Cash Store, Abel Yzaguirre.

Perhaps that will help your recollection, Judge.

Q Okay. Turn it over and let's -- maybe that will refresh your recollection to look on that back of the check?

A Yes, sir. That check was paid over to the Cash Store, and it's -- I cannot speculate. It is right at the hunting season also. It might have been for that. I don't know.

Q Could this be -- now, the last check in November to pay for the hunting supplies was \$267.00. Do you think maybe he added on another \$77.00 to pay for more hunting supplies?

A It might have been so. I don't know. I don't have any recollection whatsoever, and it was paid over to Cash Store. And, I am sure that if this check had been meant -- going to me, I would have deposited it because that is my rule, to deposit all checks.

Q You don't know -- it does not indicate on the chart what the --

A It does not indicate where Mr. Couling got the money except that he wrote out a check to me for \$77.00 and I paid it over to the Cash Store.

Q All right. He got a check for \$77.00 and he wrote a check to you for \$77.00? He got a check for \$77.06.

Now, Judge Carrillo, back on the chart, and we are going to pick this one up on the chart on Page 1560. Would you mark the notation beside that check for \$77.00 that that is E-177 that you just looked at?

A Just a moment, sir.

Q I'm sorry; E-178.

A All right, sir.

Q Now --

MR. MITCHELL: No.

MR. ODAM: I apologize. It is E-177.

MR. MITCHELL: And the notation on 1560 beyond -- beside R. Ramirez is incorrect. That should probably come out. Would you agree?

MR. ODAM: Yes. Where it says R. Ramirez, where it says E-177, that should be out beside where it says "O. P. Carrillo".

A It's E-177, then?

Q Yes, sir.

A I need an eraser. I had already written down E-178.

Q All right. E-177.
Now, the next check down, Judge Carrillo, you follow down on the chart --

A Just a moment, please, sir.

Q All right, sir.
The next check that is on the chart made out to you is on January the 17th, 1972. Would you please find that check?

A 1/17/72?

Q Yes, sir. Now, it already has beside it the notation "E-178". Is that correct?

A Yes, sir. Now, going back to the check, I would like you to look at it and tell us why he made out the check to you for \$900.00?

A I would have to see the check.

Q Yes, sir. It's on Page 1045 in Volume Two.

MR. ODAM: Again, for the benefit of the Court, we are in Volume Two. The check to Judge Carrillo is on Page 1045. This is E-178. It pertains to the chart on Page 1560.

A "O. P. Carrillo, \$900.00, hay for resale."

Q And could you tell us, in your own words, why, Judge Carrillo, that Mr. Couling would buy \$900.00 worth of hay from you?

A For resale.

Q Do you know who he sold \$900.00 worth of hay to?

A People there. They are looking for hay everyday. As a matter of fact, I had a phone call last night, people looking for hay.

Q Sir?

A People are looking for hay around this time. Like I say, as a matter of fact, just last night, I had a telephone call over here in Austin from back home, people looking for hay.

Q Well, now, this check is in January of 1972?

A Yes.

Q So, you sold \$900.00 worth of hay to Benavides Implement and Hardware?

A To Mr. Couling.

Q Oh. To Mr. Couling.
Do you know who he resold the hay to?

A No, sir.

Q Why would he buy the hay to resell? Why wouldn't you, just like you say, why wouldn't you sell it yourself rather than resell through him?

A I don't know whether he had it for resale or took it to use himself, he had some cattle, or what he did, he bought some hay from me.

Q Well, as Mr. Mitchell said earlier, if we are going to rely on what the notation on the check itself says, "Hay for resale" --

A All right, sir.

Q And assuming that he did buy it to resell it to somebody, my question to you is why would you sell the hay to him, and he turn around and sell it to someone else? Why wouldn't you make the sale directly?

A He has his customers, and I have my customers. And, I have hay and it's for sale and for me also.

Q Is that an unusually large amount of money to pay for hay? \$900.00?

I am not in the hay business. I don't know anything about it. It sounds like a bunch of hay to me.

A No. It sounds like a bunch of hay to you because you are not from down in the country where hay is needed, but \$900.00 does not buy too much hay. As a matter of fact, it would probably buy around 600 -- 600 bales of hay, at the most. Maybe even less.

Q Now, I notice that Mr. Couling, on this chart, when he testified, had drawn a line on there. I haven't added those up. Looks like he has a line, \$900.00, going across to a County check for \$237.00, "County check", and a line for \$365.00, and then a line up to \$180.00--

A I don't know where -- what page is that, sir?

Q Page 1560.

A Yes, sir. I have the page.

Q Okay. On Page 1560, do you see the line from the check to you for \$900.00? It looks like it connects with the check from the County for \$237.87, and it connects with another unidentified check for \$180.80, and another County check for \$365.46?

A Yes, sir. I notice he is connecting everything there. I don't know what it means.

Q So, you don't know if there is any connection between those County checks and the \$900.00 worth of hay that you sold to him to resell?

A No, sir, I don't.

Q Do you have any kind of bill of goods, or any kind of invoice -- I think one of the Senators asked you about this earlier -- anything other than the documentation of the check to evidence your sale of \$900.00 worth of hay to him?

A Whatever documentation we have with an invoice if it was worked through the store, and the cancelled checks. That is the documentation that we have, sir.

Q Well, was the \$900.00 worth of hay, was that sold through the Farm and Ranch Supply?

A I don't remember whether it was sold through the Farm and Ranch Supply -- by an invoice through the Farm and Ranch Supply or whether it was sold directly by me. The hay -- we have hay, and feed -- cattle feed. Like you say, if Mr. Gonzalez is to be believed, he has testified that we have cattle feed.

Q How about the hay? Did you personally deliver it to Mr. Couling? The \$900.00 worth of hay? Or, how did he get the hay?

A He got the hay. I sell the hay and he got the hay.

Q No. Did you personally deliver it to him? Did he go out to your ranch to get it? Did he go to Farm and Ranch, or do you know?

A No. He took delivery of the hay. I don't remember where he got it from.

Q You don't know where he got the hay?

A No, sir.

Q Now, Judge Carrillo, on the same page, there is a check -- I don't think Mr. Mitchell had covered this one either -- for \$997.00. This is on Page 15 --

A Just a moment. I had closed the book. What page was that?

Q Page 1560. The notation out beside it is "E-175".

A Yes, sir.

Q And I would ask you to turn in the Senate Journal, to Page 1039 to see a copy of that check. I would like to ask you what he wrote out that check for?

A I don't know. I would have to see the check.

Q Yes, sir. It's on Page 1039.

A Is that in Volume --

Q Volume Two.

A 1039? Yes, sir, I have it.

Q Okay. Could you describe the check that's on Page 1039?

A It says "February the 18th, 1972, O. P. Carrillo, \$997.00, Benavides Implement and Hardware Company, R. M. Couling".

Q Is there a notation as to what that check was for?

A No, sir.

Q On the back of the check, was it evidenced what happened to that check?

A It has "For deposit". It's somebody else's handwriting. That is not my handwriting.

Q Okay. Now, Judge Carrillo, why did Mr. Couling write out a check for \$997.00 to you on February the 13th of 1972?

A That check was deposited directly by Mr. Couling. I don't have any independent recollection of this check, sir.

Q So, you don't know what that check is for?

A It would have been for rental of equipment, but I don't have any recollection.

Q Oh. It would have been for rental of equipment?

A Yes, sir.

Q Okay. You will notice on the chart on Page 1060 -- I will wait until you get to that page -- I'm sorry; Page 1560?

A Yes, sir.

Q You notice on the chart, the check to you for \$997.00, and you will notice that across, there was a County check for \$997.00. Do you see that County check for \$997.00 entry on the chart?

A Yes, sir.

Q The question is, do you know of your own personal knowledge of any connection between the check that he received from Duval County for \$997.00 on

February the 18th and the check that he wrote out to you on February the 13th for \$997.00?

A You mean to say, he wrote out the check to me --

Q Before he got the County check?

A -- before he got the County check for that? No, sir. I don't know that there is any connection on that.

Q So, you don't know if there is any connection at all?

A Well, the check to me is five days before he got the check from the County.

Q I understand that.

A I don't see how there could be any connection, but I don't know.

Q Well, I'm sorry. The check on -- it goes through the line. It looks like February the 12th. I think the lines go through. It is on the same day. I'm sorry.

If you look back at the check itself -- it's on Page 1039. The check you read to me earlier was February the 18th. The check says February the 18th. Do you see that?

A Well, it looks like February the 13th. It could be February the 18th. I don't know.

At any rate, I don't have any personal knowledge of this connection whatsoever.

Q Well, the check on Page 1039, do you see that check?

A On Page 1039?

Q Yes, sir.

A That's Volume Two?

Q Yes, sir.

A Yes, sir.

Q What's the date on that check, then?

A February the 18th.

Q Okay. So, that check is February the 18th, and the County check is February the 18th. I'm sorry I misled you on the February the -- it looked like the 12th. The lines went through.

The County check is February the 18th for \$997.00. The check to you on February the 18th for \$997.00.

Again, I now ask the question, do you know if there is any connecting link between that County check and the check to you?

A No, I do not.

Q But you -- it's your testimony that this must be another one of those checks for rental of some of that equipment you have?

A As far as I know.

Q But it does not so indicate on the check as on some of the others, nor do you have anything to support it except that check itself. Is that right?

A I don't know whether there is an invoice at the Farm and Ranch Supply for this.

Q Okay. These two particular ones, "Hay for resale", and the check for \$997.00, were these picked up on your income tax return for 1972?

A The checks are deposited to my account, sir. They are picked up on my bank accounts.

Q Well, like this last check, you said --

A I mean, on my income tax return.

Q The one you said, "Hay for resale", we should be able to find that in the work papers from Mr. Couling -- excuse me; from Mr. Kirkland.

A Yes, sir.

Q And the check for \$997.00 -- I will look through the work papers and see if Mr. Kirkland made some notation on it.

A Yes, sir.

MR. ODAM: Your Honor, the next items I intend to go to are some other checks that Mr. Mitchell did not cover. Specifically, on Page 1561, a check for \$1,000.00. Then, I want to pick up another \$1,000.00 check on Page 1562. Then, I want to pick up the \$2,640.00 loan on Page 1565. After that, I want to go into the Massey-Ferguson, the bulldozers and the root plows on Page 1565.

SENATOR AIKIN: Do you want a break?

MR. ODAM: Yes, sir.

SENATOR AIKIN: I now move that the Senate stand adjourned -- recessed until 1:30 p.m.

THE PRESIDENT: The Senator from Lamar moves the Court take recess until 1:30. All in favor say "aye", those opposed, "no". The "ayes" have it, the Senate stands recessed until 1:30 o'clock p.m. today.

Accordingly, the Senate, sitting as a Court of Impeachment, at 11:58 o'clock p.m. took recess until 1:30 o'clock p.m. today.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 1:30 o'clock p.m.

SENATOR ANNOUNCED PRESENT

Senator Clower who had previously been recorded "Absent-excused" was announced "Present".

CROSS EXAMINATION RESUMED

(Questions by Mr. Odam:)

Q Judge Carrillo, you recall just before the noon break that we were examining checks that were made out to you from Benavides Implement and Hardware. Do you recall that line of questioning?

A Yes, sir.

Q I would like to take back up at that point, Judge Carrillo, and I refer you, please, sir, to the chart and I would like for you to turn to Volume Three, Page 1560.

A Yes, sir.

Q As you recall, right before the break, we covered the checks, the \$77.00 check on that page, the check on the station wagon and the check for \$900.00. We come down to the \$997.00 check which was, I believe, the last check that we were on right before the noon recess, you recall that?

A Yes, sir.

Q I would like to turn your attention and the Senate's attention to Page 1561 of Volume Three, Page 1561.

A Yes, sir.

Q Now, Judge Carrillo, I would like for you to look at the check that's dated 3/21/72.

A Yes, sir.

Q And I would like for you to turn over in this same Volume on Page 1122. Tell me when you come to Page 1122.

A Yes, sir.

Q And could you describe for the Court, please, the check that's marked E-186-1 at the top of that page?

A "March 21st, 1972, O. P. Carrillo, \$1,000.00, R. M. Couling."

Q Is there any description as to what purpose this check was issued?

A No, sir.

Q And the back of the check is shown there right below it, and would you agree that is not your signature?

A That is not my signature.

Q Can you explain to the Senate why Mr. Couling would write out a check to you in March of 1972 for \$1,000.00? I don't think we covered this the other day by Mr. Mitchell.

A Well, yes, sir, because Benavides Implement and Hardware Company owed me quite a bit of money. And it might have been in payment of that.

Q What did they owe you money for?

A For the rental on that water well rig.

Q Oh, this is another water well rig check?

A I am saying that -- why I would be getting money from Mr. Couling? Mr. Couling owed me -- Benavides Implement and Hardware owed me money, then, and they owe me money now. I don't know how I'm going to collect it, but they still owe me. They still owe me money. So, it would be your testimony that this \$1,000.00 is probably for the water well drilling rig?

A Well, the check is there. I don't see an invoice.

Q So, this is for payment on the water well drilling rig?

A I am saying that Mr. Couling -- the question was why Mr. Couling would be paying me money. Mr. Couling and Benavides Implement and Hardware Company owed us -- my brother, Ramiro and myself, and still owes quite a bit of money.

Q For the water well --

A And for the rental of the equipment and so forth.

Q Well, of the checks I've seen, some of the checks -- one check was for hay for resale, there were some checks for equipment rental, some checks for water well drilling rig, and I, you know, I just want to pin down for the purpose for which you think this check was issued -- which one of those three purposes?

A I cannot speculate other than to say that we were owed some money, and there were payments made from time to time.

Q So, this would then be a payment either for the water well drilling rig or for equipment rental?

A Well, I don't see the invoice what it was billed for.

Q So, you don't know what the check was for except that he owed you money?

A If you will show the invoice, that went with the check --

Q Is this an invoice from you to him or from Benavides Implement and Hardware to you or --

A Whichever way it was -- I did not manage the Farm and Ranch Supply. Cleofas Gonzalez was running the Farm and Ranch Supply. And evidently him and Mr. Couling had some kind of a deal going, and I can't explain this.

Q They had some kind of a deal going, and from that deal --

A It's very apparent they had something going.

Q Well, I know, and from that, you would get the money from the deal they had going --

A Well, no, they would use my equipment. They would use our properties, personal properties, they would use all of these things, and they -- they would put in bills or claims for eight or ten thousand dollars a month, and then come out and say, "Here, here is \$1,000.00. This is all you have coming," and that was it.

Q Could you describe for us, please, sir -- I'm not familiar with what a water well drilling rig is. Could you describe for me what it looks like, how big it is --

A Yes, sir.

Q I just don't know what one looks like.

A I am sorry, Mr. Odam. If you don't, I will try to educate you the best way that I can. A water well rig of course, is -- there are different types of water well rigs. This particular one is on a float. It has a tower -- it's an iron -- you know, big tower, and it will go up to, depending on the size of the rig, 20 to 30 feet. And then it will have what they call a barrel where you get your hoist, you know, and everything else, so that they can bring in the tubing that is going to go into the well. It has an electric plant in case it has to work at night, and it needs the electrical power to work. It has a motor, and an engine which powers the drilling mechanism which goes into the --

Q I've got a picture of it. Is it a rotary rig?

A Yes, sir, it goes in -- has different bits, you know, the bits have sort of three -- sort of jaws things, and it goes into the ground with the drill, and you need a water pump so they can be bringing the mud up, and --

Q Now, this particular water well -- I take it there was only one in question, is this one that you and Ramiro had purchased, and it's carried on the depreciation schedule of Farm and Ranch Supply --

A Yes, sir.

Q -- only one rig we are talking about?

A Yes, sir.

Q I would like you to go back to Page 1561 in the chart and tell me when you've come to Page 1561.

A Yes, sir. All right, sir.

Q And out beside that \$1,000.00 check we just looked at, would you put that Exhibit Number E-186-1, the one we've just looked at the check?

A Besides the \$1,000.00 check, you want what number, sir?

Q E-186-1, that's the check we just looked at.

A Yes, sir.

Q Now, I would like for you to turn the page -- now, this check was issued in, January, February, March. We turn over to April. And I would like to know what the next check for \$1,000.00 is for, the next month? This is the one that's already marked E-174. And if you look over at the check, it's on Page 1037. And I believe 1037 is at the very end of the other volume, Volume Two, Judge Carrillo, Page 1037. Tell me when you --

A Yes, sir.

Q Okay. You have Page 1037?

A Yes, sir.

Q And could you describe for the benefit of the Senate what the item is on Page 1037?

A It is a check made out to O. P. Carrillo, 4/14/72 for \$1,000.00 signed "Benavides Implement and Hardware Company, R. M. Couling."

Q And this had no notation as to what that check is for? For what purpose was this check issued?

A I would say the same answer that I just gave would apply. Sir, I will -- this check, I notice on the deposit, it is not endorsed by me, and it says, "For deposit," and that writing is not mine either, sir.

Q So, this would be for the equipment rentals or maybe for payment on that water well drilling rig?

A For money that was owed by Benavides Implement and Hardware Company to me or something like that.

Q Well, owed either for that water well drilling rig or some of this equipment rental?

A I don't think Mr. Couling, as kindhearted as he might seem to you, would be giving me any money or doing anything just because he liked me, sir.

Q So, this is money he owed you either for the water well drilling rig or for this equipment rental?

A Or equipment rental.

Q Okay.

A And you will notice now -- that is now the third check that comes out for a thousand dollars even where they have so dramatically stated that on the advice of myself and my brother we told them be sure not to make any checks for an even amount. And here now it happens -- and here's the third one.

Q Well, I believe that the testimony was those were ones where there were checks -- or where there are invoices made out to the County and there were invoices for a thousand eighteen, a thousand sixty-five, you notice on this particular one. And on the last one I've not tied any particular invoices to the County. It was their testimony on the invoices to the County, not to make the invoices to the County for exactly a thousand. And we have no invoices on these.

Now, my question again is: On this drilling rig you purchased this, I believe, in George West, Texas or do you know?

A Yes, sir.

Q And how was it moved, was it moved on a truck?

A It is moved by truck. There are two floats, one that carried the rig which was mounted on the float and another trailer which moved the drilling pipe and other equipment that went with the rig.

Q And what color is the rig?

A What color is the rig, right now?

Q Is it painted or was it black at that time?

A It was --

Q Painted silver perhaps?

A No, sir. It was -- I don't remember any particular color. It was just -- you know, rigs are -- it's pretty dirty work, you know, so I would say it was painted with mud.

Q Okay. Is it gasoline driven or diesel driven?

A Gasoline driven.

Q Who operated it?

A Mr. Luis Elizondo.

Q Now, the check we just covered was the one for \$1,000.00 for April. Now, we skip over to the last check we have on the chart and I refer you to Page 1565. This is on the chart on Volume Three, Page 1565.

A Yes, sir.

Q You notice there on the chart there's a check that says written September the 5th, 1972 for \$2,640.00 to you. Do you see that notation?

A Yes, sir.

Q Now, this check is on Page 1041. And Page 1041 is in Volume Two.

A Yes, sir.

Q And can you describe for the Court what this \$2,640.00 check from Mr. Couling -- describe this particular check for us, please?

A September 5, 1972, O. P. Carrillo, \$2,640.00, Benavides Implement and Hardware Company, loan, R. M. Couling.

Q Does that teller stamp number four, does that indicate cash of that check? Did you go to the bank and cash it?

A I don't know, sir.

Q You don't know if it was cashed or not?

A No, sir.

Q Well, explain for me, again, why Mr. Couling would loan you \$2,640.00? For what purpose did he loan you \$2,640.00.

A Again, my explanation would be the same the -- you know, they were trying to figure out how much money it was totally that they owed us. And they would give us this money and they were going to figure out how much money they owed us and pay us and they never did. That was Mr. Couling and George Parr.

Q Did you all -- who kept the books as to how much was being loaned or how much was being paid off on this rental? Who kept all of those books?

A Mr. Cleofas Gonzalez who was working together with Mr. Rudolfo Couling.

Q So, this is not actually a loan, but this is some kind of a rental payment on that water rig?

A On money that they owed us and still owe us for which now I think they have created a very nice vehicle to where I don't think we will ever see the money that they owe us and we will be very lucky if we end up getting our equipment back.

Q Did they ever send you a statement or a bill for any of this water well drilling rig business?

A Mr. Cleofas Gonzalez and Mr. Couling were working that out.

Q Judge Carrillo, as you recall from Judicial Qualifications I had all of these checks. And the first time I tried to go through these checks was to identify them by way of your signature. Do you recall that?

A Yes, sir.

Q And do you recall your testimony at that time?

A Yes, sir.

Q And what was that testimony?

A These checks were introduced late after I had testified, on the advice of my attorney I pled the Fifth Amendment.

Q And, I believe, that was on the series 174 through 178?

A Yes.

Q But now, I understand that this particular check to you is again payment on that water well drilling rig?

A Or for rental equipment, money that Benavides Implement and Hardware Company owed us.

Q Oh, this might not be for the water well drilling rig?

A It is for money that is owed by Couling and his company.

Q Well, I believe yesterday you testified to Mr. Mitchell that you thought it was for the drilling rig. I went back through during the lunch hour and just on this drilling rig where -- there is a check for \$1,200.00 that was marked loan that you said was payment on that drilling rig, then there was another check from the -- that went to pay on the station wagon that was due because of the amount of money they owed you on the water drilling rig, which was for \$5,725.00. And now we could possibly include the last two checks of \$1,000.00 each that might have gone for it or might have gone for equipment rental. And then the last check we have here is \$2,640.00. I totaled that up to be approximately nine thousand some-odd dollars that they're paying you for the water rig. Do you recall how much that water rig cost initially?

A I think it was about \$7,500.00.

Q \$7,500.00?

A For the rig as it was. Then, of course, it was fixed up and put together.

Q So, the last notation of any payment on the water well drilling rig would be this one here and September the 5th of 1972?

A I don't know.

Q Well, I mean the last one that I have found so far.

A That's what you show, but I don't know that it is or it isn't.

Q So, you believe in September 5th of 1972 that Mr. Couling had collected this from having rented it to George Parr or Archer Parr?

A I don't know how much he had collected, sir.

Q Well, I mean it was for when it was out on his ranch in 1972, being operated, I suppose.

A It was being taken back and forth between Mr. Parr and -- both Archer Parr and George Parr. And then all of a sudden it came to our attention that Archer Parr had made a deal with Mr. Lou Flournoy, who is a driller out of -- who owns a drilling company out of Alice and they were going to ship this water well rig to South America, I think it was to work over there.

Q You all's rig?

A Yes, sir. And when I found out I went over and I talked to Mr. Lou Flournoy and I talked to him, and I told him that the rig did not belong to Mr. Archer Parr and I stopped the shipment of that rig to South America. I told him it was ours and it was not for sale and it wasn't going to go.

Q When did that take place?

A I don't remember exactly when it happened, but it happened and Mr. Lou Flournoy is doing well and alive and he's over in Alice, Texas, sir.

Q Would it surprise you to learn that that water well drilling rig was not operational until after about 1967?

A Would it surprise me?

Q To learn that it was not used for any purpose after 1967?

A They were getting ready to ship that thing to South America and it was long after 1967. They worked it and they used it until they drilled the wells -- as a matter of fact, they weren't through with it --

Q Who operated the rig all the time it was being used? Luis Elizondo?

A No, sir, Luis Elizondo operated the rig when it started out. And then they got somebody else to operate it. I don't know what happened. They got complete and total control.

Q You say "they", you mean George and Archer?

A That's right, sir.

Q You don't know who they got to operate it after Luis Elizondo?

A No, sir, I don't.

Q Well, I would like to summarize this chart, if I could with you, Judge Carrillo. And turn back to Page 1555 and let me just be sure I have covered all of these notations. And, again, I call the Court's attention to Page 1555 in the Senate Journal.

I believe Mr. Couling stated that the store began more full-time operation in April of 1971. Let me check them off to be sure I have covered them all. We have the \$1,008.00 check to you in April of 1971, May of 1971 there's that \$1,000.00 check, in June of 1971 there's a \$1,200.00 check, in July of 1971 there's a \$982.00 check -- on the next page. At the latter part of July there's a \$1,018.00 check to you. That's the one that's E-155 that I had you mark. That's in July of 1971. I didn't see any in August -- come over to September. At the bottom of Page 1557 there's a \$700.00 check to you in September. The first of October there's a \$306.00 check to you. In November there's

the \$267.00 check to you, in November there's the \$995.00 check to you. In December there's a \$930.00 check to you.

Turn the page, in January of the next month there's a \$77.00 check to you. Then we have the \$5,700.00 payment on the station wagon.

MR. MITCHELL: You're talking about '72, aren't you, Counsel? I say, you're talking about, now, 1972.

MR. ODAM: Yes, sir.

Q January, '72 there's a \$5,700.00 check. In January of '72 there's a \$900.00 check. January -- the next month is February, is a \$997.00 check. February -- March, there's a \$1,000.00 check on Page 1561. April, there's a \$1,000.00 check on Page 1562. And then we drop off and don't have any more personal checks to you until we have the \$2,640.00 check in September of 1972.

Do you think I have covered them all. I think --

A I don't know, sir, whether you covered them all or not, but that's what's there.

Q Not including the check to pay on that station wagon I came to a total of -- a little over \$15,000.00. And if I'm incorrect on that I'm sure Mr. Mitchell will correct me. But I came to approximately \$15,000.00 in checks that were written out personally to you, which have been for such things, according to your testimony thus far as hay for resale, equipment rentals and payments on this water well drilling rig. Can you think of any other purpose I haven't covered?

A That's \$15,000.00 out of close to about \$400,000.00, sir?

Q Yes, sir.

A And I owned a third of that company, sir?

Q Well, I believe Mr. Couling said you were a silent partner in the company.

A For a third, if it's true, then I think I have been shortchanged. Don't you think so, sir?

Q Well, we're not counting -- and I don't want to take the Senate's time to go through all these checks to R. Carrillo and Brothers and to go through your income tax return on those. And I don't want to take the time of the Senate to go through all of the checks to Farm and Ranch Supply.

A Regardless of who they made the money with, if the company made \$400,000.00 and I'm a silent partner and I own a third of it I'm entitled to approximately a hundred and some-odd dollars.

Q Well, Judge Carrillo, you know that -- well, that's true. Maybe -- that's true.

MR. MITCHELL: Mr. President, may I instruct my client not to be argumentative?

THE WITNESS: I'm sorry, sir.

MR. MITCHELL: Don't argue with him, Judge Carrillo. Don't argue with him, Judge, you know better than that.

THE WITNESS: I won't argue with him.

Q So, you only got fifteen --

A I apologize.

Q -- \$15,000.00 all of that money?

A \$15,000.00, yes.

Q I would like to move now, Judge Carrillo, to the matter of all the equipment that we know for a fact did exist. There's a question in our minds as to whether or not this existed. There's a dispute as to his testimony. I think we can all agree that there were Caterpillars that existed and a Massey-Ferguson tractor that existed and a root plow that existed. I don't think there's any dispute about that.

MR. MITCHELL: Excuse me, Counsel, I do take exception to your remark, that we don't know about this other that existed --

MR. ODAM: What I mean is it's in dispute as to the existence.

MR. MITCHELL: Well, it's on his tax returns and I haven't heard any -- in fact, your own witness testified in Corpus Christi that he recalled the water well rig distinctly. Is that what you had reference to when you said it did not exist?

MR. ODAM: The dispute is to whether or not this equipment -- what I refer to is whether or not this equipment was actually rented to the county.

MR. MITCHELL: I don't want to quarrel with you, Counsel. I just thought maybe you made an editorial remark.

MR. ODAM: I'm sure I did make an editorial remark. I tried to get one by.

Q Judge Carrillo, I will direct your attention now to the Rio Grande City bank account. Mr. Couling said that you went over and actually set up that bank account. Do you deny that?

A Yes, sir.

Q And he said that you brought over the cards for him to fill out. Do you deny that?

A Yes, sir.

Q I will direct your attention and ask the Clerk to hand to you the Exhibit which has been marked E-172. Clerk, would you hand this to him? E-172.

MR. ODAM: And for the benefit of the Senate this appears on Page 939 of Volume Two.

A Yes, sir.

Q And can you describe for the Court, please, sir, what is that item on that page, it didn't reproduce too well on the Senate Journal copy.

MR. MITCHELL: Excuse me, John, I haven't caught up with you. What page are you on, please?

MR. ODAM: Page 939.

MR. MITCHELL: E-172. Thank you.

Q Can you describe, Judge Carrillo, what is that item on Page 939?

A Let me get that. I was looking at the E-172(1). What page was that, sir?

Q Page 939.

A All right. It is a check on First State Bank and Trust Company, dated November, 1972, Massey-Ferguson Credit Corporation, \$2,775.00, Benavides Implement and Hardware Company, R. M. Couling, payment.

Q And the check was in what amount? How much is that check for?

A It seems to read -- it's very poorly reproduced. It seems to read \$2,775.00.

Q \$2,775.00? And if you'll set that aside, I'd like for you to turn to the Respondent's Exhibit, which you admitted down in the Judicial Qualifications hearing. That's the gold book and I'd like you to turn to Page 692. The gold book. The gold pages, the one on the right over there.

A 692?

Q Yes, sir.

A Yes, sir.

Q Now, what are these pages you admitted into evidence down in Corpus Christi? Can you explain what R-74 is?

A R-74 is a retail purchase order, Nueces Farm Center, Robstown, Texas, O. P. Carrillo, Drawer S, Benavides, Texas, for one diesel tractor in the amount of \$13,714.26.

Q If you turn over to Page 695, one page over, it's the retail installment contract and security agreement that you admitted into evidence down there.

A Yes, sir.

Q What are the due dates for payments on this Massey-Ferguson tractor? I'm looking in the middle of the page.

A The payments were September 1st, 1970, September 1st, 1971, and September 1st, one nine one seven, and the rest is not -- is blocked out, sir.

Q Well, the contract is on -- it says O. P. Carrillo, Drawer S, Benavides, Texas

--

A Yes, sir.

Q -- your Massey-Ferguson. Would you agree with me that maybe that is September, '70, due date, September, '71, due date, and the last one is September, '72 due date. Would you think that would be logical, three years in a row?

A It may be logical, but it doesn't show it, sir --

Q It has a blank space through it?

A Yes, sir.

Q Now, the contract says Drawer S. I take that to be -- what is that?

A That's my address.

Q Your address?

A Yes, sir.

Q I believe Mr. Mitchell asked you why that Drawer S was on the Benavides Implement and Hardware contract on the Caterpillars the other day, is that correct?

A Yes, sir.

Q And you stated that was because the contract had been destroyed.

A No. I said we changed the contract. I had bought one bulldozer. And the payments on it were for \$1,000.00 a month.

Q Okay. Let me -- okay. There was a Drawer S on the Benavides Implement and Hardware contracts also?

A Yes.

Q I'll get to that in sequence later on. Now, this Massey-Ferguson payment was due September 1st of what appears to be 1972 for \$2,932.00. If you don't have one, I wonder if Mr. Mitchell will hand you -- the pink volume, which is not admitted copy of the Judicial Qualifications record. And I refer to the next to the last page. And for the benefit of the Senate, I'm referring to Page 145, in the pink volume, Examiner's Exhibits Not Admitted. Has he given that to you? Do you have the pink volume?

A I don't have one.

Q Judge Carrillo, the -- do you have Page 145?

A Yes, sir.

Q Now, this is a letter addressed to you, is that correct?

A Yes, sir.

Q And could you read to the Court, please, sir, just the first paragraph for the benefit of those Senators who might not have a volume before them.

A Says the Benavides Implement and Hardware Company check in the amount of \$2,975.25 going to First State Bank and Trust Company and dated October 18, 1972, has been returned to us unpaid marked unable to locate account.

Q Now, could you explain, please, that sentence, why -- apparently the Massey-Ferguson people received a check in the amount of \$2,975.00 drawn on Benavides Implement and Hardware that date. Could you explain why they would have received a check drawn on Benavides Implement and Hardware on that date?

A No, sir, Mr. Odam, and I think I've explained to you I have absolutely and completely no recollection of this transaction whatsoever.

Q So they returned that check that was dated October the 18th of 1972. And then I refer to the check on Page 172 -- or the check which is 172-1. What was the date of this Xeroxed copy you have there before you on the Massey-Ferguson check?

A The gentleman took it back.

Q Just give me the date and the amount of that check, the second one.

A November, 1972.

Q November the what?

A It doesn't show. It's a very bad reproduction.

Q Okay. November, 1972. And the amount of that check to Massey-Ferguson?

A It seems to read \$2,775.00. I'm not -- it's a very poor reproduction.

Q Could it be \$2,975.00? The reason I ask is this letter says that they sent back the check for \$2,975.00 in October, and that check's in November.

A See, that's --

Q Is it written out there --

A There's -- you're talking about a check in October, that the letter is talking about. And we're talking about a check in November over here.

Q Right, and that's -- I'm asking about the November check. Does it have written out there in longhand how much that check was for?

A \$2,975.25.

Q Now, and this is the first check that appeared on the bank statement of Rio Grande City Bank. And my question, Judge Carrillo, can you explain to me why Mr. Couling, who signed this check, would have been writing out a check on the Rio Grande

City Bank for \$2,975.00 to Massey-Ferguson? Is it to pay on this note payment that was due there?

A I have -- on several occasions, Mr. Odam, you questioned me about this particular item, and I have always told you, and I am telling you again I wish I could answer your question. I have absolutely and completely no recollection of this incident or transaction whatsoever, and I cannot enlighten you on it.

Q Well, can you just tell me is this particular check in payment on your Massey-Ferguson, one of these we looked at --

A I cannot tell you that because I don't know it, and I'm under oath here to tell you the truth, and I want to --

Q Well, do you have any evidence that you could give the Senate that you personally paid this payment that was due September of 1972?

A I don't know. We'll have to look. Would be surprised --

Q If you could come up with a check written out to Massey-Ferguson about this time to make that payment.

A Yes, sir, I will produce it.

Q Again, you recall the testimony of Mr. Couling that one of the reasons the account was set up and the first payment made out of it was to pay on this Massey-Ferguson tractor, one of your payments. Do you recall that?

A I recall the testimony. I don't agree with it.

Q Well, I understand. All right, so we have the \$2,975.00 payment to Massey-Ferguson to pay for this tractor. We've got the contract here that you had with Massey-Ferguson.

A Yes, sir.

Q And we have the letter indicating that an earlier check written on the Benavides Implement and Hardware account was returned because there was no such account?

A Yes, sir.

Q And we know that the account was opened somewhere around, I think, the first of November. Now, let's forget the Massey-Ferguson tractor for just a moment. Let's talk about these Caterpillars.

A Yes, sir.

Q We all know and we can almost stipulate that you paid around \$20,000.00, and this twenty thousand and some odd dollars was paid for the Caterpillars and for the root plows, is that correct?

A Yes, sir.

Q Judge Carrillo, the first time that you went down to find out about the Caterpillars, you dealt with Mr. Red Kurtz, is that right?

A Well, that is where we are in -- where I say that Mr. Red Kurtz is confused somewhat in his recollection of my going down because the transaction to buy the bulldozer was made in my office in San Diego and not at the -- at the Plains Machinery in Corpus Christi.

Q Is this the transaction to buy the one bulldozer or the two bulldozers?

A The one bulldozer and when -- after it was decided to take both bulldozers it was made over the telephone.

Q You realize Mr. Kurtz's testimony was that when you came in it was to talk about two bulldozers that were in stock. Do you remember that?

A Yes, sir, I know that, but I knew that he was confused. As far as I could remember, the transaction was carried out with Mr. Duran and not with Mr. Red Kurtz insofar as I can remember.

Q Is Mr. Red Kurtz a Parr man too?

A A Parr man?

Q Uh-huh.

A No, I wouldn't say that. I think Mr. Kurtz was trying to tell the truth. I think he was just confused, and I was confused, and I have gone over with the individuals that were around when the transaction took place, and I know that this business occurred at -- in my office with the discussions of these bulldozers.

Q Now, when you had the conversation with Mr. Red Kurtz about the bulldozer or bulldozers, I understand that you changed to two because Mr. Couling wanted a bulldozer.

A Yes, sir. The original agreement was to purchase one bulldozer.

Q Now, this original agreement, was it reduced to writing?

A As far as I can remember -- and I'll be perfectly honest with you -- I have even discussed this matter and so have you all with Mr. Red Kurtz, in my conversation yesterday, and -- because I'm trying to run down because I believe somewhere in my files I'm going to find, and I'm looking very hard and I think I will find it -- I think I know where it is. But it's probably back home, and I don't have enough time to get home and look for it. But I believe that there was an agreement entered into for the first one bulldozer and the payment of \$1,000.00 per month. Then it was changed to -- to take the two bulldozers, and it was changed over to Benavides Implement and Hardware Store and the payments -- instead of \$1,000.00 a month for one bulldozer, it was \$1,500.00 a month for both bulldozers.

Q Now, the original agreement that you say you're looking for, I take it that you have talked to Mr. Red Kurtz in the last day or so?

A Yes.

Q And you are aware of the fact that Mr. Kurtz, I understand, has stated that there was no first contract reduced to writing, there was no notes receivable card that he could find. He has no evidence of any written agreement?

A He has told me and what his salesmen have told me -- the salesman, Mr. Duran understands perfectly well, that they recall very vividly that at the beginning there was the matter of purchasing only one bulldozer.

Q Who says that? Mr. Duran?

A Mr. Duran and Mr. -- I think Mr. Kurtz also remembers that. And, I was trying to get him to run down and the -- to see if they had a copy of the original agreement.

Q Well, that's what I'm saying. You are aware of the fact that Mr. Kurtz, it's my understanding, he says that there wasn't -- he hadn't been able to find any first agreement?

A They can't find it because, as far as I know -- as far as I can figure, it was cancelled or done away with and not filed because the second one was entered into before the first payment was made.

Q All right. So, the -- ultimately there was the contract that was entered into with Benavides Implement and Hardware, Mr. Kurtz took out to Mr. Couling and had Mr. Couling sign the contract?

A Yes, sir.

Q I believe that's -- it's E-160?

A Yes, sir.

Q And that was in December of 1970 --?

A Two.

Q -- two. Both Caterpillars were then delivered to your ranch?

A Yes, sir. That was around January.

Q How come Mr. Couling didn't get his Caterpillar?

A No. The idea was to work them as units, to get one truck to have with the greasing outfits, the tools, the -- everything that goes with them. The air compressors and everything that goes with them, and have one outfit going. And, when I used them, I would use both of them. When he used them, he would use both of them, and that was the way it was supposed to go. We weren't going to divide them up.

I started to clearing my land, and then he would clear his land.

Q He never did use one of the Caterpillars, though?

A No, he -- because Mr. Parr took one of them and -- like I say, up until today, I haven't finished clearing my land.

Q Did he take Mr. Couling's Caterpillar, or did he take yours?

A It wasn't decided, you're going to take this Caterpillar, or you're going to take this Caterpillar. It was two Caterpillars that belonged to Benavides Implement and Hardware. I used them, I paid rent on them; if he used them, he paid rent on them.

Q All right. I would like for you to refer, Judge Carrillo, to the gold book. These are the Exhibits that you admitted down at Corpus Christi in the Judicial Qualifications Commission.

MR. ODAM: I refer the Court to Page 648.

(Senator Andujar in Chair)

Q First of all, I think that Governor Hobby, or someone, had asked you the other day to pinpoint the time as closely as you can as to when the first time that George Parr got one of those bulldozers?

A I said that it was approximately three or four months after we received the bulldozers.

Q Oh. Three or four months?

A Two or three months; something like that. It was -- it was not too long after we got them.

Q Three months?

A Could be; something like that. I don't know.

Q Three months; okay. You got them in January?

A Yes, sir.

Q So, he probably picked them up in, what? March? Got the one in March of 1973?

A March or April; something like that. I don't remember the exact date.

Q Now, R-58, these are a series of checks that you wrote in payment to the Benavides Implement and Hardware. Correct?

A Yes.

Q The first one there on the page, \$2,500.00; 58-1, is for Cat rental and equipment. The next one, "tractor rental". You put "tractor rental". Were you --

A Yes.

Q What do you mean by "tractor rental"?

A Bulldozer rental.

Q So the second one is intended to be for the Cat too?

A Tractor, yes. They are all supposed to be for that.

Q Okay. The \$1,000.00 check, that does not state on it. You are saying that one was for Cat also?

A The same thing.

Q The same on the next check?

A Yes, sir.

Q "For Cat".

A Yes, sir.

Q Turn over to the next page, Page 650. This check is for the rent on the root plows. Is that right?

A Well, it was going -- it was the whole unit, thing -- you know, to make the payments on.

Q Well, I mean, this check says -- this the check on Page 650?

A Yes, sir.

Q It says "rent on plows".

A Yes, sir.

Q Isn't that what it was for? The rent on the root plows?

A Yes, sir. Well, the plows and the tractors. On both. For both things.

Q Oh. Even though it states on the front of it to be for plows, it could be for the plows and the tractor?

A That's right.

Q Okay. The next one down, is \$1,750.00. The next one says, "rent on Cats", in October of '73. The next one, no notation.

The next one, "rent for December/January, \$3,550.00" The next one, January, 1974 is \$217.00. We will strike that one out because that's for a pear burner. Did you buy a pear burner from Mr. Couling?

A That's what I haven't been able to remember, because we sell pear burners over at our store. And, I can't imagine going to my competitor to buy something when I can get them at wholesale back where I own the place. But, that is what it says, and that is what it is.

Q Okay. For such a small amount, that was not a payment on the Caterpillars, though?

A No, sir.

Q Okay. Now, the last one there is for \$2,000.00, "Cat rental"?

A Yes, sir.

Q Now, these checks excluding -- or, excuse me -- including the \$217.00 come to a total of \$20,744.00. And, I believe this is the item that you had put on the R-100 Exhibit. Right?

A Yes, sir.

Q The total amount of payments.

Now, the first check that you wrote out to him, R-58-1, I take it here to be -- that was the February of 1973 check. Is that right?

A January 21st, 1973. That's the last check, Mr. Odam.

Q All right. January the 21st, 1973.

Now, Mr. George Parr got the Caterpillars and -- could have gotten them in March or April. Is that right?

A He got one.

Q He got one in March or April?

A Yes.

Q But it is your testimony that you think -- or, it is your testimony that George Parr had made a deal with Mr. Couling to rip-off the County, as Mr. Mitchell likes to coin the phrase. Mr. George Parr decided to steal the money from the County to pay for the Caterpillar while it was on his ranch. Is that okay? Is that right?

A Well, Mr. Parr told me after he came back for the Caterpillars the second time, and I advised him that the contract was no longer in Benavides Implement and Hardware, and that Mr. Couling did not have anything to do with those bulldozers anymore. And, he explained to me the way he was paying his rent on those bulldozers, and wanted to continue to make the same arrangements with me. And, I wouldn't agree to it.

Q Well, I hate to keep flipping back and forth between Exhibits, but I would like for you to look back at Volume Two of the Examiner's Exhibits. I will specifically refer you to E-91 on Page 839.

Tell me when you come to Page 839.

A Yes, sir. I'm very -- there it is.

Q You've got it?

A Yes, sir.

Q Okay. That says, "rental equipment; working County roads, \$1,006.00". The next page is the statement on BIH for \$1,006.00; the next page is the claim jacket for \$1,006.00. The next page is the County check for \$1,006.00?

A Yes, sir.

Q And on the back of it, on Page 843, is where it says, "for note payment", that Mr. Couling testified that this first one went to pay on the note to Massey-Ferguson. So, then we pick up on December of 1972 -- and I am looking now on Page 843.

A Yes, sir.

Q This one says, "rent on wench truck and dump truck, number ten", for \$1,018.00. And, that is in the latter part of December, 1972 --

A Yes, sir.

Q -- after that contract was entered into. The next one is in February of 1973. Let me put it this way. When the first ones were filled out in December of 1972, Mr. George Parr, according to your own testimony thus far, didn't have the Cat?

A That's right.

Q He didn't even pick it up yet?

A That's right.

Q But Mr. Couling had already started getting money from the County, according to his testimony here, for Cat payments. There is \$1,018.00 checks on the next page where it was deposited in the Rio Grande City Bank before Mr. Parr and the Caterpillar. On the next page, 845, is February, 1973. George Parr still didn't have the Cat. It was still on your ranch. It says, "rent on tractors" on that one. He didn't even have the Cat yet.

Turning over to the next page, Page 846, is the County check, and it shows there that it was deposited in the Rio Grande City Bank. Mr. Parr still didn't have the County -- or, didn't have the bulldozer. On Page 847 -- and this is in early March of 1972 --

A Yes, sir.

Q -- "rent on D-8 tractor", \$1,009.00 which, along with the other invoices, went into the County and caused issuance of the check on Page 849 that was deposited. This is in the latter part of March.

My point, Judge Carrillo, is that this whole scheme to take the money from the County started before George Parr even had the Caterpillar. Now, how do you reconcile George Parr having Mr. Couling rip-off the County starting back in December when he bought the Caterpillars, according to his testimony, when he didn't even have the Caterpillar yet? He hadn't even come to your ranch?

A I never said that he made that arrangement back then. I just told you the way that Mr. Parr told me that he had made arrangements to pay his rental on them with Mr. Couling. When it started, I don't know. I do know that I have my cancelled checks.

Q Oh, I know you have the cancelled checks. We just went through those where your making your own -- there is no question that you made certain payments, Mr. Couling admitted that, and there is certain money paid from the County. You understand that's what's been the position all along is that certain -- County money came in to pay for the Cats. And your money came in. We are not denying you paid the \$20,000.00 at all. My question is, how could you reconcile, according to your story of George Parr getting the money when he didn't even have the Caterpillar there? How do you fit that together?

A I don't know, sir. I don't know what kind of arrangements Mr. Parr and Mr. Couling had.

Q George Parr is dead, and Rudolfo Couling's testimony does not support that at all. And, in fact, don't you agree that the Caterpillar operators, you sent them over there and you paid the Caterpillar operators to operate the Cats --

A Oh, yes, sir, I did very much so. Sent the operators for two reasons like I explained. First of all I had an agreement where I would pay them \$300.00 a month for it, cheap for the Caterpillar operator, but they would get paid rain or shine, and if they go or didn't go, they would still get paid. Secondly, those bulldozers were being used by other people, and I wanted to be sure that the operators kept the maintenance on them, and kept them up and didn't go out and wreck them and destroy them like folks that don't have an interest in a piece of equipment.

Q Did he pay you, pay the operator -- did George Parr pay you to pay the operators?

A No, I paid the operators. I paid everything. It cost me a shiny penny. This contract called for \$35,000.00 for both bulldozers, and I think I ended up paying about \$44,000.00 for it by the time I got through.

Q Judge Carrillo, are you sure you didn't just loan these Caterpillars, this Cat to George Parr?

A No, sir.

Q You didn't loan it to him?

A No, sir. I loaned it to him the second time. I wouldn't take the County money.

Q But you didn't loan it to him the first time?

A If I had agreed to take the money back in '71 and '72, I could have easily taken it in '73, but I didn't do it.

Q Judge Carrillo, the problem I have with it is, again, I don't know Mr. Parr. He's dead. I just don't understand why George Parr would arrange with Mr. Couling to steal money from the County to go out of the way to make these payments to Plains Machinery on Caterpillars that were in the name of Benavides Implement and Hardware. I don't know why George Parr would do that. Could you -- I just don't understand why he would go to that problem to steal that money to be legitimate enough to make the rental payments. Could you fill me in on that?

MR. MITCHELL: It's about as incredulous, Counsel, as the position that you've taken that Judge Carrillo would do it, and then pay him rent while he's doing it.

MR. ODAM: The Caterpillars were delivered out to his ranch, Mr. Mitchell. They are his Caterpillars.

MR. MITCHELL: They were in Mr. Couling's name all during that time, Counsel. That's our point.

Q Well, just answer my question if you could; why Mr. George Parr would arrange to steal money from the County --

THE PRESIDING OFFICER: Mr. Mitchell, if you have an objection, would you address the Bench?

MR. MITCHELL: I'm sorry. I withdraw that comment.

Q Why would George Parr steal money from the County so that money could go into the account at Rio Grande City to be paid to Plains while he used the Caterpillar?

MR. MITCHELL: Mr. President, my objection is that it would call for speculation. And it would be argumentative. I do address the objection correctly this time, I hope.

THE PRESIDING OFFICER: If you would continue, Mr. Odam, but don't argue with the witness. Just continue.

MR. ODAM: Yes, ma'am. I will not argue with the witness.

Q Please state, if you know, why George Parr would arrange for the County to make payments to Mr. Couling, for Mr. Couling to put in the Rio Grande City Bank to turn around and make the payments of Plains Machinery on these Caterpillars? Why would Mr. George Parr do that?

A I don't know.

Q But you think that's what he did?

A That's what he told me he did.

Q How long did George Parr have the Cat out on his ranch? He picked it up in April and kept it about how long?

A About -- I can't remember, six or seven months then he brought it back in that -- then he came back for them two or three months later.

Q So, he kept it six or seven months, and all these invoices, they continue on Page 855, you have invoices in May of '73, and they continue to June of '73; and checks keep coming out of the County in August of '73; October of '73; November of '73; December of '73. How much did you pay for these root plows? I guess that's evidenced by the contract, about \$11,000.00, is it not?

A Approximately, yes, sir.

Q Why would it be that Benavides Implement and Hardware, whose name the contract was in, why would you -- remember on one of them said, "Verbal, O. P. Carrillo."

A Yes, sir.

Q Why would you negotiate to get the contract or get the Caterpillar -- strike that. Get the root plows in the name of Benavides Implement and Hardware? Why did you do that?

A I just did. That was the understanding we had.

Q Do what?

A I just did.

Q Well, why would you not -- if you dealt with B. D. Holt, why put them in the name of Benavides Implement and Hardware? Why didn't you put them in your own name?

A Because both Mr. Couling and I were going to use those tractors. And that was the arrangement that was arrived at. It could have very easily been the other way. It was not. That's it.

Q Well, you know, one of the B. D. Holt contracts, and I believe one of them is E-1-60-1 and the other one is E-1-60-1-A. On E-1-60-1, said, "Benavides Implement and Hardware, verbal by O. P. Carrillo, February, 1973." And then the other one, which is in December of 1972, says, "Verbal on phone by Ramiro Carrillo".

A Yes, sir.

Q Now, why would Ramiro Carrillo be getting one of these root plows? Is he also getting it for the benefit of Mr. Couling?

A No, sir, he was probably just doing it as a courtesy to --

MR. MITCHELL: Excuse me, Mr. President.

I asked you not to speculate, Judge Carrillo. If you know -- if you don't, you should not speculate. What Ramiro Carrillo had in his mind certainly would not be known to you.

And I simply request the witness not to speculate, Mr. President.

Q You don't deny, then, that the two root plows were to be used on those two Caterpillars? You agree with that?

A I agree with it.

Q Therefore, that the payments that you were making to Mr. Couling were for Caterpillars and for these two root plows, do you agree to that?

A Yes.

Q So, you -- well, one Caterpillar, I'm looking at the contract, calls -- or one root plow costs \$5,630.00, this is on Page 896 for the benefit of the Senate. This is the one that says, "Verbal on phone, Ramiro Carrillo, December 1972". And the other Caterpillar, or, correction, the other root plow is \$5,780.00, and that comes to a total of \$11,410.00, okay?

A Okay.

Q Now, the E-1-60, which is when the Cats were first purchased according to that contract, it says, \$39,186.00 . \$39,186.00. That comes to a grand total of \$50,596.00 for the two Cats and the two root plows, just reading off the contract, is that right?

A Yes, counting insurance and everything else.

Q That's right, the whole shooting match costs \$50,596.00 for the two Cats, and the accompanying two root plows, you paid a total of \$20,000.00, right?

A \$20,700.00.

Q Plus whatever it was in the check that you paid Plains Machinery yourself later on?

A Yes, sir. And, of course, it was a credit on the insurance and on the -- would be on the financing end of it also.

Q Okay. Well, now, on one of these root plows, did one of the root plows -- was George Parr making arrangements for the county to be ripped-off to pay for one of these root plows also?

A No, the -- the root plow that was borrowed by the county has now been discovered. It was over in Terry Canales' ranch.

Q Whose ranch?

A Terry Canales.

Q The root plows --

A And just brought back about two months ago, sir.

Q These two root plows in the name of Benavides --

A No, the root plow that you were talking about, there was a big to do in the newspapers about it, the root plow that the County borrowed --

Q Now, I'm talking about -- I'm talking about these two root plows, one of them Ramiro Carrillo and one of them O. P. Carrillo.

A I'm sorry.

Q Judge Carrillo, you recall now the Judicial Qualification Commission when I called the witness Mr. Red Craig who worked --

A Red Craig?

Q Yes, sir.

A Yes, sir.

Q Do you recall that I called as a witness Mr. Crisoforo Chapa who went out and worked on the Caterpillars?

A Yes, sir.

Q Do you recall I called the witness Mr. Arnaldo Amaraz?

A Yes, sir.

Q Now, his testimony was, and we can refer to it specifically, that he went over to work on George Parr's ranch and he testified he only worked two or three months in 1973. You just said that the Caterpillar was on George Parr's ranch for about seven months?

A That is my recollection, sir.

Q Is Mr. Amaraz confused as to how long he stayed out there or --

A I believe he is.

MR. MITCHELL: That's argumentative, if it please the Court. This Court can believe anybody they want. Mr. Amaraz said it's three months on George Parr, the Judge said it wasn't. I mean, it would be argumentative to use that question, Judge.

MR. ODAM: Let me rephrase my question.

Q Judge Carrillo, is Mr. Amaraz, is he a Parr man too?

A I don't know, sir.

Q How about Crisoforo Chapa? Is he a Parr man?

A Yes, he's Ruben Chapa's, Tete Chapa's, Vicente Chapa's and Rosa Chapa's father.

Q How about Red Kurtz from Corpus Christi Plains Machinery? Is he a George Parr man too?

A No, I don't have any political views on Mr. Red Kurtz one way or the other, sir.

Q How about Mr. Abel Ruiz. Is he a Parr man? The Caterpillar operator.

A I don't know.

Q How about Mr. Fidel Saenz?

A No, I would say Mr. Fidel Saenz is a Carrillo man, sir.

Q Mr. Fidel Saenz was employed and is employed by you, is he not?

A He is employed by me, yes, sir.

Q I believe he previously testified he went to work for you in December of 1972?

A Yes, sir.

Q Do you recall his testimony at the Judicial Qualifications that the best that he could understand that you had rented these Caterpillars from Plains Machinery and do you recall I asked him --

A That is right.

Q Judge Carrillo, I notice that -- I had the opportunity to read through the transcript of yesterday, and at one point, Mr. Doyle asked you some questions -- remember yesterday that your spontaneous exclamation was that you -- about John Hill -- and never getting any money from George Parr and all this business? Do you recall all that yesterday?

A Yes.

Q I believe you said something about that George Parr has stolen \$121,000.00 -- or was it Archer Parr?

A I believe Archer Parr stole \$121,000.00. I believe Mr. George Parr -- I don't think it has been determined exactly how much he took.

Q What did George -- what did Archer Parr -- how did he steal this money, this \$121,000.00?

A From the water district. I don't know, I wasn't a party to it.

Q What makes you think that he stole \$121,000.00?

A Well, that's what the U. S. government says.

Q Judge Carrillo, I recall that your testimony was yesterday that Mr. Archer Parr then or George Parr had stolen this \$121,000.00 and that John Hill hadn't done a thing to get any of it back. Is that right?

A As far as I know.

MR. ODAM: Well, I have asked the court reporter to mark as an Exhibit what is H-35 and ask you if you can read off the top to identify for the Court what this is.

(House Exhibit No. 35 was marked
for identification H-35)

A Duval County Conservation Reclamation District vs. Archer Parr.

Q And may I see just a moment. And this petition is filed against Archer Parr. Do you read with me on the last page you see the name of John Hill, David Kendall, John Odam and Bert Pluyemen?

A Yes, sir.

Q And you see on the first paragraph on the bottom, "recovering money from Archer Parr for the water district the amount of \$121,000.00"?

A Yes, sir.

Q You weren't aware that this suit had been filed yesterday?

A I was not.

MR. ODAM: Your Honor, I would like to offer in evidence a copy, it's not a certified copy, it's our file copy, of a lawsuit that's been filed in the name of the water district to recover from Archer Parr the amount of \$121,000.00, plus a total of \$100,000.00 in punitive damages. And I tender it to Mr. Mitchell at this time.

MR. MITCHELL: Does it show when it was filed, Counsel? I have no objection to the record reflecting that the Attorney General is chasing that \$121,000.00, Your Honor.

Q Maybe I was confused about the way I phrased the last question. Yesterday when you made the comment -- yesterday you had no knowledge that the lawsuit had been filed. Is that right?

MR. ODAM: Mr. Mitchell --

A I --

Q Go ahead.

A I don't think so.

Q You weren't aware of it yesterday?

A No

MR. ODAM: Mr. Mitchell, do you have that copy over there?

MR. MITCHELL: It wasn't filed between yesterday and today is what I'm trying to determine. It was filed --

MR. ODAM: That's right. That's what I think is confusing.

MR. MITCHELL: I wish you would clear that up.

Q It states on the top of it that the lawsuit was filed October 31st of 1975, three months ago.

A That's fine, I'm glad to hear that, sir.

Q You weren't aware that this was filed in Duval County three months ago?

A No, I was not. And I'm glad to hear it. Now, we need Mrs. Hilda Parr and George Parr and the rest and we will be all right.

MR. ODAM: Okay. Pass the witness.

MR. MITCHELL: I wonder if it would be appropriate to have the afternoon break or should I commence, Mr. President? You have passed the witness, haven't you?

MR. ODAM: Yes.

THE PRESIDING OFFICER: Before we do that we have some questions here that we would like to submit before we return to the witness.

Mr. Odam, these questions are addressed to you by Senator Sherman. "Is there an explanation in preparation of the chart on Page 1555 --

SENATOR OGG: Mr. President, we can't hear. Turn on the microphone.

THE PRESIDING OFFICER: "Is there an explanation in preparation of the chart on Page 1555 why only \$5,725.34, the check has a notation on it as to what it was for".

MR. ODAM: Why it has a notation on it?

SENATOR SHERMAN: It's the only one on the list that has a notation on it.

MR. ODAM: The reason that it has a notation on it is because on the check itself the check states station wagon. And I don't know why that particular one --

SENATOR SHERMAN: All the rest of them have notations also and they're -- is there anything significant on the face of the checks?

MR. ODAM: On the face of the check -- here's the chart and the --

MR. MITCHELL: I think the question is well put though why the rest of them aren't noted --

Isn't that the question, Senator -- yes. I think the question --

SENATOR SHERMAN: The rest of them have notations on them also and yet this is the one there's some question about. And why it happens to be the only one that shows up in the preparation of the chart.

MR. ODAM: What is the date of that?

Examining the chart it does not appear that it was placed on the chart at the time it was made up. It could be that it was placed on there during the time of testimony. I just can't identify it, but it was not placed on there by whoever prepared this particular sheet. You can examine the chart.

MR. MITCHELL: I think it should be stricken then.

MR. ODAM: Well, it's on the chart, as are the check numbers which are on there. But I just can't tell you why it says in parenthesis station wagon on there.

SENATOR SHERMAN: The reason I asked that was to ask the second one. And explain the position that you have taken in regard to the station wagon, particularly the general note ledger that we've talked about, which is not real easy for us to read in our Exhibits. What's your position on that, please?

MR. ODAM: Yes, the position on that is as follows. Number one, that Judge Carrillo had taken out a loan at the Rio Grande City Bank, which is evidenced by the loan ledger. Number two, that having been done, the water district issued a check in the amount of \$5,000.00 -- correction, water district issued a check in the amount of \$5,725.34. It's our position that -- and on that check it says "invoice". Mr. Couling stated he didn't know what it was for, he didn't fill out any invoices that came to him like that, either from Mr. Couling or from Rogelio Guajardo. He got the check just as was. Prior to that he had a conversation, Mr. Couling stated, with Judge Carrillo at which time Judge Carrillo said, "I have arranged for the water district to pay for a station wagon." Mr. Couling then issued a check that had rubber stamped on it "First State Bank". He just signed his name to it. And he testified all he did is put his name on it. And he put on there "station wagon". And that check that he gave to Judge Carrillo was then taken over to the bank to be applied on the note to pay for the station wagon. So, it's our position that there was no legitimate business done with the water district to have obtained the check which is in evidence, I believe it's E-74 from the water district. He turned around and wrote out the check in blank that went to pay for the station wagon.

SENATOR SHERMAN: What you just said is the reason I asked the question. Is that the note ledger, if I looked at it -- it's a general note ledger, it's not an automobile purchase ledger, but it's a general note ledger.

MR. ODAM: That's right. It went into his account and you will just have to look at the note ledger to see the amount of the note. And we have calculated at one time that the amount of the check that is made out to First State Bank and Trust, that equals the principal on the note on the car, as well as the interest. I'm sure Judge Carrillo -- is eight per cent interest -- did not dispute in his testimony today that he got the money he said from the water well drilling rig and he needed the money, as he testified, to pay on that note. So, it's our position that there's no legitimate business done with the water district to cause issuance of that check.

MR. MITCHELL: By Benavides Implement and Hardware.

MR. ODAM: By Benavides Implement and Hardware, that's right.

THE PRESIDING OFFICER: Gentlemen, there will be further questions entertained, but in the meantime the Court will stand in recess until 3:10.

RECESS

Accordingly, the Senate, sitting as a Court of Impeachment, at 3:00 o'clock p.m. recessed until 3:10 o'clock p.m.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 3:10 o'clock p.m.

ANNOUNCED PRESENT

Senator Meier who had previously been recorded as "Absent-excused" was announced "Present".

MR. ODAM: Judge Carrillo, just prior to the break we had completed, I believe, I had passed the witness to Mr. Mitchell. And I have no further questions at this time.

MR. MITCHELL: Thank you, Mr. Odam. Mr. President, I didn't know whether some members of the Court had questions they wanted to put to the witness prior to the time I commence my redirect. Otherwise, with permission of the Court, I will commence the redirect examination.

SENATOR SHERMAN: Mr. President.

THE PRESIDENT: Senator Sherman.

SENATOR SHERMAN: Mr. Odam, I had one other question. This was in regard to the Exhibit E-176, 1041, which is a \$2,640.00 check. The longhand on that checks says \$2,040.00. Is there some witness who can explain the deposit slip of \$2,040.00, about \$600.00 difference in the two.

MR. ODAM: I noticed that, and I had not noticed it until it was brought to my attention at that break. I guess Mr. Couling would explain that, unless Judge Carrillo could. The check's made out to him. Maybe he could explain it.

Judge Carrillo, you understand the question. There was a check -- Senator Sherman, what page was that on?

SENATOR SHERMAN: 1041. Volume Two.

MR. ODAM: The very last of Volume Two. Page 1041.

THE WITNESS: Yes, sir.

MR. ODAM: You'll notice that the check on Page 1041, Judge Carrillo -- the numbers say \$2,640.00, but you'll notice that it is written out two thousand forty and no cents or no dollars. Two thousand forty.

THE WITNESS: Yes, sir.

MR. ODAM: Can you explain -- the check made out to you -- can you explain why Mr. Couling would have made the numbers \$2,640.00 but would have written out in long hand two thousand forty?

THE WITNESS: No, sir, I don't. I don't know anything about that, sir.

MR. ODAM: I suppose Mr. Couling, Senator Sherman, would be the only one that -- could be the only other person to shed light on that.

Judge Carrillo, do you know whether or not you got the \$2,040.00, or did you get \$2,640.00?

THE WITNESS: Mr. Odam, I would have to see the deposit slip and the endorsement on the check.

MR. ODAM: Well, the endorsement on the other side says "For deposit, O. P. Carrillo." You do identify that as being your signature? On Page 1042.

THE WITNESS: Does that correspond to that one check, sir?

MR. ODAM: Yes, sir. There's only one check on that page.

THE WITNESS: I would have to see the deposit slip also, sir, on that. I have no personal recollection of it, sir. I'm sorry.

MR. ODAM: Is the monthly statement available, Mr. Mitchell, to show how much money he got from it, \$2,040.00 or \$2,640.00?

MR. MITCHELL: Yes, the statement -- the monthly statement -- the deposit slip would be available. I probably have them in the office. I'll be very glad to check that and furnish that information to the Court.

MR. ODAM: I'll also check -- the San Diego bank account statement probably indicates which it was, written out. I'll check that out.

MR. MITCHELL: I have -- while we're at the break, I have trouble with that one check that's printed in one amount and written out to the side another. Could we get some light on that? Do you know what I'm talking about, Judge?

THE WITNESS: Yes, but I don't have any recollection whatsoever.

MR. MITCHELL: Am I to commence, Mr. President, or do they have any more questions?

THE PRESIDENT: No, I believe Mr. Odam's passed. You have the witness on redirect.

MR. MITCHELL: No further questions from the Court? All right.

REDIRECT EXAMINATION

(Questions by Mr. Mitchell:)

Q Judge Carrillo, let me start my redirect with the last matter touched on by Mr. Odam. Mr. Odam and you engaged in considerable discussion concerning what did Mr. Couling say and what Mr. Cleofas Gonzalez said and what they owed you and what they didn't owe you. Let me ask you some questions. First of all, it is a matter of fact that Cleofas Gonzalez quit your employment, Farm and Ranch, that is, your partnership employment, in the middle of 1974. Am I correct?

A Yes, sir.

Q In addition to quitting your employment -- I believe I accurately reflect the record -- when he quit political association with you and moved his affiliations, political and otherwise, to the Archie Parr side of the political family tree down there.

A Yes, sir.

Q The evidence further reveals that Mr. Cleofas Gonzalez worked for Mr. Rudolfo Couling from that period of time up until the middle of 1975, at which time he agreed to buy the Benavides Implement and Hardware, doesn't it?

A Yes, sir.

MR. ODAM: Your Honor, if I might. If this is the same line of questioning which we heard before, I would object on the grounds of repetition. We've been through this about five or six times as to the alignment of all the Carrillos and Parrs and Gonzalezes and Coulings. I think this entire Court knows everything, and I would object on the grounds of repetition.

THE PRESIDENT: Objection is sustained. Move on to some new ground, please.

MR. MITCHELL: Well, my question -- the only question I was going to ask on political alignment, Mr. President, if it please the Court, the question has now been brought into the case on cross-examination as to motivation and a great serious doubt is sought to be cast by the questions as I understand them on the motivation. And what I'm trying to do by a series of about four or five preliminary questions, hopefully on redirect examination, is perform the function of the redirect. I didn't intend to go into any more political aspects of the case.

Q My question was did the testimony reflect that Cleofas Gonzalez bought the Benavides Implement and Hardware from Rudolfo Couling?

A He did.

Q In mid-'75?

A Yes.

Q And as a part of the consideration -- and I'll make it relevant -- agreed to assume the payments of all outstanding accounts.

MR. ODAM: Your Honor, we would stipulate this, and I again urge the objection of repetition which the Court just sustained as to those questions.

MR. MITCHELL: Do you stipulate that the agreement was that he was to buy the Benavides Implement and Hardware for the amount of the outstanding accounts?

MR. ODAM: That's right.

MR. MITCHELL: All right.

Q Then, my next question is, the motivation on the account owed you and Farm and Ranch would be that if Mr. Gonzalez and Mr. Cleofas -- that is, Mr. Couling who entered into that contract to purchase Benavides Implement and Hardware, would somehow secrete the amount owed to you on that continuing equipment rental account, they could have bought that business for a lot less money, couldn't they, Judge Carrillo?

A Yes, sir.

Q Assuming that they were still due and owing in May of last year on the account of legitimate rental of equipment in you all's behalf, the sum of \$15,000.00 to \$20,000.00, who else but Cleofas Gonzalez or Rudolfo Couling could testify to the existence of that account?

A Nobody, sir.

Q Because Cleofas had exclusive control while he was an employee of Farm and Ranch over the rental of your equipment, didn't he?

A Yes, sir.

Q And Rudolfo Couling had exclusive control over the execution of these invoices and the receipt of these checks and the deposits. Am I correct, Judge Carrillo?

A Yes, sir.

Q Now, let's look specifically, if we can, and tie that in with the Exhibits that Mr. Odam asked you about, and let's move, first, to about E-65. That would be in Volume Two.

But, the fact of the matter is, I believe he asked you about -- preceding that. Let's take a look at E-60, Judge Carrillo, on 793.

Mr. Odam, in asking you about these specific Exhibits, referred you to the testimony of either Mr. Couling or Mr. Gonzalez. You recall?

A Yes, sir.

Q Mr. Craig and other gentlemen -- Mr. Kurtz, and so forth. Now, I am going to ask you -- for the purpose of putting these questions to you and your answers to my questions, you just forget what these people testified to and look to the documentary. Would you do that with me?

A Yes, sir.

Q The documentary evidence -- that is, the handwritten evidence, on the item of \$1,008.00 says what? "Contract on fencing and roads". That's on 793. Isn't that correct?

A Yes, sir.

Q And the testimony is that that is in the handwriting of Cleofas Gonzalez. Am I correct?

A Yes.

Q All right.

MR. ODAM: Mr. President, may I --

THE PRESIDENT: Mr. Odam.

MR. ODAM: Your Honor, we would stipulate as far as -- I know Mr. Mitchell wants to tie it down, and for some reason -- well, I know what the reason is. Mr. Mitchell wants this Court to ignore what the testimony is and look only at **what the**

documentary evidence is.

I will stipulate, Mr. Mitchell, as to what it says on there. The Court can read it for itself, what it states to be. And, I would object to a line of questions where you look only to the items in writing and not -- and ask the witness to exclude what the testimony is. I think that is an unfair line of questioning to exclude what the testimony is.

MR. MITCHELL: Mr. President, may I speak to that, please?

He asked this witness, and several of the Court asked this witness, was there a written contract for the sale for that tubing? Was there a written contract for the sale of that counter?

What I am attempting to show with this testimony is that there is, in fact, at law, a contract that is in evidence, and that contract is made up by the documentation, the invoices, the statements, the checks, Your Honor. And, I believe I can do it in just about three or four minutes, and illustrate with one or two and demonstrate the existence of a contract.

THE PRESIDENT: Mr. Mitchell, don't the documents which are in evidence and which have been testified to repeatedly the last few days, don't they speak for themselves?

MR. MITCHELL: They do, if it please the Court, and I would not have gone back into this testimony but for the fact that there has been some question as to whether or not a contract exists. My simple motive here is to demonstrate that the written testimony, forgetting the verbal -- and, if I can get that agreement, I will certainly move on. The written testimony, for example, Your Honor, on 795, speaks to rental equipment. Voucher speaks to rental equipment; the check speaks -- to Judge Carrillo, of rental equipment. So I --

THE PRESIDENT: There is no dispute about any of that, Mr. Mitchell.

MR. MITCHELL: Fine. If there is no dispute on that, I will move on.

Q But at any rate, Judge Carrillo, in effect, there was a credit in your favor, as well as the Farm and Ranch favor that was created over the period of the years for the rental of equipment through Cleofas Gonzalez and/or Rudolfo Couling?

A Yes, sir.

Q And isn't it a fact that from time to time, you would be paid on that account?

A That is correct, sir.

Q And after you and Mr. Cleofas Gonzalez had your argument in 1972, did you ever get an up-to-date, accurate and honest accounting from Rudolfo Couling or him on what they owed you?

A No, sir.

Q And were you required, by reason of that fact, to continuously go back and to request additional funds on account of that rental account?

A Yes, sir.

Q Do you have any hope, today as you sit here, of ever determining how much more money those folks owe you? That is, Rudolfo Couling on the one hand, or Mr. Cleofas Gonzalez on the other?

A No, sir.

Q Is there any way that you, as a Judge and a lawyer, could ever prove now how much equipment Cleofas rented to the Benavides Implement and Hardware on your account today?

A No, sir.

Q You notice that they got married, don't you, in the middle of last year?

A Yes, sir.

Q And Cleofas bought that business on the basis of what the outstanding account was to your credit, am I correct?

A Yes, sir.

MR. ODAM: I'm sorry. I missed the last -- they got what?

MR. MITCHELL: I say, you notice they got married in the middle of last year when they sold the business on the basis of what the outstanding accounts were.

MR. ODAM: Who got married?

MR. MITCHELL: Cleofas and Brother Couling.

MR. ODAM: Mr. Gonzalez and Mr. Couling married each other?

MR. MITCHELL: Yes, and I predict it will be one of quite some enduring nature.

MR. ODAM: I'm sorry. I didn't realize they had -- that there was any evidence that they had married each other.
Go ahead.

Q Now, Judge Carrillo, back -- I am going to shift, if you will permit me for a minute, back to Article I.

A Yes, sir.

Q I'm going to come back to the specific matters raised on cross-examination, but first I want to talk about Article I.

Now, you will recall that the essence of Article I and the essence of the case of the House Board of Managers is that you, one, used -- or conspired with someone to rip the County off on groceries. You recall that?

A Yes, sir.

Q Two methods -- two accounts existed at the Cash Store. Your personal account and the welfare account. Am I correct?

A Yes, sir.

Q The testimony has been, up to this point, that payment by you of your own -- out of your own personal funds for -- and to Cash Store for groceries that you personally bought. Am I correct?

A Yes, sir.

Q And the testimony indicates, on those that were in the welfare, that you stepped out of that business in favor of other persons including Mr. Couling after you became District Judge?

A Yes, sir.

Q Now, as to your payment of personal accounts, I'm going to hand you these -- I am not going to ask you a lot of questions about them, but it's the R series, 1, 2, 3, 4 and 5. You were questioned about the dates and times of those payments out of your personal account to Cash Store. Am I correct?

A Yes, sir.

Q And are those checks, the ones that you testified to that are payments from your personal account to Cash Store?

A Yes, sir.

Q All right.

SENATOR OGG: Mr. President.

THE PRESIDENT: Senator from Harris, Senator Ogg.

SENATOR OGG: Mr. President, I would respectfully ask, on behalf of the Court, that Mr. Mitchell be directed by the Court to stay within the scope of what redirect examination is supposed to be. There is no intent to limit this Defendant, to limit redirect, or to limit rehabilitation if there is anything new. But, I know Mr. Mitchell knows what redirect examination is, and I don't think -- I think we understand what Mr. Carrillo's theory -- Judge Carrillo's theory, we understand what Mr. Couling's theory, and we are left to the documentary evidence. But, I don't think we have to sit here and bolster it by retelling the same theory over again unless there is something in his testimony that would change, unless there is something new the State has raised.

MR. MITCHELL: If it please the Court, that was a predicate question because I am getting ready to introduce \$5,000.00 worth of checks in addition, Senator, and I didn't want to just introduce them in the air. I thought you ought to have a predicate of how I'm going to bring them in. That was a predicate question. Hopefully I didn't impose on the Court.

May I have the Exhibits that have been marked, please?

THE PRESIDENT: Mr. Mitchell, nonetheless, Senator Ogg's remarks are timely and well taken. Every member of the Court, by this time, is abundantly familiar with the testimony about the transactions relating to the welfare checks, and if you have new testimony to adduce, please do so. But, don't plow the same ground over and over

and over again.

MR. MITCHELL: Mr. President, I am fully aware of the function of redirect. I don't mean to be impertinent. But, the testimony on cross raised the question of whether or not Judge Carrillo was, in fact, telling the truth because these were the only checks he gave. And the fact of the matter, an issue was made that the months of November and December of '72 were left out.

THE PRESIDENT: Mr. Mitchell, the Chair well understands all that.

MR. MITCHELL: Now, I am going to introduce additional checks that --

THE PRESIDENT: Well, please proceed to do it without going over the same ground that we have been over here for two weeks.

MR. MITCHELL: Could I have the checks, please, that I have had marked?

MR. DOYLE: I'm sorry.

Q Now, Judge Carrillo, in line with the comments of the Court and the President, I am going to hand you a stack of checks. I know we are in a hurry, and I want to get through with it, but I want you to take them, please, one at a time, by Exhibit numbers, and give us the date, the payee, and whether you signed it and it's in your handwriting, and the amount?

A All right, sir.

R-20; January 6, 1972; to the Cash Store; \$200.00; O. P. Carrillo.

These are my personal checks. R-21; January 16, 1972; Cash Store, \$50.00.

R-22; January 20th; Cash Store, \$100.00. January 21st, 1972; Cash Store, \$40.00.

January 26, '72; Cash Store, \$20.00. January 21st -- 31st, 1972; Cash Store, \$50.00.

February 8, 1972; Cash Store, \$50.00. February 14, 1972; Cash Store, \$50.00.

March 24th, 1972; Cash Store, \$25.00. February 16th, 1972; Cash Store, \$75.00.

February 19th, 1972; Cash Store, \$50.00.

March 29th, 1972; Cash Store, \$25.00. March 18, 1972; Cash Store, \$50.00.

March 13, 1972; Cash Store, \$15.00.

January 10th, 1972 -- I mean, June 10, 1972; Cash Store, \$200.00. May the 10th, 1973; Cash Store, \$48.00. July the 4th, 1972; Cash Store, \$125.00.

July 9th, 1972; Cash Store, \$50.00. July 21st, 1972; Cash Store, \$50.00. July 29th, 1972; Cash Store, \$25.00.

July 31st, 1972; Cash Store, \$25.00. August the 13th, 1972; Cash Store, \$50.00.

September 25th, 1972; Cash Store, \$100.00. October 17th, 1972; Cash Store, \$43.00.

March the 1st, 1972; Cash Store, \$25.00.

October 20th, 1972; Cash Store, \$50.00. November 7th, 1972; Cash Store, \$75.00. November 15th, 1972; Cash Store, \$75.00. March the 7th, 1972; Cash Store, \$50.00. August -- April the 8th, 1972; Cash Store, \$75.00. July 29th, 1972; Cash Store, \$100.00.

November 17th, 1972; Cash Store, \$75.00. December the 6th, 1972; Cash Store, \$50.00. December the 9th, 1972; Cash Store, \$50.00. December the 14th, 1973; Cash Store, \$150.00. December the 15th, 1972; Cash Store, \$100.00. December the 19th, 1972; Cash Store, \$100.00. December the 27th, 1972; Cash Store, \$70.00. January the 16th, 1974; Cash Store, \$75.00.

January the 25th, 1974; Cash Store, \$50.00. February 6, 1974; Cash Store, \$25.00. February the 12th, 1974; Cash Store, \$100.00. February 26th, 1974; Cash Store, \$50.00. March the 15th, 1974; Cash Store, \$366.26. March 11, 1974; Cash

Store, \$50.00. March 7th, 1974; Cash Store, \$300 -- \$50.00.

March the 2nd, 1974; Cash Store, \$15.00. July the 9th, 1974; Cash Store, \$53.00. July the 11th, 1974; Cash Store, \$50.00. January the 13th, 1974; Cash Store, \$25.00.

April the 29th, 1974; Cash Store, \$50.00. April the 25th, 1974; Cash Store, \$50.00. 4-23-74, Cash Store, \$40.00. April the 11th, 1974; Cash Store, \$100.00. June 27th, 1974; Cash Store, \$75.00. January the 16th, 1962; Cash Store, \$20.00. January 27th, 1962; Cash Store, \$10.00. February 17th, 1963; Cash Store, \$1.28. March 12th, 1963; Cash Store, \$24.03. January the 13th, 1963; Cash Store, \$6.55. March the 10th, 1963; Cash Store, \$3.29. March the 10th, 1963; Cash Store, \$5.00.

May 22nd, 1963; Cash Store, \$10.00. March 31, 1963; Cash Store, \$6.42. July 12, 1963; Cash Store, \$5.45.

MR. ODAM: Pardon me. Judge Carrillo, are these checks to Cash Store back in 1963?

THE WITNESS: These last ones that I'm reading goes '63, '68, up -- and 1968.

MR. ODAM: Your Honor, I don't think they have been offered, any of them have been offered in evidence yet, but the objection is going to be as to those checks, when they are offered, the relevancy of the checks that are not in the period of time in question by the Articles of Impeachment. Certainly, back in 1963 is 13 years ago, and I do not see the relevancy of those checks.

MR. MITCHELL: We offer, if it please the Court, R-20 through and including R-93.

THE PRESIDENT: The checks will be received in evidence, Mr. Odam, on the grounds that they tend to show a course of conduct.

(Respondent Exhibits 20 through 93 were marked
for identification, R-20 through R-93)

Q Judge Carrillo, you'll recall Mr. Odam asked if we could find another check to the Cash Store for one of the hunting groceries. I'll ask you if you'll look at R-89. Do you recognize Abel Yzaguirre's endorsement on that Cash Store check?

A Yes, sir.

Q And what's the amount of it?

A "November 2nd, 1968, Cash Store, \$262.50, Zertuche General Store by Arturo Zertuche."

Q I'll hand you R-90 and ask you the same about it. What's the date of it?

A "November 1st, 1968, Cash Store, \$362.50. Zertuche General Store, Arturo Zertuche."

Q Do you recognize the endorsement of Mr. Yzaguirre on back of that one?

A "Cash Store, Abel Yzaguirre."

Q All right. How about R-91, 92 and 93? Aren't they all payable, endorsed by Cash Store, Abel Yzaguirre, December 4th, of '68, November 12th of '68, and October 7th, '68, Judge Carrillo?

A Yes, sir.

MR. MITCHELL: We offer these, if it please the Court.

SENATOR JONES: Mr. President.

THE PRESIDENT: Senator from Taylor.

SENATOR JONES: In reading those endorsements, was he saying that they were endorsed Cash Store, Zertuche General Store?

MR. MITCHELL: Cash Store, Abel Yzaguirre, Senator, if it please the Court.

SENATOR JONES: There was some reference to Zertuche General Store, was there not?

MR. MITCHELL: The question that Counsel put, as I recall, was whether or not there was a check from the Zertuche General Store to the Cash Store, and my representation to Counsel, "well, yes, they were, and I am producing those." Those were from Zertuche General Store by Arturo Zertuche to Cash Store, and endorsed, "Cash Store by Abel Yzaguirre," if it please the Court.

SENATOR OGG: Mr. President.

THE PRESIDENT: Senator from Harris, Senator Ogg.

SENATOR OGG: I would like the State to give their interpretation of that question, because I don't think I interpreted it the same way Mr. Mitchell did. I understood Mr. Odam's question to be, "Do you have any other checks or can you show any other checks that were given to you?" In effect, I guess by "other people", the testimony was that people would give him the check on the street or something for the payment of this hunting. And were there other people -- I would assume Mr. Odam meant that same year that he testified as to this check, other people of those sixteen people that were involved in the lease, and I don't believe these checks are at that time.

THE PRESIDENT: Mr. Odam will have the opportunity for recross examination.

MR. ODAM: Yes, sir.

On these particular checks, R-89 is a check, November of 1968; R-90 is November of 1968; R-91 is December of '68; R-92 is November of '68; R-93 is October, 1968. Judge Carrillo none of these checks --

In order to pose an objection to these checks, may I ask a question?

MR. MITCHELL: Excuse me, Mr. Odam. I would like to know precisely what it is you wanted in line with Senator Ogg's observation, and it's quite possible I've got those.

I understood this it what he wanted, if it please the Court. That's why I got them.

THE PRESIDENT: Mr. Odam.

VOIR DIRE EXAMINATION

(Questions by Mr. Odam:)

Q Judge Carrillo, the checks that Mr. Mitchell just asked you about, R-89, 90, 91, 92 and 93, they are all made out and signed by Zertuche General Store, Hector -- or, correction, Arturo Zertuche, is that right?

A Yes, sir.

Q In all, the years on these checks were 1968, is that correct?

A I think --

Q I'll show you the checks again. 89 is November 2nd, November 1st, December, and November. First, let me ask you, if you look at the checks, your signature does not appear on the check, does it?

A No, sir.

Q And the check is made out by who? Arturo Zertuche?

A Yes, sir.

MR. ODAM: Your Honor, I would object, number one -- on two grounds, number one, that as to authentication that these checks obviously were filled out by Arturo Zertuche, and I think Mr. Mitchell intends to call Mr. Zertuche and perhaps get in the checks that way, so I object as to authentication of these checks. Number two, in light of what Senator Ogg says, I object as to the relevancy on redirect examination. Senator Ogg was correct. What I was concerned about before was, in November, I believe of 1971, there was a check for \$267.00 from Mr. Couling. What I was interested in is whether or not there were any other checks in November of 1971 for \$267.00 from Arturo Zertuche. I'm not interested in checks three years earlier, a series of checks, so, number one, I object on authentication; and number two, I object on the grounds of relevancy.

MR. MITCHELL: May I speak to the objections, if it please the Court?

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: The predicate question for authentication I asked the witness was, "Do you recognize Abel Yzaguirre's signature?" He said, "Yes." That authenticates in my opinion. Secondly, we offer it for two reasons, if it please the Court. The essence of the case of the House Board of Managers is that Arturo Zertuche and Zertuche General Store never existed. We offer it on the existence of the reality of that store in '68 as is demonstrated by the checks.

Secondly, to rebut any inference that the \$267.00 check that Judge Carrillo testified to was given him by Benavides Implement and Hardware was part of a rip-off scheme, but that this was really a custom among those people and had been since the year '68, as evidenced by the check.

MR. ODAM: Your Honor, if I could, the only comment I would make is the check that was in evidence was \$267.00 to Mr. Couling. Now, if Mr. Arturo Zertuche can come in here and authenticate for what purpose these checks were -- that he made out the checks, then let him authenticate it as to why he made out the checks three years early and let him testify with regard to the checks. I do not think they are relevant with respect to the \$267.00 item which was raised on cross-examination. And I nevertheless do not think they have properly been authenticated with regard to Arturo Zertuche. The endorsement is not by Judge Carrillo, but by Abel Yzaguirre. Let him come in and authenticate the check.

THE PRESIDENT: Mr. Mitchell, do you intend to call Arturo Zertuche?

MR. MITCHELL: Yes, I do intend to call him, however, out of fairness to the Court. I would like to condition the offer of these two Exhibits on his predicate testimony in that the witness has identified the signature on the document, which is one method, as I understand the rules of evidence, of authenticating.

THE PRESIDENT: Has the Judge testified that he recognizes Arturo Zertuche's signature?

MR. MITCHELL: I'll ask him, your Honor.

REDIRECT EXAMINATION CONTINUED

(Questions by Mr. Mitchell:)

Q Judge Carrillo, you heard the President's question. Do you recognize Arturo Zertuche's signature?

A I do.

Q Could you give the Court the basis for that recognition, if you will look at the Exhibits, please, sir? Are you personally acquainted --

A Yes, sir, I have been personally acquainted with Arturo Zertuche since he was born, and I know the young man perfectly well. I have seen his signature many, many times. This is his signature.

MR. ODAM: I still have the objection as to relevancy of the checks in 1968 as to a check that was raised in 1971, three years earlier. As Senator Ogg pointed out, that is not what I was interested in. I am interested in other checks that Luis Elizondo or even Arturo Zertuche filled out to support the 1971, not 1968.

MR. MITCHELL: Mr. President, may I ask Counsel a question?

Did he make a statement to this Court that the essence of his Article VII was that Zertuche Store did not exist? If that's the essence of their theory, then we have some checks from Zertuche General Store signed by Arturo. If he wants to withdraw that allegation, I withdraw the Exhibit.

MR. ODAM: Number one, I obviously do not and definitely do not withdraw that allegation. And, number two, the allegation has always been that the Zertuche General Store is simply a sham, a front, and it had no invoice at all. Therefore, just because you put a name "Zertuche General Store," on it, that doesn't make it any more than a front by the mere fact it has that any more than just simply because it

has a license makes it any more than a front.

MR. MITCHELL: I think the Exhibit bears on that issue, then, if it please the Court.

SENATOR MAUZY: Mr. President.

THE PRESIDENT: All right. The checks will be admitted into evidence. Proceed.

Senator Mauzy.

SENATOR MAUZY: I was just going to comment, Mr. President. It seems to me that Mr. Odam is saying that it goes to the weight to be given the evidence, not its admissibility, which is what we're here to decide.

THE PRESIDENT: The text will be admitted. Please proceed, Mr. Mitchell.

MR. MITCHELL: Just one minute, Mr. President. I'm about through.

Oh, yes, if it please the Court, I would like, with the Court's permission, to request that I have permission to withdraw these original checks and substitute copies once they appear in the Journal. That's one of the problems that I'm having. And I am still faced with the case to try, U.S. versus Arturo Zertuche. Might I have permission to do that once they have appeared in the Journal?

MR. ODAM: No objection.

THE PRESIDENT: That request is permitted.

MR. MITCHELL: In addition, if it please the Court, I would like to have reproduced, and this was a question of the O. P. Drug's advertisement in the 1963 -- How is that pronounced, Judge Carrillo?

THE WITNESS: El Ceniza, 1963.

MR. MITCHELL: I might have that marked as an Exhibit and reproduced, and with the permission to withdraw the book once the Exhibit has been reproduced in evidence.

MR. ODAM: No objection.

(Respondent's Exhibit No. 94 was
marked for identification, R-94)

Q Judge Carrillo, I want to be -- before I move, I want to be sure the record is abundantly clear. The tile purchase for the remodeling of the Borjas Ranch house was when, please, sir?

A That was -- with the total remodeling of the house was completed back in '64, and it was begun around 1962, so it was between 1962 and 1964.

Q All right. There was some testimony about the purchase of a similar tile for some repair to the school?

A Yes, sir.

Q When was that?

A The school was not built until approximately 1969.

Q And your testimony -- or is it your testimony that there is no interrelation between the two transactions?

A There is not, sir.

Q Oh, Judge Carrillo, would you please turn to Volume Three? Your partnership tax return and your personal return, I'm going to ask you a question that Counsel went into as regards the profit carry-over in your personal return from the operation of the Farm and Ranch. I don't know whether the record reflected, and I'm now calling your attention to Exhibit 184, Page 1106, which is your personal return, that's the --

A What page was that?

Q 1106.

Counsel had asked you as regards Mr. Couling's testimony of how much business that the Benavides Implement and Hardware did with the Farm and Ranch for that year, 1972. Do you recall that testimony?

A Yes, sir.

Q And I direct your attention to 1106. If the gross receipts from all sources to the partnership of the Farm and Ranch is reflected on that Exhibit, that partnership return?

A Yes, sir, it is.

Q What is that figure, please, sir?

A That is \$57,239 and some cents.

Q Now, against the gross receipt, though, is the purchase of inventory which is deducted from that as reflected by the Exhibit, am I correct?

A That is correct.

Q Less legitimate expenses that are calculated on this return by Mr. Kirkland?

A Yes, sir.

Q And, as evidenced by the work papers, et cetera, the net income to you as reflected on your 1040 Form for that year, on Page 1072, Judge Carrillo, was what? \$5,894.13, is that correct?

MR. ODAM: What page are you on?

MR. MITCHELL: I'm on Page 1072, that is his Schedule --

A Yes, sir.

Q Part three to his personal tax return, Mr. Odam.

A \$5,894.13.

Q That's a carry-over from the gross sales, less the inventory, less the expenses, divided by two, being your share and Ramiro's share. Am I correct?

A Yes.

Q All right. Mr. Doyle asked you as regarding some funds in connection with the water district. Do you recall that testimony?

A Yes, sir.

Q And he directed your attention to 1555, Page 1555, which is the schedule drawn up in Volume Three. And I ask you as regards money going from the water district in and to the Benavides Implement and Hardware. Do you recall that?

A Yes, sir.

Q Now, you started to mention something about a Special Fund in the water district. Do you recall that?

A Yes, sir.

Q And the disappearance of that Special Fund?

A Yes, sir.

Q Is that the one-hundred and some-odd thousand dollars that it now appears that the water district is suing Mr. Archer Parr for?

A No, sir, I think the Special Fund, what they are supposed to have, disappeared from there is close to \$500,000.00.

Q Well, Mr. Odam showed you a pleading styled Duval County Water and Conservation District vs. Archer Parr. Is it your testimony -- wherein, I believe, I didn't read it carefully, but there is, according to Mr. Odam a suit for the recovery of funds, plus punitive damages?

A Yes, sir.

Q Now, you started to tell us about a Special Fund. That, you say, is not the Special Fund we're talking about?

A That is correct, sir.

Q Now, what is the Special Fund that you have personal knowledge of?

A The Special Fund was a fund that was set up by George Parr --

MR. ODAM: Your Honor, may I ask the witness a question on voir dire examination?

THE PRESIDENT: Yes, Mr. Odam.

VOIR DIRE EXAMINATION

(Questions by Mr. Odam:)

Q Judge Carrillo, you say you have personal knowledge of the Special Fund?

A I have knowledge; no, no personal knowledge. I have knowledge of it.

Q What is the basis of your knowledge?

A The basis of my knowledge is the conversations that I had with my own father who was a witness at the Parr case and discovered the Special Fund for the first time when he was questioned in the case of U. S. vs. Parr.

MR. ODAM: Your Honor, I would object, number one, on the grounds of relevancy. I do not think -- if the Court wants -- well, I object on the grounds of relevancy of going back into this Special Fund matter. I don't think it's relevant to the issues now under consideration. And number two, the witness has very specifically stated he has no personal knowledge. Therefore, it would be speculation. Number three, he says he relies on conversations of Mr. D. C. Chapa, his father, it calls for hearsay. I object to the entire line of questioning with respect to the Special Funds on these three bases.

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: Your Honor, I just simply thought that in view of some of the questions put by the Court that that matter might be relevant. I certainly, if the Court doesn't care to hear about it, I certainly don't care to pursue it.

THE PRESIDENT: Objection is sustained. Please go on.

MR. MITCHELL: All right. Thank you.

REDIRECT EXAMINATION RESUMED

(Questions by Mr. Mitchell:)

Q Judge Carrillo, the next point that I believe Mr. Doyle asked you about was concerning the default on the dozer purchase agreement. Do you recall that?

A Yes, sir.

Q Now, there's been a great deal of questions directed to you about why George Parr and Mr. Couling would -- and/or Mr. Gonzalez would initiate these vouchers and generate money into Benavides Implement and Hardware. Do you recall that?

A Yes, sir.

Q As a matter of fact the evidence reveals that the money continued into Benavides Implement and Hardware during '73 and '74 and '75.

A Yes, sir.

Q And the evidence reveals that Mr. Couling did not remit any money to the Plains Machinery for the purchase price, if I recall it, at all, in 1974.

A That's correct, sir.

Q Did you receive a communication from the Benavides -- I'm sorry, from the Plains Machinery informing you of the default by Mr. Couling?

A Yes, sir, I did.

Q Do you have it with you?

A Yes, I have.

Q May I have it?

MR. MITCHELL: May I have this marked, please?

MR. DOYLE: Arthur, is that addressed to him?

MR. MITCHELL: Yes, it's addressed to him and it relates right at the time of May, just before the new contract and agreement was executed. And it's noticed that it is in default. I will authenticate it --

MR. DOYLE: We don't have any objection.

MR. MITCHELL: May I have the Exhibits marked, please, and I will attempt to authenticate them and offer them.

THE PRESIDENT: The Exhibits will be marked and entered into evidence.

(Respondent Exhibits No. 95 and No. 95-A
were marked for identification, R-95, R-95A)

Q Judge Carrillo, I hand you what's been marked for identification as R-95 and R-95A and ask you if you received this communication from Plains Machinery at about the time it's reflected on the envelope, May 1st, 1974?

A I did, sir.

Q And do you notice it -- well, read the notice that's handwritten to the Court.

A It says, "O. P., I need this taken care of at once. Mr. Couling has not taken care of this. Red"

Q Now, what is typewritten above that, Judge Carrillo?

A Typewritten above that is Benavides Implement and Hardware Company, P. O. Box Drawer S, Benavides, Texas, notice of installment due, February the 16th, 1974,

\$1,500.00; March the 16th, 1974, \$1,500.00; April 16th, 1974, \$1,500.00; May the 16th, 1974, \$1,500.00. Total, \$6,000.00.

Q They were communicating to you that Mr. Couling had not remitted any of the rental for the periods February, March, April and May and was \$6,000.00 in arrears.

A Yes.

Q Now, Judge Carrillo, in advance of Mr. Odam asking you, I will ask you, why would the folks communicate with you concerning the delinquent status of that County, if you know of your own personal knowledge?

A Because Mr. Red Kurtz had also called me on the telephone and told me that they wanted to know where the bulldozers were, because they were coming over to pick them up; they wanted to pick them up.

Q Judge Carrillo, the record will reflect even beginning in December of '72 -- now, I'm looking at the Appendix on Page 2830, if it please the Court, that Mr. Couling and Mr. Cleofas Gonzalez had filled out an invoice demand or request of payment on the Benavides Implement and Hardware Company invoice form to the Duval County Precinct 3. Am I correct?

A Yes, sir.

Q And it appears, if the record now -- if there is continuity of the record that Cleofas or Rudolfo billed the County for rental from that time forward, that is from December, even prior to the time that the contract was signed, 1972 on through '73 and '74. That's what the record reflects, doesn't it?

A Yes.

Q And, as a matter of fact, Benavides Implement and Hardware, if the letter can be believed from Mr. Kurtz to you, was not remitting the monies to Plains Machinery.

A Yes, sir. And over and above that I paid \$3,550.00 in January or February of that year to Mr. Couling to that account and he had kept that also.

Q Yes, the record will reflect that you paid, even in the year 1973, to Benavides Implement and Hardware.

A Yes, sir.

Q And, I believe the record will reflect that you paid, all told, over \$20,000.00, isn't that right?

A Yes.

MR. MITCHELL: We offer R-95, if it please the Court, and R-95A.

MR. DOYLE: That's the envelope?

MR. MITCHELL: Yes.

MR. DOYLE: No objections.

THE PRESIDENT: Those Exhibits will be received in evidence.

Q Now, Judge Carrillo, in Article I you were asked by Mr. Terry Doyle -- I believe he questioned you concerning Article I that the -- as regards the testimony of Mrs. Lauro Yzaguirre.

A Yes, sir.

Q You were asked whether or not she testified. And I believe her testimony and that of Walter Meek, Mr. Meek discussing or testifying as regards the existence of the claim jackets, et cetera. Do you recall that?

A Yes, sir.

Q And I believe the question was put to you as regards the accuracy or the veracity to be attached to Mrs. Yzaguirre's testimony.

A Yes.

Q I'm going to ask you one question -- and I believe the spectrum of that claim number one goes from 1970 until the middle part of 1974. I believe the last invoice being dated -- I mean, the last check coming out of Duval County a few days after your Certificate of Election, sometime in November of '74.

A Yes, sir.

Q Do you recall, as a matter of fact, Mrs. Lauro Yzaguirre was not even in the Cash Store for a period of over two years during that --

A That is correct, sir.

Q And had, I believe, an operation and she testified that she removed herself as a medical necessity to a hospital in Corpus Christi and she convalesced for a period in excess of two years.

A That is correct, sir.

Q Now, Judge Carrillo, beginning today Mr. Odam, I believe, took up the cross-examination. He commenced with Exhibit No. 65. There are one or two questions I want to ask you about that. That's the check to you for \$1,008.00 based upon the invoice appearing E-61. Would you please get page 793, Examiner's Volume Two.

A What page was that, sir?

Q E-61, 793 -- I'm sorry, E-60, 793. I believe Mr. Odam asked you some questions that I want to clear up here.

A Yes, sir.

Q First of all, Judge Carrillo, you never did receive a check from the County on any account, did you?

A No, sir.

Q These checks, I believe, each and every one, beginning with E-60 and going forward were checks going to Benavides Implement and Hardware and endorsed by a stamp and put in the Benavides Implement and Hardware account.

A Yes, sir.

Q And the Court is aware of the fact that the Benavides Implement and Hardware account was an account solely and only under the control of Mr. Rudolfo Couling.

A Yes.

Q Is that correct?

A Yes, sir.

MR. ODAM: Your Honor, I would object to this line of questioning. I would stipulate, and the evidence speaks for itself, that all of the checks that the Examiners admitted in evidence are made out to Benavides Implement and Hardware. I think it would be repetition of both my examination of the witness and Mr. Mitchell to go back through the fact that all of the checks went to Benavides Implement and Hardware. I would stipulate they went to BIH. That's not where the controversy began, it's after that point.

MR. MITCHELL: Do you stipulate, also, Counsel, so that I can move on, that each invoice was executed by Rudolfo Couling or Cleofas Gonzalez?

MR. ODAM: The record speaks for itself very clearly on that.

MR. MITCHELL: And that the statements were also executed by Cleofas Gonzalez or Rudolfo Couling.

MR. ODAM: That's correct.

MR. MITCHELL: All right. Thank you.

Q Judge Carrillo. I will ask you, in about three instances checks were made payable to you by Rudolfo Couling out of this account that were apparently deposited by him in your bank account.

A Yes, sir.

Q For deposit only. And you testified were not in your handwriting. Do you recall?

A Yes, sir.

Q I believe out of the total sixteen checks that come out of the Benavides Implement and Hardware account from its inception in April of 1971 until 1975, out of

that total checks there are about four -- and I might stand to be corrected -- that did not have recitals on them, either "tubing" or "counter" or so forth.

A Yes, sir.

Q And of this group, I believe, Judge Carrillo, one was the Cash Store, Abel Yzaguirre one. Do you recall that?

A Yes, sir.

Q And then the others now were deposited directly. Did you have any conversations with regard to those deposits by Mr. Couling directly in your account? Can you recount anything that --

A No, sir.

Q Would you have any personal knowledge of why he would choose to deposit those checks, other than to try and pay his account with you on the rental of the equipment?

A No, sir.

Q Now, Judge Carrillo, I'm going to ask you, please, about two questions on the question -- on the payment to you by Mr. Couling out of the Benavides Implement and Hardware account of the \$5,700.00. And I'm referring specifically to Page 823. When, if you recall -- I don't know whether it's reflected -- somewhere probably in these documents -- was the purchase contract made by you of the station wagon automobile? If you can refer now to the Exhibits at E-90 on 830 to help refresh your recollection to answer that question or 836. Do you recall when you bought the car?

A I don't have that before me.

Q Well, I'm sorry. Do you have Volume Two?

A Volume Two 823, you said?

Q Yes, sir. 823, 824, 825, 826, 827, 828, 829, 830. That series of documents you may refer to those to refresh your recollection. Do you recall, looking at those documents now to assist you in your present recollection, when you bought, when you made your deal for the purchase of the station wagon?

A Trying to arrive at that, sir, but this instrument don't --

Q Well, for example, Judge Carrillo, on Page 830 it appears that the title there is dated sometime in 1970 --

A That is the title when I sold it, sir. Now, the title when I bought it is on 831, and it shows November 30 the date the title was issued. The automobile was bought prior to that, November 30, 1971.

Q All right, sir. By looking at the Exhibit on 831, your recollection is that you purchased it sometime prior to the 30th day of November, 1971?

A Yes, sir.

Q Was it paid for by you at that time by cash?

A It was paid by a personal -- as a matter of fact, here is the date it was, 15th of November, 1971. And it was paid by my personal check.

Q All right. Now, Judge Carrillo, thereafter it appears -- and I'm now looking at 823 and -- 824. This is the Exhibit E-85 that is illegible. Is that the check Mr. Odam asked you about? It's illegible in my book. E-85. What's the date of that check?

A What page are you --

Q You're going to be handed it. 824.

A Mr. Couling's check, January 13, 1972.

Q All right. The check from Mr. Couling to you on the account concerning what you have testified is some, what, sixty days later?

A Sixty or 90 days later.

Q All right. Judge Carrillo, are you telling this Court you have no knowledge of the source of Mr. Couling for those funds; that is, that he was getting the money from the Duval County Conservation and Reclamation --

A That is correct. I have no knowledge of it.

Q Is it your testimony you had no prior preconceived agreement or conspiracy as regards the source of those funds at the time you bought your car?

A That is correct.

Q You're not doubting that you needed some money to make that payment and that you approached him and asked him to pay on the account?

A That is correct. Yes.

Q You were asked as regards any -- and I'm moving now to a question put to you by Mr. Odam -- as relates to E-178, Page 1045. That's the check given to you by Benavides Implement and Hardware where Mr. Couling recites -- puts on the check for the payment to you of sale for hay for resale. Do you recall that, please, sir? If you want, you can look to that check to refresh your recollection.

A What page was that?

Q It's E-178, Page 1045.

A Yes, sir.

Q Judge Carrillo, in your County is it a customary procedure, particularly in a sale, let's say, an item such as hay to give a formal bill of sale?

A No, sir.

Q Or bill of lading, for that matter?

A No, sir.

Q Was the hay stored in a warehouse where a warehouse receipt was required?

A No, sir.

Q The check itself recites the amount, the date, the parties, and the purpose, as well as the receipt of the money, is that correct?

A Yes, sir.

Q Now, I don't know whether I understood the questions put to you by Counsel on the Massey-Ferguson. Let me ask you a question about it.

A Yes, sir.

Q Judge Carrillo, I'm referring now to the contract appearing at R-74, 692, and the opening deposit in that First -- that bank at Rio Grande City. Do you recall that line of testimony?

A Yes, sir.

Q What connection -- now, let's ask it this way, what connection, if any, did the Massey-Ferguson transaction have with the purchase by the Benavides Implement and Hardware of those two tractors? Was there any interrelation?

A No, sir.

Q You were asked about E-170. That's a letter on Page 145 of the Exhibits excluded. A letter from Mr. C. G. James to you informing you that the Benavides Implement and Hardware check in the amount of \$2,975.25 had been returned, unable to locate account.

A Yes, sir.

Q Now, can you tell us if there is any interrelation between that check, purchase of that by Benavides Implement and Hardware, and the tractors? Judge Carrillo, is there any interrelation?

A No, sir.

Q Did you buy the Massey-Fergusons appearing on Page 695 of Respondents' Exhibits? No, the Respondents' Exhibits, Judge Carrillo, the yellow book, 695, in front of you, Judge Carrillo.

A I had --

Q 695 there, please. Are you with me, Judge Carrillo?

A Yes, sir.

Q That shows an \$8,706.00 agreement by you, does it not, on the one hand and Nueces Farm Center on the other hand. Am I correct?

A Yes, sir.

Q For the purchase of what?

(Senator McKinnon in Chair)

A One Massey-Ferguson tractor.

Q All right, sir. I'm a little thick-headed, but what does the letter that was excluded at the Judicial Qualifications Commission hearing but which Counsel eluded to here, what does the letter have to do, if anything, with the purchase agreement by you and the Nueces Farm Center? What does the letter have referring to Benavides Implement and Hardware check? What reference, what connection is there?

A I have told Mr. Odam, Mr. Mitchell, that I have absolutely and completely no recollection whatsoever of that matter at all.

Q Did you pay for the tractor as per your installment sales contract as appears on Page 695?

A Yes, sir, I did.

Q And do you now presently have title?

A Yes, sir.

Q And was it placed on your tax return --

A Yes, sir.

Q -- and picked up on your Depreciation Schedule --

A Yes, sir.

Q -- by Mr. Kirkland?

A Yes.

SENATOR OGG: Repetitious testimony. We heard that before.

MR. MITCHELL: I'm trying not to be repetitious. If it please the Court, I'm

THE PRESIDING OFFICER: If you would, please not repeat.

MR. MITCHELL: I'll try not to. I have notations as to that one area.

SENATOR OGG: I'm not trying to be disrespectful.

Q Judge Carrillo, I know that some members of the Court have in their mind and I have in my mind the question of do you have an accounting or some method whereby you can indicate to us what the nature of the equipment account was through Benavides Implement and Hardware of your rental of your personal equipment.

A That was handled through the Farm and Ranch Store through Mr. Cleofas Gonzalez, and I don't have any of those records, sir.

Q Mr. Odam asked you about Exhibit 94 on Page 842, and I'll ask you one question about it.

A What Volume are we in, sir?

Q We're in Volume Two, please, sir.

A What page, sir?

Q Well, go to Page 839. Mr. Odam asked you about the invoice that was executed on Page 839 of December 6th, '72 by Cleofas Gonzalez and the statement and the check, which is E-94 on Page 842, which is endorsed "payment of note." That's on Page 843, the back of that Duval County check going to Benavides Implement and Hardware. Are you with me?

A No, sir. I have 843.

Q 843 is the back of 842, which is the check from Duval County to Benavides Implement and Hardware for \$1,006.00.

A I'm sorry. We seem to have two 843s. I've got the one you're talking about now, I believe, but I think we have two 843 pages.

Q No, Judge -- yes, sir, 843, this. Do you recall the question put to you by Mr. Odam about the proceeds of that note as being in payment -- I mean the proceeds of that check as being in payment of Mr. Gonzalez' -- Mr. Cleofas -- I'm sorry, Mr. Rudolfo Couling's note? Do you recall that?

A Yes, sir.

Q Well, my question to you is that -- do you -- well, first of all, the note, as I recall, that Mr. Couling had was for the amount of three thousand dollars.

A As I recall the testimony, yes, sir.

Q Yes, well, do you know what note that Mr. Couling -- did he talk to you about what he was going to do with the proceeds of that Duval County check, Judge Carrillo?

A No, sir.

Q You know as a matter of fact what note he applied it to?

A No, sir.

Q As a matter of fact, that check is for \$1,006.00, am I correct?

A Yes, sir.

Q The note referred to is over \$3,000.00.

A Yes, sir.

Q Am I correct?

A Yes, sir.

Q Mr. Odam asked you a line of questions as to Parr's motive as regards joining with Couling in the securing of the issuance of checks by Duval County, asked you as regarding the motivation. And I'll ask you one question on that. Isn't it a fact that the money that was secured by the Benavides Implement and Hardware based upon Cleofas Gonzalez' invoices and Cleofas Gonzalez' statement, that money was clear net profit to Benavides Implement and Hardware for sharing either by George Parr or Mr. Couling?

A Yes, sir.

Q Your monies, that is the \$20,000.00 you paid, were more than enough to cover the contract price for the years '73 and '74, were they not, Judge Carrillo?

A And to have had it up to date if that had been applied.

Q So Mr. Couling got -- the money he got from the County for '73, the money he got from you, am I correct?

A Yes, sir.

Q And when you picked the contract up in May of '74, you still owed nineteen thousand plus dollars --

MR. ODAM: Are we talking about the payments just for the Caterpillars, or did you ask him about the root plows too?

MR. MITCHELL: No, I didn't ask him about the root plows, Mr. Odam.

Q Well, you heard Counsel's comment. Out of fairness to the Court, Judge Carrillo, that would not include the price of about roughly \$10,000.00 for those two root plows.

A Well, they were being paid together, sir.

Q Yes. They were being paid concurrent to the time the contract --

A Yes.

Q -- for the payment of the Caterpillars.

A Yes.

MR. MITCHELL: May I approach the witness, if it please the Court, just for a minute?

MR. MITCHELL: I pass the witness.

MR. ODAM: Judge Carrillo, the -- or may it please the Court, the first series of questions pertain to Article I on the Cash Store which Mr. Doyle had asked a question about, and he will ask on the recross examination on the Cash Store, and then I took some notes on the redirect on Article VII and we will break it up, and I will cover those. So first on Article I. Mr. Doyle.

MR. MITCHELL: We have no objection, Mr. President.

RECROSS EXAMINATION

(Questions by Mr. Doyle:)

Q Judge Carrillo, you just identified and the Court admitted into evidence R-20 through R-88, a series of checks written by you to the Cash Store. Are those the same ones that Mr. Mitchell showed you just a moment ago?

A I believe so.

Q Okay. Now, the question I asked you the other day about your dealings with the Cash Store, you indicated that you always paid your bill for whatever groceries you received at that store, is that correct?

A Yes, sir.

Q Now, is the purpose of these checks -- or are you alleging that all of these checks were checks that you issued to the Cash Store in payment of a grocery bill that you had there?

A Well, Mr. Doyle, yesterday you asked me if there were any more checks to Cash Store, and I told you that I wasn't sure; there might be and there might not be. Then we went out and we looked for some more and found those. And there might still be some more. But those were the ones we found, and as a matter of fact I still think there are some more in there somewhere.

Q Well, are you alleging that these checks were checks that you used to pay the Cash Store for groceries that you received on your monthly bill?

A Some would be, Mr. Doyle, but I imagine, but very few there might -- I might have just cashed there.

Q A very few?

A Yes, sir. Mostly there would be, and like I say, if you have a bill for \$38.00 I might have written the bill for -- I mean the check for \$40.00 or \$50.00; something like that.

Q Now, in response to a question by Mr. Mitchell on redirect, you indicated that Mrs. Yzaguirre, the lady that testified, had been ill and out of the store for sometime. Was that your recollection, or was that --

A As I recall -- she has testified here. I don't remember exactly when it was that she was ill, but she was out of the store for about two years, and she has so testified.

Q Well, you are not taking the position, then, that she doesn't know what she is talking about with respect to you getting groceries and the county paying for them?

A I know what I am talking about, that I paid for them.

Q Yes, sir. But, you are not asking the Senate to believe that this lady didn't have knowledge about what went on with respect to the Cash Store, your account, and who paid the account?

A I am laying the facts on the table, showing my cancelled checks to the Cash Store, and I will let the Senate make up their own minds -- look at the evidence and make up their own minds.

Q Okay. Now, Judge, some of these checks go way back don't they?

A Very few of them. Mostly, they were for '72 and '73.

Q Right. But here is some pink colored checks on the First State Bank of San Diego in the years 1962 and '63. Let's take a look at some of those, Judge.

A All right, sir.

Q Now, there is one that is marked R-75, is \$20.00 in January of '62. Is that right?

A Yes, sir.

Q And \$10.00 in January of '62?

A Yes, sir.

Q \$1.28 in February of '63?

A Yes, sir.

Q \$24.03 in March of '63?

A Yes, sir.

Q Judge, I'm just going to ask you to look through these early checks and see if you see any of them that are for even amounts of \$30.00 or \$40.00 or \$50.00, or more?

A One for \$80.00.

Q Okay. That's -- well, it's not an even amount, though, Judge. That's for \$80.28.

A And 28 cents, yes.

Q So, most all of those checks are for some amount of dollars plus some amount of cents. Isn't that correct?

A Some are, and some are not.

Q Well, -- Okay. Now, Judge, here's the ones that you gave us for '72 and '73. I'm going to hand you, just as an example, R-20, 21, 22, 23, 24 and 25. Would you look at those?

A Yes, sir.

Q Now, Judge, are those checks that you used to pay your account at the Cash Store?

A Yes, sir.

Q What are the amounts on those checks?

A \$50.00, \$20.00, \$40.00, \$100.00, \$50.00, \$200.00.

Q Okay. That's all in one month. Is that right?

A I didn't notice that. I just looked at the amounts.

Q They're all in January of '72, four hundred and some-odd dollars?

A Yes, sir.

Q And you are alleging that those checks were used to pay your bill, and that you didn't just cash those and take the money with you?

A That's right, sir.

Q All right. Now, Judge, I'm going to hand you what's been marked as 26, 7, 8, 9 and 30, checks in February of 1972. Are any of those checks -- do any of those checks have any odd cents?

A No, sir.

Q All of them are for even amounts?

A Yes, sir.

Q \$25.00, \$50.00, \$75.00, \$100.00 -- amounts like that. Isn't that right?

A Yes.

Q Okay. Thank you, Judge.

Here's March of '72, Judge. Are there any even amounts -- any checks in that group that have odd amounts, are or they all even money?

A Even.

Q I don't find any in April or May -- excuse me; here's one in May. How much is that one, Judge?

A May? \$48.00.

Q Was that to pay on the account, or just cash that you cashed and took with you?

MR. MITCHELL: What year, please?

MR. DOYLE: '72; all these are '72. Excuse me; this one is '73. It is out of place.

Q I apologize, Judge.

MR. DOYLE: It's numbered with the '72 checks, Mr. Mitchell. I'm sorry.

Q There are none, then, for April or May of '72, Judge. Here's one in June. What's the amount of that one?

A \$200.00.

Q Was that just cashed or was that what you paid on your account?

A Like I have stated, I would go in there, I would give some money on my account, or if I owed \$190.00, I might have written a check for \$200.00, or -- that's the way it went. And these checks, I believe, really go together with those other checks that you had yesterday. We went out and looked and found some more.

Q Okay. Judge, let's skip over here to '73. Judge, I don't see any in here -- yeah, here's one. Judge, what's the date of that check?

A March, 1974.

Q And how much is it made for?

A \$366.26.

Q Now, what is the notation that you have written down on the left-hand side of that check?

A "Balance for March".

Q Now, that check clearly shows what it's for, doesn't it?

A Yes.

Q That you paid off the balance that you owed those people?

A Yes, sir.

Q Who endorsed that check?

A Cash Store, Mrs. Lauro Yzaguirre.

MR. DOYLE: This is Exhibit Number R-63.

Q Judge, are there any other checks, either the ones I have just handed you or any of these others that show on their face that you are paying the balance that you owe those people? I don't think you'll find any, Judge, but if you want to look through there right quick.

A Well, yes, sir. I have -- I think, if you will notice, all of my checks through all of my years, my main fault has been never filling in that "for", what it was for. And now, I have been very well lectured by all of my auditors as to what to do in the future about that particular matter.

Q Okay. Judge, yesterday when I asked you about these checks and why there was such a gap in there, you explained that you weren't doing business with the Cash Store because your cattle had all been moved some place else?

A Most -- all of my cattle had been moved during that time over to Roma, and we were doing all of our work over there. And, I was buying most of my groceries over at the -- in the Valley.

Q Well, now, now that you have found these other checks which indicate you were doing business with the Cash Store, do you want to change that, or do you want to stay --

A No, I don't want to change that. That is -- everything that I have told you is exactly the way it is.

Q Judge, the Exhibit that I asked you about yesterday --

MR. DOYLE: I apologize, Mr. President. I couldn't find the Exhibit.

Q This is -- you remember we looked at this yesterday, these are the tickets that Mrs. Yzaguirre gave us from the month of August, 1972?

A Yes, sir.

Q Now, I believe in connection with that Exhibit, you explained that's when your cattle -- is that when your cattle were all being moved and you weren't doing business, or was it some other time?

A No. This is about the time we moved over there.

Q And I believe we agreed yesterday that those checks -- those tickets totaled \$300.00 -- \$302.00?

A I believe so.

Q Now, Judge, I have found one check --

SENATOR OGG: Mr. President, I think Mr. Doyle ought to stay within the bounds of redirect just as Mr. Mitchell was required to do on recross.

MR. DOYLE: I will be happy to qualify this, Judge.

On cross-examination yesterday, we established that in the month of August, '72, there was evidence which indicated he got \$300.00 worth of groceries. And now, he has presented to us checks in addition to the checks that were previously introduced into evidence which he now says were used in payment of the groceries he received during this period of time.

That was established on redirect. Now, I have him on recross and I'm going in to show, on recross, that the checks that he introduced on redirect don't do anything to damage the position we took on direct.

THE PRESIDING OFFICER: Proceed, Mr. Doyle.

Q Judge, I'm just going to hand you these checks here.

A Yes, sir.

Q I have pulled out the only check I found in August of 1972, and I would like you to read to the Senate the amount of that check, please?

A \$50.00.

Q Now, do you see any others in there in August of 1972, or even early September of '72 --

A Well --

Q -- for an amount around \$300.00?

A I would imagine that my bill for August would have been paid, all or part of it in September.

Q Well, see what you have in there in September?

A However, also -- and, I don't want to get over and try to say -- it would be argumentative -- but, I did look -- I was going through those slips over there, and some say August and some don't have any date at all.

Q Yes, sir. I thought we covered that when it was introduced. Do you see any in there for September of '72?

A September, \$100.00.

Q Is that the only one you find? That's the only one I found.

A Yes, sir.

Q Okay. One more -- only one other question, which I think pertains to Article I, Judge. I believe you testified unequivocally for your attorney that you recognized the signature of Arturo Zertuche?

A Yes, sir.

Q Have no trouble telling who it is?

A I believe I've -- I'm pretty sure that I can--

Q Okay.

A -- identify him.

MR. DOYLE: I believe that's all the questions I have with respect to Article I.

(Questions by Mr. Odam:)

Q Judge Carrillo, I have a few questions on Article VII on the items that Mr. Mitchell brought up. First of all, this item that he introduced into evidence which is marked as your Respondent's Exhibit 95 and 95-A, this is the -- what did you call that? An invoice? Or what is that item from Mr. Kurtz?

A I call -- that is a notice that something had to be done about this account.

Q Okay.

A Delinquency notice.

Q Okay. Delinquency notice. Judge Carrillo, I ask you, and also I refer the Court's attention to Volume Two of the Examiner's Admitted Exhibits. Judge Carrillo, I ask you to turn to Page 930.

A Yes, sir.

Q And you recall that Mrs. Juanette Dreska, the bookkeeper of Plains Machinery, was the lady that brought these items over and they introduced them into evidence?

A Yes, sir.

Q Okay. Again, for the benefit of the Court, I'm referring to the item on Page 930 --

A Yes, sir.

Q -- which is the notes receivable card for Benavides Implement and Hardware.

A Yes, sir.

Q Now, Mr. Kurtz in his little note to you says, "O. P., I need this taken care of at once. Mr. Couling has not taken care of this." And it's dated May the 1st of 1974. And the first entry -- he says, "February the 16th, 1974, in the amount of \$1,500.00."

A Yes, sir.

Q Is that what his note says? If you'll look on the notes receivable card, you go down to February 16, 1974 --

A When?

Q February -- 2/16/74?

A Yes, sir.

Q \$1,500.00 due.

A Yes, sir.

Q And you note there that the payment was made 4/2/74 for \$1,500.00. Do you see that entry?

A Yes.

Q Okay. The next entry Mr. Kurtz has here, he says, "March 16, 1974." He says that's due. And that note card evidences 3/16/74 that that was also paid on April 2nd, 1974, do you see that?

A Yes, sir.

Q The next notation he has in his little note to you says, "April 16, 1974, \$1,500.00 due."

A Yes, sir.

Q And the card shows that on April 16, there is \$1,500.00 paid, but that's in brackets. And I'll get back to the brackets in just a moment. And then the May 16th. Now, first of all, why would it be that Mr. Red Kurtz would be sending you a note on May the 1st complaining about a payment that was due May the 16th?

A I don't have the slightest idea. That's the letter I got.

Q Well, obviously I don't want you to speculate, but I was just wondering if you had any conversation with him as to why he on May the 1st would say, "Take care of this. It's due on May the 16th," and it wasn't even due at that time.

A All I know is that I got that, and they told me that he was delinquent \$6,000.00, and they were going to pick up the tractors, and I issued my own personal check, which is in evidence for \$6,000.00.

Q So, while he says it's \$6,000.00, it was delinquent actually, the note card shows, if we can rely on it that, Mrs. Dreska had made the notation that the February payment -- and we can look to her testimony, and also I call to the Court's attention Mrs. Dreska's testimony in the Judicial Qualifications, and I can quote the page number if the Senate desires. The February of '74 payment was made April the 2nd.

A Yes.

Q The March payment was made April the 2nd. The April the 16th payment was made April the 22nd, and the May the 16th payment was made on April the 22nd. Now, you remember the reason it's in brackets is because that \$3,000.00 check bounced. Do you recall her testimony about that?

A That is -- was one thing also.

Q And then there is the last entry on 6/16/74, and that's where you paid the \$6,000.00, right?

A I paid it, yes.

Q As a matter of fact, if we turn over to Page 932, I ask the Court to turn their attention to Examiner's Exhibit E-165, and Judge Carrillo the same, this is your note card, isn't it? Is it not?

A What page is that, sir?

Q Page 932, notes receivable card when you picked up the Caterpillars, 932. Right there.

A Yes, sir.

Q So, you see where your \$6,000.00 was applied.

A Yes, sir.

Q Now, isn't it true that what happened on that 15 -- the \$1,500.00 payment, there is a \$3,000.00 check that bounced, and when it came back through, it was applied and credited to your account for \$3,000.00?

A The understanding was that I would go on and buy the contract and make them good right then and there. They wanted their money. They said that there was that one check that had bounced, and it hadn't cleared the bank, and it was -- the understanding was that I would buy the bulldozers for the balance due on the contract, and if that check was made good, they would credit that account and give me credit for it.

Q So, first of all, if we had to rely on the note card, it appears that perhaps contrary to Mr. Kurtz's note -- and I recognize this stands for -- on its own feet, but the note card evidences that it was not in fact in default, if we rely on the note card?

A Relying on whatever it is, I went over to Plains Machinery, because they were coming over to pick up the bulldozers, and they either had to have \$6,000.00 or the bulldozers, so I had to produce \$6,000.00.

Q Well, sir, you paid \$6,000.00, and then you got the benefit of the \$3,000.00 when it came back through the bank --

A Oh, yes.

Q So you got the benefit of the \$3,000.00 check when it --

A Yes, sir. In connection with that \$3,000.00 check, you've also got to look at my own personal checks to Benavides Implement and Hardware Company where I have given Mr. Couling a check for \$3,550.00.

Q Speaking of checks, I notice that all the checks that you wrote to Plains Machinery are on the Bank of the Southwest except this first check for \$6,000.00 on the Gross National Bank, Mr. Manges' bank over in San Antonio.

A Yes.

Q Why did you write the first check on the Gross National Bank?

A Why did I write it over there? Because that's where I had the money to pay that \$6,000.00 with.

Q Now, Judge Carrillo, the only other item, I believe, that was raised by Mr. Mitchell was he made reference to the check that Mr. Couling said for \$1,006.00 went to pay on the note. Do you recall that?

A Yes, sir.

Q And it is Mr. Couling's testimony that he went to pay on the note that was taken out initially to set up the Rio Grande City bank account, do you recall? Do you recall his testimony there? There was a note that was taken out --

A Mr. Couling said that he had a note at the Rio Grande Bank. I don't know anything about that note.

Q Well, I would ask you, Judge Carrillo, to look at the item which I hand you at this time, both items, and then I have a question about those. Now, referring to the Examiner's Exhibits admitted, Volume Two, I refer the Court's attention to Page 902. Judge Carrillo, would you look in Examiner's Exhibits admitted, Page 902? For the benefit of the Court, Examiner's Exhibit on Page 902, this was a copy of the entire bank statement from Benavides Implement and Hardware, Drawer M, in Rio Grande City Bank, and I will call the Court's attention to Mr. Couling's testimony that he took out a loan to set up the bank account. And I would offer into evidence what I would state to be -- which are the bank's photostatic copy of the loan ledger sheet evidencing this note which you asked about awhile ago, and also a bank photostatic copy of the notes receivable to evidence the note that was taken out to set up the bank account.

MR. MITCHELL: John, are you going to let me offer those Zertuche tax returns? You know, I did that two or three times, and you objected on best evidence. I'll trade out with you. I'll object on the grounds of best evidence and withdraw it if you will agree to withdraw that offer to my offer, if it please the Court. I think we would expedite it, Your Honor.

THE PRESIDENT: Do you have an objection --

MR. MITCHELL: I object on the grounds of best evidence.

MR. ODAM: This is the bank photostatic copy of the notes receivable card, and this is the bank photostatic copy of the note.

MR. MITCHELL: Mr. President, if Counsel will represent to this Court that those were made under his supervision and they are accurate, I will withdraw the objection on the grounds of Article 3731B as regards photostatic or photographic copies.

THE PRESIDING OFFICER: Mr. Mitchell, do you withdraw the objection?

MR. MITCHELL: Yes, upon representation he supervised the making, and they are accurate, Your Honor. And I'm sure Mr. Odam did supervise the making of

them and will testify that they are accurate. That's all the representation I would require.

MR. ODAM: Well, the copy, which is H-37, I represent to be a copy made by the bank just like Mr. Bates' testimony from the Rio Grande City Bank, that this was made just like all the rest of the bank photostatic copies were made as was this copy of the note card for \$3,500.00. The only point I wish to make is that there was a \$1,006.00 payment on this particular note in response to the question you raised. The only representation I can make to you is that this is the bank photostatic copy, and we would have to fall back on Mr. Jim Bates, Jr.'s testimony with all the rest of them that we introduced from the Rio Grande City Bank.

MR. MITCHELL: I have no objection in faith of Counsel's stipulation, Mr. President.

Q Judge Carrillo, you will notice then that the note card on the R. M. Couling bank account evidences a payment on that note of \$1,006.00, do you see that?

A Yes, sir.

Q And I show you what was Page 902, I referred to earlier, which is where Mr. Couling had testified that he took out the note for \$3,500.00, and the initial payment into this bank account was \$3,500.00, and then the first check shown on Page 902 is the check for \$2,975.00 which was made payable to Plains -- to Massey-Ferguson. My question to you, you see the \$1,006.00 payment on the note on H-37?

A Yes, sir.

MR. ODAM: Pass the witness.

REDIRECT EXAMINATION

(Questions by Mr. Mitchell:)

A Judge Carrillo, Mr. Odam has handed me H-36, which he has represented to be -- and as I recall the testimony of Mr. Couling was that there was a note that was executed at the very beginning of his relationship with the Carrillos. Do you recall that testimony?

A Yes, sir.

Q And that the partnership came into existence back in the early part of 1972. And he pointed specifically to a note that he executed with the First State Bank and Trust Company of Rio Grande City. Do you recall his testimony?

A Yes.

Q And that that note -- is that the note --

MR. ODAM: No, no, there's two notes. This one was a note to set up the Rio Grande City account. The note that you are referring to is the note to set up the San Diego account of \$3,000.00.

MR. MITCHELL: I understand. This note -- this note comes just about as close to that transaction. I do want to observe and I guess you will stipulate that Ramiro Carrillo's endorsement does not appear on your H-36.

MR. ODAM: Oh, no, these are two separate notes.

MR. MITCHELL: Do you have the note that Ramiro Carrillo's signature appears with Mr. Couling then, Mr. Odam, so we can see if the undoubtable Mr. Couling has correctly stated his testimony as regards that \$3,000.00 note?

MR. ODAM: Mr. Couling has testified that he was unable to find the note to set up the San Diego account for \$3,000.00.

MR. MITCHELL: You're telling this Court that this note H-37 is not the note he testified was endorsed by Ramiro Carrillo?

MR. ODAM: No, that was on the Rio Grande City Bank. Both of those items on the Rio Grande City account, San Diego account was set up with \$3,000.00.

Q It appears from the H-37, does it not, Judge Carrillo, that Mr. Couling paid \$1,006.00 as indicated by Mr. Odam on December 18, 1972. Am I correct?

A Yes, sir.

Q And \$900.00 in February of '73?

A Yes, sir.

Q And that's -- if you will give me a minute, let me see if I can trace that.

MR. ODAM: What are you trying to trace, maybe I can help you?

MR. MITCHELL: I want to find out, Mr. Odam, and you might be able to help the Court, if as a matter of fact those payments came from Duval County by Mr. Couling's representation through those invoices and went directly to the payment of his note, along with \$1,006.00. It did, is that correct?

A That's not what I am saying.

MR. MITCHELL: You're not claiming that Mr. Carrillo got the \$1,006.00, are you?

MR. ODAM: This was paid on the note, that's all. A note payment was taken out to set up the account in which the first payment was to make the payment on the Massey-Ferguson with.

Q I have -- Judge Carrillo, Mr. Doyle has asked you again about checks and I have to make this statement to the Court. I hand you now 288 more checks to the Cash Store.

A Yes, sir.

Q And they are Carrillo's 23, 24, 25, 26, 27, 32, 33, 40 and 41 before the House Select Committee. Do you recognize them?

A Yes.

MR. MITCHELL: I'm, unfortunately, not in the position, if it please the Court, to represent to this Court that all of these are separate and apart from the originals. And I would like, once I've asked the witness a predicate question to have permission to have us withdraw the originals and compare them to these to be sure we're not duplicating.

Q But, I will ask you, Judge Carrillo, if you recognize those as copies of checks written by you to Cash Store?

A Yes, sir.

Q And examine each and every page?

A Yes, sir, they are, Mr. Mitchell.

MR. MITCHELL: Your Honor, I think to not impose on the time of the Court we would like to offer these subject to the right to compare the checks with the originals so as to be sure that we have not duplicated those.

THE PRESIDING OFFICER: Mr. Doyle, do you have a position?

MR. MITCHELL: They have not been numbered, I'm sorry, Mr. President. If we could have them numbered, please. I think we could save the Court's time if we can be allowed, Your Honor, to take those and compare them to the ones introduced after they have been marked so we can be in a position to make a representation to the Court tomorrow morning that we're not duplicating any of those checks. It's quite possible that some are duplicates. I'm unfortunately not in a position to represent to the Court at this point which ones are, if any, duplicated.

MR. JAWORSKI: Well, you don't offer them at this time.

MR. MITCHELL: No, sir, I would like, Your Honor, to be able to make a more streamline offer, but I don't want to shut down -- keep this examination open.

MR. DOYLE: If you want to offer these into evidence I would first like to point out to the Court, because the Court may have an objection besides me. What these appear to be are photostatic copies of the front side of a series of checks.

MR. MITCHELL: That's correct.

MR. DOYLE: There's nothing to indicate that these checks have ever been negotiated.

MR. MITCHELL: Those were checks that were offered into evidence -- and the reason I've got only the photostat that's the only copies I made. Those were offered before the House Select Committee, Mr. Doyle.

MR. DOYLE: I don't want anybody to think we're trying to keep anything out, we're sure not. And even though we don't have anything to indicate that the checks have ever been negotiated I have no objection to the introduction into evidence of what I've got here in my hand if you want to go ahead and put them in evidence at this point.

MR. MITCHELL: To be sure that we're not duplicating, and I appreciate that consideration, if the Court will permit us to withdraw those and give them to Judge Carrillo to make a comparison so that tomorrow we can offer only those --

MR. DOYLE: I would not have any objection to them being withdrawn after they have been printed for the Journal.

MR. MITCHELL: Okay. Fine. May we have them marked, then, Your Honor, at this point.

With that, Your Honor, I have no further questions of this witness, other than to ask him if he negotiated those checks in the same manner as he previously negotiated the other checks.

(Respondent Exhibits No. 96 through 156 were marked for identification, R-96 through R-156)

Q Those only that are not duplicated, Judge Carrillo.

A I did.

MR. DOYLE: Mr. Mitchell, they show his signature.

MR. MITCHELL: Yes.

MR. DOYLE: They just don't show that who he gave the checks to --

MR. MITCHELL: I understand.

MR. DOYLE: -- negotiated them.

MR. MITCHELL: I understand. And that's the reason I asked him the question.

Q As far as your personal knowledge, Judge Carrillo, those checks appearing on the photostat were issued by you and handled in the same manner as R-1, two, three, four, five series. Is that correct?

A Yes.

MR. MITCHELL: We will offer, subject to that connection and subject to the screening, Your Honor, so that there is no duplication.

THE PRESIDING OFFICER: Mr. Doyle and Mr. Odam, do you have any further questions for this witness?

MR. ODAM: I have no further questions at this time.

MR. DOYLE: Mr. Mitchell, you said something about subject to screening. Either they're all coming in or they are not all coming in.

MR. MITCHELL: I will just withdraw that condition. I just didn't want to burden the record with the duplicates. I withdraw that then if that's going to constitute an object or obstacle for Counsel I just offered them, Judge.

THE PRESIDING OFFICER: Witness will be excused.

THE PRESIDING OFFICER: Mr. Mitchell, Mr. Doyle, approach the Bench, please.

MR. MITCHELL: Mr. President, I can proceed with the custodian of the records. Mr. Doyle, could you call the custodian in? I will see if I can't introduce these tax returns.

SENATOR AIKIN: Mr. President.

THE PRESIDING OFFICER: Senator from Lamar.

SENATOR AIKIN: Members of the Senate, if it's agreeable, I had hoped that we would have a little break and several have told me they would like to go right straight on through. And if it's all right, we're having a little break here anyway until they get the next witness here and if you will just please bear with us and stay around until we get the next witness here.

THE PRESIDING OFFICER: Mr. Mitchell, is your next witness ready?

MR. MITCHELL: No, they're not available. Are they here, Judge?

JUDGE CARRILLO: They're at the motel. I called them. They are on their way. It ought to be about ten minutes.

MR. MITCHELL: We do have some agreement, if we can make some headway here. We have the -- Mr. Doyle. see if I state this correctly. If it please the Court, I have the custodian of the official records that I'd like to put on the stand, and question as regards the introduction into evidence of certain matters that were introduced before the House Select Committee, and that's the --

MR. DOYLE: She's here.

MR. MITCHELL: She's here and available. I believe before that -- Mr. Doyle and I agreed that this one document, the Zertuche General Store sales permit, however, can come in without any further authentication, and if that's the correct statement, I would like to have it marked and offered into evidence.

MR. DOYLE: If you'll just advise the Court that you -- that copy was prepared under your supervision and you'll vouch for it's authenticity.

MR. MITCHELL: I advise the Court --

MR. DOYLE: A copy of it does exist in the Comptroller's Office of the State of Texas.

MR. MITCHELL: Right. I advise the Court that the copy was made from the original and that I supervised the making of the copy, and the original I introduced in the Federal Court in Corpus Christi.

MR. DOYLE: Another copy of that is readily available, and I have no objection to him introducing what appears to be a valid certified -- I mean, a valid photostat.

THE PRESIDING OFFICER: There's no objection. It will be received. Mr. Mitchell, proceed, if you would.

(Respondent Exhibit 160 was marked
for identification, R-160)

MR. MITCHELL: All right. Thank you.

THE PRESIDING OFFICER: Will the transcriber, Betty Haygood come forward, please. Raise your right hand. You do solemnly swear or affirm that you will correctly transcribe and report all of the proceedings of the trial of O. P. Carrillo, on impeachment, so help you God.

MS. HAYGOOD: I do.

MR. MITCHELL: May I -- we have, if it please the Court, now introduced into evidence the -- what is that document, Mr. Doyle the sales license for Zertuche General Store--

MR. DOYLE: I believe it's called the sales tax permit.

MR. MITCHELL: Yeah, let me get the exact document.

MR. DOYLE You might state for what year.

THE PRESIDING OFFICER: Will the custodian of the records come forward, please. Raise your right hand. You do solemnly swear or affirm that the evidence you give upon this hearing by the Senate of Texas on impeachment charges against O. P. Carrillo shall be the truth, the whole truth and nothing but the truth, so help you God.

MS. PICKETT: I do.

MR. DOYLE: Mr. Mitchell, would you agree to waive The Rule on this young lady? We need her from time to time because she's familiar with the Exhibits.

(Off the record discussion.)

SENATOR PATMAN: That has to be done by the whole Senate, I believe, waiving The Rule.

MR. JAWORSKI: Senator Patman, answering your question, this can be waived by Judge Carrillo, and his Counsel has said that he was willing to let the witness stay.

SENATOR PATMAN: It's satisfactory with me. I just thought it was in the impeachment rules, specifically that all witnesses should be under The Rule.

MR. JAWORSKI: That's correct, but it is subject to waiver.

SENATOR AIKIN: Mr. President, if there's any question about it, I'll ask unanimous consent.

MR. DOYLE: Mr. Mitchell, what we've agreed upon you introducing is R-10, which is a sales tax permit. Does that answer your question?

SENATOR AIKIN: Mr. President.

THE PRESIDING OFFICER: Senator from Lamar.

SENATOR AIKIN: If there's any question about it, Mr. President, I'll ask unanimous consent and that will dispel -- I don't think anybody objects.

THE PRESIDING OFFICER: Is there objection?
Chair hears none.

MR. MITCHELL: May it please the Court, R-160, documentary R-160, which we offer, is a Xeroxed copy of the limited sales tax permit issued to Arturo Zertuche, P. O. Box 424, Benavides, Texas. The taxpayer's number is 2449780163-9 for the month, the first month of 1967. Thank you, Mr. Doyle.

DIRECT EXAMINATION

(Questions by Mr. Mitchell):

Q I'll ask the witness to state her name for the record, please.

A Laura Pickett.

Q You are the, and were, I believe, the official custodian of the documentary introduced during the hearings of the House Select Committee on Impeachment held here in Austin?

A Yes, sir.

Q And would you as that custodian -- did you receive the official records introduced during the hearing?

A Yes, sir.

Q And would you as a matter of performing your duties and during the course of the hearings mark those Exhibits dependent upon who offered the Exhibits?

A Yes, sir. Well, actually the Court Reporter would do the marking of the Exhibits.

Q All right. And tell the Court then, after the Court Reporter would mark what procedure would you follow as regards to the filing, indexing, preserving, and delivering to this Court today of those Exhibits intact as they were filed by you during the hearings, please, ma'am.

A Well, I would make a list of them and record them in the committee minutes, which were the official record, and I had them filed in my --

Q So if the Court desired today they could look to the minutes of the official records and the Exhibits would be identified such as Carrillo 1 or Carrillo 2 or Committee 1, etc. Am I correct?

A Yes, sir.

Q And state whether or not your duties call for, and you in performance of those duties, would make that entry in a master list?

A Yes, sir.

Q Now, did I ask you please to bring -- well, first of all, Carrillo No. 2, which is the tax return for Hector Zertuche for '65, '66. Do you have that document?

A I don't have it. It's over there.

MR. MITCHELL: May she be excused, Your Honor, to pick it up?

MR. ODAM: Mr. Mitchell, you want her to just pick up the rest of them while she's there?

MR. MITCHELL: Yes, please.

Q Ms. Pickett, let me -- strike that -- withdraw that last question and ask you, do you have a Carrillo No. 1 to begin with, or is that the one Counsel has agreed on --

A That's it.

Q Carrillo 2. Do you have that, please, ma'am?

A Oh, I'm sorry. I left it over there I thought they were all in one stack.

Q May I hand that -- you can take that. Do you recognize that as a copy of Carrillo 2?

A Yes.

Q And it is -- what does it purport to be, please?

MR. DOYLE: Mr. Mitchell, she has them.

A It looks like a tax return for Hector Zertuche.

Q All right. For the year 1965 and 1966, is that correct?

A Yes, sir.

Q Now, I'll ask you about the documents, please, ma'am. Those documents were taken by you in the regular course of discharging your duties as the custodian?

A Yes, sir.

Q And they were indexed pursuant to the dictates of the statute --

A Yes, sir.

Q -- by you, and they were catalogued, I suppose, by you, were they not?

A Yes, sir.

Q And have you maintained them in your custody since the time of the hearing they were delivered to you?

A Yes, sir.

Q And can you state to the Court and to Special Counsel that these documents are as they were given to you and you have preserved their continuity from the time you got them until today.

A Yes, sir. They -- I believe that you gave us your copy, and then we made Xeroxes and returned generally all of yours back to you.

Q At the time of the offer, the offer was made by me as Counsel for Judge Carrillo.

A Yes, sir.

Q And for that reason that Exhibit bears the label, I believe, Carrillo 2, does it not?

A Yes, sir.

Q And it bears the date June '75 and Mr. Walter Hickman's initials.

A Yes, sir.

Q And you recall he was the official Court Reporter that transcribed the testimony of the proceedings before the Texas State House of Representatives, House Select Committee on Impeachment, set up under H.S.R. 161.

A Yes, sir.

MR. MITCHELL: Mr. President, I believe I have a more legible copy, if I might be permitted to ask the witness to make a comparison between the legible copy that I have and the one that is the official record, and make an offer and a request to substitute. I think the copy she has -- probably the ones I have are a little more pronounced.

Q Would you make an examination and see if the documents are precisely the same.

MR. MITCHELL: May I have this one marked, please, and would you give it to Counsel, please. Then, I will make an offer on it.

(Respondent Exhibits No. 161 and No. 162
were marked for identification, R-161, R-162)

A That appears to be the same.

MR. MITCHELL: May I have this one marked, please?
May I ask Counsel -- Counsel, did you request one tax return of my client, Judge Carrillo, that had not been put in the record?

MR. DOYLE: I believe it was the individual returns for 1973 and '74 that are not in evidence.

MR. MITCHELL: All right. May I, Your Honor, have this one marked, which is O. P. Carrillo's 1973 return, and we tender it pursuant to request of Counsel. May I be permitted to do so out of --

(Respondent Exhibit No. 163 was
marked for identification, R-163)

MR. DOYLE: Mr. Mitchell, would your client testify that this is an accurate copy of the return he actually filed?

MR. MITCHELL: Judge Carrillo, you heard Counsel's question. Would you please look at R-163 and answer the question?

THE WITNESS: Yes, sir.

MR. MITCHELL: We offer 163 which is the tax return requested by the House Board of Managers, of Judge O. P. Carrillo. And, we offer the two preceding Exhibits under the statute providing for the introduction into evidence of all official documents that are in the custody of official and proper committees, agencies, offices of the State of Texas, if it please the Court.

MR. DOYLE: Mr. President, I would object to the introduction of R-161 and R-162. First, because both violate the best evidence rule.

Second, and much more important, neither have been authenticated as being -- they purport to be partial income tax returns of Hector Zertuche for the years 1965 and 1966. Neither bears the signature, even a copy of the signature of Hector Zertuche. They are both unsigned. Hector Zertuche has not appeared to testify that they are accurate copies, photo copies of his 1965 and '66 income tax returns.

I would point out to the Court that Mr. Mitchell has made reference to a statute which permits the introduction of evidence to get around the best evidence rule under limited circumstances. What the custodian of the House records has is a copy of an income tax return, a copy of a copy which is not -- of an alleged income tax return which was not properly authenticated at the time the House received it and has not, up to this point, been authenticated for the purposes of this hearing.

MR. MITCHELL: If it please the Court, may I speak to that objection?

At the time that Exhibit was authenticated before the Select Committee, it was authenticated through the preparer, Mr. Oscar Kirkland.

The original not being in our possession, I will represent to the Court that I will have Mr. Kirkland here in the morning who, as preparer of it and the others of Arturo Zertuche, will authenticate that they are the copies that he maintained in his office, and his signature appears on those tax returns, and would by way, and effect, be a double authentication of the tax returns.

MR. DOYLE: Mr. Mitchell, I would take issue with you. Mr. Kirkland's signature does not appear on the copies that you handed me, nor does Mr. Zertuche's. In fact, the place where people would sign is blank, and I will tender this to the President for his --

THE PRESIDING OFFICER: Mr. Mitchell.

MR. MITCHELL: Yes, sir.

THE PRESIDING OFFICER: Approach the Bench, please.
Mr. Doyle.

MR. DOYLE: Mr. Mitchell, are you withdrawing your tender of 161 and 162 temporarily?

MR. MITCHELL: Yes, I'm withdrawing them temporarily, Your Honor.
What are those exhibits, the two numbers there?

MR. DOYLE: 161 and 162 are the ones you withdrew, and 163 is Judge Carrillo's '73 tax return, which I do not object to.

MR. MITCHELL: We call, if it please the Court, Mrs. Elvira Rodriguez.

THE PRESIDING OFFICER: "You do solemnly swear or affirm that the evidence you give upon this hearing by the Senate of Texas of impeachment charges against O. P. Carrillo shall be the truth, the whole truth and nothing but the truth so help you God?"

THE WITNESS: I do.

ELVIRA RODRIQUEZ

DIRECT EXAMINATION

(Questions by Mr. Mitchell:)

Q Will you speak into the microphone, please, ma'am?

A Yes, sir.

Q Tell the Court your name, please.

A Elvira Rodriguez.

Q Mrs. Rodriguez, where do you reside?

A In Benavides, Texas.

Q And how long have you been a resident in Benavides, Texas?

A All my life.

Q I'm not going to ask you your age. I've learned long ago not to do that to a lady, but you were old enough to be an adult, say, in the latter part of the 1960's, were you not?

A Yes, sir.

Q All right. I'll ask you, do you know where the Vaello Sales Building is in Benavides or was?

A Yes, sir.

Q Mrs. Rodriguez, do you know Mr. -- Judge O. P. Carrillo?

A Yes, sir.

Q Do you know Arturo Zertuche?

A Yes, sir.

Q Do you know George Zertuche, Jr.?

A Yes, sir.

Q Are Arturo and George, Jr. brothers?

A Yes, sir.

Q Tell the Court, is their father George Zertuche, Sr.?

A Yes, sir.

Q Do you recall whether or not there was a store, it was in Benavides, Texas, in the latter part of 1960, that is specifically, '67, '68 and '69 known as the Zertuche General Store?

A Yes, sir.

Q There is an Exhibit in evidence, and I perhaps can cut across looking for it, that appears about February of 1967, Mr. Arturo Zertuche filed an application for a store license with the Zertuche General Store. Now, using that as a point in time, Mrs. Rodriguez, I'll ask you, did you work for Zertuche General Store?

A Yes, sir.

Q All right. And when did you go to work for Zertuche General Store?

A I don't remember the exact date, but it was between '65 and '67.

Q All right. Were you working -- do you recall who owned the store at the time you went to work for it?

A Mr. Zertuche.

Q Which one?

A Hector.

Q All right. As a matter of fact, did Hector own the store to begin with from about the year 1966, '65, '66 to --

A Yes, sir.

Q Do you recall whether or not he was succeeded by his brother, Arturo Zertuche?

A Yes, sir.

Q Did you continue -- tell us whether or not you continued to work for Hector Zertuche after -- I'm sorry, Arturo Zertuche after Hector left?

A Yes, sir.

Q You did?

A Yes, sir.

Q All right. Now, I'll ask you, please, to describe for us what merchandise, if any, you had in the Zertuche Store at the time that you went to work for Hector Zertuche, if you recall?

A It was a general store. It had linens and rockers, stereos, portable, and televisions, stoves, refrigerators, and lots more. There were too many items to describe.

Q All right.

A But they had most everything in there.

Q Did it have any refrigerators?

A Yes, sir.

Q Do you recall whether or not, Mrs. Rodriguez, that you sold the merchandise that was displayed there on the floor to any and all persons that would come in the door?

A Yes, sir.

Q I'll ask you, Mrs. Rodriguez, did you know Cleofas Gonzalez?

A Yes, sir.

Q Did Cleofas work with you in the Zertuche Store, or did he work elsewhere? Do you recall?

A He worked at the Farm and Ranch, but he had contact with me for the Zertuche General Store.

Q All right. I'll ask you, where is the Farm and Ranch as relates to the Vaello Sales Building, I believe it's been identified that the Zertuche Store was in the Vaello Sales Building, am I correct? Do you know the Vaello Sales Building?

A Yes, sir.

MR. MITCHELL: Do we have those pictures, please, that I can show this lady?

Q I hand you what's been introduced as H-34 and ask you if you can recognize that building. I don't know when it was taken. I just ask you simply if you recognize it.

A Yes, sir.

Q What is it, please, ma'am?

A It's the Zertuche General Store in this part, and then this part was vacant for the commodities of the welfare.

Q All right, now. Unfortunately, that record doesn't show what this part is. Would you indicate, now -- to the left there is west, and to the right is east, and to the bottom is south, and someone has put "n" for north.

A Right.

Q Now, where was the Zertuche Store both under Hector and Arturo as you recall it? Would you indicate again, please?

A It was on this side right here, this part right here.

Q All right. And, Mrs. Rodriguez, could you tell us please, ma'am, if that's the place where the merchandise was kept?

A Yes, sir.

Q All right. How long was the -- did you work for the Zertuche General Store at that location while it was owned by Arturo?

A Hurricane Beulah hit the store -- the city, then it was destroyed.

Q Now, let me ask you --

MR. DOYLE: Mr. Mitchell, I'm sorry. If you don't mind my interrupting. Did you say Hurricane Beulah?

THE WITNESS: Right.

MR. DOYLE: Okay. Could you give us a year?

THE WITNESS: I believe it was 1967.

Q All right. Were you there when the high winds destroyed the building or hit the building in '67, Mrs. Rodriguez?

A You mean at the store?

Q Yes.

A No, it was closed for the hurricane.

Q All right. Were you able to observe it after the storm?

A Yes, sir.

Q Now, can you describe it for the Court, please, what condition was the building in after the storm?

A Well, we had water running in through the roof and through the small windows at the top, they were broken, and the door.

Q Did you all have any bicycles in that store for sale?

A Yes, sir.

Q I believe I asked you if you had a refrigerator, and you said you did?

A Yes, sir.

Q Now, what if anything was done with the merchandise that was in the store after the hurricane hit it in 1967, Mrs. Rodriguez, if you know?

A What was your question?

Q What was done with the merchandise that was there in the store?

A Well, it was damaged, and after it was damaged, they moved to the Farm and Ranch.

Q All right. Now, they -- who moved it? Do you recall?

A I believe it was Mr. Zertuche, Sr., and I don't know who helped him.

Q All right. But, do you -- are you sure that -- strike that. Some of the fellows there moved the merchandise from the Vaello Sales Building to the Farm and Ranch Building?

A Right.

Q All right. Now, you mentioned earlier that you had -- that you did know Cleofas Gonzalez?

A Yes, sir.

Q How long have you known Cleofas Gonzalez?

A All my life.

Q During the time that you were at the Zertuche Store either under Hector or Arturo, did you have an occasion to talk with Cleofas Gonzalez?

A Several times.

Q All right. Now, let me ask you, specifically, did any of these conversations occur in the Zertuche Store at the Vaello Sales Building?

A Yes -- well, sometimes he would drop by.

Q All right.

A And sometimes I would contact him by phone.

Q Did you know at that time of your own personal knowledge what his employment was? By that, I mean, when he would come over to see you at the Zertuche Store when Arturo owned it. Do you know what he -- what Cleofas -- where he was working?

A He was working for the Farm and Ranch.

Q And Farm and Ranch was a merchandising store, was it not? Was it a merchandising store, Mrs. Rodriguez? Do you know.

A I don't remember.

Q All right. Now, do you recall, and can you tell us, the occasion for his visit to you while you were at the Zertuche Store?

A Well, I was told, you know, that when I didn't have enough change, he told me that when I didn't have enough change to pay the merchandise that would come in by the truck lines to call him in or send them over there and he would pay for the merchandise.

Q All right. And did you have an occasion to need some change and follow his instructions --

A Yes, sir.

Q Do you recall -- can you tell the Court how many times you called -- strike that. Where did you call on him at? Where was it? The Farm and Ranch?

A At the Farm and Ranch.

Q Was there a telephone in the Farm and Ranch?

A Yes, sir.

Q And was there a telephone in the Vaello Sales Building, the location of the Zertuche General Store?

A No, sir, I had to use Mr. Carrillo's, next door, telephone.

Q All right.

A At his residence, Oscar Carrillo.

Q All right. Now, you indicated that there was also a portion of the building, Vaello Sales Building, used for commodities.

A Yes, sir.

Q Was that separate and apart from the store known as Zertuche General Store?

A Yes, sir.

Q Do you know a Mr. Lozano, Mrs. Rodriguez?

A Yes, sir.

Q What is his full name?

A I don't recall his first name, but I can tell you if I see him.

Q Well, in what connection do you know him?

A He was the one that would give us the license, you know, for the store.

Q Is that the store license that was issued by the State?

A That's right.

Q Tell us whether or not while you were working for Arturo Zertuche did he on occasion visit you and talk to you about paying your tax or making your report? Do you recall?

A He came by to renew our license because it was almost due.

MR. MITCHELL: May I have the Exhibit I just introduced?

Q Mrs. Rodriguez, I'm going to hand you what's been introduced before the Court as R-160. I don't know whether you've ever seen it. Have you ever seen this limited sales tax permit issued January 6th, 1968 to Arturo Zertuche, Zertuche General Store? Do you recall whether you ever saw that, the original of that document?

A Well, he was in charge of the tax, so --

Q Did Mr. Lozano come and talk to you about that?

A Yes, sir. That's right.

Q All right. Can you tell us of your own present recollection how many times he visited you there in the store?

A Once he came to visit the store, and the next time he came, I was at home, so he went to the house and talked to me about the license.

Q And can you tell the Court what he talked to you about, what was -- if there was anything specifically that you can recall that you can tell us that he visited with you about officially on the store license?

A Well, it was a license, and I believe it was about the tax, and I told him Mr. Zertuche was not there, and then he said he would talk to him later.

Q All right. Do you recall whether or not he filled out some character of report, sales tax report?

A I don't recall.

Q Mrs. Rodriguez, did you have any, as a part of your duties, the duty and responsibility to fill out the sales tax reports for the Zertuche Store?

A No, sir.

Q Do you know, as a matter of fact, that they were filled out?

A Yes, sir.

Q And can you tell the Court who filled them out? Who filled the sales tax forms out?

A When Hector was there, Hector would, and when Arturo was there, he would do it.

Q All right. Now, I'll ask you, please, ma'am, as to Mr. George Zertuche, Sr. specifically. Can you tell us whether or not Mr. George Zertuche, Sr. was one of those gentlemen that helped move the inventory?

A Yes, sir.

Q Do you know whether or not of your own present recollection Cleofas Gonzalez might have assisted in moving the inventory or whether he was there --

A I don't know.

Q I would like to have your best present recollection of how many times Cleofas was in that store -- strike that. Let me -- tell the Court how much distance separated the Farm and Ranch Store and Arturo Zertuche's store when you worked there. How much distance? How many blocks?

A Let me see -- about four or five blocks.

Q All right, ma'am.

A More or less.

Q And how many times that you can recall was Cleofas there in the Zertuche Store?

A About once or twice.

Q Did you have an occasion to visit with him while you were working in the Zertuche General Store, when it was owned by Arturo -- did you have an occasion to visit with Cleofas over in the Farm and Ranch? Do you recall?

A Well, I went there several times for the occasion of the store and sometimes for other occasions.

Q Mrs. Rodriguez, I believe at the time you worked for Hector Zertuche in the Zertuche Store and Arturo Zertuche, after he took over, you were actually an employee of the County, were you not?

A That's right.

Q Were you working in the Welfare Department?

A Right.

Q And your work there was part-time in assistance of the store?

A Part-time.

Q Is that correct?

A And also part-time at the Zertuche Store too.

Q All right. Mrs. Rodriguez, the record reflects that Hector had the store from '65 -- 1965 and 1966 and that Arturo had it '67, '68, '69 and '70. Does that comply with your recollection of how those fellows owned that store?

A I worked until 1967, I helped them out.

Q All right. You didn't have any further connection with it after 1967?

A No, sir.

Q And that was the year the building was destroyed?

A That's right.

Q Do you know who took over your duties after 1967 when the building was destroyed?

A Well, they moved it to the Farm and Ranch and I believe it was Cleofas Gonzalez.

MR. MITCHELL: Okay. Your witness.

CROSS EXAMINATION

(Questions by Mr. Doyle:)

Q Mrs. Rodriguez, I believe you went to work for the Zertuche Store, you said, between 1965 and 1967. Can you give us any better estimate as to when you went to work?

A Well, it was just part-time -- and there was several days of the week that I would work for them, whenever I didn't have to work for the County.

Q It was just for a time?

A Right.

Q Well, was it like two or three weeks or two or three months or can you give us any idea how long you worked?

A No, it was from '65 to '67, but there was just a day or two from each week, on and off.

Q Now, did you work all of '67 for the Zertuches?

A Sir?

Q Did you work all of 1965 for the Zertuches?

A Well, yes, but just part-time.

Q Well, you were getting paid by somebody else, as I understand it?

A By the County, but I was paid by the County -- I was part-time working for the County too. I was not getting paid by the Zertuche Store.

Q Well, who paid you for the County?

A It was the Commissioners.

Q Which Commissioner?

A Mr. Carrillo. It was Atlee Parr at that time, before he died.

Q Okay. So, you worked for Atlee Parr's precinct?

A Right.

Q And Atlee Parr passed away in '67?

A That's right.

Q Do you remember when he died in '67?

A I don't remember the date, sir.

Q Was it before or after the hurricane?

A I don't remember.

Q Okay. Did you continue to work for the same precinct after Ramiro Carrillo became the Commissioner?

A Yes, sir.

Q You did?

A That's right.

Q All right. Now, you got paid from the County?

A From the County.

Q How much money did the County pay you?

A \$150.00 a month.

Q How much money did the Zertuches pay you?

A Nothing.

Q So, you were kind of in the same boat Cleofas Gonzalez was in. Is that right?

A What was that?

Q Well, you are aware that Cleofas Gonzalez did not get paid by the Farm and Ranch, all he ever got was paid by Ramiro Carrillo as a County Official?

A I don't know about how he got paid.

Q Okay.

A I wasn't aware.

Q But you never got any money from the Zertuches for any work that you performed?

A No, sir, he would give me a gift or something.

Q Well, like what?

A Like a set of pillowcases or sheets or camera or something like that, from the store, something from the store.

Q Well, you were doing this work as a County employee in connection with the Welfare Department. Is that right?

A I was working with the County with the welfare. And whenever I didn't work for the County he would ask me if I could help him.

Q In other words, -- who would ask you that, Ramiro or --

A No, Zertuche.

Q Well, how was it that you were over at the Zertuche Store if you were a County employee?

A Because I was -- I worked for the County just when we issued commodities.

Q Where were the commodities issued from?

A From the County?

Q What location in town, ma'am?

A Next door to the Zertuche Store.

Q In a separate building?

A That's right.

Q Was it under the same roof?

A Yes, sir.

Q Just a separate part of the Vaello Sales Building?

A That's right.

Q All right. Now, who else -- who worked in there? Who else -- who worked in there? I think in '65 -- who was your boss, Hector or Arturo?

A I believe it was Hector.

Q And when did Arturo take over?

A I don't remember the date.

Q Well, was --

A Since I wasn't there permanently -- I can't remember exactly the date.

Q You were just in there a couple of days here and there, isn't that right?

A Right.

Q And Hector was away at school, wasn't he? I mean, Arturo was away at school, wasn't he?

A I believe so. I wouldn't know what he ever did. He would come in and out, you know, and tell me -- I worked when he wasn't there, when he wasn't able to be there.

Q Well, let me ask you this. On any given day did you open up the store or did somebody else open up the store?

A When he wasn't there I would open it up.

Q You had a key to it?

A Right.

Q Well, now, would it be several days at a time that he wouldn't be there or several weeks at a time or several months at a time or what was the facts?

A Well, all I know is I would work two or three days of each week. And then I didn't go when he opened, I didn't know when he would open sometimes if he wasn't there and I wasn't there he would close the store for that day.

Q This is Hector or Arturo?

A Both.

Q Now, let's go back to, say, 1965, when you first went to work there. That was Hector running the show then. Is that right?

A Right.

Q Who did you all buy your merchandise from?

A Well, he would do the buying and sometimes it was delivered by the Alamo Express Truck Line.

Q Well, now, you were there for about two years.

A That's right.

Q About how many times while you worked there did they deliver merchandise?

A Well, it was several times, I can't remember how many times.

Q What kind of merchandise did they deliver there?

A Well, they would deliver linens, dishes and things like televisions and refrigerators, things like that.

Q This was in 1965?

A Right.

Q Okay. Now, you were there when the hurricane came, immediately prior to the hurricane coming there. Is that right?

A Yes, sir.

Q And after the hurricane you never did work there anymore?

A No, sir.

Q Is that right?

A That's right.

Q Just before the hurricane came, can you remember back then, what the store was like?

A Before the hurricane?

Q Yes, ma'am, just before. The hurricane was in September of '67, I believe you said.

A That's right.

Q Well, just immediately before that, were there any television sets in there?

A Yes, sir, we had televisions, refrigerators, bicycles, stereos, stoves --

Q Well, did you sell any small items, like watches or rings?

A No, we would sell small items, but not as watches. We would sell knives -- a set of knives, silver. Well, there were a lot of things that --

Q How big was the store, ma'am? How big was the Zertuche Store in, say, August of '67?

A Well, it was not too small, it was not too big, it was medium size.

Q Well, was the room as wide as from me to you?

A Sir?

Q Was the room as wide as from me to you?

A Yes, sir.

Q Wider than that?

A Maybe wider than that.

Q How long was it? Was it as long as from you to the back of the Chamber?

A No, sir, it was smaller.

Q Half that long?

A Maybe.

Q So, it was a relatively small store?

A Yes, sir.

Q Is that right?

A That's right.

Q One person could operate it without any difficulty?

A How was your question?

Q I say, one person could operate it without any difficulty?

A That's right.

Q Did you have a cash register?

A Yes, sir.

Q Did you make sales?

A Yes, sir.

Q How would -- what would you do when you made a sale? Would you write out a ticket?

A Well, I would write it down, yes, and then I would turn it in to Zertuche -- to Mr. Zertuche.

Q Well, what if he wasn't there that day?

A Sir, I would save the box there in the store until he would come over -- for a day or two.

Q What box, ma'am?

A I kept a little box where I kept my receipts and the change and everything after --

Q So, if a fellow comes in --

A -- the day was over.

Q Did you ever sell a television out of there?

A No, I don't remember.

Q Did you ever --

A He sold several televisions.

Q Did you ever sell a refrigerator?

A No.

Q What's the biggest item you ever sold? Pillowcases?

A Pillowcases. And I would -- I have to think. There were so many -- pillowcases and dishes and -- I would put a lot of things, you know -- people would come in and put them on layaway and then give some money on it and then they would take them out, when it was a big item.

Q I believe Mr. Mitchell asked you about these pictures, Mrs. Rodriguez. You said this was a picture of the outside of the store. Is that right?

A Yes, sir.

Q Now, this picture here that shows the arched doorway. Is that -- that's the inside of the store?

A That's right.

Q Now, these shelves -- this shelving in here, what is that?

A The shelving where we used to put merchandise on top of.

Q Like what would you put -- would this be the pillowcases and --

A And we put, you know, radios and portable TV's on the top.

Q Now, is this where the -- where this shelving was while you worked in there? Was it in this location or was it --

A It was in several places around the store.

Q Right.

A We had shelves all around the store.

Q I believe this is another shot of the same kind of shelving. Is that right?

A Yes, sir.

Q Well, was it on the walls around the edge?

A Right. Some were on the walls and some were in the middle of the store, you know, we had some shelves in there, fixed up.

Q Now, the shelves in the middle, were they shelves like this -- these bracket type things?

A No, sir, they were just like -- I can explain. Something like this and then they had, you know, like tables and then they had shelves on the sides.

Q Oh, I see, like tables.

A That's right.

Q I see. Now, then, so, you had shelves around the outside against the wall. Is that right, Mrs. Rodriguez?

A Yes, sir.

Q And you had some tables like these tables over here, ma'am, with, four legs on them, -- you can't see that one. Like those tables over there?

A Just like this one over here but they were higher, you know, and they had shelves on the sides.

Q Had what on the side, ma'am?

A Shelves.

Q Shelves on the side?

A On both sides and then we set televisions on top of them.

Q How many of those tables like that did they have in there?

A Well, there were several, I didn't count them.

Q Right. Were there any shelves -- were there any in there that had glass on them, cabinets with glass that you could look through?

A Yes, sir.

Q How many of those were in there?

A Maybe two or three. I can't remember. We never did count them.

Q Right. Now, you described that the interior of the store was damaged?

A You want me to describe it?

Q No, ma'am, you said it was damaged by the hurricane?

A That's right.

Q Water got in there and so forth?

A Right.

Q Well, was it pretty bad?

A Yes, sir.

Q Did it damage the shelving?

A Everything.

Q Damage the --

A Damaged the shelving and the walls through the roof and --

Q Did it damage the tables?

A The tables and everything.

Q Did it damage the cabinets with the glass in them?

A Right.

Q Mess them up pretty bad?

A That's right.

Q Now, you were there when they moved the merchandise?

A No, sir.

Q Well, I believe you said that you knew that George Zertuche helped move it. How did you know that?

A Yeah, because I wasn't working there, but I was next door at his brother -- at Mr. Carrillo's house when they were moving the merchandise.

Q Right. Well, now, when they moved that stuff out of there did they move the television sets out?

A They moved everything.

Q Tables, everything?

A Well, I don't think they moved the tables, because they were damaged. I don't think they moved them all.

Q How about the cabinets with the glass on them?

A They were broken.

Q The glasses were broken?

A Right.

Q Did they move those out of there?

A I don't remember, because I didn't stay all the time that they were there, I just stayed a little while.

Q Let's talk about those cabinets in there that had the glass doors. How big were they?

A They weren't very big.

Q Well, two or three feet wide, or six feet wide?

A About three.

Q About three feet wide?

A That's right.

Q Weren't big enough to hold a television set, or anything like that?

A No, sir.

Q Were they as long as that table that Judge Carrillo is sitting at, half that long, or what?

A A little bit smaller.

Q Smaller than half, or smaller than that table?

A That's right. No, smaller than that one.

Q Mrs. Rodriguez, did you see any of those glass cabinet things that were damaged by the hurricane -- did you see any of those that you would have paid \$1,000.00 for?

A I don't remember. I wouldn't say.

Q Ma'am?

A I wouldn't know.

Q Well, did any of them appear to you -- you had been working in that business for two years, hadn't you?

A Yes, sir.

Q Well, did you see any of them that you would have paid \$1,000.00 for?

A Maybe they would. I don't know.

Q Either you --

A I can't tell you.

Q Either you would have or you wouldn't have, ma'am. You wouldn't have paid \$1,000.00 for any of that stuff, would you?

MR. MITCHELL: Your Honor, I'm going to object. I thought he was going to leave that. That's obviously argumentative and improper.

MR. DOYLE: Well, Judge, this lady had been selling furniture, appliances, and so forth for two years. Obviously, she knows what she is talking about. I have the right to ask her if she would have paid a thousand dollars for a cabinet that was allegedly sold out of there sometime later for a thousand dollars.

THE PRESIDING OFFICER: Overruled, Mr. Mitchell.

Q Mrs. Rodriguez, would you have paid \$1,000.00 for everything in that store after that hurricane?

A Well, it was damaged.

Q That's right. And as a matter of fact, it was damaged and there was a lawsuit over the damage to that property, wasn't there? Are you familiar with that?

A Yes, sir.

Q Now, Mrs. Rodriguez, you have testified up here at the Capitol once before, didn't you?

A That's right.

Q And you testified over across the hall before a Committee of the House, didn't you?

A Yes, sir.

Q And you knew at that time that someone was sitting down there taking down what you said, didn't you?

A Yes, sir.

Q And you told the truth then, didn't you?

A Well, what I could remember.

Q And you have lived in Benavides all your life, haven't you?

A That's right.

Q Now, somebody over there that day asked you a question, "Has there been a Zertuche General Store since 19 -- since the hurricane?" Since 1968, is what the question really was, I believe -- no, since the hurricane, and you said, "No, sir." That's accurate, isn't it?

A Since the hurricane?

Q Yes, ma'am.

A Has there been a Zertuche General Store?

Q Right.

A No, sir.

Q Has not been, has there?

A After the hurricane, it might have been, but I didn't work after that. They moved the merchandise to --

Q Well now, you have lived down at Benavides all your life. Right?

A Right.

Q Now, since the hurricane, have you known of the existence of a Zertuche General Store?

A No, sir.

MR. DOYLE I don't have any other questions.

REDIRECT EXAMINATION

(Questions by Mr. Mitchell:)

Q There wasn't a Zertuche General Store at the Vaello Sales Building after the hurricane. I believe that's what you testified.

A That's right.

Q Where was it?

A At the Farm and Ranch. They moved the merchandise to the Farm and Ranch.

Q Right.

MR. MITCHELL: I would like to have this marked, please.

(Respondent Exhibit Nos. 164 and 165
were marked for identification; R-164 and R-165)

MR. MITCHELL: I can have the witness authenticate it first, Mr. Secretary.

Q Mrs. Rodriguez, I hand you what is marked for identification as R-165, which appears to be a check, 7th day of January, 1965 to Elvira Rodriguez for \$50.00 on the General Store by Hector Zertuche. Do you recognize that?

If you want to, you can turn it over and see if you signed it.

A Yes, sir.

Q Is that your signature?

A That's right.

Q And it appears that you drew a check, then, on the 7th day of January, 1965. And, whose signature is that on the check on the front right-hand side? Do you recognize that?

A I believe that's Hector's.

Q Do you recognize it as Hector's signature?

A Yes, sir.

Q You have no difficulty recognizing your own signature on the endorsement?

A That's right.

MR. MITCHELL: We offer it.

MR. DOYLE: It's a check that she apparently cashed for Hector Zertuche? Is that what --

MR. MITCHELL: I don't know, Counsel.

Q It's a check payable to you, isn't it, Mrs. Rodriguez? Do you know what for?

A Well, I don't remember right now.

Q All right.

MR. DOYLE: I don't have any objections.

MR. MITCHELL: I have no further questions, Mr. Doyle.

THE PRESIDING OFFICER: Mr. Doyle, do you have any further questions of this witness?

REXCROSS EXAMINATION

(Questions by Mr. Doyle:)

Q Now, Mrs. Rodriguez, you indicated that you were around when they moved those goods in '67 to --

A I was there for a little while.

Q Right. And you've described for us the size of the store. It was a relatively small store, wasn't it?

A The store that was damaged?

Q Yes, ma'am.

A You want me to describe the size.

Q No. I say -- you have described it for us as a relatively small store. It wasn't a great big store. It was a --

A No, sir.

Q -- relatively small store.

A That's right.

Q Did they throw any of that merchandise away, or do you know?

A I don't know.

Q That was damaged. You don't know that?

A No, sir.

Q How much would you sell out of there in a day? Would \$10.00, \$50.00, \$5.00 -- how much --

A Well, there were days that I would sell about \$15.00, \$25.00, and some days -- and some days I would sell more, but people would put that on layaway.

Q Yes, ma'am.

A And then, they had certain time to take it out.

Q Well, have you ever sold as much as \$50.00 worth of goods in one day?

A Well, not counting cash, yes.

Q Not counting --

A All those items that they would put on layaway, they would use some money and they would put it on layaway, and they would pay little by little.

Q Yes, ma'am. Okay.

A Yes, sir.

Q Well, let me just -- let me ask it to you another way, then, ma'am. Did you ever take in as much as \$50.00 in sales or in payments on layaways in any one day?

A I don't follow you.

Q Well, some people come in and buy some pillowcases.

A Right.

Q \$5.00 or \$2.00, or whatever it would be. Right?

A Uh-huh.

Q And the next person would come in and pay \$3.00 or \$4.00 on a layaway.

A That's right.

Q Now, both of them gave you money.

A That's right.

Q All right. Now, counting both of those kinds of money -- layaway money --

A Uh-huh.

Q -- and cash money where they bought something and left with it. Did you ever take in as much as \$50.00 in one day?

A Maybe I would -- I did.

Q Would that be rare?

A No, sir.

Q Did you ever take in as much as \$100.00 in one day?

A Well, I wasn't there every day.

Q Yes, ma'am. I understand.

A But I -- no, sir.

Q You never did take in \$100.00 in a day?

A No, sir.

Q Okay. Mrs. Rodriguez, let's just pick a day. The first day of September, 1967, just before the hurricane. Okay? Is that a good enough day?

A What for? What was your question?

Q Well, we are just going to pick a day.

A Oh.

Q September the 1st, 1967. That's a day just a week or two before the hurricane. Okay?

A Okay.

Q If you had sold everything in that store, wall-to-wall, would you have gotten \$5,000.00?

A Maybe, because there were big items there.

Q Yes, ma'am. Counting the televisions, and the refrigerators, the works, would you have gotten \$5,000.00?

A I believe so.

Q Ten?

A I wouldn't know about ten, but \$5,000.00, I would.

Q But probably not ten.

A That's right.

MR. DOYLE: I believe that's all.

MR. MITCHELL: May I have just one more minute, if it please the Court. I have no further questions of this witness. Thank you.

MR. DOYLE: We have no further questions.

MR. MITCHELL: If it please the Court, we would like to call Mr. George Zertuche, Sr.

THE PRESIDING OFFICER: Mrs. Rodriguez. Just one minute, Mrs. Rodriguez.

In view of the fact that the possibility exists that you might be recalled for further testimony in this case, it is my duty to warn you that you are under The Rule, that you are not to converse with any other person except Counsel for the two parties concerned in the proceedings before this Court. Do not read any report or any comment on the testimony before the Court. A person violating such instruction may be punished with contempt.

Do you understand that?

THE WITNESS: Yes, sir.

THE PRESIDING OFFICER: You may be excused.

THE PRESIDENT: Mr. Mitchell, do you have any --

MR. MITCHELL: Yes. We have George Zertuche, Sr., please. I believe we can finish him within the next 30 or 40 minutes.

THE PRESIDING OFFICER: Mr. Zertuche, please raise your right hand to be sworn.

"You do solemnly swear or affirm that the evidence you give upon this hearing by the Senate of Texas of impeachment charges against O. P. Carrillo shall be the truth, the whole truth and nothing but the truth so help you God?"

THE WITNESS: I do.

DIRECT EXAMINATION

(Questions by Mr. Mitchell:)

Q State your name, please, sir, for the record.

A George Zertuche, Sr.

Q And your residence?

A Benavides, Texas, Duval County.

Q I'm sorry. I didn't mean to step on your answer. Do you want to repeat it?

A Benavides, Texas.

Q Did you say what County?

How long have you been a resident of Benavides?

A All my life.

Q And are you the father of George Zertuche, Jr?

A Yes, sir.

Q Hector Zertuche?

A Yes, sir.

Q Arturo Zertuche?

A Yes, sir.

Q And they are real, and alive and doing well?

A Yes, sir.

Q All right. I will ask your -- direct your attention to the year 1967, and ask you whether you had an occasion to assist in the movement of merchandise from the Vaello Sales Building in Benavides, Texas, to the Farm and Ranch after the building was damaged by a hurricane?

A Yes, sir.

Q All right. Tell us about when it was. What day, what month? Do you recall, George?

A When we moved the -- when they moved the merchandise from the --

Q Yes, sir.

A It was in 1967 when Beulah -- the storm Beulah hit Benavides and ruined the building there where the Zertuche General Store was.

Q You know, George, I have listened to several people testify. They've called that hurricane everything from Celia, Darwin and Beulah. Without regard to what you call it, was there a hurricane that hit that part of the County in 1967?

A Yes, sir.

Q Do you recall it distinctly?

A Yes, sir.

Q Were you living there in the community?

A Yes, I was.

Q Do you recall whether or not it damaged the Vaello Sales Building?

A Yes, sir.

Q Do you know where the Vaello Sales Building was?

A Yes, sir.

Q Do you know where the Farm and Ranch was?

A Yes, sir, I do.

Q How far apart were they in 1967?

A They're about four or five blocks apart.

Q All right, sir. Do you recall whether anybody assisted you in moving the merchandise, George? How did you accomplish it, in other words. Just tell the Court. Just tell the gentlemen of the Court; just tell them how you did it.

A Well, I didn't help move the merchandise. I just helped move a safe, a big safe they had in there.

MR. ODAM: I'm sorry. What was that last word?

MR. MITCHELL: Safe. A big safe.

THE WITNESS: Safe.

Q All right. How did you -- how big was the safe? Do you recall?

A Oh, about 5'11". I think that thing was a little -- about four or five inches taller than I am and about four or five feet wide, in depth too.

Q All right. How did you all manage to move the safe? Did you have some help to begin with?

A We had to move it with a lift fork, a high lift, one of those because it was too big to be put on a truck, and a pickup wouldn't probably hold it. It was too heavy.

Q All right. And then did you put it on a -- well, how did you do it? Did you move it --

A Well, we had this high lift and had some, like, forks, you know, and we picked it up and carried it all the way down to the Farm and Ranch Supply.

Q All right.

A And they had double doors in there, so we just put that thing right where the double doors were and took out the machine.

Q Mr. Zertuche, you have lived in Benavides, I believe you testified, all your life, have you not?

A That's right.

Q During the course of that time were you able to acquaint yourself with the location -- well, strike that. In fact, your boy, Hector Zertuche, had the Zertuche General Store at that location, didn't he?

A Yes, sir.

Q And I believe the record reflects that Arturo had it, if the sales tax application can be used as a point of reference, in 1967, '68, '69 and '70.

A Right.

Q When did Hector last have anything to do with the store, can you tell us?

A Hector was the owner or had to do with it until the time he got married. Then he went to the armed forces and he went to El Paso.

Q All right. And then did Arturo take it over --

A Arturo took it over, yes.

Q Can you tell the Court how long Arturo had the store?

A Well, up to the time -- I don't know how far after Beulah it was -- when they moved everything to the Farm and Ranch Supply. After that we didn't know. Could have been two or three months, or I don't know how much.

Q All right. At the time that Arturo owned the Zertuche Store, was he also a resident of Benavides, Texas, Mr. Zertuche?

A Well, he was a resident there. He started going to school in Kingsville, and then I guess -- I don't remember. He went to San Marcos or Denton. He finally went to Denton.

Q Can you tell us if, of your own personal knowledge, there was other merchandise in the store, that you recall, Mr. Zertuche, that was moved, or damaged. Do you recall any other merchandise?

A Well, I did happen to see when they were moving boxes or whatever they were moving, something like linen, maybe bedspreads or pillowcases, or something like that.

Q Do you recall any refrigerator or bicycles?

A They had a lot of toys in there.

MR. DOYLE: I object to that as a leading question. He has no right to lead this witness. This is his witness.

THE PRESIDING OFFICER: Mr. Mitchell --

MR. MITCHELL: I think the question is leading. I'll withdraw it.

Q State whether or not there was any other item that you can recall that was there on the floor of the Zertuche Store at the Vaello Sales Building that you moved or caused to be moved.

A Well, they had some appliances, coffee maker, coffee pots, and irons and radios and -- I actually bought one stereo for my daughter, a record player. And they had, I believe I saw some stoves in there too.

Q All right.

A But what they were putting in the boxes I guess they were just, you know, small articles, appliances or linen or stuff like that.

Q Tell us how long it took to move that safe from the Zertuche Store location to the Farm and Ranch. Do you recall?

A Well, that thing went pretty slow. It took us about I would say an hour.

Q All right.

A To go about five blocks, maybe less. Little less than an hour.

Q Can you tell the Court how long it took to move the rest of the merchandise over?

A Well, they were moving all the merchandise during that time. I guess -- probably half a day -- two, three hours. They had a couple of pickup trucks. And I don't think it took them too much.

Q George, you would recognize your own boy's signature and handwriting, wouldn't you? You know Arturo's and Hector's handwriting?

A I think I do. I'm not sure.

Q Well, let me hand you some bank statements and checks. I'll hand you first a series of checks --

MR. MITCHELL: Might I have these marked, please, before I -- with the understanding, Mr. President, I would like to have the opportunity to withdraw these for substitute copies when the record -- they are produced in the record form. I do need the originals. Perhaps we better mark them -- I've marked them 1, 2, --

MR. DOYLE: Mr. President, might I inquire of Counsel if the checks that he's fixing to show the witness are checks made out to the witness?

MR. MITCHELL: No. They're checks by -- all the checks are Zertuche General Store, Arturo Zertuche. And I'm going to ask the witness -- and they're for the year 1968, January through December, all by Arturo Zertuche. And I'm going to ask the witness an authenticating question, being does he recognize the signature of his own son, Arturo Zertuche.

MR. DOYLE: Well, Mr. President, we would object to the line of questioning first. We would certainly object to the introduction of the Exhibits. Arturo Zertuche is the best person obviously to testify whether these checks are his or not. Unless the check is made out to this witness, this witness can't testify about what happened to the check, whether it was negotiated, whether indeed the negotiating signature was accurate. I don't see why we have to keep going this round about way to get Arturo's checks into this record. There's a simple way to do it, and I object.

MR. MITCHELL: May I speak to that objection, Mr. President. If I understand the rule of authentication is, there's several methods to authenticate. One is by the route suggested by Counsel; that is, the person who executes the document takes the oath and verifies he executed it. The second method is by a person who is acquainted with the handwriting of the person who has to be authenticated, and that

witness can be asked a direct question, if he is acquainted, and if he is, the second method of authentication is complied with. The third method is by circumstantial evidence, such as A here would admit that B signed the document. And the fourth is by a very statutory method, 3737E. We submit, if it please the Court, that if Mr. Zertuche recognizes his own son's handwriting, we comply with the second method of authentication, and it's not necessary for us to produce Mr. Arturo Zertuche. I haven't asked him yet. He might not recognize it and would solve all our problems. May I ask him the predicate questions, please?

THE PRESIDING OFFICER: Yes, go ahead.

MR. MITCHELL: I think I better have them marked, please.

ASSISTANT SECRETARY/CLERK: You want these marked as a group?

MR. MITCHELL: As a group, with sub-parts. And may I have the understanding, Mr. President, I'd like to withdraw those because of the necessity of using those in the other proceedings after, of course, the Senate Journal reflects them.

MR. JAWORSKI: Mr. Mitchell.

MR. MITCHELL: Yes, sir.

MR. JAWORSKI: After you have asked the questions that relate to the identification you want to make and the authenticity that you seek to prove, Mr. Doyle is going to be given an opportunity to take this witness on Voir Dire.

MR. MITCHELL: Fine. Thank you, sir. I'd state for the purpose of the record, if it please the Court, each of these packages has a little number up in the upper right-hand corner with a circle around 1, 2, 3, 4, 5, 6, 7. That number I put there, and is not part of the Exhibit.

(Respondent Exhibits No. 166 through 176 were marked for identification,
R-166(1)(2)(3)(4)(6)(7)(8), R-167(1)-(4), R-168 (2)-(6), R-169(1)-(5),
R-170(1)-(4), R-171(1)-(9), R-172(1)-(8), R-173(2)-(10),
R-174(1)(3)(4)(5)(7)(8), R-175(4)-(10))

Q Mr. Zertuche, I hand you what's been marked as R-166(1), which is a check which appears to be written on Zertuche General Store, Arturo Zertuche to Robert Calvert Comptroller of Public Accounts. Am I reading that correctly?

A That's correct.

Q That's in re license number 738259-1. Did I read that correctly?

A That's right.

Q For \$5.00, is that correct?

A Yes, sir.

Q That was written in December of 1967, am I correct?

A Yes, sir, 1967.

Q All right, sir. I'll ask you, please, to look at the lower right-hand corner, Zertuche General Store, Arturo Zertuche, and ask you if you recognize the handwriting of your son, Arturo Zertuche?

A Yes, I do.

MR. MITCHELL: Let me have that last Exhibit, that store license Exhibit.

Q I'll ask you, please, sir, to also look at the other Exhibits now; that's 166-1, 2, 3, 4, 5, 6, 7, and 8, and ask you the same question, that is, if you recognize that handwriting in the lower right-hand corner.

A Yes, sir, I do.

Q All right. And are you telling this Court under oath that that is the signature of Arturo Zertuche, your boy?

A I believe it is, yes, sir.

Q All right, sir.

MR. MITCHELL: We offer these, if it please the Court, and Counsel, I understand, has some questions on voir dire. Do you want to hand these to Mr. Doyle, please.

VOIR DIRE EXAMINATION

(Questions by Mr. Doyle:)

Q Mr. Zertuche, I'm going to hand you what's been marked as R-166(4).

A Yes, sir.

Q What is the date of that check?

A This check is made in November 25, 1967.

Q Who's it made out to?

A I think it's Hills of Alice, Inc., I think.

Q You can't read English, can you, Mr. Zertuche?

A How's that?

Q You can't read English, can you?

A I can't? I sure can.

Q Well, who's it made out to?

A To Hills of Alice, Inc.

Q Who's this one made out to, R-166(6)?

A That's O. P. Carrillo.

Q What's the date of that check?

A January 19, 1968.

Q So you can read English?

A Yes, sir.

Q Did you see Arturo Zertuche sign any of these checks?

A No, sir, I did not.

Q Now, I believe you said that you thought this was his signature. You believe it was, I believe is the words --

A Well, the same signature he writes all the time.

Q Do you know whether Hills of Alice, Inc. negotiated this check?

A No, sir, I don't.

Q Do you know whether O. P. Carrillo negotiated that check that had his name on it?

A No, sir.

Q You don't know whether he received it or not, do you?

A No, sir, I don't.

Q In fact, I believe you testified that Arturo ran the store after Hector?

A Correct.

Q And that Arturo ran it for two or three months after the hurricane?

A I don't know how much time he ran it after the hurricane, because it was moved to the Farm and Ranch, and then I believe --

Q O. P. took it after that, is that right?

A Cleofas Gonzalez was doing the business over there. I don't know.

Q Pardon?

A Cleofas Gonzalez.

Q Right. He worked for O. P. and Ramiro?

A I don't know if he worked for O. P. or he worked for Ramiro. He worked for the County. I don't know. For O. P.

MR. DOYLE: Mr. Mitchell.

DIRECT EXAMINATION RESUMED

(Questions by Mr. Mitchell:)

Q Mr. Zertuche, you are a graduate of high school, aren't you?

A Yes, sir.

Q And you attended Texas A&I University, didn't you?

A Yes, sir.

Q You can read and write the English language?

A I sure can.

Q And you were in -- I believe you were in the service too, weren't you?

A I was in the service, yes, sir.

Q Assistant band director?

A 1944 to 1946.

Q All right. You can read that Honorable Discharge you've got, can't you?

A Yes, sir.

MR. DOYLE: Mr. President, the 166 that is now tendered for purposes of offering into evidence, I would level the same objection I leveled earlier. It would appear to me that what the Exhibits are not just pieces of paper, but negotiable instruments. The question of whether or not they were signed by the name that's on the bottom of them is best answered by the person who is alleged to have signed them. The question as to whether or not they were issued to the persons whose names are marked as payees is best answered by those persons who are not here. I would submit that they are not -- that this witness has stated only that he believed that it was his son's signature, and that is not enough to authenticate these checks for purposes of introducing them into evidence.

MR. MITCHELL: May I speak to that objection, Your Honor. That would go, I believe, Your Honor, to the weight and not the admissibility. We reoffer them.

THE PRESIDING OFFICER: It is overruled, Mr. Doyle.

MR. MITCHELL: Your Honor, I have the rest of these to mark, and perhaps we can expedite the time of the Court. They are -- if I could just hand them to the witness and have him identify all of these signatures and then turn him loose for cross,

and perhaps we can finish the cross this evening, if that would be permissible.

Q Let me hand you now all of these checks. And I want you to please to go through each one, item by item, Mr. Zertuche, and if you find one that's not signed by Arturo Zertuche, I'll want you to pull it out. Would you do that, please, sir?

A Yes, sir.

Q You've indicated that you have looked at the series 167, R-167(1) through and including (7) and each and everyone of those checks that are here were signed by your son?

A Yes, sir.

MR. MITCHELL: We will offer these, and I give them to Counsel for his examination.

Q You've handed me back now the series marked 168(1) through and including 168(7) and the checks appear each and everyone by your examination to be signed by your son, Arturo?

A That's right, sir.

Q I hand you now the series marked 169(1) through and including (6), and ask you please to examine each and every item, specifically, the handwriting of the drawer and if they are not each and everyone written by your son, Arturo Zertuche, would you please call them to the attention of the Court?

MR. DOYLE: Mr. President, might I have an opportunity to take the witness on voir dire on a couple of these checks on 167?

VOIR DIRE EXAMINATION

(Questions by Mr. Doyle:)

Q Mr. Zertuche, I am going to hand you what's been marked as 167(3) and ask you to take a look at that check, please. Now, doesn't that appear -- you indicate by your testimony that the signature on the bottom of that check is that of your son, Arturo, is that right?

A That's correct, sir.

Q Now, the rest of the check appears to be made out in another hand. Would you agree with that?

A They seem to me the same handwriting on this check that I've seen here.

Q The printing and the signature look like the same to you?

A Oh, you mean this part here?

Q Yeah. That doesn't look like his handwriting, does it?

A No, I don't know. I couldn't tell you.

Q Have you ever seen Cleofas Gonzalez' handwriting?

A No, sir.

Q O. P. Carrillo's?

A (Witness nods head negatively)

Q Could that be either one of theirs perhaps?

A I couldn't say.

Q But it's not your son's, is it?

A It might be. I can't tell. He didn't -- he wrote his name in long hand. I don't know. He printed that part of the check.

Q Is that your signature on the back of this one, or your other son?

A That's my son, I think.

Q That's George, Jr.?

A George, Jr., yes, sir.

MR. DOYLE: I don't have any objection to 167, I don't guess, other than the one I previously leveled.

DIRECT EXAMINATION RESUMED

(Questions by Mr. Mitchell:)

Q Mr. Zertuche, you have handed me now R-169(1). I've asked you to examine those, and your testimony to this Court is that you have examined each and every one of these items and that each and every one of these signatures back in the lower right-hand corner --

A That's correct.

Q -- is your son, Arturo Zertuche?

A Yes, sir.

MR. MITCHELL: We offer it, if it please the Court.

Q Now, I'll hand you the Exhibit marked R-170(1), Mr. Zertuche, a series of R-170(1) through and including (5), and ask you please if you would take it from me, examine carefully the lower right-hand corner and see if each and every one of those is signed by your son, Arturo Zertuche, and if you recognize the signature. If not, would you please call attention to the Court of any that you do not recognize?

You have handed them back, and what is your answer to my question? Is each and every one signed by Arturo Zertuche?

A I believe they are all signed by Arturo.

Q R-170(1) through and including 170(5)?

A Right.

MR. MITCHELL: We offer these, if it please the Court.

MR. DOYLE: Mr. President, with respect to the Exhibits that I've been tendered thus far, the Exhibits consists of what appears to be a statement which has not been authenticated at all by this witness and it also consists of various instruments which have been attached and marked by the clerk which do not bear the signature of Arturo Zertuche.

MR. MITCHELL: I agree.

MR. DOYLE: There is no way they can be authenticated by this witness. Counsel, do you intend to separate those and --

MR. MITCHELL: The objection is good, and I don't intend to play games with Counsel or this Court. I withdraw the yellow ledger sheet, if it please the Court. That objection is well-taken along with the debit memos, a method of authentication which I have adopted does not include the authentication of those unless the Court wants to consider them under the internal continuity theory, which I don't --

THE PRESIDING OFFICER: The objection is sustained except those items with the signature only on them.

MR. MITCHELL: Fine, Mr. President, I withdraw the bank statements.

MR. DOYLE: It would appear that there is a substantial stack of these over there, and they are going to have to be separated out. This gentleman is obviously going to be back tomorrow anyway. Perhaps we could do this and let the Court go home. I don't anticipate being able to finish with this witness for another hour or so, it looks like. Or maybe two.

THE PRESIDING OFFICER: Senator from Lamar.

SENATOR AIKIN: Mr. President, he's just about a jump ahead, because I was just fixing to do it. We had an understanding pretty well here yesterday afternoon that we would adjourn at 7:00 o'clock. And unless the Senate wants to, if the Senate wants to stay, I'll certainly do it. But, my understanding was I was to move to adjourn at 7:00 o'clock, and we would bring this witness back in the morning. I don't hear anything from anybody.

I so move. We will adjourn until 9:00 o'clock in the morning.

THE PRESIDING OFFICER: The Senator from Lamar moves the Court stand adjourned until 9:00 o'clock tomorrow morning. All those in favor say "Yea." Opposed say "No." The "Yeas" have it. The Court stands adjourned.

Accordingly, the Senate, sitting as a Court of Impeachment, at 6:58 o'clock p.m., stood adjourned until 9:00 o'clock a.m. tomorrow.

TWENTY-SECOND DAY
 (Thursday, January 22, 1976)

The Senate, sitting as a Court of Impeachment, met at 9:00 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Hance, Harrington, Harris, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Sherman, Snelson, Traeger and Williams.

Absent-excused: Gammage, Lombardino and Schwartz.

A quorum was announced present.

Mr. R. B. Hall, Director of Legislative Division, House of Representatives, Austin, offered the invocation as follows:

Almighty God our Heavenly Father, we come to Thee conscious of our shortcomings and keenly aware of our need of You.

As the Members of this Senate body meet during these days of decision, I pray that you would give to them open minds, willing to receive the truth and able to understand clearly the unusual issues that face them.

Impress all of us of our inability to govern the affairs of men apart from Your wisdom and guidance, and for this we pray.

May we all join the Psalmist of old as he prayed "Create in me a clean heart, Oh God, and renew a spirit of rightness within me."

In Jesus' name I pray. Amen.

LEAVES OF ABSENCE

Senator Gammage was granted leave of absence for today on account of important business on motion of Senator Brooks.

Senator Lombardino was granted leave of absence for today on account of illness on motion of Senator Longoria.

Senator Schwartz was granted leave of absence for today on account of important business on motion of Senator Creighton.

APPEARANCES

Judge O. P. Carrillo, Respondent; Honorable Arthur Mitchell, Attorney for Respondent.

Board of House Managers; Honorable Terry Doyle, Counsel; Honorable John Odam, Assistant Attorney General on behalf of the Board of Managers.

THE PRESIDENT: Mr. Zertuche, please retake the stand.
 Good morning, Mr. Zertuche. Mr. Mitchell.

GEORGE ZERTUCHE, SR.

was recalled to the stand by the Defendant, and having been previously duly sworn, testified further, as follows, to-wit:

DIRECT EXAMINATION RESUMED

(Questions by Mr. Mitchell:)

Q You are the same George Zertuche, Sr., that testified previously, please, sir?

A Yes, sir.

Q And you are under oath, as you understand?

A Right, sir.

Q I hand you -- I believe I handed you a series of checks that you identified the signature on the checks as being that of your son, Arturo Zertuche?

A Yes, sir.

(Respondent Exhibit No. 177(1) through (5), was marked for identification, R-177(1) through (5).

MR. MITCHELL: And for the record, Mr. President, I would like to refer to that Series. They are in the Senate Journal, now, as the R-166 Series -- the Series 167, 68, 69, 70, 71, 2, 3, 4, 5, 6, and down to R-177.

I have not asked the witness concerning the Series R-177.

With the leave of the Court, I will approach the witness.

Q I now hand you R-177-(1) through and including (5) -- 177-(1), (2), (3), (4), (5) -- which appear to be checks drawn on the Zertuche General Store by Arturo Zertuche, and ask you to look at each and every one of those to identify them, if you can, please, sir, as the signature of your son, Arturo Zertuche.

A They are Arturo's signature.

Q All right, sir. On each and every check?

A Yes, sir.

MR. MITCHELL: We offer, if it please the Court, the R-177 Series, being the checks of Arturo Zertuche signing for Zertuche General Store for the month of August, '68, and with the leave of the Court, submit them to Counsel for his examination and objection, if any.

MR. ODAM: Mr. Mitchell, are you representing these to be all of the checks that they issued during that month for the account?

MR. MITCHELL: I cannot -- now, you mean the entire Series, Mr. Odam, that I have introduced here?

MR. ODAM: No, these checks here are for the month of August.

MR. MITCHELL: No, I can't represent honestly that -- they were just some, quite frankly, that I found that I hadn't introduced last night. I put them together in this Exhibit number.

MR. ODAM: Well, these checks are August of 1968 --

MR. MITCHELL: Yes, sir.

MR. ODAM: We will pose the same objection to these checks from 1968 as to the relevancy of these checks in '68, as to the Articles of Impeachment which start with the term in 1971.

THE PRESIDENT: Mr. Mitchell, would you explain to the Court what the relevancy of these 1968 checks are to the Articles of Impeachment?

MR. MITCHELL: Yes. The basic cornerstone, as I understand it, of the Board of Managers as regards Article VII is that there were sales of rental of equipment, if it please the Court, to the County through nonexistent entities. That's one vehicle.

The second vehicle being some character of conspiracy with Rudolfo Couling, and the third vehicle being some character of partnership, secret partnership, with Rudolfo Couling and Ramiro Carrillo and Judge Carrillo.

These checks are introduced to negate the inference left in the record that the Zertuche Store was a nonexistent entity and a sham, and if Counsel wants to stipulate that that store was in existence, if it please the Court, or was Arturo's business, that he operated it for '67, '68, '69 and 70, I will withdraw all of them.

MR. ODAM: Your Honor, the Article VII does not pertain to nonexistent entities. It does pertain to nonexistent equipment, and there certainly is a distinction. Do not -- for equipment that did not exist or for rental of equipment that the County did not use, or governmental entities did not use, it has always been our position that there was a Zertuche General Store invoice box, but this has nothing to do and does not go to the relevancy of whether or not there was an invoice box simply because he can identify his signature back in 1968. Still -- even in light of what Mr. Mitchell's statements are, even those -- I do not see the relevancy to what is stated to be Article VII. It certainly does not relate to all of the invoices that have been put into evidence thus far in this case on Benavides Implement and Hardware Store.

You could start with R-91 -- or R-60 -- excuse me; E-65 in the book, Benavides Implement and Hardware Store, Benavides Implement and Hardware Store, all starting about 1971. We pick up here about four years earlier -- three years earlier.

MR. MITCHELL: If it please the Court, is the Court --

THE PRESIDENT: Mr. Mitchell, Article VII reads "While holding office as District Judge of the 229th District Court, O. P. Carrillo conspired with others," and so forth, so please indicate to the Court what checks dated '68, how they relate to conduct after -- after January of '71 was when Judge Carrillo first took office?

MR. MITCHELL: First took office. Mr. President, there is no way I can represent to this Court under the fat language in Article VII what I'm charged with, and I have filed Special Exceptions for that very reason. When they introduced the evidence on Zertuche Store, I objected. They introduced it through Cleofas Gonzalez, who said, "yes, it was nothing but a box of invoices," leaving the inference, I thought, if it please the Court, that they were going to use that as a vehicle under VII, and

consequently I undertook the laboring or to prove that the Zertuche Store was a viable entity and was in existence. And that's the reason for it, if it please the Court.

THE PRESIDENT: Mr. Mitchell, do you have documentary evidence that you propose to offer relating to the period of '70, '71 and thereafter?

MR. MITCHELL: On the existence of Zertuche General Store? My documentary will show it went out of business December 31st, 1970, and that's one of the reasons I've been put in the box, Your Honor. It never was in the picture, but they brought it up, they delivered a box of so-called invoices to Cleofas and injected in this case the fact that the store was a box of invoices. I knew full well it never had done business a day after December 31st, '70, and I objected. Yet, the objection was overruled and it was permitted to come in. And I knew when that happened I was going to be off on this long trail. And I'm sorry to impose on the Court, but that's the only way I know how to rebut the inference left by that introduction of the Zertuche General Store invoices, if it please the Court.

THE PRESIDENT: Mr. Doyle, will you and Mr. Odam and Mr. Mitchell come to the rostrum, please?

THE PRESIDENT: The Chair recognizes Mr. Doyle for the purpose of stating a stipulation.

MR. DOYLE: Mr. President, and Members of the Senate, it appears to me that there's no contradicting testimony on the fact that during the years 1967, '68, '69 and '70 there was in existence a checking account and an invoice register at the Farm and Ranch Store which belonged to the Zertuche -- which carried the name Zertuche General Store. The testimony of Cleofas Gonzalez was that there was an invoice register that had that type of invoice and that he made deposits to a banking account that was the banking account that carried the name Zertuche General Store.

It appears to me that evidence is uncontradicted and Mr. Mitchell requested a stipulation to that fact. And to this point in time there appears to be no contradicting evidence nor do I know of any contradicting evidence which would indicate those were not the facts.

THE PRESIDENT: Mr. Mitchell, do you agree with that stipulation?

MR. MITCHELL: Mr. President, let me see if I can't dictate it in the form of a stipulation, that is without the argumentation. Both parties agree that the Zertuche General Store was owned and operated by Arturo Zertuche for the years '67, '68, '69 and '70.

MR. DOYLE: No, sir, that is not it at all. We agree that prior to the 1967 hurricane the evidence appears to show that a Zertuche Store operated in the Vaello Sales Building under the ownership of Arturo Zertuche and prior to that Arturo Hector Zertuche. From and after the time of the hurricane we agree, because the evidence is uncontradicted that there existed a checking account which carried that name and an invoice register which carried that name.

The invoice register being located at the Farm and Ranch Store.

MR. MITCHELL: All right. Will you stipulate because of the evidence here that there were many checks going in and out of that account during that entire period.

MR. DOYLE: I will agree that there were any number of checks you want to say there were, Mr. Mitchell. We acknowledge the existence of a checking account, we acknowledge the existence of an invoice register. And the use of the register -- Cleofas Gonzalez has testified to that. And that evidence seems to be uncontradicted. We would agree with you those two things existed.

MR. MITCHELL: And I think you have the samples of checks going into Zertuche General Store. We will agree, there were checks going into Zertuche's General Store during that period and out of Zertuche.

MR. DOYLE: No question about that.

MR. MITCHELL: May I request --

MR. DOYLE: Into that account.

MR. MITCHELL: Yes, I understand. I understand, you're not stipulating the existence of an inventory. I understand that.

MR. DOYLE: No, sir. There's no evidence of an inventory.

MR. MITCHELL: I, of course, disagree with you, but that's all right. Now, may I ask, Mr. President, of Counsel if he will agree with me -- and this is just a matter that went a little beyond our discussion -- as regards the tax return -- that is the ending of the tax year of Zertuche General Store by Arturo Zertuche December 31st, 1970.

MR. DOYLE: I will not agree to any tax returns that are not properly authenticated, Mr. Mitchell.

MR. MITCHELL: Fine. That's all right. I will then pass the witness on the basis of that stipulation and perhaps maybe some Members of the Court have questions to put to either Counsel as regards the scope of the stipulation, if it please the Court. I do not at this point, if it please the Court, and I don't want to be discourteous, withdraw the tendered material that was here last night. I think that that should be available for the Senate in case they want to examine it. But on the basis of the stipulation I will not offer any more checks or this type of document. And I now pass Mr. George Zertuche.

MR. DOYLE: Mr. President, might I have a moment to see what's come into this record before I begin my cross-examination of Mr. Zertuche? There appear to be things that I thought were not in the record that are in the record. May I have about five minutes to look at that before I begin my cross-examination.

THE PRESIDENT: All right. Now, is the extent of the stipulation between the Counsel clear to all Members of the Court? This saves burdening the record with an enormous amount of documentary evidence and will save the Court considerable time.

SENATOR TRAEGER: Mr. President.

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: May I address Mr. Mitchell?

THE PRESIDENT: Yes, sir.

SENATOR TRAEGER: Mr. Mitchell, as I understand what the stipulation -- what you all have agreed upon is that the Zertuche General Store did exist, did operate, live, breathe and ran until 1970 when the hurricane --

MR. MITCHELL: No, no.

THE PRESIDENT: Senator, that's not the stipulation. The stipulation is there was an active banking account with checks going in and out, the stipulation is that there was an invoice register which was used. Now as to the extent --

SENATOR TRAEGER: After the hurricane?

THE PRESIDENT: Yes, sir, up to the end of 1970. Now, as to what form of operation other than that documentary evidence which both sides have agreed to, that will no doubt be the subject of cross-examination.

SENATOR TRAEGER: That's what I wanted to ask. If they had this stipulation that the store did exist and operate --

THE PRESIDENT: The stipulation goes only to the documentary evidence.

SENATOR TRAEGER: Thank you, sir.

MR. MITCHELL: Mr. President, Counsel for the House Board of Managers also indicated yesterday, and it might be a good time to dispose of it, that he was willing to agree with me, and I have the documentary here, that a lawsuit was instituted by Judge Carrillo for the purposes of recovering damage to the Vaello Sales Building. And I wouldn't find it necessary to burden the record with the entire official pleadings, if Counsel --

MR. DOYLE: Mr. Mitchell, can I see the pleadings just a moment?

MR. MITCHELL: Yes. This is a lawsuit against the insurance company for the recovery of damages. O. P. Carrillo vs. Republic Insurance, 8357.

MR. DOYLE: Mr. President, I see nothing unusual in the pleadings. I would agree, and as I stated to Mr. Mitchell yesterday, that such a lawsuit was filed. I do not know about the outcome of the lawsuit. It is apparent that such a lawsuit was filed, and I will be happy to stipulate that such a lawsuit was filed. I am confident that Mr. Mitchell knows the outcome and will tell us what the outcome of the lawsuit was, and I would certainly agree to stipulate to that. I don't see any reason to burden the record with that.

MR. MITCHELL: Thank you very much, Mr. Doyle.

If it please the Court, the Cause Number is 8357 in the District Court, Duval County, Texas, O. P. Carrillo vs. Republic Insurance Company.

My client informs me that the case was settled prior to going to trial, Mr. Doyle, for a sum of \$2,000.00, and a judgment was entered --

MR. DOYLE: That's fine.

MR. MITCHELL: -- reflecting that disposition of the case.
I appreciate that.

THE PRESIDENT: All right.

MR. DOYLE: Did that lawsuit cover the contents?

MR. MITCHELL: No, it did not. Just the building, and I will --
Mr. Doyle, I would like for you to take the copy and read it with the
understanding that if there is something in there that catches you by surprise, you
certainly are not going to be bound by any stipulation.

MR. DOYLE: That's fine. I acknowledge that there was such a lawsuit.

THE PRESIDENT: All right. Now, it is understood and agreed, then, that
further examination of this witness and any other witness that may be called to testify
with regard to the Zertuche Store, will not center around the documentation, but
around other aspects of that store's operation. Is that correct?

MR. MITCHELL: Yes, sir. That's true.
I have no further questions of Mr. George Zertuche, Sr., if it please the Court,
in view of the work accomplished by the stipulation. I pass the witness.

THE PRESIDENT: Mr. Doyle, do you desire to cross-examine --

MR. DOYLE: Yes. We will have a few questions.

THE PRESIDENT: All right. Please recall Mr. Zertuche.

GEORGE ZERTUCHE, SR.

was recalled to the stand, and having been previously duly sworn, testified further as
follows, to-wit:

CROSS EXAMINATION

(Questions by Mr. Odam:)

Q Mr. Zertuche?

A Yes, sir.

Q My name is John Odam. I would like to ask you a few questions.
You recall that you were on the stand down in Corpus Christi at the Judicial
Qualifications Commission?

A Yes, sir.

Q Do you recall at that time that I asked you some questions about a totally
different matter? We didn't go into this at all. Do you recall that?
We were talking about some photographs out on the Borjas?

A Yes, sir.

Q Okay. Mr. Zertuche, yesterday you testified that -- or last night, about the hurricane coming and about you assisting -- doing some work. Is that correct?

A Yes, sir.

Q Is it true -- I take it from your testimony last night, that you did not personally move this inventory. Is that right?

A No. I just moved the safe.

Q And so you didn't move any goods at all out of the Zertuche General Store?

A No, sir.

Q And what you did move was a large safe?

A Right; yes, sir.

Q And you moved that to the Farm and Ranch Store?

A Farm and Ranch Store, yes, sir.

Q Do you still live in Benavides, Texas?

A Yes, sir.

Q Have you ever personally done any business -- strike that.

After the safe was moved over to the Farm and Ranch Store, did you personally ever do any business -- did you buy any goods from the Zertuche General Store?

A No, sir.

Q Do you know anyone, of your own personal knowledge, that actually went into the Zertuche General Store and bought anything?

A I don't know.

Q You don't know of anybody that bought anything?

A No, because I didn't -- I was not in the store. I was in a shop in the back. I was at Farm and Ranch -- the County had a shop in the back of the Farm and Ranch Store.

Q Well, I understand. But, I mean, you live in Benavides, and you lived in Benavides, Texas, in 1970?

A Yes, sir.

Q What's the population of Benavides, Texas?

A Sir?

Q What is the population -- how many people live in Benavides?

A About 1,000 something; I don't know.

Q How many?

A About a thousand something, I don't know.

Q About a thousand people?

A Two thousand -- I don't know.

Q And you've mentioned where you were. What do you do for a living now?

A I work for the County.

Q You work for the County?

A Yes, sir.

Q And what did you do for a living back in, say, 1970, six years ago?

A I have been working for the County for the last fifteen, eighteen years.

Q And what is your position with the County?

A I am a mechanic.

Q Mechanic?

A Yes, sir.

Q Do you do your work there in Benavides, Texas?

A Yes, sir.

Q And what precinct is that in?

A Precinct 3.

Q Ramiro Carrillo's precinct?

A Yes, sir.

Q And where do you actually do the work? Is it at the County warehouse?

A We have a County shop behind the store there.

Q And the County shop is at the same location as the Farm and Ranch Store?

A Yes, sir.

Q And the Farm and Ranch Store is where the safe was moved to. Right?

A Yes, sir.

Q Okay. Now again, in your time there, and living in this town of a thousand people, did you ever personally buy any goods at all from the Zertuche General Store?

A No, sir.

Q And it is your testimony, you do not know of anyone who did buy any goods from the Zertuche General Store?

A No. I couldn't say. There was a lot of people coming in and doing business there. I couldn't say what they were doing.

Q Where were they doing the business? At the Farm and Ranch Store?

A The Farm and Ranch Store. That is where Cleofas Gonzalez was, and everytime I would try to get in there to see about the store, he got mad. He didn't want for me to be around there too much.

Q Okay. Now, the Zertuche General Store safe, that you moved over there. You did not move the inventory over there, and you stated that someone did, you think, take a couple of pickup -- well, you said something about some pickup loads.

How much -- did you actually see the inventory being taken to the Zertuche General Store? Did you watch it being moved?

A Yes, sir. I did see these trucks put in there and unload the merchandise.

Q And I think you said last night, they unloaded some linens and some pillow cases?

A Yes, sir.

Q How many truck loads did they take over there? About two pickup truck loads full?

A Well maybe they took two or three trucks -- pickups and they might have made two or three trips in every truck. I wouldn't know for sure.

Q And what did you actually see them taking over there other than some pillow cases and some sheets?

A Well, like I said, appliances, and maybe stoves and refrigerators.

Q And who actually took it over there? The appliances, the sheets and the pillow cases?

A The boys or men that were driving the trucks.

Q Who were the boys?

A I don't remember.

Q You don't remember the boys' names that took it over there?

A No, sir.

Q So, I take it it was not Hector or Arturo that took it over there?

A No, no, sir.

Q Were they taking it over there in County trucks?

A No, sir.

Q Whose pickup trucks were they driving?

A I guess they were friends for -- boys from town that had pickups trying to help.

Q Who? Your friends, Judge Carrillo's, Ramiro's?

A Well, everybody in Benavides his friends.

Q Well the -- I take it, then, that you don't know who it was, then, that moved the inventory over there? You don't recall their names?

A No, sir.

Q And it took two or three hours to move this over there?

A I would say about two or three hours. I wouldn't be sure. I couldn't swear.

Q Now, last night, you identified the signature of your son on some checks. Is that right?

A Yes, sir.

MR. ODAM: Again, in response to what we said, Mr. President, I don't intend to go back through the documentary evidence, but I -- last night, we started to establish the difference in signature between Arturo Zertuche and what appears on the checks. I would like to at least go back into that point, if I could.

THE PRESIDENT: All right, sir.

Q Now, I show you -- and again, I refer to the checks that are in evidence in the Senate Journal that were admitted last night.

MR. ODAM: Senate Journal that begins -- Series of checks at Page 3423 in last night's Senate Journal. The copies do not reproduce very well. Mr. Mitchell asked permission to withdraw the copies, and as I stated last night, we have no objection to that as long as they are left available for the Senate as long as this trial proceeds.

MR. MITCHELL: Yes. As previously done with the Judicial Qualifications Commission trial and the Federal trial, our agreement always is that they will remain in custody until the gentlemen of the Court and all the officials are finished with them. We certainly don't want to secrete anything.

Q Mr. Zertuche, I am not going to go through everyone of these checks, but I would like to take just a few of them.

MR. ODAM: I direct the Court's attention to what has been marked as R-166(2).

Q Do you see the R-166(2), the second check there for \$2,346.00?

A Yes, sir.

Q And to whom is that check made out?

A That check is made out to Farm and Ranch Supply.

Q And would you look down at the next check, January 19 of 1968. Who is that check made out to?

A That's the Farm and Ranch Supply.

Q Now, Mr. Zertuche, is it your sworn testimony that you believe that your son, Arturo Zertuche, whose signature you have identified, as making out the -- or, signing his name to the check. Is it your testimony that, where it says Farm and Ranch Supply and the amount of money, that this is his signature also?

A Yes, sir.

Q You think that he put Farm and Ranch Supply on there?

A I couldn't -- I couldn't tell he did. I'm talking about his signature.

Q Well, he did put his signature on there. I got -- we don't dispute that. My question to you, did he put in Farm and Ranch Supply? Did he write that out?

A I wouldn't know for sure.

Q You wouldn't know if he wrote that out or not?

A I couldn't swear.

Q Would you agree with me that it appears that the writing by the ballpoint pencil is heavier and was not made out at least by the same pencil at the same time? Would you agree with that?

A I believe I would, yes.

Q All right, sir. Now, these two checks are to Farm and Ranch Supply -- again, I do not want to go through each one of them. But let's take another check, R-167(3). That one's made out for \$4,000.00 to Farm and Ranch Supply. Is it your testimony also that you -- as with the previous ones, that you couldn't swear that is your son's signature where it says Farm and Ranch Supply?

A The signature?

Q No. I'm sorry. Where it says Farm and Ranch Supply.

A Well, like I said, I wouldn't know because, you know, in print it's different than the handwriting. I mean, I write my name, sign it, and if I would print it would be

different.

Q Well, let's take one that's written out here. I refer to the one for \$3,546.00 to Farm and Ranch Supply. This is R-169(4). This is one in June of 1968. This one is written out in longhand. It's not printed. My question to you, Mr. Zertuche, where it says Farm and Ranch Supply, was that written out in the handwriting of Arturo Zertuche?

A I couldn't be sure, but sometimes when you're in a hurry, you just don't write --

MR. ODAM: Well, I do not want to go through each one of them, and the point, Mr. Mitchell, on this for clarification and for the benefit of the Court, it would be our position, as previously stated, that while the checks have Arturo Zertuche's name on it, it would be our position that the rest of the checks were not actually filled out by him and Mr. Zertuche's testimony is he cannot state who filled out the rest of it, I understand. And I'll ask the Court, if we could, to examine the checks up here to compare the signatures, the ball point impressions, etc., that are on these checks. I'll leave them here for examination by the Court.

Q Mr. Zertuche, when did your son, Hector, leave Benavides to go into the Army?

A I don't recall if it was in '66 or --

Q 1966?

A I'm not quite sure because he got married, and then he joined the Army. He went to El Paso.

Q And it was after this time that Arturo Zertuche took over the operation of the Zertuche General Store?

A Well, when Hector left, Arturo took the operation of the General Store.

Q And when did Hector -- or excuse me -- when did Arturo Zertuche go away to college or go away to school?

A I think right about -- after he finished high school.

Q And when was that?

A Might have been '64. I don't -- I don't remember.

Q Well, who was running the Zertuche General Store then if he went away? He picked it up after Hector left, and if he went away in 1964, who was running the Zertuche General Store?

A In the Vaello Sales Building --

Q Yes, sir.

A Elvira Rodriguez. Mrs. Rodriguez.

Q In 1964?

A No, no. The store was made in 1965, and after Hector went to the Army, Mrs. Rodriguez was taking care of the store.

Q Mrs. Rodriguez was taking care of the store? And all of this time Arturo was away at school. And what school did he go to? I think you testified last night. I don't recall.

A He started going to A&I, Texas A&I.

Q Texas A&I. I think you said one time he went to Denton, North Texas --

A Yes, sir, he finished in Denton.

Q Well, did he run the store while he was away at Denton at North Texas or while he was at Texas A&I?

A Well, after '66 -- after Hector went to the Army -- well, he came on weekends or every fifteen days and --

Q So Hector went to the Army and then Arturo also went to the Army?

A No, Arturo went to school and he went -- afterwards he went -- way later on he went to the National Guard.

Q Okay. Now, I'm just talking about Arturo Zertuche. You said that Hector left and went in the Army and then Arturo took over the operation of the store, right?

A Yes, sir.

Q And Arturo graduated from high school in 1964, right?

A I believe. I'm not sure.

Q And Arturo graduated from high school and went to Texas A&I, correct?

A Yes, sir.

Q So, Mrs. Rodriguez was there to mind the store after he left, is that correct?

A After '66, after Hector went to the Army.

Q Well, when did Arturo get back from college? When was he back on the scene running the store?

A When did he get back from college?

Q Yes, sir. North Texas, Denton.

A I don't remember. He just came on weekends or every fifteen days and came home and --

Q You recall Arturo being paid \$225.00 a month while he was away at Denton, do you not, by the County?

A I wouldn't know.

Q You don't know if your son was paid by the County while he was in Denton?

A No, sir.

Q When he came home on the weekends, I think you testified just a while ago, that he would go to the store and work at the store on the weekends, Arturo would. Is that right?

A Well, he went to the store. I don't know what he was doing there.

Q Did you -- back on this merchandise, after the hurricane came, was not part of the merchandise damaged? It was a pretty bad hurricane from the way you described it.

A Yes, sir.

Q So some of the merchandise that was moved was actually damaged, is that correct?

A Yes, sir.

Q Now, are you sure that the merchandise was actually moved into the Farm and Ranch Store, or could it have been taken away and thrown away or given to someone else?

A What I saw, I saw it moved into the Farm and Ranch Store.

Q You actually saw it loaded into the Farm and Ranch Store?

A Yes, sir.

Q Do you know why the goods were moved to the Farm and Ranch Store?

A Sir?

Q Why were the goods moved to the Farm and Ranch Store in the first place?

A Now, I wouldn't know.

Q Well, who do you think owned the goods at that time? Did they belong to O. P. and Ramiro once the goods were moved over there?

A It belonged to Ramiro, I believe.

Q What belonged to Ramiro?

A Farm and Ranch.

Q No, sir, I'm talking about the supplies that were moved, the merchandise that was moved over there. Weren't supplies -- didn't they belong to Ramiro Carrillo?

A No, sir.

Q They belonged to O. P. Carrillo?

A No, sir.

Q They still belonged to --

A Belonged to the store.

Q Who was running the store if Arturo was away at college?

A Well, like I say, it was -- I'm talking about '66, '67.

Q Let's talk about who owned the store after 1967 once the goods were all moved over to Judge Carrillo's store and Ramiro's --

A Well, when it was moved to Farm and Ranch Store, I -- they just -- I just saw the merchandise moved over there. I don't know who took charge of the store then. I knew Cleofas Gonzalez was taking care of the store there. I wouldn't know whose --

Q Okay. Well, where was Hector Zertuche in 1967 after the hurricane? Where was he actually located? Was he in the Army, or where was he in 1967?

A I don't remember. He might have been in El Paso.

Q Might have been in El Paso?

A Yes, sir. He was stationed in El Paso.

Q When did he get out of the Army?

A I don't remember.

Q Has he ever lived back in Benavides again after he got out of the Army?

A No, he lived in Alice.

Q So, we can get Hector out of the scene after the hurricane. How about Arturo. When, if at all, did he ever come back except on weekends to have anything to do with the store after all these truck loads of stuff were moved over to the Farm and Ranch Store? When did Arturo come back and have anything to do with the store?

A I don't know.

Q Well, after 1967, has Arturo Zertuche, your son, ever lived in Benavides, Texas?

A He lived with us until the time he got married.

Q When was that?

A It might have been '70, '71. I don't --

Q Does he have any children?

A Who?

Q Arturo Zertuche.

A Yes, sir.

Q How many children does he have?

A He has a little daughter. A girl.

Q Was there -- you worked at the -- you were a County employee, working at the warehouse as a mechanic, is that correct?

A Yes, sir.

Q At the Farm and Ranch Store, is there a sign in front of the Farm and Ranch Store that says Farm and Ranch Supply or something like that? Some kind of a billboard or neon sign?

A I don't know. There might have been.

Q I'm talking about right now, today. If I drove down to Benavides, would I see a --

A Well, no, I don't --

Q Well, in 1967, was there a sign up that said Farm and Ranch Supply?

A I don't remember.

Q Was there any kind of identification that there was a Farm and Ranch Store, Farm and Ranch Supply? Was it written on a glass window? Was there a neon sign? You just don't know?

A I couldn't say --

Q Well, if you don't know --

A I don't know.

Q Could you tell me physically where is the warehouse where you worked as a mechanic in relation to where this Farm and Ranch Supply Store is. I've been down the main street, and the Farm and Ranch Supply fronts on the street, is that correct?

A Yes, sir.

Q And where did you work in relation to that building?

A Oh, about a hundred feet back in the -- almost in the other street, close to the other street, close to the other street in the same block, you know. It's the same building, but --

Q Same building? You worked in the same building where the Farm and Ranch Supply was?

A Yeah, but we had --

Q A hundred feet back.

A Yes, sir.

Q On the same piece of property.

A Yes, sir.

Q And you don't know if there was a sign that said Farm and Ranch Supply or not?

A Well, I knew there was a Farm and Ranch Supply. I didn't pay much attention if they had a sign or not.

Q How about Zertuche General Store after this merchandise was moved over there in 1967 -- did you ever see a sign thereafter that said Zertuche General Store on it?

A I couldn't say.

Q You couldn't say if there was a sign or not?

A No, sir.

Q You went there everyday and you don't know if there was a sign that said --

A I just didn't look at it. I mean, I didn't pay much attention to it.

MR. ODAM: Pass the witness.

REDIRECT EXAMINATION

(Questions by Mr. Mitchell:)

Q Mr. Zertuche, I'll not ask you any further questions on the documentation and the checks because of agreements reached by Counsel. But I will ask you as regards other items that you have mentioned on cross-examination. I believe you testified that the moving of the merchandise took two or three trips. Do you recall how many trips in the trucks it took to move the merchandise, Mr. Zertuche?

A I said two or three trips. I'm not sure.

Q All right. And do you recall whether or not the movers were moving the merchandise at the same time that you were using the forklift to move the safe?

A Yes, sir.

Q Can you tell the Senate about how long it took to move the merchandise and to make the move completely, Mr. Zertuche?

A How long it took the merchandise -- to move the merchandise?

Q Everything, yes.

A Everything. I'd say three or four hours, maybe half a day. I wouldn't know exactly.

Q All right, sir. And I believe your testimony is in sum and substance that there were stoves, refrigerators, sheets, pillowcases --

MR. ODAM: Your Honor --

Q -- appliances that were moved, is that correct?

A That's correct.

THE PRESIDENT: Mr. Odam.

MR. ODAM: The questions that Mr. Mitchell just asked about how long it took was what he had asked before, and I would object on the grounds of repetition to walk back through the same testimony or to summarize it. That's not the purpose of cross-examination -- or redirect examination. It would be repetitious to take Mr. Zertuche back to what we went through last night until 7:00 o'clock and what we've gone through this morning for the past hour and ten minutes.

THE PRESIDENT: Objection sustained.

Q You mentioned -- and I don't believe this was covered last night, and if I covered it, I want to apologize. The first time I heard the testimony was when Mr. Odam asked you as regards Mr. Gonzalez' reaction over at the Farm and Ranch when you were talking to him about the operation of the Zertuche Store, and your testimony was that he would refuse to tell you anything about the operation of the store?

A That's correct.

Q And can you tell us whether or not you specifically asked him questions about your son's store and the operation?

A Well, sometimes I'd ask him something about the store, what he was doing, or what --

MR. ODAM: Your Honor, if I might, I would object --

A He got mad.

THE PRESIDENT: Mr. Odam.

MR. ODAM: I would object on the grounds that whatever Mr. Zertuche is getting ready to say that Cleofas Gonzalez stated to him would be hearsay. Mr.

Cleofas Gonzalez was on the stand already in this case and subject to cross-examination by Mr. Mitchell, and we'd object to Mr. Zertuche stating why he was upset if he was upset. That would call for speculation. And also I would object to the hearsay.

MR. MITCHELL: May it -- may I speak to that objection?

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: The testimony was brought out on cross-examination as regards Cleofas Gonzalez' testimony to this witness. I asked the witness to explicate it on redirect to be sure we got the full content, if it please the Court. The only reason I did was because he brought it out on cross, and the testimony -- certainly what Cleofas told this man is not hearsay.

THE PRESIDENT: Objection is overruled. Please answer the question, Mr. Zertuche.

Q Did you answer the question, Mr. Zertuche so we can move on --

A Every time I went in there and tried to ask him something about the Zertuche Store, why, he seemed to get mad and said, "I know what I'm doing." And I left him alone and just walked out.

MR. MITCHELL: If it please the Court, I have no further questions of this witness.

THE PRESIDENT: Mr. Odam.

CROSS EXAMINATION

(Questions by Mr. Odam:)

Q Mr. Zertuche, now, we will get into that a little bit. Why were you questioning Cleofas Gonzalez at all as to why he was running the Zertuche General Store?

A Well, just being Arturo's father and knowing that he was running that store in that building there with -- you know, I wanted to know what was -- what was he doing, what was going on and he just wouldn't tell me.

Q Why would he not tell you? Do you know?

A I don't know.

Q Did he tell you he was working at the Farm and Ranch Supply?

A He just told me he knew what he was doing and that's all.

MR. ODAM: Pass the witness.

MR. MITCHELL: I have no further questions, Mr. President.
May we ask this witness to be excused, subject to recall, if it please the Court.

THE PRESIDENT: Mr. Zertuche, in view of the fact that you may be recalled for further testimony in this case, it is my duty to warn you that you are under The Rule, that you are not to converse with any other person except Counsel for the two parties concerning the proceedings before this Court. Do not read any report of or comment on any testimony before this Court. A person violating such instructions may be punished with contempt. Do you understand that?

THE WITNESS: Yes, sir.

THE PRESIDENT: Thank you, Mr. Zertuche. You're excused. Mr. Mitchell, call your next witness.

MR. MITCHELL: Thank you. The next witness, if it please the Court, will be Mr. Oscar Kirkland. O. D. Kirkland.

Mr. President, for the purpose of the record, his testimony previously appeared on Page 2041 of the Senate Journal record and goes from 2041 to 2103. In examining this witness, I will attempt not to duplicate the matters that have been previously covered by that testimony. There are some matters that are in conflict here, however, I do hope to be able to touch on with this witness. I will try not to be repetitive. I call the Court's attention to the fact that Mr. Kirkland had been previously examined as to the items and matters that I'm going to question him about.

May I have the proper Exhibit of Arturo Zertuche's income tax return, too, please, sir.

THE PRESIDENT: Mr. Kirkland, would you please raise your right hand? "You do solemnly swear or affirm that the evidence you give upon this hearing by the Senate of Texas of impeachment charges against O. P. Carrillo shall be the truth, the whole truth, and nothing but the truth, so help you God."

THE WITNESS: I do.

THE PRESIDENT: Please be seated.

OSCAR D. KIRKLAND,
was called as a witness, and having been first duly sworn, testified as follows, to-wit:

DIRECT EXAMINATION

(Question by Mr. Mitchell:)

Q Mr. Kirkland, would you please state your name, full name, for the record?

A Oscar D. Kirkland.

Q And your present address?

A Star Route, Box 16B, San Diego, Texas.

Q And your employment, trade or occupation, please, sir?

A I'm a Certified Public Accountant.

Q Mr. Kirkland, are you a Certified Public Accountant under the laws of the State of Texas?

A Yes.

Q And can you give us, please, sir, your background and preparatory education?

MR. MITCHELL: I believe Counsel has previously stipulated that Mr. Kirkland was an expert. And may I invite that same stipulation, to be permitted to represent him to this Court, as an expert, Mr. President?

THE PRESIDENT: Mr. Odam.

MR. ODAM: I recall the testimony of Mr. Kirkland down there at Corpus Christi when we had him on as a witness and I would stipulate that he is a C.P.A. and has the necessary educational background to become a Certified Public Accountant.

MR. MITCHELL: And would you please state, Mr. Odam, whether or not he is in your opinion an expert in the area? Expert witness, as distinct from non-expert witness, otherwise I would be pleased to ask him the necessary predicate questions to demonstrate his expertise.

MR. ODAM: I believe we can go -- I will not stipulate that he's an expert. I will stipulate that he's a Certified Public Accountant.

MR. MITCHELL: Our position is he's an expert by both experience and by education. And to meet that test I will ask --

Q Mr. Kirkland, I will ask you some questions. Please, what is your educational background?

A I graduated from Edinburg Junior College in '34; have a BBA from Texas A&I; about twenty-four hours towards my Masters in accounting and about --

Q Where did you take your study towards your Master Degree?

A At Texas A&I.

Q All right, sir. Continue. What other formal education did you have?

A About fourteen months at the Texas University Law School.

Q And when did you attend Texas University Law School?

A 1946 and '47.

Q And what degrees, if any, were conferred on you besides the BBA. You did, I believe get your Masters?

A No, I didn't.

Q How much more effort is required for you to complete your Masters. You had twenty-four hours towards your Master Degree?

A I lack, I believe, it was six hours and a thesis.

Q All right, sir. Have you, since your graduation, Mr. Kirkland, undertaken to attend seminars and to familiarize yourself with the latest development in the field of accountancy?

A Yes, sir, I have.

Q And are you a member of any professional associations, if so, tell us those associations.

A With the Texas Society of Certified Public Accountants.

Q Is the Texas Society of Certified Public Accountants an organized association of Certified Public Accountants?

A Yes, it is.

Q And do you attend annual meetings as a member of that Society?

A Whenever possible, yes.

Q And when you attend annual meetings, do you attend seminars and do you exchange information with fellow members of your profession?

A Yes, we do.

Q And do you attempt through that associational affiliation to maintain a currency in your information as an accountant, Mr. Kirkland?

A Yes.

Q All right. Now, in addition to your educational background that you have described, are you a member of any other society, other than the Texas Society of Certified Public Accountants?

A No other accounting societies. I belong to the Retired Officers Association.

Q I will ask you, in order to become a -- are you a Certified Public Accountant?

A Yes.

Q And was that status gained through -- is it an honorary, do you take an exam?

A Take an exam.

Q And the subject matters that are covered on the exam, please, sir, what are they?

Q Well, there are four parts, there's accounting theory, accounting practice, business law and auditing.

Q All right, sir. And your certificate -- are you given a certificate once you successfully pass those four parts?

A Yes.

Q And when did you become a Certified Public Accountant?

A I passed the exam in November of '49, received my certificate in January of 1950.

Q As a part of the prerequisite for becoming a Certified Public Accountant, is it necessary for you to fulfill a certain practical period to demonstrate your ability in the area of accountancy?

A Yes.

Q And how long was that requirement for your particular case, Mr. Kirkland?

A Two years working in public accounting.

Q And where did you do your work in public accounting?

A In Alice.

Q And in what area of accounting? Did you have any specialties?

A Probably at least fifty per cent of the work was preparing income tax returns.

Q If you have a specialty, would it be your subjective opinion that it would be in the preparation of income tax returns?

A Possibly the biggest part of my work, yes.

Q All right. Now, you became certified in 1950?

A Yes.

Q And you have been certified, I assume, continuously from 1950 to date, which is 1976, which according to my mathematics and you can check me -- twenty what, twenty-six years?

A Twenty-six years, yes.

(Senator Mehgden in Chair)

Q And during that period of twenty-six years have you practiced accountancy in an uninterrupted fashion?

A I wasn't in public accounting until 1955. I opened my office in Alice in 1955.

Q And you have been in business continuously since 1955 to date?

A Yes.

Q Now making an inquiry as to the nature of your business. Your testimony was previously that you have -- about fifty per cent of your practice involves the preparation of tax returns. Is that correct?

A Roughly, yes.

Q And would that be the truth as regards, say, from about '55 to date?

A Substantially, yes.

Q Now, when we talk in terms of tax returns, Mr. Kirkland, does your service go beyond the actual filling in of the return? Do you maintain books and ledgers that constitute an input into the return?

MR. ODAM: Mr. Chairman, he's satisfied me to his point. I would like for him to move on to the substance, I have heard enough now.

MR. MITCHELL: Are you willing to stipulate he's an expert, Counsel?

MR. ODAM: I'm willing to move on to the merits of the case.

MR. MITCHELL: I still don't think I have discharged my duty. I'm going to qualify him until you stipulate he's qualified.

MR. ODAM: I'm not stipulating to it, I would suggest that Mr. Kirkland has given the necessary information for the Court to make determination of whether or not he's an expert. And I would like to go on with the case.

MR. MITCHELL: Then I would like to submit him as an expert --

Q Incidentally, Mr. Kirkland, I believe in the Federal Court in Corpus Christi you have been admitted as an expert before that Court, as well as other Federal Courts, have you not?

A Yes. No others, just that one

Q All right. Mr. Kirkland, do you know Judge O. P. Carrillo, please?

A Yes.

Q I believe the record reflects and I'm going to lead, if I might be permitted, to cover a lot of preliminary matter, unless Counsel wants to object. The record reflects you commenced doing the tax returns for the Carrillo family in about 1959.

A That's right.

Q Now, there is in the record and we can refer to the record that's here and I'm going to -- there is in the record certain tax returns. And I'm going to have to ask you some basic questions as regards these returns, Mr. Kirkland, prior to the time that we can direct our questions to specific inquiry. Is the basic tax return composed of a 1040 Form?

A Individuals, yes.

Q All right. The individual tax return?

A Yes.

Q And is that a number assigned to that tax return by the Service?

A Yes.

Q All right. That basic 1040 Form has certain input into it, does it not, to reflect at one place the total amount of income of the taxpayer, is that a fair statement?

A Yes.

Q For example, a standard 1040 Form would have gross income from salaries, wages, et cetera?

A Right.

Q Subject to withholding and maybe commissions that are not subject to withholding. Am I correct?

A It's correct.

Q So, he would have an input into a 1040 Form of wages, salaries, etc. Is that correct?

A That's correct.

Q So, if Judge Carrillo were a Judge and he were drawing a salary, that salary would be reported in the 1040 Form?

A Yes.

Q And the tax would be paid on that salary by virtue of the W-2 Withholding. Am I correct?

A There would be tax to be applied to it, yes.

Q All right. So, that for example, using as a hypothetical situation Judge Carrillo is presently a Judge, he tenders to you at the end of this tax year his tax information and it indicates that there is a wage -- wages paid, the W-2 Form would indicate the amount of the wage, I suppose and the amount of the tax withheld?

A That's right.

MR. ODAM: Your Honor, if I might pose an objection of repetitious testimony here. Mr. Mitchell asked basically the same questions which he alluded to earlier are in this record. I imagine the majority, probably 100 per cent of Members of the Court know about W-2 Forms, how they're composed, plus Mr. Kirkland's testimony on this very point is already here in the record. I would object on the ground of repetition to go through the testimony Mr. Kirkland testified to down at Corpus Christi.

MR. MITCHELL: Well, Your Honor, I'm trying not to be repetitious. I notice, for example, when they call Cleofas Gonzalez they went through his testimony item for item, page for page. I'm trying not to be repetitious, but I do have a very important burden where these tax returns are concerned, particularly on the ultimate existence of the various entities. I will try not to be repetitive and I will try to move on.

And I will stop that line of inquiry and move to -- particularly Schedule C, partnership type returns, if I might be permitted.

THE PRESIDING OFFICER. All right. Counsel, let's try to move on.

MR. MITCHELL: I will, Your Honor.

Q All right. Let me move in light with the objection and the Court's instruction, Mr. Kirkland. Schedule C -- is that a form of reporting a sole proprietorship that also constitutes an input into a 1040 Form?

A Yes.

Q And tell us what the Schedule C is?

A It's income from a business or profession.

Q Is it a distinct method of reporting -- strike that. Is there another method or another form used for reporting partnerships?

A Yes.

Q And what is that Form?

A It's a Form 1065.

Q Now, the Schedule C reports a sole proprietorship earning, is that correct?

A That's correct.

Q Now, what other basis, if any -- what other calculation is taken from the Schedule C on the 1040 Form, other than the income from the operation of a business?

A Well, it is also the Social Security tax to be paid.

Q Your testimony is that the Schedule C then is a beginning point for the Social Security calculation as well as the profit or loss operation of a sole business?

A That's right.

Q All right. The form designation for a partnership is 1065. Is that correct?

A That's correct.

Q The 1065 Form, tell us, is actually an information Form, is it not, Mr. Kirkland?

A That's right.

Q There's no tax paid on the basis of the information contained in the 1065, but rather the net income is transposed to the various 1040 forms of the individual partner. Am I correct?

A It's transferred to the Schedule E, yes, on a 1040.

Q And picked up in that 1040 Form along with the profit from, say, Schedule C or profit from the operating of a business or wages in capital gains, etc. Is that correct?

A That's correct.

Q Now, one other item I want to discuss with you. What is a Depreciation Schedule?

A A Depreciation Schedule is fixed assets which are used in the business and the amount that you can deduct for reasonable -- well, reasonable depreciation of the assets.

Q All right. So, Depreciation Schedules -- does it exist for both real property, such as a house that is rented, as well as personal property?

A Yes.

Q So, if I rent real property, or acquire a piece of real property, you as an accountant would set up a Depreciation Schedule on the house that's being rented. Is that correct?

A That's correct.

Q Who determines, generally, Mr. Kirkland, the useful life of the real property subject to the depreciation of the rental property?

A The IRS gives us a set of guidelines and we stick pretty close to them.

Q All right. Now, personal property. If there is personal property owned by the taxpayer for business purposes, does that personal property -- is it picked up on a separate Depreciation Schedule?

A Yes.

Q And does it have a depreciation -- useful life?

A It does.

Q And where do you get the information that you, as an accountant, use to decide its useful life?

A From the IRS bulletins or from the general industry concerned.

Q Now, on personal property what is -- is the period of useful life shorter or longer, as a general rule, than the rental of real property?

A It is generally always shorter.

Q Three, five, six, seven years, that type of a --

A Up to ten, possibly.

Q All right. Now, one more question.

How does the useful life and the depreciation relate to the acquisition data and the deductions permitted by the taxpayer during a current year against the income from that item that is subject to rental?

MR. ODAM: Your Honor, if I might, and I hate to be argumentative with Mr. Mitchell. But, this was covered down in Corpus Christi. And second of all, right now, with Mr. Kirkland on the stand, I don't know what the relevancy of any of this is -- the useful life, etc. We can go to a particular Depreciation Schedule and discuss certain items, and I might not have an objection. But, I would have the objection of repetition of what we went through in Corpus Christi again; and second of all, I do not see the relevancy of this line of testimony to what is in evidence.

MR. MITCHELL: Well, the relevancy, Your Honor, if I might speak to that, is that the particular -- on the Depreciation Schedule, the question has been raised time and time again as regards equipment for rental.

Counsel has turned and made quite an issue when he cross-examined my client, looking at the Depreciation Schedules from Judge Carrillo's Tax Return, which appears on Page 1097, that the equipment was not available. My -- or, not in the Depreciation Schedule.

My reason for my questions will be that after -- I'm going to ask him -- I'm leading up to what happens to the depreciation or the listing of the items on the Depreciation Schedule after the full life has been captured.

MR. ODAM: Your Honor, if that is it, I would stipulate that Mr. Kirkland testified in Corpus Christi that certain items go off the Depreciation Schedule after a certain period of time, and that we have the items on the Depreciation Schedule. They are there, and not necessarily is that all the equipment that is owned by Judge Carrillo; that there might be other items that are not on the Depreciation Schedule, if that would assist us in moving on.

MR. MITCHELL: Very good. I appreciate that stipulation. And, my only other question would be, why did you spend thirty minutes talking to Judge Carrillo about that equipment that wasn't on that Depreciation Schedule, Mr. Odam, if you knew that and were willing to stipulate for this Court?

I'm sorry. That is probably an improper remark. I withdraw that remark.

MR. ODAM: Thank you.

Q All right. Now, specifically -- I don't know whether we have got a very nice chart to work from, but I have got to go through this.

As you can tell, Mr. Kirkland, I am under the constraint of not duplicating, and yet under the burden of explicating to this Court this Carrillo picture.

First of all, how long have you been making out Judge O. P. Carrillo's individual return?

A I believe about 1959.

Q All right.

MR. MITCHELL: May I have this marked, please, as an Exhibit, on the board?

(Respondent Exhibit No. 178 marked for identification.)

A Possibly, in '59, my partner at the time made that one particular return, but I've made them since then.

Q All right. The proper official has marked that as R-178, Mr. Kirkland, and I note that the beginning date here is 1964, but your testimony is that you commenced filling out O. P. Carrillo's 1040 Forms at a time prior to that time. Is that correct?

A That's correct.

Q Now, have you filled out or prepared -- strike that. What, first of all, is a preparer? Is that a term that's got some part in your business? A preparer of a tax return?

A We are not ordinarily known as income tax return preparers. There are such people.

Q Well, when you sign a tax return -- and I'm going to hand you one now that is marked Exhibit 164 for identification. You signed that at the bottom, which I notice you have signed some of these.

I will ask you some authenticating questions later on.

What is your responsibility, if any, as a preparer of that return, Mr. Kirkland?

A We take the information as furnished to us, properly put it on the tax return and calculate the tax from that.

Q All right, sir. And is it a fair summary that you were the preparer of Judge Carrillo's returns from the late fifties on up to date?

A That is correct.

Q And I would like, if I could -- if it please the Court -- to mark -- I am going to mark "X" out into these to show that you prepared his 1040 Returns for the periods shown on 178, would be 1964 --

MR. MITCHELL: I'm sorry, I don't have a big enough chart. I know you can't see it back there. I tried looking at it this morning. And unfortunately -- I will have it filled in and the Court will have it available at the time of deliberation.

By showing -- by the "X's", I would invite the Court to come up closer. I apologize for not having one of those big beautiful charts.

SENATOR ANDUJAR: Use a black pen.

MR. MITCHELL: Would that be better? Do you have a black pen, please, that I could use?

Q Mr. Kirkland, let me ask you, please, sir -- there has been some testimony in this record as regards a Farm and Ranch Supply. Let's start there.

The Farm and Ranch Supply -- I'll ask you, did you and were you the accountant for the Farm and Ranch Supply? Or, did you make up the tax return, I should ask you?

A I made up tax returns for a partnership, O. P. and Ramiro D. Carrillo. And, I didn't head it "Farm and Ranch Supply". That was their business, handling farm and -- and ranch supplies.

Q Right. I will show you, for example, in the official record on which we can comment, it having been admitted into the case, on Page 1093, if it please the Court, there is an entry, "O. P. and Ramiro Carrillo".

Is that how you carried that Farm and Ranch Supply income, Mr. Kirkland?

A Yes, it is.

Q All right. Now, can you tell the Court, are there evidences in -- there is evidence here of the existence of the Farm and Ranch Supply from back in the early part of the sixties. Do you recall whether or not that you -- that you prepared the Farm and Ranch Supply Returns for the period reflected on 178, which would be from 1964 to date?

A I couldn't be sure about the first one. I believe it was about 1964, but so far as I know, I prepared all Returns ever prepared for them.

Q All right. I am going to see if I can mark this out from Farm and Ranch from 1964 -- is that true down to '74, Mr. Kirkland?

A All of them that were prepared, yes, I prepared them.

Q All right. Now, let's be sure that the Court understands. The Farm and Ranch Supply is a partnership owned by O. P. Carrillo and Ramiro Carrillo. Am I correct?

A That's correct.

Q And the Return that you prepared was the information return which is the Form 1065?

A That's correct.

Q And that's the Form that appears in the record. The record here before us has Judge Carrillo's Returns, I believe, for '71, '72, '73 and '74. That's the Return that is carried over in Judge Carrillo's 1040 Form.

A That's correct.

Q And as I understand the mechanics, the net income from the 1065 is taken from -- Judge Carrillo's share, or his proportionate share and carried over as an input into the amount of income that Judge Carrillo is reporting. Is that correct?

A Net income, or possibly loss; whichever it was.

Q Now, did you -- do you know Ramiro Carrillo?

A Yes.

Q And is it a fair statement to say that you also prepared Ramiro and Alma Carrillo's 1040 Return for the period of time about when you started with Judge

Carrillo?

A That's correct.

Q Now, look at 178. I'm going -- I have a column here, "Ramiro Carrillo, 1040", and I'm going to mark in here -- the 1040 Form.

MR. ODAM: Mr. Mitchell?

MR. MITCHELL: Yes, sir.

MR. ODAM: If I might, the list of Exhibits indicate, in evidence before the Court, a number of Income Tax Returns, E-182 is the individual Income Tax Return for O. P. Carrillo. The individual Income Tax Return for 1971 is in evidence. They are signed by Mr. Kirkland.

I think it is -- the Court is aware, from observation of the Exhibits, that the returns are in evidence and they have been prepared by him. I simply do not state -- I do not see where we are going with this line of testimony. Obviously --

MR. MITCHELL: Well, I will tell you, sir, where we are going. We are going to show a complex interwoven tax picture so that if there is a Zertuche General Store and a tax on it, it's got to fit in this picture somewhere. If there is not, then it's got to be out of the picture.

That's all I am doing, Counsel. There have been indications here, and you have got tons of questions in there that Judge Carrillo didn't report this and didn't report that. And, I'm going to try to clear up everything for this Court that I can on that score, if it please the Court. And to do it, I have got to go this route.

MR. ODAM: Well, if we are going to center in on Zertuche General Store, I would like -- I think that this man might have testimony relevant to Zertuche General Store. What he has testified -- ask him about thus far is O. P. Carrillo, Ramiro Carrillo, and Farm and Ranch Supply. I do not see the relevancy of that to the items that are already in evidence.

MR. MITCHELL: Well, I will move to Zertuche General Store, then.

MR. ODAM: That's fine.

MR. MITCHELL: All right.

Q Mr. Kirkland, you heard the Counsel's statement and the President's instruction.

Now, did you cause to be prepared the Tax Returns for Arturo Zertuche for 1967, '68, '69 and '70, and I hand you what has been marked for identification as 164 and see if you recognize them so that you can be informed before you answer my questions?

A Yes, I prepared those.

Q Speak up, please. Did you say you did prepare those?

A Yes, I prepared those.

Q All right. And did you prepare them from information furnished you by the taxpayer?

A I can't recall for sure who furnished me the information each particular year. Different people brought it in at different times.

Q All right. Now, I notice that some are signed by you and some are not signed, and some are not signed by Arturo and some are signed. Can you tell us, please, where the original of those tax returns are?

First of all, you have got to tell us, does Mr. Arturo Zertuche sign each and every one?

A So far as I know, he did.

Q And how about yourself, as the preparer?

A As best of my knowledge, yes, I signed them all.

Q As a matter of fact, Mr. Kirkland, those are your file copies, are they not?

A These are pictures of my file copies, yes.

Q And you recognize them as being those that, I believe, at a previous trial, I called upon and you produced?

A That's correct.

Q All right. Now, for what years are those Arturo Zertuche tax returns?

A 1967, 1968, 1969, and 1970.

Q All right. I'm going to put '67 on 178, '68, '69 and '70. Is that the last year you have?

A That's the last year, yes.

Q All right. Now, I want you, if you would, please, sir, look at the Exhibits. That is, the Zertuche General Store and see whether -- I'm sorry. Strike that.

The Arturo Zertuche Tax Returns for the indicated years, '67, '68, '69 and '70, and see if there is a Schedule C reporting income from Zertuche General Store as a sole proprietorship?

A Yes, they are.

Q All right. In answer to the question, and I look -- Now, look at 178. I have got Zertuche General Store, Schedule C on 1040, and I'm going to put "C" in these. That will be '67, '68, '69 and '70. Is that correct? Is that your testimony?

A That's correct.

Q What does the Schedule C on the Zertuche 1040 indicate? What is the significance of that, Mr. Kirkland?

A That's the income from the business.

Q The Schedule C is included, according to your testimony, in Arturo Zertuche's tax returns for the years '67, 8, 9 and '70?

A That's correct.

Q And what is the last date, now -- what is the -- strike that.

Can you tell the Court the difference between a calendar year taxpayer and a fiscal year taxpayer?

A Well, a calendar year taxpayer, their accounting year ends December 31st. A fiscal year taxpayer could be anytime during -- their tax year could end anytime during the year.

Q All right. Does the return contain an appropriate block to mark whether it is a calendar year or a fiscal year?

A They have a place at the top. It says, "Year, 1967" or "Year beginning, blank, 1967 ending, blank, 1968".

Q All right. Does -- was Arturo Zertuche's Schedule C, the Zertuche General Store, a calendar year reporting?

A Yes, it was.

Q All right. Now, can you turn -- flip over for me -- that would mean that in December 31st, 1970, was the last date that business was in existence, that is, the Zertuche General Store, according to the tax returns, is that correct?

A It was the last year that it was in existence for Arturo Zertuche.

Q All right.

A Yes.

Q And was -- does the Schedule C report -- strike that. Without going into it in detail, but I have a burden to meet. Does the Schedule C show gross income to Zertuche General Store?

A Yes, it does.

Q Does it show acquisition of -- that is, inventory -- current inventory -- inventory during the current year?

A No.

Q What does it reflect in terms of income?

A It shows merchandise purchased.

Q All right. Merchandise purchased. It shows gross sales, does it not?

A That's correct.

Q Merchandise purchased as a deduction against the gross sales to determine the net sales in order to get the net profit, isn't it?

A That is to determine the gross profit, yes.

Q Gross profit. Right. From which there are allowable deduction to arrive at the net profit.

A That's correct.

Q Which constitutes an input into the 1040 Form that is reported and the taxes paid on.

A That's correct.

Q And is that what was done with Mr. Zertuche's Schedule C of the Zertuche General Store for the year 1970, Mr. Kirkland?

A That and he also paid Social Security tax.

Q All right. That was my next question. In addition to calculating the income for Zertuche General Store -- what was the profit he reported in December -- for that year 1970 and paid tax on?

A \$2,267.66.

Q Two thousand --

A Two sixty-seven sixty-six.

Q All right. And what does the Schedule C reflect for 1970 as being the gross sales of Zertuche General Store?

A \$72,974.75.

Q And cost of inventory?

A Cost of merchandise purchased \$44,069.52.

Q All right. And now without going into detail, but sufficient enough to establish the existence, would you look to the Schedule C in '69 and see if that same general reporting method was adopted, Mr. Kirkland? And I'll ask you to do that with '68 and '67, and then I'll move on.

A Yes, it was substantially the same.

Q All right. Now, I'll ask you, Mr. Kirkland, if the cost of the inventory of the Zertuche General Store -- is there any indication how much of that inventory, if any, was purchased from the Farm and Ranch Supply.

A No.

Q During those years. Now, let me go back for just a minute. Were there work papers drawn up in support of each and every one of these tax returns?

A Yes.

Q All right. Now, what are work papers. Tell us what are work papers.

A They are papers which develop the figures to be put on the income tax return.

Q Now, there is in the record work papers. Now, I'm going to show them to you because I'm going to ask you some questions on how you treated rent income.

MR. ODAM: Now, we are moving from Zertuche --

THE PRESIDING OFFICER: Counsel, are you at a point at this time to recommend that we have a ten minute recess?

MR. MITCHELL: I'd love to. Yes, I would.

THE PRESIDING OFFICER: If there is no objection, the Chair will recess for ten minutes. Fifteen minutes.

Accordingly, the Senate, sitting as a Court of Impeachment, at 10:45 o'clock a.m. recessed until 11:00 o'clock a.m.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 11:00 o'clock a.m.

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: Thank you, Mr. President.

(Questions by Mr. Mitchell:)

Q Mr. Kirkland, before I move on I want you to look, if you would, please, once again at the Exhibit marked 164, which is the -- which you have identified as the 1040 Form of the Arturo Zertuche Tax Returns for '67, '68, '69 and '70 as being in your handwriting, I believe.

A Yes.

Q Coming from your files?

A Yes, sir.

Q Kept in the regular course of your business?

A That's right.

Q And you are testifying under oath to this Court that it is an accurate portrayal of what it intends to portray. Is that correct?

A That's correct.

Q And that the originals have been sent to the Federal government. I suppose?

A They got copies, the originals are in the hands of another attorney in connection with another case right now.

Q All right. Now, did you do the tax work for Cleofas Gonzalez?

A Yes, I did.

Q All right. Did you -- well, tell the Court, did you do his 1040 Form?

A I did them for -- I don't remember how long, one or two or three years.

Q And can you be -- can you give us your best recollection of what years you did Cleofas' 1040 form, was he working --

MR. ODAM: Your Honor, I know what Mr. Mitchell said about this is all an interwoven tax scheme, but this is not a Federal income tax case, and I object to going into Cleofas Gonzalez' 1040 Tax Return. If Mr. Kirkland wants to testify about the Zertuche General Store or about the Farm and Ranch Supply or O. P. Carrillo's individual return or Ramiro's that's fine, but I'm not here to try a tax case.

MR. MITCHELL: May I withdraw that question and ask him if he did the return reflecting the sale of the Benavides Implement and Hardware to -- from Rudolfo Couling to Cleofas Gonzalez and withdraw the pattern question as to the general tax returns, Mr. President. Would that satisfy the objection, Mr. Odam?

MR. ODAM: (Nodding head affirmatively.)

Q Mr. Kirkland, I will dispose of that rapidly by a predicate question. Are you presently making out Mr. Cleofas Gonzalez' tax returns?

A No.

Q All right. The last time you had any contact with Cleofas' returns was when, sir, do you recall?

A About 1970 is the nearest of my recollection. It might have been a little later, I'm not sure.

Q All right. Well, then, I will pass to another matter in line with the objection and the Court's ruling. Do you make out Rudolfo Couling's tax returns?

A No.

Q All right. Now, I want to hand you Rudolfo Couling's tax return which are in evidence at 833. That's his tax return which have been previously identified; introduced by Judge Meyers in Judicial Qualifications Commission as three tax returns, '72, '73 and '74. I'm going to hand you, and if that please the Court that's in the yellow volume, Page 833 for the '72 return, 840 for the '73 return and 855 for the -- I'm sorry, that's an incorrect date -- 852 for the '74 return. You see the '72 return at 833?

A Yes.

Q All right. Speak into the mike. Now, will you examine it to see if Mr. -- and I will just ask you one question. Did Mr. Couling report any income on a 1065 Partnership Return with anybody, including O. P. Carrillo or Ramiro Carrillo? In that year?

MR. ODAM: Your Honor, I believe we could dispose on the examination of this. Mr. Couling has already testified as to the silent partnership the fact in the records are replete that every piece of paper that has anything to do with Benavides Implement and Hardware is only in the name of Mr. Couling. And therefore this witness, no more than anyone else needs to examine if there is a tax return in there for the partnership.

MR. MITCHELL: You're prepared to stipulate for the Court then that Mr. Couling did not report on a 1065 Form with O. P. Carrillo or Ramiro Carrillo from '70, '71, '72, '73 or '74, Counsel.

MR. ODAM: Mr. Couling stated about the silent partnership and every piece of paper he stated indicated only sole proprietorship to Rio Grande City accounts, San Diego account of Benavides Implement and Hardware. I think that the --

MR. MITCHELL: Application of the Comptroller's number, etc.

MR. ODAM: That's correct. I think the Court can examine this return to see whether or not there is a Schedule C. I doubt that there is, because of Mr. Couling's Tax Returns.

MR. MITCHELL: That was my next question, Counsel. Will you stipulate that he reported the income from Benavides Implement and Hardware on Schedule C for the years in question. I believe if you will examine the returns, John, you will see that that's what he did.

MR. ODAM: Well, my point is, Mr. Mitchell, that the tax returns are in evidence. And the Court can examine them, starting at that page, and make their own examination of what they call for and reach their own conclusions of how it was reported. And I don't think Mr. Kirkland's testimony adds anything to it.

MR. MITCHELL: If it please the Court, as an expert, I believe I can ask him to assist the Court. I don't know how the Members of the Court stand, for example, I'm not an accountant, I would love to have somebody to kind of assist me through it and if that function can't be performed with him I certainly don't want to bore the Court, but I think the Court's going to want to know how he reported. I ask the questions to assist, if it's clear in the minds of the Court that he did not report it on a 1065 Form, if he says he was a partner, if he reported it on a Schedule C throughout that period time and that's what the return reflects then I will move on. I don't want to bore the Court, sir.

THE PRESIDENT: Will you agree to that, Mr. Odam?

MR. ODAM: Your Honor, I would agree that the tax returns begin on Page 840 and I would agree that the Court can take these tax returns and make their own determination of whether or not to have the Schedule C and we need not take the time of this witness or the Court to go through these pages and determine if it's there. The

record speaks for itself and I think we should go on to another subject.

THE PRESIDENT: The Chair is going to overrule your objection, Mr. Odam. Mr. Mitchell, does the record before this Court reflect no partnership tax return?

MR. MITCHELL: That's right.

THE PRESIDENT: The record then speaks for itself.

MR. MITCHELL: I didn't want you all to take my word for it, Mr. President. And here's an expert witness who is sworn -- and I just thought it would take me about a minute for him to examine them and if there is no partnership return I think this Court needs to know it.

THE PRESIDENT: Let's pass on to your next topic for questioning, Mr. Mitchell.

MR. MITCHELL: All right, fine.

SENATOR BROOKS: Mr. President.

THE PRESIDENT: Senator from Harris, Senator Brooks.

SENATOR BROOKS: As a Member of the Court, is it appropriate for me to ask for a point of clarification?

THE PRESIDENT: You're recognized for that purpose, Senator.

SENATOR BROOKS: Mr. President, I would like to know for my information was it established by this witness that the Schedule C was included with the Couling return. Was that income reported on the Schedule C?

THE PRESIDENT: Let the Chair direct that question to the witness. Did you understand Senator Brooks' question?

THE WITNESS: Yes, sir.

THE PRESIDENT: Could you respond to it, please?

THE WITNESS: Let me check these by years.

MR. MITCHELL: I can help you, if you like, Mr. Kirkland.

Q On Page 855, Mr. Kirkland, you had a Schedule C for '74 return, for Benavides Implement and Hardware, Rudolfo Couling, 855?

A I have started here with '72, I'm just checking to see if they're in here.

Q That would be on 835?

A Yes.

Q Answer up now, the President -- I mean the Court out there wants to hear your answer, Mr. Kirkland.

A For '73 he shows a Schedule C for Benavides Implement and Hardware.

Q How about '72?

A Let's see.

Q On 835.

A 835 is a Schedule C for 1972 for the Benavides Implement and Hardware.

Q Now, how about 855, for '74. And I believe we have answered the questions of the Court, Mr. Kirkland, and I will move on.

A Yes, 855 is the Schedule C for 1974.

Q Now, look at one item there. He shows rent on a bulldozer tractor as part of the income to that business, that sole proprietorship in the amount of \$3,630.00 for '74, doesn't it?

A Yes, rent on bulldozer tractor, \$3,630.15.

MR. MITCHELL: All right, sir. If the Court has no further questions I will move on to the next inquiry.

Q Now, Mr. Kirkland, I now want to hand you, if I can get together for a series of questions -- first I offer into evidence 164, being the Zertuche -- the Arturo Zertuche tax returns, '67, '68, '69 and '70 and R-178 being the chart.

MR. ODAM: Your Honor, may I -- Mr. President, may I ask a question of this witness to determine whether or not to pose an objection to this offer of 178 and the tax returns?

THE PRESIDENT: Yes, Mr. Odam.

VOIR DIRE EXAMINATION

(Questions by Mr. Odam:)

Q Mr. Kirkland, do you recall I asked you questions down in Corpus Christi? We have seen each other before?

A Yes.

Q Now, the Tax Return that Mr. Mitchell was just referring to, do you have it in your hand now?

A Right here, yes.

Q The Tax Return, R-164 for 1967, in the name of Arturo Zertuche can you testify and tell this Court that this is -- this consists of all the papers that compose a Tax Return? Is this a complete reproduction of the Tax Return?

A Of the Tax Return, yes.

Q And can you swear to the fact and identify that on the end of the Tax Return, that the signature that is reproduced here is, in fact the signature of Arturo Zertuche?

A No, I can't. I believe it is, but I couldn't swear to that.

Q Now, earlier, you testified that certain people would bring you information. Who brought you the information to make out Arturo's Tax Return? Was this Judge Carrillo?

A I am almost certain it wasn't Judge Carrillo.

MR. MITCHELL: Did you say it was not?

THE WITNESS: Was not.

Q Who was it that brought you the information. You said that a number of people brought you the information.

A About that time, I would -- the nearest of my recollection, it was either Cleofas Gonzalez or Arturo Zertuche.

Q Now, this is back in 1967?

A Yes.

Q Cleofas Gonzalez would have wrote it back in 1967?

A I can't be certain about the years. Different ones brought in -- brought in the information different years.

Q So, Cleofas Gonzalez did? You believe Cleofas did?

A I believe so.

Q Did --

A Or Arturo Zertuche, or both of them.

Q Or Arturo Zertuche. Anyone else? Would Ramiro Carrillo bring in any of the information on the store?

A Possibly on the store, yes, but not on Arturo Zertuche, I don't believe.

Q Now, when I am talking about the store, I am talking about Zertuche General Store, not the Farm and Ranch Store.

A Oh.

Q Who would bring you the information with respect to the Zertuche General Store?

A I can't be certain. I believe that it was Arturo Zertuche or Cleofas Gonzalez. But, there were a number of different people depending on who was making a trip from Benavides to Alice on that particular day. They would bring in information from

several different entities, several different people.

MR. ODAM: Your Honor, as to the Tax Return, R-164, we would object to its entry into evidence on the basis of lack of authentication. Mr. Kirkland has just stated that he cannot definitely -- as I recall what he just stated, he cannot definitely identify the name of Arturo Zertuche on the Tax Return, and I would submit that it is not properly authenticated for that reason.

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: Quite to the contrary, Your Honor. I think the record is replete with the testimony of the authenticating witness, that he prepared it. It's his handwriting. It is the product of the input from Hector -- I'm sorry -- Arturo Zertuche and Cleofas Gonzalez, which is corroborative of Cleofas Gonzalez' testimony.

I think, for all purposes, the objection, if any, would go perhaps to the weight, but certainly not to the authentication. The accountability of the original being that they are sent in to the Old Uncle Sam and he retains the copy.

I believe that I will have to ask him to look at each page to see that it does reflect accurately, for that reason.

Q Is that your testimony, Mr. Kirkland? That each page of that -- of those returns are the returns as you prepared them?

A That's right. As I prepared them, yes.

THE PRESIDENT: May the Chair see the Exhibit?

MR. MITCHELL: Yes, sir.

THE PRESIDENT: The Chair recognizes the Special Counsel for the purpose of questioning the witness.

MR. JAWORSKI: Mr. Kirkland, I'm not certain that we are clear on one thing. Did you -- do you recognize this return as having personally prepared it?

THE WITNESS: Yes, sir.

MR. JAWORSKI: Now, do you know that it was signed by the taxpayer?

THE WITNESS: No, sir.

MR. JAWORSKI: Do you know whether the taxpayer sent it in?

THE WITNESS: No, sir, I don't.

MR. MITCHELL: Mr. Jaworski, there is one that is signed by the taxpayer. I believe there is only the front one that is not.

Maybe I can ask a few more questions to clear up the question on the procedure.

MR. ODAM: No, sir. Mr. Mitchell, before -- If I might, just one thing. I don't think it goes to the point of whether or not it is signed or not. But, the point is that he could not identify the signature on it. There is a signature on it and there is a name on it on the front of it.

MR. MITCHELL: Well, it is in the witness' handwriting, is it not, Mr. Kirkland? The entire return is in your handwriting?

THE WITNESS: The return is in my handwriting, yes.

MR. MITCHELL: All right. Tell us the procedure that is used once there is an input into those returns as regards the taxpayer signing them and their being submitted to Uncle Sam. How do they -- what procedure is followed?

THE WITNESS: Well, when I prepare a tax return, my partner, who is also a CPA, checks it for accuracy, mathematics, everything.

When he completes it, it's turned over to the secretary who reproduces it on a Xerox. It is then returned to me, I sign it, and it is put in the completed basket. From there, I can't say who, for sure, picked it up. Sometimes they sign them in my presence. Sometimes they are taken to them to be signed. I can't -- from there on, I can't absolutely swear to the signatures on them other than mine. I can swear that the signatures on there as being prepared by me, that I signed them.

MR. MITCHELL: Well, I understand. If you don't have personal knowledge of the taxpayer signing them, you are certainly not going to --

THE PRESIDENT: Mr. Mitchell, the Chair is going to sustain Mr. Odam's objection, and the returns will not be admitted into evidence.

MR. MITCHELL: Well, then, I would like to have a postponement to subpoena Mrs. Nancy Gibson out here at the IRS for the original.

THE PRESIDENT: Mr. Odam, Mr. Doyle, Mr. Mitchell, would you come to the rostrum, please?

THE PRESIDENT: The objection has been withdrawn. Please proceed, Mr. Mitchell.

Q Mr. Kirkland, one more question before I proceed to some specifics. There have been -- there is -- there are some questions in the record and some -- I'm sure Members of the Court have a question in their mind about an entity called R. Carrillo and Brothers. Are you familiar with that entity?

A Yes, I am.

Q Tell the Court what it is -- and if I could have the permission of the Court to erase in view of the Court's ruling Cleofas Gonzalez. I simply neglected to put it up there. It relates and is relevant, I will represent to the Court, the O. P. Carrillo return. I just neglected -- what is -- first of all, tell the Court precisely what the name of that entity is.

A It is Ramiro Carrillo and Brothers.

Q Ramiro Carrillo. And is that reported separately? Do you make out a separate return on it -- how do you handle the income on it?

A I make up a schedule, O. P. Carrillo, et al, income received for distribution.

Q And how long have you been doing that? How long is that --

A Since about '59 or '60.

Q All right, sir. I'm going to mark here the chart beginning in '64. Tell us the relevancy now of the income shown on R. Carrillo and Brothers as it relates to Judge Carrillo's 1040, if there is a relevancy, Mr. Kirkland.

A O. P. Carrillo is entitled to one full share of the income from Ramiro Carrillo and Brothers, which was a trust set up by his father.

Q That's Judge Carrillo's daddy?

A Yes.

Q All right.

A He is entitled to one-sixth of the income. There were six children. One-sixth of the income. And each year we accumulate the income and deduct the expenses and figure depletion on oil runs, caliche sales, and such as that, and the remainder is then put on a separate schedule so that each recipient or beneficiary will pick up their share of the income and add it to their other income and pay tax on it.

Q About how many recipients are there, if you know, let's say, in the returns, '72, '73, and '74?

A There are six primary recipients. Each of the others besides O. P. are married and have given some specific items of income to their children, and there are about eight, eleven -- I believe there are about fourteen or fifteen grandchildren involved.

Q All right. Now, I'm going to move to specific inquiries as regards items that have been introduced into evidence and your treatment -- their treatment of Judge Carrillo's tax returns, Mr. Kirkland. And the first thing I'd like for you to do is turn, if you would, to Page 1081 of the blue Volume Three, if it please the Court.

Now, Mr. Kirkland, is that page, along with 1080, 1082, 1083, 1084, 1085, 1086, characterized correctly as work papers? Oh, you don't have it in front of you yet.

A 1081?

Q You have it in front of you now.

A Yes.

Q All right. Can you --

A 1082, 1083, 1084, 1085, 1086.

MR. ODAM: Mr. President. I would object on the grounds -- first of all, I would object to Mr. Kirkland going into and taking the time to trace and prove all of the amounts of money of these checks we've gone into as to whether or not they've been reported on his income tax return. I do not believe in this particular case that it has been an issue. And it does not relate to Articles of Impeachment of whether or not he paid tax on it or not. And that was in evidence down in Corpus Christi. That already

is in the case, and we have not made an issue of whether or not he paid tax on it, etc. I went through with Mr. Kirkland in great detail, which is in this record, where every item is there. It's all before the Senate, and we've not made a big point out of it, Mr. Mitchell, and I don't see the relevancy to take the Court's time to go into it now.

MR. MITCHELL: I perhaps think the objection might be good, Mr. President, without my further explanation, one explanation, please.

THE PRESIDENT: Please explain.

MR. MITCHELL: Article VII charges Judge Carrillo with the rental, a conspiracy whereby there was a rental of nonexisting equipment. This tax return --

MR. ODAM: And equipment that they did not use.

MR. MITCHELL: Did not get the benefit of. This tax return is but one more piece of evidence that reflects that Judge Carrillo collected the checks that have been introduced, that were marked rent, and this accountant carried them over on work papers as rent, and they found their way into the return as rent, as shown, for example, on Page 1086, rent, Benavides Implement and Hardware; rent, Benavides Implement and Hardware --

THE PRESIDENT: I don't believe that matter is in dispute, Mr. Mitchell. Do you dispute that?

MR. ODAM: No, sir. As a matter of fact, we -- it is already in the record. We went into it yesterday as to where it says rent on buildings, rent on personal property, etc. It's not an issue of whether or not he paid income tax on it at all. This is not a tax case.

MR. MITCHELL: Mr. Odam, I'm not interested in whether he paid the tax on it or not because I agree. We're not trying this case -- that case here --

MR. ODAM: And I accept that he got the money. I went over with Judge Carrillo yesterday his deposit slips, of where it was deposited in his account. I think that's pointed up again --

MR. MITCHELL: And would you characterize -- would you agree with me that when they were put into the tax return and in the deposit they were characterized as rent from Benavides Implement and Hardware?

MR. ODAM: Again, Mr. Kirkland went through at least two days down in Corpus Christi, and I cannot -- I'm not prepared to stipulate. All I'm saying, Mr. Mitchell, is that the Senate has had the benefit for three weeks now -- or at least two weeks of Mr. Kirkland's testimony. I think it speaks for itself. I can't stipulate the two days of testimony. All I'm saying is I do not think it's relevant to go into the point when the tax returns themselves speak for themselves. I don't think we need to take the time of the Court with Mr. Kirkland to trace it all through.

MR. MITCHELL: One more point, Mr. President.

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: Yes.

THE PRESIDENT: Let me ask you this question. Does the -- Mr. Kirkland's testimony in Corpus Christi go along this same line, prove that it was treated as rental income on the tax returns?

MR. MITCHELL: Yes, sir, I believe in each event, Mr. President. Would you agree, Mr. Odam, the answer -- of my --

MR. ODAM: It was treated -- again, we went through every one of these checks, and it's in this record, whether or not it was income, whether or not it was legal fees, whether or not -- where he picked it up. Mr. Kirkland recalls all that. Generally speaking, it was picked up somewhere as fees. We went through all those checks that had "loan" on them. All I'm saying is it's in the record. The issue of the case is not whether it was reported there. The issue --

THE PRESIDENT: Mr. Odam, would you and Mr. Mitchell agree that -- if Mr. Kirkland were asked the same questions that are in the record his testimony would be the same?

MR. ODAM: I'd definitely stipulate that.

MR. MITCHELL: Yes, I definitely would, and --

THE PRESIDENT: All right. Is there need for further questioning?

MR. MITCHELL: No, there wouldn't be, with this one final remark, Mr. President, and that is that a conspiracy, as all of us know, is a deep dark hatched secret, and the fact that he would declare it as a rent item on a public document would be relevant. And that's the reason I was going in it, but I'm satisfied with the exchange, and I'm satisfied the Senate knows it's reported as rent, and I will pass to something else.

THE PRESIDENT: I didn't know the tax returns were public documents yet, Mr. Mitchell.

All right. Will you pass on to your next --

MR. MITCHELL: Yes. Well, Mr. President, the recital, I believe, was in some of the work papers too.

THE PRESIDENT: I understand. Okay.

MR. MITCHELL: May I have just a minute, please, sir, to make a check in view of that stipulation. That eliminates quite a bit of examination.

Your Honor, I pass the witness. I appreciate the assistance of Counsel and the Court in shortening considerably what would have been a long and very detailed examination.

CROSS-EXAMINATION

(Questions by Mr. Odam:)

Q Mr. Kirkland, you recall that I asked you a series of questions down in Corpus Christi about the tax returns and work papers. So we have seen each other

before, is that correct?

A A number of them, yes.

Q I take it from the testimony thus far on the chart that you prepared O. P. Carrillo's individual income return, Ramiro's return, Cleofas' return, Zertuche General Store return, is that correct? At least those, among others.

A Yes. For certain years, yes.

Q You pointed out that, and I believe it was -- I put down the statement you made that the Zertuche General Store no longer did business after December 31 of 1970 under the name of Arturo Zertuche. I remember very distinctly you qualified it that way. You remember that statement you made?

A I made the statement that to my knowledge they didn't operate any more.

Q My question to you, Mr. Kirkland, is to your own personal knowledge did the Zertuche General Store continue to operate after December of 1970?

A To my knowledge, they did not.

Q Do you know for a fact that it did not operate any longer?

A No, I don't.

Q What caused you to no longer fill out the income tax returns for the Zertuche General Store? Did you have a discussion with the taxpayer, Arturo, about that?

A No, I never did see Arturo again that I can recall. I was just told that he was no longer operating the Zertuche General Store.

Q And at what point in time did Arturo Zertuche no longer operate the store?

A As well as I can remember, the year 1970.

Q 1970?

A Yes. I would have to go back and look to be sure about the years involved.

Q Did you ever have any conversation with Judge O. P. Carrillo or with Commissioner Ramiro Carrillo about the Zertuche General Store?

A I can't recall any, but I'm just reasonably sure that I did.

Q Sir?

A I can't recall any as such, but I've discussed it with some persons, and I don't remember just who it was.

Q Persons other than Arturo Zertuche?

A Yes.

Q Other than Cleofas Gonzalez?

A That I'm not sure. It might have just been Cleofas.

Q Now, you testified in Judge Carrillo's Federal income tax case, is that correct?

A That's correct.

Q I'm not sure what the status is on Arturo Zertuche's Federal income tax case. Have you testified in his case on that yet?

A No, but I'm afraid I have to.

Q You're going to testify at Mr. Arturo Zertuche's tax case?

A I haven't been subpoenaed yet.

Q I'm not familiar -- is Arturo Zertuche's Federal income tax case, does it pertain to the years 1967, '68, '69 and 70?

A I don't know.

Q You do not know?

A I haven't been contacted at all regarding that case.

Q Now, I'll show you what has been marked as H-29, and ask if you can identify for the Court what this item is?

A No, I can't. I've never seen it before.

Q Well, can you just describe for the Court what it is?

A It's a check from the Benavides Independent School District to Zertuche's General Store for marked supplies, \$555.49.

Q And what is the date of that check?

A March the 8th, 1971.

Q And can you turn the check over and see who endorsed the check?

A It says Zertuche General Store, For deposit only, Farm and Ranch Supply by -- I can't read it.

Q Can you -- I believe you said you filled out tax returns for Cleofas Gonzalez. Can you identify that as being the signature of Cleofas Gonzalez?

A I can't, but it looks like it possibly. I can't read it.

Q I'll show you what has been marked as H-30 and ask if you can again give a general description of what this item is.

A It's a check from the Benavides Independent School District, January 11th, 1971, Zertuche General Store, for supplies, \$764.48.

Q And can you identify Mr. Cleofas Gonzalez' signature on the back of that check?

A It's endorsed Zertuche General Store by and for deposit only Farm and Ranch Supply by, and both of them -- it looks like the same endorsement. Now, whether it's Cleofas Gonzalez' or not, I don't know.

Q And I ask you to identify H-30 in the same general manner, please, sir?

A It's a check on the Benavides Independent School District to Zertuche General Store, dated February 11, 1971 for supplies, \$813.99.

Q And can you identify Cleofas Gonzalez' signature as the endorsing "for deposit only" on Zertuche and on Farm and Ranch Supply on the back of that check?

A It looks like the same endorsement as on the other ones.

MR. MITCHELL: May I ask the relevancy of this, and maybe we can avoid a hassle over the objection, Mr. President.

MR. ODAM: Yes, sir, the relevancy is that these checks while Zertuche General Store was to have gone out of business in December of 1970 we have checks that are issued by the Benavides Independent School District in 1971. And the relevancy is to show and to support what we have said all along that there's a continuation of the use of Zertuche General Store right into Benavides Implement and Hardware in 1971. And that is the relevancy, to show the continuing transaction. And that Zertuche General Store did not cease to do business in 1970.

SENATOR OGG: You mean Farm and Ranch, not Benavides Implement and Hardware.

MR. ODAM: Well, the continuation of the use of Zertuche General Store generally and then into Benavides Implement and Hardware.

MR. MITCHELL: Well, we're going to object, if it please the Court, on the grounds that the Exhibits H-30 -- H-29, 30 and 31 are not properly authenticated. Two, they're irrelevant and immaterial to any provision of Article I or VII. They are hearsay as to Judge O. P. Carrillo, being checks drawn by Rudolfo Couling and endorsed with what appears to be Cleofas Gonzalez. It would be hearsay as to Judge Carrillo.

THE PRESIDENT: Objection overruled.

(House Exhibits 29, 30 and 31 were
marked for identification, H-29, H-30, H-31.)

MR. MITCHELL: I'm sorry, did the witness ever identify Cleofas Gonzalez' signature, Mr. President, I didn't remember whether he did or not?

THE PRESIDENT: Not definitely, Mr. Mitchell, no, he did not.

Q Judge Carrillo -- excuse me -- On Judge Carrillo's interest in the Ramiro Carrillo and Brother's trust -- you referred to that earlier on questions from Mr. Mitchell, you recall that?

A Yes.

Q Who would bring you that information on the R. Carrillo and Brothers or Ramiro Carrillo and Brothers?

A Quite often Ramiro Carrillo would bring that.

Q I believe that you testified in Corpus Christi and in evidence here, of certain work papers. Do you recall the work papers that you used for the 1971 return, 1972?

A They were probably brought to me by Ramiro Carrillo. I couldn't be sure.

Q I would ask if you would to turn to Volume Two of these green books up there. You have not used them before, but they're in evidence, Mr. Kirkland, and you will find a reproduction of your work papers in those. The green covered one is Volume Two. Do you have that one up there?

A What color is it?

Q And I'm asking you specifically to turn to Page 1099 in Volume Two.

A This one doesn't go that far.

Q Well, I will ask the Clerk then to get a copy of Volume Two that has Page 1099 in it -- well, strike that -- it would be in Volume Three, which might be there beside your hand, Page 1099.

MR. MITCHELL: Now, if it please the Court, I was under the impression and that's the reason I gave up the right to go in under these work papers, that there was not going to be any inquiry in the work papers. He's turned him now to Page 1066, which is the work paper input into the 1971 return. And I called the witness and I should be allowed at law to be the first one to have a shot at him if he's going to go back into those work papers.

THE PRESIDENT: Well, what is the purpose, Mr. Odam?

MR. ODAM: The question that I intend to ask Mr. Kirkland with respect to the work papers is not a repetition of what was covered down there. The question I intend to ask him is not one that I have asked him before.

THE PRESIDENT: Proceed, Mr. Odam.

Q Do you have Page 1085 before you?

A 1085?

Q Yes, sir.

A All right.

Q And can you look down to Line 28 on Page 1085?

A All right.

Q And can you describe for the Court for the benefit of those Senators that might not have the Volume before them what is stated to be on Line 1085?

A "12/19/72, Mex money, \$744.48." I believe it's a 7, 7 or an 8. \$844.48 or \$744.48.

Q It's either \$744.00 or \$844.00?

A Right.

Q First of all, Mr. Kirkland, where it says "Mex money". Is that "Mex money" in your handwriting?

A No, it isn't.

Q And how was the Mexican money or the Mexico money or the Mex money -- how was that \$844.00 picked up on income tax returns?

A It wasn't, I questioned Mr. Carrillo about that and --

Q Mr. Carrillo, you mean Ramiro?

A No, O. P.

Q And what did Judge Carrillo say?

A That he had made a trip into Mexico and to go travel in Mexico he had exchanged quite a bit of American money for Mexican money. And when he came back he had this left and he deposited it in the bank.

Q Okay. Thank you.

A That's the nearest of my recollection, it's been quite some time ago.

Q Now, I will show you what has been marked as H-38 and ask if you can identify this item, please, sir?

A No, I can't.

Q Well, can you describe generally for the Court, although you might not have seen it before, what the item is?

MR. MITCHELL: Well, Counsel, he's already testified that he cannot recognize it. And I want to object before we take him and waltz him around and try to make an authenticating witness out of him. Now, Your Honor, I would object. The witness is being overused, he doesn't have any personal knowledge of these documents. He just got through saying he didn't.

MR. ODAM: Your Honor, may I respond to that?

THE PRESIDENT: Yes.

MR. ODAM: The items that the Court Reporter has marked thus far, H-38 -- and he's still marking Exhibits. And what I would submit to Mr. Mitchell is that they purport to be checks from Duval County to Zertuche General Store with the date in 1971 on the back of them. What I was going to ask Mr. Kirkland, again, if he can recognize the fact that they were endorsed Farm and Ranch Supply on some of them, which is a partnership that Judge Carrillo is a partner in. Also, that they have what I would submit to be the signature of Mr. Cleofas Gonzalez, although I recognize that Mr. Kirkland might not be able to identify it. I would submit that these are bank photostatic copies, just like all the other bank photostatic copies that Mr. Carl Williams reproduced. And I would so testify that if Mr. Carl Williams were called to testify that he would testify as he did down in Corpus Christi as to the manner in which these bank photostatic copies were made. And I submit the relevancy is to show the continuing operation in 1971 of the Zertuche General Store.

(House Exhibits 38 through 47 were marked for identification.
H-38 through H-47)

THE PRESIDENT: The Chair will take the objection under advisement.
Senator from Lamar.

SENATOR AIKIN: I move the Senate stand in recess until 1:30.

THE PRESIDENT: Senator from Lamar moves the Senate stand in recess until 1:30. All those in favor say "Aye", all opposed "No". The "Ayes" have it. The Senate stands recessed.

Accordingly, the Senate, sitting as a Court of Impeachment, at 11:55 o'clock a.m. took recess until 1:30 o'clock p.m. today.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 1:30 o'clock p.m.

THE PRESIDENT: The Senate will come to order.
Mr. Odam.

Q Mr. Kirkland, just prior to our recess for lunch, we were looking at some checks which had been given to Mr. Mitchell, and which he is aware of. And, for the benefit of the Court, these appear to be all -- well, let me ask you if you can generally identify what the item is in H-39?

A All I could do, I could read to you what it says.

Q That's what I would like for you to do.

A "Treasurer of the County of Duval to Zertuche General Store, \$859.94."

Q This is made to Zertuche General Store? And what is the date on that check?

A The 8th day of February, 1971.

Q And would you turn over the check and see on the back of it what the endorsement is on the check?

A "Zertuche General Store," a signature for deposit only, Farm and Ranch Supply, and a signature.

Q Now, Mr. Kirkland, I -- that Exhibit Number I just showed you is a check from Duval County for \$859.00, H-39, is that correct?

A That's correct.

Q If you'll hold H-39, I show you a County check marked H-40 from Duval County made out to Zertuche General Store, February, 1971; H-41, a County check for \$242.00 to Zertuche General Store, February, 1971; and March of 1971, a County check to Zertuche General Store for \$201.00; H-38, 1971, February, 1971 --

MR. MITCHELL: Did you say H-38? I'm sorry, John.

MR. ODAM: H-38.

MR. MITCHELL: I thought you previously --

Q Zertuche General Store, pay to the order of Zertuche General Store, amount of \$129.00; H-46, check payable to Zertuche General Store for \$300.00 in March of 1971; H-47, check payable to Zertuche General Store from Duval County for \$275.00 in March 1971; H-43 is a Duval County check for \$305.00 payable to Zertuche General Store, and this one is in March 1971; March 1971, another check to Zertuche General Store for \$1,200.00; and, finally, H-45, made out to Zertuche General Store in the amount of \$800.22 in March, 1971. All of these checks in February and March, 1971, the County checks payable to the order of Zertuche General Store, and I'll ask you -- I'll show you the backs of all the checks. And, as I show them to you, I'll ask you, would you agree that they are endorsed with a stamp for deposit only, Farm and Ranch Supply, with a signature just like we were talking about this morning?

And I hand these to you. For deposit only, Farm and Ranch Supply, and also the stamp on all of them where it says "Zertuche General Store." Now, you agree that the back of those checks all indicate, at least the stamp of endorsement of the Farm and Ranch Supply with the signature of -- well, what I would submit to you would be the name of Cleofas Gonzalez. I recognize you don't identify that signature.

MR. MITCHELL: May I have the witness on voir dire, please, to test -- for the purpose of making an intelligent objection?

MR. ODAM: Could I go ahead and try to authenticate the checks before -- I have not offered them into evidence yet.

THE PRESIDENT: Please deliver the Exhibits to Mr. Mitchell.

MR. ODAM: Yes, sir.

MR. MITCHELL: Thank you, Mr. Odam. Thank you, Mr. President.

MR. ODAM: Your Honor, if I might, could I go ahead and ask the witness a couple of other questions before I offer them into evidence, at which time he can take the witness on voir dire.

Q Now, the checks that I just handed Mr. Mitchell, you notice on the back of every one of them that they are for deposit only, Farm and Ranch Supply. All the checks I showed you, you would agree with me they stated on the front of them they were dated March or February of 1971. Mr. Kirkland, my question to you first of all, I believe you told Mr. Mitchell earlier that you did prepare the income tax return for Farm and Ranch Supply in 1971. Isn't that correct?

A I prepared the tax return for O. P. and Ramiro D. Carrillo, and I believe that they were operating as Farm and Ranch Supply at that time.

Q All right, sir. And I believe you testified earlier that either Ramiro Carrillo or O. P. Carrillo would bring you the information upon which you would make up the partnership return, isn't that correct?

A O. P. never did. Ramiro, I believe, possibly did, and Cleofas Gonzalez brought me information at times on that.

Q And Cleofas Gonzalez brought you the information?

A Yes.

Q Now, my question to you, Mr. Kirkland, is if you can state whether or not in preparing the tax return for 1971, you took into consideration in the preparation of that tax return these Duval County checks which indicate on the back of them for deposit only to the account of Farm and Ranch Supply.

A The only way I could state that for certain would be to go back to their records from which they prepared the income from the store. They gave me the total deposits to Farm and Ranch Supply or O. P. and Ramiro D. Carrillo store. And these were supposed to be all these monies deposited to that account during the year. It would indicate to me in looking at these checks that they were deposited to that account. Now, I didn't see them at the time, didn't see them go into the account, but I would suppose that they did go into the account and were reported.

MR. ODAM: Your Honor, at this time based upon Mr. Kirkland's testimony that he just stated we would offer into evidence these Duval County checks that show "For deposit only" to Farm and Ranch Supply on the basis of that being the information that went into make up the income tax return for the Farm and Ranch Supply for 1971.

MR. MITCHELL: We object to the admission of the Exhibits, if it please the Court, on the grounds of hearsay. And too, they're not properly authenticated, the witness not having personal knowledge. They're irrelevant material and beyond the scope of I and VII, they would not be the best evidence rule, they are copies. This witness is obviously not the proper witness through which an authentication should occur of those checks, those checks being issued by Duval County payable to Zertuche General Store and endorsed by Cleofas Gonzalez.

We would plead surprise if the checks are admitted in that they constitute a new theory of the case, the use of the Zertuche General Store vehicle after the close down of that vehicle by Mr. Cleofas Gonzalez and Mr. Couling in some character of business. We therefore would request additional time to prepare to defend against the additional cause of action asserted by those checks.

THE PRESIDENT: Your objection, Mr. Mitchell, is sustained with respect to the lack of proper authentication of the checks. However, the testimony already entered into the record regarding them will stand.

MR. ODAM: And with that, Your Honor, we pass the witness.

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: May I have just a second, I think I'm through, Mr. President.

We have no further questions of the witness, if it please the Court.

THE PRESIDENT: Mr. Kirkland, in view of the fact that you may be recalled for further testimony in this case it's my duty to warn you that you are under The Rule that you are not to converse with any other person except Counsel for the two parties concerning the proceedings before this Court. You're not to read any report or comment on testimony before this Court. Any person violating such instructions may be punished with contempt. Do you understand that?

THE WITNESS: Yes.

THE PRESIDENT: Thank you, Mr. Kirkland, you are excused. You may call your next witness, Mr. Mitchell.

MR. MITCHELL: Yes, sir, if it please the Court, we would like to call Mr. Arturo Lozano, please.

THE PRESIDENT: Would Mr. Arturo Lozano take the stand, please. Mr. Lozano, please raise your right hand.

"You do solemnly swear or affirm that the evidence you give upon this hearing by the Senate of Texas of impeachment charges against O. P. Carrillo shall be the truth, the whole truth and nothing but the truth?"

MR. LOZANO: I do.

ARTURO D. LOZANO

was called as a witness by the Defense, and having been first duly sworn, testified as follows, to-wit:

DIRECT EXAMINATION

(Questions by Mr. Mitchell:)

Q State your name for the record, please, sir.

A Arturo D. Lozano.

Q And would you spell your last name for the benefit of the reporter, please, sir?

A L-o-z-a-n-o.

Q Mr. Lozano, what is your present trade, occupation or profession, please, sir?

A Enforcement Officer for the State Comptroller's Department.

MR. MITCHELL: Can the Court hear?

Q You're the Enforcement Officer for the State Comptroller's Office?

A Yes, sir.

Q All right. And how long have you been the Enforcement Officer, please, sir?

A Since May of 1949.

Q What are your duties and specifically what were you duties in 1967 with that office, please, Mr. Lozano?

A Enforcing the sales tax law on cigarettes, coin machines, store licenses.

Q All right. And did your duties require you to visit the premises personally that operated under store licenses?

A Yes, sir.

MR. MITCHELL: Might I have the Exhibit, please, on the store license to the Zertuche Store?

Q Mr. Lozano, I hand you what's been introduced as R-160. And it has been identified as a Limited Sales Tax Permit as issued by the Comptroller's Office. Is that form familiar to you?

A Yes, sir.

Q All right. Tell us what it is, please, sir?

A It's a limited sales tax permit entitling the taxpayer to collect the tax and remit it to the Comptroller.

Q All right. And the procedure for securing one and specifically at the time that was issued, was that procedure initiated by the taxpayer, the vendor, the man who wanted to sell the goods, by filing an application?

A They would have to file an application before they can get a sales tax permit.

Q All right. Now, the limit -- Limited Sales Tax Permit -- what were your duties as connected with the Limited Sales Tax Permit of that type?

A Filing applications.

Q All right.

A And collecting sales taxes.

Q Now, the collecting of the sales tax. Is that in connection with a different permit, Mr. Lozano, or is that all tied in with the Limited Sales Tax Permit?

A All of it's tied up, sir.

Q All right. Tell us, please, sir, the collection of the sales tax -- and specifically I'm talking about '67 and at a time when that Exhibit indicates that that permit was issued to Arturo Zertuche for the Zertuche General Store. Does that require you to visit the premises personally and on the spot?

A I visited the business twice, sir.

Q You did visit the Zertuche General Store twice?

A Yes, sir.

Q All right. Can you tell the Court, please, when you visited the Zertuche General Store?

A The exact time and date I could not, sir. It was sometime in the '60's.

Q All right. Would it be at such time -- and you can refer to that permit, if you wish, for the purpose of refreshing your recollection. Was it at such time that that permit was outstanding in the name of Arturo Zertuche?

A I couldn't say.

Q Was it in the '60's, in the latter part of the '60's?

A Yes, sir, but this permit was issued in January of '67.

Q The original permit for the Zertuche General Store was, I believe, January 1st of 1967. And that document was issued, in January of '68, wasn't it? Is that how that worked?

A This permit was issued on June 1st of '68.

Q Now, can you, by referring to that document and specifically the date give this Court some idea as best recollection serves you as to when it was that you made the visit the first time to the Zertuche Store and the purpose of that visit, Mr. Lozano.

A Well, exactly -- I went by to visit the store and I cannot recall if I had a delinquency store tax license on it or if it was a question on the sales tax application.

Q All right. Did you talk to any person there in the store?

A I talked to a lady.

Q And can you describe -- do you know her as Elvira Rodriguez now?

A Now, I do, yes, sir.

Q Do you recall what, if any information she gave you? And did she, by giving you this information, satisfy your official inquiry?

A Yes, sir.

Q All right. And what was done on the basis of visiting with Mrs. Rodriguez?

A Well, all the documents were mailed in to the Comptroller's Department.

Q Now, the sales tax -- the documentation. Is there any interrelation between merchandise on display and inventory and that sales type?

A No, sir, it's only on sale, sir.

Q Well, you have to have something to sell.

A Yes, sir.

Q If I'm not engaged in the sale of merchandise, such as -- let's say I'm engaged in the sale of service, I don't fall within the sales tax law, do I?

A Not if you don't sell any tangible merchandise.

Q Right. If I sell tangible merchandise, however, the law requires me as was done here, to file an application with the Comptroller to secure a number and then to make reports for sales tax levy. Isn't that correct?

A That's right, sir.

Q So that everybody understands these folks filed sales -- that is Zertuche General Store filed sales tax returns, didn't they, Mr. Lozano?

A That's right, sir.

Q And you were having a problem particularly toward the tail end of that year or at the time that you made the visit there was some hitch in the filing of that sales tax return at that point?

A Yes, sir.

Q All right. And are you telling the Court upon making the visit that you secured the necessary information and the sales tax return was filed in accordance with the law?

A Yes, sir.

Q And did you while you were there have an opportunity to observe the merchandise that these folks were operating for sale for which the sales permits were secured? Do you recall any of the merchandise?

A Yes, sir, I saw some toys.

Q All right.

A Saw a refrigerator.

Q All right. Stove, bicycle, linen?

A I can't recall that, sir.

Q All right. Any other merchandise than that which you have mentioned?

A No, sir.

Q Mr. Lozano, so the record reflects very clearly the only time I've ever seen you before is when I called you as a witness in another trial. I hadn't talked to you prior to that trial or since that trial, am I correct?

A That's right, sir.

Q And this is the second time you have seen me in my lifetime?

A That's right.

Q And do you know my client, O. P. Carrillo, at all?

A Yes, sir.

Q Do you know him personally?

A Not what you consider personally, but I know him.

Q The first time I ever talked to you, I believe, was in September of last year and this is the second time?

A That is correct, sir.

Q I have not talked to you since the time you testified there at Corpus or even today, either, I just called you to the stand. Am I correct?

A That's right, sir.

Q The second time you visited in the store, please, sir, can you tell the Court when that was?

A No, sir, I do not know the exact date.

Q What was the nature of your visit?

A If I recall it was some kind of an additional collection. And I contacted the lady and she mailed me a check to my house.

Q Now, can you tell us how you are able to lock in to the stores in terms of triggering your Enforcement Division to the fact that there is tax due? Can you give us how you are alerted to that or they filed returns -- is that how you picked that up?

A Well, whenever they file returns, sometimes they don't file the correct remittance and they give us a notice so we can go by and pick up the additional tax deal.

Q All right. Now, the second time you were down there how much time, if you recall, lapsed in terms from your first visit? Do you recall?

A No, sir.

Q And what was done on the second visit? Do you recall what forms were -- you mentioned that there were some forms filed and that you received a check from the lady for payment of the taxes?

A I just told her how much was due, and I told her that whenever she had the checks, to go ahead and send it in to my address at my house.

Q And out of what city were you working at that time?

A Laredo.

Q Is that the headquarters for that Division down there?

A No, sir, Corpus Christi is my District Headquarters.

Q But, you were satisfied that the tax was paid?

A Yes, sir.

Q Now, Mr. Lozano, there has been, and I think I can speak to the record, evidence that that store was damaged by some character of storm in '67, and the store moved to another location. Which location -- The record reflects was the location of the Farm and Ranch Store or the old Vaello Sales Lumberyard. I'll ask you, did you have any further contact with the Zertuche General Store after it moved from the Vaello Sales Building to the Vaello Lumberyard Building, or as we call it, the Farm and Ranch location?

A No, sir.

MR. MITCHELL: Pass the witness.

CROSS-EXAMINATION

(Questions by Mr. Doyle:)

Q Mr. Lozano, I'm going to hand you a picture of a building and ask you if that looks like the place you visited when you went down there to see the Zertuche Store.

A It looks like it, sir.

Q That's it. It looks like it? Okay.

MR. MITCHELL: Excuse me, Mr. Doyle. Would you mind reading the Exhibit number?

MR. DOYLE: I'm going to do that right now. What I've shown the witness was H-34, which was identified by Judge Carrillo as a picture of an exterior of the Vaello Sales Building. I believe there is a stipulation that for sure Zertuche moved out of there in September of 1967. Is that correct, Mr. Mitchell?

MR. MITCHELL: I think that's accurate, yes, sir.

Q So, that looks like the building you went into?

A Yes, sir.

Q So, if the stipulation is accurate or if the evidence is accurate, Mr. Lozano, then your visit must have been sometime prior to September of 1967?

A Yes, sir.

Q Now, and I believe in response to a question by Mr. Mitchell, you indicated that you never visited the Zertuche Store at any location other than the one in the picture I showed you?

A That's right, sir.

Q There were two visits?

A Yes, sir.

Q Can you give us your best estimate as to how far apart the two visits were?

A I couldn't recall it, sir.

Q Most State agencies, to my knowledge, keep records of such things as that. You don't have any record of the date you went to make your visit?

A No, sir.

Q You just don't keep that sort of record?

A I keep a record, but after three or four years, I throw them away.

Q I see. Now, I believe you said the purpose of your first visit, you weren't sure why you went there, is that right?

A That's right, sir. It was either for a store license or a sales license.

Q And the purpose of your second visit, I believe you said, you weren't sure why you went there?

A No, sir, all I can recall is that I called that lady, trying to collect an additional tax that was due --

MR. DOYLE: Mr. President, I would like to have the Clerk mark these Exhibits for me, please. It will just take a moment.

You can just give them one number and subparts if you like.

Mr. President, it's a certified -- and I have attached to this list a certification by Mr. Bullock. These are his records, copies of his records from the Comptroller's Office.

(House Exhibits 48(1) through (26) were marked
for Identification. H-48(1) through H-48(26))

MR. DOYLE: Mr. President, I could go ahead and ask the witness a couple of questions while the Clerk is -

THE PRESIDENT: Please proceed, Mr. Doyle.

Q Mr. Lozano, you have been in the Comptroller's Office since 1949, I believe you said?

A Yes, sir.

Q And you have been mostly in the Enforcement Division of Comptroller's Office, is that correct?

A That is correct, sir.

Q Now, just because a fellow has a sales tax license, that doesn't necessarily mean he's in the business of selling. Is that an accurate statement or not?

A Well, I guess somebody could ask for a sales tax permit, but then if he doesn't file his first quarter return, we have to go by and visit him and find out why he has not filed it.

Q But you can have a license for twenty years and not ever sell anything and file your returns every quarter showing that you didn't sell anything, and that creates no problems, does it?

A No, the only thing is, after a certain time, they will send out either a License or Law Enforcement Officer to check the records of the store, see if they are selling anything.

Q Right. Now, tell us what happens when a business establishment has a license and makes no sales except to governmental agencies? Do they pay any taxes?

A No, sir.

Q So, if a person had a license and didn't make any sales except to governmental entities, he wouldn't pay any taxes, would he?

A No, sir. But he would have to file a return anyway.

Q Right. He would have to file a return showing he didn't owe the State any money, wouldn't he?

A Yes, sir.

Q If you went down there and found all the sales were governmental entities, he wouldn't owe the State any money, would he?

A No, sir.

Q Okay. Mr. Lozano, I am going to hand you what's been marked as H-48. And H-48 consists of H-48(1) through H-48(26), and ask you if you'll just take a look at those.

MR. DOYLE: Mr. Lozano, I will ask you if those appear to be certified copies of the Comptroller's records that have to do with the Zertuche General Store --

A Yes, sir.

Q -- for the period June 30, '68. June 30, 1970?

A Yes, sir.

Q Now, I would like to ask you some questions about that. I would like for you to refer -- I think they are in order, Mr. Lozano.

A Okay.

Q The return for the period ending 6/30/78, is that the one on top?

A No, sir.

MR. MITCHELL: Excuse me. Mr. President, I was wondering if Counsel was going to make an offer on them, so I might have an opportunity to observe them --

MR. DOYLE: Hand them to Mr. Mitchell now.

MR. MITCHELL: -- so I can ask some questions about them. I don't mean I have any. I just might --

I don't have any objection to H-48(1), H-48(4), H-48(8), and if I'm given a minute, I can check the others.

I have no objection, if it please the Court, to H-48(9) and (10). I believe those are numbered in pairs, aren't they? That should be H-48(1) and (2). I have no objections to and including H-48(10), nor do I have any objection to H-48(11) and (12) or H-48(13), (14), (15), H-48(15) or (16), I have no objection to those, if it please the Court. I have no objection to H-48(17), (18). I have no objection to H-48(19), (20). I have no objection to H-48(21), (22). I have no objection to H-48(23), (24), I have no objection, Your Honor, either to H-48(25) or (26).

Thank you, Mr. Doyle.

MR. DOYLE: Mr. President, I take it these are now in evidence, is that correct?

THE PRESIDENT: These Exhibits will be admitted in evidence.

(House Exhibits H-48(1) through H-48(26)
were received in evidence H-48(1)-(26).)

MR. DOYLE: All right. Now, would you hand those back to the witness, please.

Q I'd ask you, Mr. Lozano, to find the return for the period ending June 30, 1968.

A Yes, sir.

Q What does it show as gross sales?

A \$20,943.91.

Q What does it show as net taxable sales?

A Zero.

Q Would that indicate that the Zertuche Store did \$20,000.00 worth of business but they didn't sell any -- any that was taxable?

A That is correct, sir.

Q Would you find the next period, the one ending 9/30/68, September 30th, 1968.

Mr. Lozano, it might be quicker if you just go ahead and let us do it in the order you have them in. What's the period you have on top there?

A The next period that I have, sir, is 3/31/70.

Q All right. What are the gross sales for that period?

A \$8,771.11.

Q That's the period ending March 31st, --

A 1970.

Q Gross sales of \$8,771.00?

A Yes, sir.

Q What are the net taxable sales?

A Zero.

Q All right. What's the next one you have?

A 12/31/69.

Q And what are the gross sales for that one?

A \$10,117.85.

Q What's the date of that one again, please?

A 12/31/69.

Q Okay. The gross sales are \$10,117.85?

A That is right, sir.

Q What are the net taxable sales?

A Net is zero.

Q Okay. What's the next one you have?

A 9/30 in '69.

Q What are the gross sales for that one?

A \$22,354.33.

Q And the net tax sales?

A Zero.

Q What's the next one you have?

A 6/30 in '69.

Q And the gross sales for that period?

A \$7,515.24.

Q And the net taxable sales?

A None. Zero.

Q What's the next one you have?

A 3/31/69.

Q And the gross sales for that period?

A \$17,318.06.

Q And the net taxable sales?

A Zero.

Q What's the next one you have?

A 12/31 in '68.

Q And what's the gross sales for that period?

A \$22,098.28.

Q And the net taxable sales?

A Zero.

Q What's the next one you have?

A 9/30/68.

Q And what are the gross sales?

A \$15,399.28.

Q And the net taxable sales?

A Zero.

Q Is that all -- have you gone through all of them yet?

A I think so, sir.

Q Okay. Would you pull out the one that starts three -- put out all the ones for '69. There should be four of them.

A I have all four '69, sir.

Q Okay. The first one there, I believe you'll find, is -- was filed March 31st, '69, \$17,318.06. Is that right?

A That's right, sir.

Q And June 30th of '69, \$7,515.24, gross sales.

A The June one?

Q Yes.

A \$7,515.24.

Q Right. Now, September, \$22,354.33, is that right?

A Yes, sir.

Q And the December one, \$10,117.85.

A That's correct, sir.

Q Now, each of those you looked previously and told us that the net taxable sales was zero.

A That is correct, sir.

Q Now, if my arithmetic is correct, Mr. Lozano, the Zertuche Store reported \$57,305.48 in gross sales for the year 1969 and zero as the money they owe the State of Texas for sales taxes. Is that correct?

A That's right.

Q And the ones we've looked at together, I believe there's three quarters of '68 and two quarters in 1970. They paid no sales tax for that --

A No, sir.

Q -- period also, is that correct.

A No, sir.

Q So, for the year 1969 the Zertuche Store reported fifty-seven thousand plus in gross sales, and they reported no sales tax due to the State of Texas, is that correct?

A That's correct.

Q Now, is it a possible explanation that all of the \$57,305.00 of gross sales was done with governmental entities?

A Where -- they show the deductions of \$17,000.00, it could have been for governmental agencies.

Q Sir?

A On all your deductions that they show on the return, it could have been for governmental agencies or if they had done any wholesaling to another retailer, it will show that and there won't be no tax due to the State.

Q Right.

A Or to any churches.

Q Right. So, if they sell them to another wholesaler who is supposed -- who collects the tax, that's one explanation.

A Yes, sir.

Q And if they sell them to governmental entities, that's another explanation or if it's to some other entity that qualifies as not having to pay sales tax it would be -- that would be an explanation. Is that correct?

A Yes, sir.

Q And I believe another exception to the tax rule is if it's sold for export you don't have to pay sales tax.

A If they have the proper documents, sir.

Q Right. But that's about the only four ways you don't get stuck with your taxes, isn't that right, Mr. Lozano?

A That's right, sir.

Q Do their returns indicate on them why they paid no taxes?

A All they show is deductions, what type, that they have the proper documentation for the deductions.

Q Sir?

A All it shows here is the deductions --

Q Well, give us an example of one of the deductions of the ones we've just been dealing with for '69.

A Well, now, your March, '69 was \$17,318.06.

Q And the deduction they claimed was what?

A Either one of those.

Q They claimed the whole amount as --

A The whole -- it was exempt on sales tax.

Q It was exempt.

A Right.

Q Their claim was that all of the sales they made were exempt.

A That's right, sir.

Q Does it show why on the return they're exempt?

A No, sir.

Q Okay.

MR. DOYLE: Mr. Mitchell, I can state to the Court and I can offer testimony, if you'd like. We requested all of the information with respect to Zertuche Store that the Comptroller had, and this is all he sent us -- all the returns with respect -- if you want me to put a witness on to that effect, I'll be glad to. We asked for all the returns they had with respect to Zertuche Store, and these are the ones they sent us.

MR. MITCHELL: No, Counsel. Your statement to the Court and for the record will be ample as far as --

MR. DOYLE: With that, I'll pass the witness.

REDIRECT EXAMINATION

(Questions by Mr. Mitchell:)

Q Mr. Lozano, let's go now and look at those returns, and tell the Court who filed the returns. Call them off by terms of the date and the person who filed the return.

A June 30 of '68 was filed by Arturo Zertuche.

Q All right.

A Doing business as Zertuche General Store.

Q Fine. Move on to the next one, please.

A March 30 of '70. Arturo Zertuche.

Q All right.

A December 31st, '68, Arturo Zertuche.

Q All right.

A September 30th of '68, Arturo Zertuche.

Q Mr. Lozano, I looked at them awhile ago, and I thought I saw Cleofas Gonzalez. Are we looking at the same documents?

A This is the remitter. You want who signed applications?

Q Yes, I wonder who signed it personally. Never mind the printing. Who signed it?

A Okay.

Q I'm sorry. I didn't make my question clear. Start all over again. Who signed it? Whose John Henry is on there?

A Okay. The December 31st of '68, there's no signature.

Q All right.

A September 30th, '68.

Q All right.

A I can't make it out. It just says helper.

Q All right. Does that appear to be Cleofas Gonzalez to you?

A I couldn't say, sir.

Q What's the date of it?

A 10/29/68.

Q All right. Well, the Court has ample specimens of the authentic handwriting of Mr. Gonzalez and can make their own determinations. Would you look at the next one, please, sir.

A 3/31/70.

Q Seems to be signed by the same man, doesn't it?

A This looks like Cleofas Gonzalez at the end of it.

Q All right.

A 6/30 and '70. Gonzalez.

Q All right.

A 3/31/69. No signature. Only some initials on top of the signature blocks.
6/30/69. No signature. 9/30/69. Gonzalez. 12/31/69. No signature.

Q All right. The law permits it at that time as a deduction for the tax due the amount of sales made to churches, wholesalers, governmental entities, and goods sold for export when the documentation indicated that they were irrevocably committed to export.

A That's right, sir.

Q Okay. How about whether or not if the sale was made to another retailer for resale, wouldn't that also be an exemption?

A Well, whenever they were wholesaling to a retailer, they're exempt.

Q All right. You included that in your exemption --

A Yes, sir.

Q All right. I'm curious as to why you would -- you, I believe, testified earlier that you collected some taxes.

A I collected something from that lady, but I cannot recall what it was.

Q That would be Mrs. Rodriguez?

A Yes, sir.

Q All right. You don't see those returns here, do you, that she filed? Or did she file a return?

A As I have mentioned, I do not know if it was for a store license or sales taxes.

Q I see. But you recall that the form that she filed that there was some money collected by the State?

A Yes, sir, she sent me some money.

MR. MITCHELL: I believe that's all the questions. Thank you.

MR. DOYLE: I just have a couple of questions.

CROSS-EXAMINATION

(Questions by Mr. Doyle:)

Q Mr. Lozano, if that lady paid you some money for a license under another name it wouldn't be there, would it?

A No, sir.

Q And in response to Mr. Mitchell's questions you looked for the signatures on the bottom of the returns?

A That is correct, sir.

Q And you looked for those signatures.

A Yes, sir.

Q Arturo Zertuche didn't sign a single one of those, did he?

A Not that I can tell, sir.

MR. DOYLE: No other questions.

SENATOR TRAEGER: Mr. President, could I have unanimous consent to ask a question?

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: Sir.

THE PRESIDENT: Do you have a question for the witness?

SENATOR TRAEGER: Yes, sir.

THE PRESIDENT: Would you mind writing it out?

SENATOR TRAEGER: All right, sir.

THE PRESIDENT: Mr. Lozano, this is a question submitted by Senator Traeger. And he's referring to the Exhibits -- to these Exhibits right here. He says, "Are these copies of the original reports?"

THE WITNESS: Yes, sir.

THE PRESIDENT: "Does the law not require that the person submitting the sales tax report sign it and by so doing certify that it is accurate."

THE WITNESS: Well, on the bottom we have the signature of taxpayer or duly authorized agent.

THE PRESIDENT: Now, are all of these reports signed?

THE WITNESS: Some of them are, sir, some of them are not.

THE PRESIDENT: Does that answer your question, Senator Traeger?

SENATOR TRAEGER: Was the answer to the second question they are required to be signed?

THE WITNESS: Yes, sir.

THE PRESIDENT: He said they were required to be signed.

SENATOR TRAEGER: But they are not signed.

THE WITNESS: They are not signed.

THE PRESIDENT: Further questions of this witness?

MR. MITCHELL: Mr. President, I have no further questions of this witness. Thank you.

MR. DOYLE: Nor do we, Mr. President.

SENATOR MAUZY: Mr. President.

THE PRESIDENT: Senator from Dallas, Senator Mauzy.

SENATOR MAUZY: I have just one short question. A sales tax was not collected on groceries at that time either, was it, at the period of time covered by these Exhibits?

THE WITNESS: No, sir.

SENATOR MAUZY: Thank you.

THE PRESIDENT: Mr. Lozano, in view of the fact that you may be recalled for further testimony in this case, it is my duty to warn you that you are under The Rule, that you are not to converse with any other person except Counsel for the two parties concerning these proceedings before this Court. You're not to read any report of or comment on the testimony before this Court. A person violating such instructions may be punished with contempt. Do you understand that?

THE WITNESS: Yes, sir.

THE PRESIDENT: Thank you, sir. You're excused.

THE WITNESS: Thank you, sir.

MR. MITCHELL: Mr. President, I offer the testimony of Mr. Randall Nye, an attorney from Starr County who has practiced before Judge Carrillo. I had offered to subpoena and bring him here. However, I understood that Counsel would be willing to stipulate that his testimony, which appears at 885 to 892 of the record.

MR. MITCHELL: 885 of this record. It was Page 336 of the Judicial Qualifications Commission record. That the witness, if called – and it is a stipulation – if called and all the questions are put to him on direct, as were put to him in this record and all those put to him on cross, he would answer as answered in the record. Is that correct, Mr. Odam?

MR. ODAM: Well, rather than a stipulation, it's my understanding, Mr. President, from the status of the Judicial Qualifications record that Mr. Arnulfo Guerra's testimony --

MR. MITCHELL: No, no, Mr. Nye.

MR. ODAM: I'm sorry. As well as Mr. Randall Nye. Mr. Randall Nye's testimony before the Judicial Qualifications Committee stipulated to or not, even if I wouldn't stipulate to it, it's in in toto. So, I think the fact that it is in the Judicial Qualifications Commission record which is before this Court negates the necessity for such a stipulation.

THE PRESIDENT: I would agree with that, Mr. Odam.

MR. MITCHELL: As long as it's in the record.

THE PRESIDENT: The information is in the record.

MR. MITCHELL: The next matter, if it please the Court, Counsel alluded to it, was the testimony of Arnulfo Guerra as appeared before the Judicial Qualifications Commission. Arnulfo Guerra being the District Attorney of the County at the time that's relevant here and that's Volume Two. I want to state for the Court further that I have Mr. Guerra on the way here for personal testimony in the event he wants to be examined or he need be examined by any Member of the Court.

Mr. President, I offer the testimony of Arnulfo Guerra before the Select Committee as it appeared as part of the Judicial Qualifications Commission hearing, being Volume II, labeled Arnulfo Guerra before this Court.

THE PRESIDENT: That's also part of the record.

MR. MITCHELL: Yes, sir.

THE PRESIDENT: And is available to the Court.

MR. MITCHELL: And with that and the statement to the Court that he is on his way if the Members of the Court desire to examine the District Attorney to get, perhaps, some questions that they might have that they want answered, with that I rest.

RESPONDENT RESTS

THE PRESIDENT: Thank you, Mr. Mitchell.

MR. DOYLE: Might I suggest about a fifteen minute recess?

THE PRESIDENT: Court will stand recessed until 3:00 o'clock.

Accordingly, the Senate, sitting as a Court of Impeachment, at 2:44 o'clock p.m. took recess until 3:00 o'clock p.m.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 3:00 o'clock p.m.

THE PRESIDENT: Members of the Senate, just before the recess, Counsel for the Defense rested. Counsel for the House Board of Managers has advised the Chair that he does not propose on his own motion to call any rebuttal witnesses. However, he has indicated to the Chair that a number of Members of the Senate have indicated an interest in hearing from other witnesses. So, at this time, the Chair will propose to recognize any Senator who desires to move that a specific additional witness be called. Are there such motions?

Being no such motions, it would seem the logical procedure at this point would be for the Senate to decide how much time it wishes to allow each side for final arguments.

SENATOR ADAMS: Mr. President.

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: Have both sides closed?

THE PRESIDENT: Yes, both sides closed, sir.

SENATOR ADAMS: Have both sides announced that they closed? Thank you.

SENATOR AIKIN: Mr. President.

THE PRESIDENT: Senator from Lamar.

SENATOR AIKIN: I have talked, I believe, with both, and I think Mr. Mitchell told me that they would want an hour. The Prosecution said they would like to have an hour and a half. In that case, it would seem to me that the fair thing to do would be to give both sides an hour and a half, if that -- I would like to give them what time they want. And I would so move if that's acceptable to both sides. They don't have to use it, but is all right if they do.

THE PRESIDENT: Senator from Smith.

SENATOR McKNIGHT: I move to limit both sides to one hour to close.

THE PRESIDENT: Please take your places.

MR. DOYLE: Mr. President.

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: I would certainly request that the record reflect the position of the Defense in this matter clearly before we go a whole lot further. He may not agree to any limitation.

THE PRESIDENT: Mr. Doyle, you will be recognized for discussion at the proper time.

SENATOR McKNIGHT: Mr. President.

THE PRESIDENT: Senator from Smith.

SENATOR McKNIGHT: Mr. Doyle indicated to me earlier that he thought an hour was ample time for closing and I have not had an opportunity to discuss it with Mr. Mitchell. And I'm delighted to hear that the same was his commitment to the Dean. In view of these facts, Mr. President, I move that the closing arguments be limited to one hour to each side.

THE PRESIDENT: Senator from Lamar moves the closing arguments be limited to an hour and a half. Senator from Smith makes a substitute motion that the closing arguments be limited to one hour on each side. Is there debate or discussion? The question will come first on the substitute.

Senator from Harris, Senator Ogg.

SENATOR OGG: Mr. President and Members --

SENATOR McKNIGHT: Wait a minute. The Dean wants to be heard.

SENATOR OGG: I'm sorry. I thought he --

SENATOR AIKIN: It's all right.

SENATOR OGG: I just would like to be heard in essence in favor of the Dean's motion. We've spent a lot of time on what we've done. There is a lot of evidence. Anybody who does any trial work understands that when you have the burden of proof what an ominous deal it is. There is a lot of documentary evidence that is going to have to be talked about with both sides. On the other hand, we've got a man whose whole public life and public career is at stake. And I don't see why there's any question why spending one more hour, if it doesn't take them that long, they don't have to talk an hour and a half. And I think it's fair and right to give the side that wants the most time as long as they are reasonable, that much time as long as we --

SENATOR McKNIGHT: Will the Senator yield, Mr. President?

SENATOR OGG: I yield.

THE PRESIDENT: Senator Ogg yields.

SENATOR McKNIGHT: I think the due process motion we filed here would be on the basis of what the Defendant requested. They requested one hour, Mr. -- Senator Ogg. And I feel that through an early education of prosecution that one hour is adequate. The rights that we are here to protect are the rights of the accused. If they are satisfied with one hour to close, I think the prosecution should acquiesce to it, in my opinion.

SENATOR OGG: I disagree. I think there are other rights involved. But there is nothing more disheartening, Senator, than to spend a week or two trying a case for a Judge to give you a short period of time to sum up to a jury something that is technical, that's involved. And there are a lot of documents in. And I just -- you know, I think everybody understands.

SENATOR McKNIGHT: Senator, I'm not sure I understand your statement. But I honestly believe that the rights to be protected here are the rights of the Defendant. If that's a satisfactory time for them, then I ask that the Senate go along with me on my motion to limit them to one hour.

SENATOR HANCE: Mr. President.

THE PRESIDENT: Senator from Lubbock.

SENATOR HANCE: Inquiry as to -- will the final arguments be today or would we recess until tomorrow and allow the time to prepare the final arguments, argue in the morning?

THE PRESIDENT: The Chair would propose before putting those motions to a vote to invite comment from Counsel from both sides both on the length of the final argument and on the timing.

SENATOR AIKIN: Right.

SENATOR HANCE: So, we go ahead and vote on the length, and then take up

--

THE PRESIDENT: Right.

SENATOR HANCE: The timing of this.

THE PRESIDENT: But you will have an opportunity to hear from Counsel for both sides.

SENATOR McKNIGHT: I would like to make a parliamentary inquiry.

THE PRESIDENT: State your inquiry.

SENATOR McKNIGHT: Could we have a stipulation from both parties, both from the Prosecution and from the Defense as to the length of time of argument? Let them stipulate what their request is and also as to the length of time as the question that has been raised by Senator Hance? I would like to have a stipulation from both parties.

THE PRESIDENT: Senator from Dallas, Senator Clower.

SENATOR CLOWER: I would suggest that the Chair make an inquiry of the Counsel publicly here as to how much time that they think they need. We have had this trial since September 3rd, drag out these months, and I submit to you it's not wise to act like a Federal Court here and say, "You've got one hour," or "One hour and a half." People need time to adequately prepare their case. We should afford it to them. That's what we're here for.

THE PRESIDENT: The Chair has just recognized Mr. Doyle for that purpose, Senator. And after Mr. Doyle concludes, we will recognize Mr. Mitchell.

MR. DOYLE: Both Senator McKnight and Senator Aikin asked me how long I thought it would take to argue the case. And both of them, as I remember, phrased their questions something like, "Do you think an hour is going to be enough?" It was what Senator McKnight said and Senator Aikin said, "Do you think" -- after two or three questions, -- "Do you think an hour and a half would be enough?" And I think I probably assented to both. I had in mind at the time I made both statements that that would be agreeable with Counsel for the other side. And I think that's the most significant thing.

And that's the thing I would like to address myself to next. It would appear to me that, as I've pointed out to the Senate on previous occasions, that the only problem with upholding any action the Senate might take, assuming it was an adverse action to the defense, the only question as I see it in the Federal jurisdiction is one of due process. And I don't think that a Federal Court would be likely to turn something around on how long you allow the Defense to make their closing arguments. But, frankly I sort of agree with Senator Clower. We've been in this thing now since September, and I would not -- and I would urge the Senate not to cut off Mr. Mitchell and Judge Carrillo in their defense, and, you know, in the time they wish to argue the case. Whatever time limitations you place upon us, we will be happy to work with them, whether it's ten minutes or two hours or an hour and a half or an hour. You know, we can adjust our arguments accordingly.

There are some things I think you should talk about before you take your vote. And there are some things that I think that you should advise Counsel on both sides before you take your vote. As you know, we have two Articles that you're going to consider. So, we'll need to know if you want us to argue on, you know, each Article in turn and stop and then argue on the other Article; or are you going to listen to us argue both Articles and then vote; or are you going to listen to us argue both Articles, and as you know, under the Constitution of Texas, the judgment that you ultimately enter is going to be one of acquittal, conviction or conviction and prohibition from holding office in the future. Are you expecting us to argue now on those questions? Are you expecting us to argue at this point --

SENATOR McKNIGHT: Mr. President, I would like to propound a question to Counsel.

MR. DOYLE: Those are things that I think that, you know, Mr. Mitchell and I both need some ground rules before you ask us, "Gentlemen, how long do you think it will take?" And, then, perhaps I'll be -- I'll do everything I can to agree with whatever the position the Defense takes.

SENATOR McKNIGHT: Mr. President.

THE PRESIDENT: Senator from Smith.

SENATOR McKNIGHT: I would like to propound a question to Mr. Doyle and to Mr. Mitchell.

One, I would like to ask Mr. Mitchell again if his final summation, his argument on both issues, if he's satisfied with one hour to sum up?

MR. MITCHELL: May it please the Court, I like to argue. I love it. I would like to have ample time. One hour appears to me with two Articles would be sufficient. I would like to have four. I mean, this is how much I enjoy presenting the case and the facts. But I am not going to -- I'm not going to grate on the good nature of my Court with that period of time. I think my case is ready to go. And I suggested an hour, but let it be -- I don't want the record to be silent. I would love to have a lot more time, because I just enjoy arguing a case. And I do need some time to prepare -- I would like to have some time to prepare the argument or whatever the wish of the Senate is.

SENATOR McKNIGHT: Mr. President, I would like to propound one more question, and I would like for the Chair to propound another question in my behalf to Mr. Mitchell on what he thinks a fair amount of time to prepare for argument might be.

THE PRESIDENT: Mr. Mitchell, how long would you require to --

MR. MITCHELL: 9:00 o'clock in the morning would be sufficient.

THE PRESIDENT: Mr. Doyle --

SENATOR McKNIGHT: I would like the same question propounded to Mr. Doyle, Mr. President.

THE PRESIDENT: I just did, Senator. Mr. Doyle.

MR. DOYLE: That's agreeable to me.

THE PRESIDENT: Mr. Doyle says that that would be agreeable to him. Mr. Doyle says that 9:00 o'clock in the morning would be agreeable to him as well.

SENATOR McKNIGHT: All right, then I would like to make parliamentary inquiry before making a motion, Mr. President.

THE PRESIDENT: State your inquiry.

SENATOR McKNIGHT: In the event that there is a verdict of guilty on either of these counts, then it's my understanding that there would recur a question on disqualification.

THE PRESIDENT: That's correct, Senator.

SENATOR McKNIGHT: I would like to ask you, and I would like to ask you, Colonel Jaworski, if then a question would recur on the argument on disqualification as set out under our Rules of Impeachment.

THE PRESIDENT: Senator, if you will refer to Rule 22, it's printed in the Rule Book.

Rule 22, Senator, as amended by the Senate in order to permit Article of Impeachment, the relevant portion reads, "Following a sustaining vote, which occurs after deliberation on an individual Article, under Rule 19(A), the following question is put: 'Shall the judgment for conviction on Article so and so extend to disqualification from holding any office of honor, trust or profit under this State?' Parties or their Counsel may present argument on the question. The judgment extends to disqualification only if approved by the vote of two-thirds of the Members of the Court present. If disqualification is approved, the presiding officer immediately shall appoint a committee to prepare a judgment disposing of all issues in accordance with the decisions of the Court. The committee shall be subject to Rule 22-(D).

"If disqualification is not approved, the Court shall proceed to presentation of evidence and argument on the remaining Articles of Impeachment subject to another motion to proceed to vote on an individual remaining article as provided in Rule 19-(A)."

SENATOR McKNIGHT: Then, sir, there would only be a vote on disqualification, not on argument?

THE PRESIDENT: No, sir. There will be arguments on disqualification.

SENATOR McKNIGHT: Disqualification. Then, if that occurs, and at that time, then would be the proper motion to limit debate or to limit argument on disqualification, is that correct, Mr. President?

THE PRESIDENT: Yes, sir. Yes, that would be correct, Senator.

SENATOR McKNIGHT: In view of those facts, Mr. President, I move this Body stand in recess until 9:00 o'clock tomorrow morning at such time to allow Counsel for Defense and for the Prosecution to prepare their final arguments.

THE PRESIDENT: Senator, the Senate has not voted on either Dean Aikin's motion or your substitute motion on the time limitation. For the guidance of Counsel for both sides, that matter ought to be disposed of.

SENATOR McKNIGHT: Whatever pleases the Chair. I thought that the motion to adjourn until that time had met with their approval. There might be one that would be --

SENATOR AIKIN: Senator, I agree with you. But I wish you would withdraw your motion on an hour. I along with most Members of the Senate have tried a few lawsuits.

SENATOR McKNIGHT: Senator, I want to be fair in every way. If that meets with your approval, Mr. President, I withdraw my motion.

SENATOR AIKIN: I move an hour and a half be extended to each side.

THE PRESIDENT: All right. The substitute motion of the Senator from Smith has been withdrawn. The question occurs on the motion of the Senator from Lamar that each side be limited to an hour and a half in final argument on the question of conviction.

SENATOR TRAEGER: Mr. President, parliamentary inquiry.

THE PRESIDENT: Senator from Guadalupe.

SENATOR TRAEGER: Do we set up by Court instruction the method of whether this argument is a continuous argument first for one side, first for the other, whether it's divided? Or what nature will this take?

THE PRESIDENT: The Chair recognizes Special Counsel for purposes of advising the Court.

MR. JAWORSKI: I wanted to make known to you that there has been a request on the part of Counsel representing the House Board of Managers that they split their arguments. Three of them will be arguing. Of course, they have the burden of proof. They will make the opening argument, and they need to open on both Article I and on Article VII. And, then, Counsel for Judge Carrillo, Mr. Mitchell, will then present his argument. Then, they have the right to close. I had mentioned to Mr. Mitchell the matter that Counsel had wanted to have three of them argue -- Counsel for the House Board of Managers, and if I understood him correctly, he has no objection to that. Correct, Mr. Mitchell?

MR. MITCHELL: That's correct, Mr. Jaworski.

MR. JAWORSKI: All right. Thank you. Now, this doesn't mean that they get any more time than is allowed to Mr. Mitchell, of course. The time will be the same, it will just mean that they will be splitting their argument. And, they will have the obligation to open and they will have the obligation to close.

THE PRESIDENT: Senator Traeger, does that answer your question?

SENATOR TRAEGER: Yes, sir. I thought that for their satisfaction and the Court's satisfaction, we should have some idea on what was needed. I would like to hear from Counsel for the Defense, if that's satisfactory.

MR. MITCHELL: And I understand that the Rules of Civil Procedure, or Criminal Procedure, would govern as to the opening --

SENATOR McKNIGHT: Pardon me, Mr. Mitchell. I didn't understand the question from Senator Traeger.

SENATOR TRAEGER: I just wanted you to hear from him on his observation on the closing arguments.
Go ahead, Mr. Mitchell.

SENATOR McKNIGHT: Pardon me, sir.

MR. MITCHELL: May I speak?

I was just commenting that I understand the opening will be completely open. That is, when they open and I take on, they will have completely opened their case, Mr. Jaworski, as we do in a normal case.

MR. JAWORSKI: That is correct. They will have to open on both Articles.

MR. MITCHELL: Right.

MR. JAWORSKI: And then, of course, you will speak as to both Articles.

MR. DOYLE: Mr. President, if I might?

THE PRESIDENT: Mr. Doyle.

MR. DOYLE: I plan for us to have Mr. Odam open on Article VII, Mrs. Levatino open on Article I. Mr. Mitchell will then argue, and I will close on both Articles.

THE PRESIDENT: The question is on the motion of the Senator from Lamar to allow each side an hour and a half.

All in favor of that motion, signify by saying "Aye".

All opposed, "No".

The "Ayes" have it. The motion is adopted.

Show the Senator from Jefferson, "No".

The Senator from Smith now moves the Senate stand adjourned until 9:00 o'clock tomorrow morning.

SENATOR ADAMS: Mr. President.

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: I would like to announce that the Administration Committee will meet on adjournment.

SENATOR PATMAN: Mr. President.

THE PRESIDENT: Senator from Jackson.

SENATOR PATMAN: Are we planning to go on through the noon hour tomorrow, then, if it's an hour and a half, and then followed by an hour and a half and then the --

THE PRESIDENT: Well, both sides should be concluded at noon, Senator.

SENATOR PATMAN: When will -- do you anticipate the vote will be taken?

THE PRESIDENT: Well, that would be up to the pleasure of the Senate.

SENATOR PATMAN: It couldn't be earlier than 12:00 o'clock, then? It could not be earlier than 12:00 o'clock noon, right?

THE PRESIDENT: Assuming both sides take their hour and a half, no, sir, it couldn't be.

SENATOR CREIGHTON: Mr. President, parliamentary inquiry.

THE PRESIDENT: State your inquiry.

SENATOR CREIGHTON: Will the members of the Court have an opportunity to debate the Articles after the arguments?

THE PRESIDENT: Yes, Senator. The rules contemplate going into Executive Session for deliberation.

SENATOR CREIGHTON: Executive Session?

THE PRESIDENT: Yes, sir.

Senator, the Chair is advised that the session will be open unless it's voted closed by a majority of the Senate.

SENATOR AIKIN: Mr. President.

THE PRESIDENT: Senator from Lamar.

SENATOR AIKIN: I think we ought to say to the Senate, and as far as I am concerned and I have talked to several of you, I would think that we would just be adjourned and return to the jury room in Executive Session. Of course, when we start the vote, it will be out in the open. It will be a part of the Journal, part of the record.

But, I had intended to make a motion at the conclusion of the arguments that the Senate go into Executive Session and just retire as the jury retires to the jury room. Then, when we come out, we will vote and it will be recorded and put in the Journal.

THE PRESIDENT: Further announcements?

The Senator from Smith moves the Senate stand adjourned until 9:00 o'clock tomorrow morning. All in favor signify by saying "Aye".

Those opposed, "No".

The "Ayes" have it. The Senate stands adjourned.

Accordingly, the Senate, sitting as a Court of Impeachment, at 3:31 o'clock p.m. adjourned until 9:00 o'clock a.m. tomorrow.

TWENTY-THIRD DAY
(Friday, January 23, 1976)

The Senate, sitting as a Court of Impeachment, met at 9:00 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Hance, Harrington, Harris, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Mengden, Moore, Ogg, Patman, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: Lombardino, Meier and Santiesteban.

Absent: Gammage.

A quorum was announced present.

Pastor Curtis Johnson, Lutheran Campus Ministry, University of Texas at Austin, offered the invocation as follows:

In critical times, pastors pray and read scripture. Sometimes the very reading of scripture is a prayer. I would do that this morning, picking passages ascribed to the wise Solomon and the perceptive prayerful David. It is said that Solomon said, "This is the end of the matter: you have heard it all. Fear God and obey His commands; there is no more to man than this. For God brings everything we do to judgment, and every secret, whether good or bad."

So, with David, let us pray: "Man's days are like the grass: he blossoms like the flowers of the field: a wind passes over them, and they cease to be, and their place knows them no more. But the Lord's love never fails those who fear Him; his righteousness never fails their sons and their grandsons who listen to His voice and keep His covenant, who remember His commandments and obey them."

Lord, have mercy upon us. Amen.

LEAVES OF ABSENCE

Senator Lombardino was granted leave of absence for today on account of illness on motion of Senator Traeger.

Senator Meier was granted leave of absence for today on account of important business on motion of Senator Farabee.

Senator Santiesteban was granted leave of absence for today on account of important business on motion of Senator Schwartz.

THE PRESIDENT: The following communication:

January 22, 1976

Honorable Bill Hobby
Lieutenant Governor of Texas
Capitol Station
Austin, Texas 78711

Dear Governor Hobby:

This is to advise you that I have this date submitted my formal resignation from the Texas Senate to Governor Briscoe effective at 9:00 a.m., Friday, January 23, 1976. It has been an honor and a privilege for me to serve in the Senate under your leadership.

It is with regret that I will no longer be serving in the Senate. I am, however, looking forward to the enormous challenges I will be facing in the next few months.

The legislative, correspondence, and constituent files of my Senate office will be at the disposal of my successor in District Seven. I will be happy to visit and work with my successors on the various committees at their pleasure.

The Senate of Texas is a great body of public servants. I hope my record with this distinguished group of Texans merits the same esteem and genuine affection with which I will remember them.

Sincerely,

/s/ BOB GAMMAGE
Bob Gammage

The Secretary/Clerk read the communication.

APPEARANCES

Judge O. P. Carrillo, Respondent; Honorable Arthur Mitchell, Attorney for Respondent.

Board of House Managers; Honorable Terry Doyle, Counsel; Honorable John L. Hill, Attorney General; Honorable John Odam and Honorable Liz Levatino, Assistant Attorney Generals, on behalf of the Board of Managers.

THE PRESIDENT: Chair recognizes Mr. Odam to open closing arguments. Total time for each side not to exceed an hour and a half.
Mr. Odam.

MR. MITCHELL: Mr. President, excuse me. I have been informed by Mr. Arnulfo Guerra, who is in the Senate Chamber, that he is available. He is the District Attorney of the 229th Judicial District. There was some indication that some of the Members of the Court wanted him to testify. I, of course, am not going to call him

myself, but if some of the Members of the Court desire to call him he is here. And I just simply call that to the attention of the Court, Mr. President.

THE PRESIDENT: Is there a motion from any Member of the Court to hear Mr. Guerra before opening arguments begin?

SENATOR PATMAN: Mr. President, I so move.

THE PRESIDENT: Senator from Jackson moves that the Court call Mr. Guerra. Is there debate or discussion of that motion? As many that favor that motion will vote "Aye", those opposed vote "No" as your name is called.
Secretary, call the roll.

Yeas: Doggett, Harrington, Kothmann, Longoria, Mauzy, Patman, Schwartz, Snelson, Traeger and Williams.

Nays: Adams, Aikin, Braecklein, Brooks, Creighton, Farabee, Hance, Harris, Jones and Sherman.

Present-Not voting: McKinnon, McKnight, Moore and Ogg.

Absent-excused: Lombardino, Meier and Santiesteban.

Absent: Andujar, Clower and Mengden.

THE PRESIDENT: There being ten "Yeas" and ten "Nays", four "Present-Not voting", the Chair votes "Nay". The motion is lost.
Mr. Odam.

Mr. Odam at 9:15 o'clock a.m. began closing arguments on Article VII.

MR. ODAM: Mr. President, and may it please the Court.

Article VII of the Articles of Impeachment state in full, and I quote: "While holding office as District Judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to charge and to collect money from governmental entities for rentals of equipment that did not exist, for rental of equipment that governmental entities did not use."

Ladies and gentlemen, over the past twenty-two days, you have had the opportunity to consider over twenty witnesses that have been called by the Board of Managers and that we called as Examiners at the Judicial Qualifications Commission, plus the witnesses called by O. P. Carrillo.

I don't think I need to tell this Senate this morning how important the matter is that is before you, that you, as Senators, sit as a High Court of Impeachment, the first time in forty-four years to sit as Judges of a State District Judge.

Now, in my personal opinion, I don't think that you have a higher calling than to do just that, to sit as Judges of this Judge. And, all I ask in this closing argument is that you do what is fair, and that you do what is just and what is right; what is fair for O. P. Carrillo and what is fair for the people of Duval County; and what is just for O. P. Carrillo and what is just for those people down in Duval County; and what is right for O. P. Carrillo and for the people of Duval County.

I sincerely appreciate the attention that you have given to us as we have put on the evidence. It's been a long time that we have been here, thousands of pages of documentation, and I submit to you that it is not a complicated case.

It's not complicated, and I will show you today, the evidence.

I had the opportunity, before I started Article VII, to make a very brief opening remark, and I told you then what I thought the evidence would prove, and I submit to you that we have met our burden. We have put on the evidence for you. We will show you today that the evidence shows beyond a reasonable doubt that O. P. Carrillo conspired with others to take money from Duval County for equipment that did not exist and for equipment that Duval County did not use. I submit that there is a tremendous amount, in quantity, of evidence. But, it is not only quantity of evidence that you have before you, but I submit the quality of that evidence is there, too.

Now, let's think about that evidence that you have before you. I think that the evidence before you can be divided into two groups. You have the documentary evidence and you have the credibility of the witnesses.

Now, the first thing I'm going to discuss with you is the documentary evidence, and then move to the credibility of the witnesses in the time that I have left, including the credibility of one of the witnesses that has appeared before you, O. P. Carrillo.

Now, let's consider, first of all, the documentary evidence. I think that, basically, the equipment rentals fall in two categories: the equipment that did not exist and was not used, and the equipment that did, in fact, exist.

Now, turn with me, if you will, now or later during deliberations, to the documentary evidence that we laid before you. Starting in Volume Two of the Examiner's Exhibits. I have been through it with you, I have been through it with O. P. Carrillo, I have been through it with Mr. Couling.

Exhibit E-57, we start off with a County check for \$1,008.00, made out to Benavides Implement and Hardware. And going over to the other Series of Exhibits there. You have them before you in the books on your desk and I know that you will be looking at them during deliberations. You have the series of invoices prepared by Cleofas Gonzalez, and what do they say on them? They say, "Contract on fencing and roads, hauling, \$1,008.00."

You remember, I asked Mr. Cleofas Gonzalez, "Where did you get 'contract on fencing and hauling'?" And what did he say? "I made it up. I made it up."

I said, "Why did you make it up?" "Because Ramiro Carrillo told me to make it up. I just made it up."

I said, "Well, where did you get \$1,008.00?" "Well, I made that up, too. I just made it up. It sounded like a good figure. It sounded like something that contract on fencing would be worth, \$1,008.00." "Well, then what happened to them?" "Ramiro Carrillo came by and picked them up."

You turn the page and you see the invoice for \$1,008.00. You turn the page, \$1,018.00; you turn to another invoice for \$1,008.00. You turn to the claim jackets, beginning for \$1,008.00. Then we come to a check to O. P. Carrillo for \$1,008.00 from Rudolfo Couling. You recall, I asked Mr. Couling, "Why did you make out a check to O. P. Carrillo for \$1,008.00?" "You see, I had that County check for \$1,008.00." "Well, did you do any equipment rental?" "No." "Did you have any equipment to rent?" "No, I didn't have any equipment to rent." "Did you have O. P. Carrillo's equipment?" "No." "Did you have Ramiro Carrillo's equipment?" "No." "Did you have Ramiro Carrillo and Brothers' equipment?" "No. I didn't have any equipment to rent. Don't you understand? I didn't make out the ticket. It didn't exist. Don't you understand what I am saying? I had the County check for \$1,008.00, and made out the check for O. P. Carrillo for \$1,008.00." Turn the page to an invoice for \$1,008.00. Turn the page to a deposit slip where \$1,008.00 is deposited into the O. P. Carrillo's bank account. Then on to another claim jacket for \$1,018.00, a County check for \$1,018.00, turn the page, a check to O. P. Carrillo for \$1,018.00, deposit slip where O. P. Carrillo has deposited in his bank account \$1,018.00, and another invoice for \$1,018.00, rental on equipment, Duval County.

Juan Leal. "Did Juan Leal rent any equipment, Mr. Cleofas Gonzalez?" "No, sir." "Then why did you put it on there?" "Ramiro Carrillo, County Commissioner for Precinct 3 told me to."

Statement for \$1,006.00. An invoice, claim jacket for \$1,006.00, County check for \$1,006.00, a check for \$700.00 from Benavides Implement and Hardware to O. P. Carrillo for \$700.00.

"Tell me about those checks, Mr. Couling. When did you make it out?" "Well, I had the county check for \$1,006.00. I gave him one for \$700.00." He came in the next month -- the next page, a check for \$306.00. He wanted the rest of his money from that county check.

Go to the deposit slip, \$700.00 and \$306.00 deposited into his bank account. And then into another series of invoices and statements, \$995.00. "Mr. Gonzalez, why did you make them out for the \$995.00?" "Well, you understand, don't you, that Ramiro Carrillo told me it couldn't be exactly \$1,000.00, so it's \$995.00 this time." "Rental equipment on county roads hauling caliche." That sounds like something worth about \$995.00. County check for \$995.00. Claim jacket for \$995.00. Check to O. P. Carrillo for \$995.00. Deposit slip to O. P. Carrillo, \$995.00.

"Mr. Couling, are these all the checks you wrote out to Judge O. P. Carrillo? Are these all the checks you gave to him?" "No, sir, it's not."

Well, let's go to the trouble to reconstruct the entire bank account for Benavides Implement and Hardware. Let's find everyone of them. I'll ask you to turn now, or at a later time, to Examiner's Exhibit E-192. You'll have it with you when you go into deliberation. E-192. They are all spelled out there for you. I went through every one of them with O. P. Carrillo. And I'll tell you a story in just a few minutes. A check for \$1,008.00, a County check for \$1,008.00. Another check for \$1,000.00. "Why did you give him this check?" "Well, you see, I had this County money -- "

MR. MITCHELL: Excuse me. I'm going to object. There is no County check to Judge O. P. Carrillo, and that's a misstatement of the record.

MR. ODAM: It was not a statement, there was a County check to O. P. Carrillo -- it shows --

MR. MITCHELL: I misunderstood you, then, Counsel. I thought you said there was a County check to Judge O. P. Carrillo. Of course, there isn't.

THE PRESIDENT: Objection is overruled. Mr. Mitchell, you will have an opportunity to present your closing arguments.

MR. ODAM: A check, O. P. Carrillo, \$1,000.00; check, O. P. Carrillo, \$1,200.00. "Now, Mr. Couling, why did you make this one out, \$1,200.00?" It says notation on it for a loan.

What does O. P. say? "Well, you see, we had this water well drilling rig. It says 'loan'." We'll come back to the story in just a moment about this water well drilling rig.

I can go through every one of them. \$982.00. "What's the notation?" "It says 'tubing.'" "Mr. Couling, why did you make it out?" "Well, look on the chart. There's a county check for \$982.65." "Mr. Couling, did you buy any tubing from him?" "No, sir."

"Judge O. P. Carrillo, tell me about that tubing. What kind was it?" "Well, we had some tubing, you understand this." "Was it water well tubing? Was it oil well tubing? What kind of tubing was it?" "Well, I don't know. I delivered it to him." "Well, do you have a contract for that?" "No, sir." "Do you have any kind of a sales agreement?" "No, sir. I just sold him \$982.00 worth of tubing." "What did he do

with it?" "Well, I don't know. I guess he used it."

Check to O. P. Carrillo for \$1,018.00; check to O. P. Carrillo for \$700.00; check to O. P. Carrillo for \$306.00; check to O. P. Carrillo for \$267.00. "Mr. Couling, why was this check made out?" "More money coming to O. P. Carrillo."

"Mr. O. P. Carrillo, why did you get a check for \$267.00?" Now, you've got to listen to this one. "\$267.00 because, see, we had this hunting lease. There are sixteen hunters, and they all paid \$267.00 each for around \$4,000.00 to go out and buy some beer and go out and buy some groceries for all this hunting lease." \$4,200.00 worth of beer and equipment and food to go hunting. Well, I understand that.

Let's go to the next one. \$995.00, we discussed. Go to the next one, \$930.00. "What's this for?" "Well, it's for this equipment rental. You see, I rent a lot of my personal equipment to O. P. Carrillo." We'll come back to that story in just a moment.

Check for \$77.00 to O. P. Carrillo. The station wagon check, I'll come back to just a moment. Check to O. P. Carrillo for \$900.00. "What does this one have on it?" "It says 'hay for resale.'" "O. P. Carrillo, you mean to tell me you sold some hay to Benavides Implement and Hardware for resale?" "Yes, sir, I did." "Why didn't you sell it yourself?" "Well, he needed the hay to resell." "Who did he sell it to? Do you have kind of invoices? Do you have a statement? Do you have any kind of a contract for that hay?" "No, I just sold him \$900.00 worth of hay." That's a lot of hay.

\$997.00 check to O. P. Carrillo. "What's this for?" "Well, it was for equipment rental or it might have been for that water well drilling rig, you see."

Another check for around \$1,000.00. Go to the next page. You can look at it. It's in the book. Benavides Implement and Hardware, check for \$1,000.00. "What's this for?" "Well, it's probably for equipment rental or might have been some of this money he owed me for that water well drilling rig."

Check to O. P. Carrillo for \$1,000.00, equipment rental. Check to O. P. Carrillo for \$2,640.00.

Senator Sherman, I checked the question that you asked before of whether or not it was \$2,640.00 or \$2,040.00. The bank statement which appears on Page 739 indicates it was for \$2,640.00. O. P. Carrillo. "What's this for? It says 'loan'. What was it really for?" "Well, you see, we got this water well drilling rig, and this must have been money that was owed on this water well drilling rig." Well, I understand. \$2,640.00 in checks for this water well drilling rig.

Now, as you can see, Judge O. P. Carrillo basically has two stories. You've got this story about all this personal equipment that was rented by Cleofas Gonzalez over to Farm and Ranch over to Benavides Implement and Hardware. You've got that story. Then, you've got the story about this water well drilling rig. Now, let's first consider the story about all this equipment that he said was his personal equipment that was rented through Cleofas Gonzalez.

I submit to you that that is totally, I would submit, an incredible story for these reasons. Number one, it's totally inconsistent with the invoices that support it. What do the invoices say? "Invoice on fencing and hauling caliche." Number two, it's totally inconsistent with the testimony of Cleofas Gonzalez and Rudolfo Couling. Cleofas Gonzalez said it didn't occur. Rudolfo Couling sat here and under oath told you, "I didn't rent his equipment. I didn't need to rent it, because I didn't rent it to Duval County." It's inconsistent with the testimony. Third, it's totally unsupported by any other testimony. If this were true, where are all those County drivers that drove all these trucks around for Duval County? Why don't we have some County Commissioners, Ramiro Carrillo or Juan Leal or Dan Tobin come in here and tell us, "Yes, we rented that equipment. We had our own, but we rented it?" Where are the witnesses to support that story?

MR. MITCHELL: I think that's an improper remark, if it please the Court. Those witnesses were equally subject to his subpoena. And I think it would be improper in any occasion.

THE PRESIDENT: Objection overruled.

MR. ODAM: Number four, I submit there is no independent supporting documentation to this story about equipment rental. He didn't know the period of the lease. He didn't know which equipment it was. He didn't know how long it was rented. He didn't know to whom it was rented. He didn't know if there was any connection between the County checks and the checks to him. All he knew was time to go by and get that check for around \$1,000.00 from Rudolfo Couling every month. That's all he knew. Must have been his equipment. "You've seen my Depreciation Schedule. Got all these Bronco trucks, I've got these Massey-Ferguson tractors. Must have been most of those. And this isn't all the equipment I've got. You know, some of them are not carried on the Depreciation Schedule. Could have been some of those. I'm not sure which ones. You'll have to ask Mr. Cleofas Gonzalez." We asked him. I submit to you that the County of Duval need not be renting any equipment from Benavides Implement and Hardware or anyone else.

Now, let's consider the Water District checks. This is E-84. Follow me on this one. Remember the testimony -- it's on Page 823, you have a check from the Water District for \$5,625.00. You can look at the check. The original is up here, countersigned by D. C. Chapa, father of O. P. Carrillo, signed by Jose Tovar who is dead. Now, what's the story on this? Remember what Rudolfo Couling said? "Well, you see, this is what took place. O. P. Carrillo came by and told me that the Water District was going to pay for a station wagon." That was his testimony. "Well, then, what happened next?" "Well, you see, what happened next was that either Rogelio Guajardo, his nephew, or O. P. Carrillo brought by that Water District check." "Mr. Couling, it says on here about all these invoices. What kind of business did you do with the water district?" "I didn't rent them any equipment. I didn't sell them anything. I didn't put those invoice numbers on there. I didn't do the business. Don't you understand? I didn't do any legitimate business with the water district. They brought me by the County -- the check." "Well, then what happened next?" "Well, O. P. Carrillo came by and he wanted his money for that station wagon. I put the notation on there, 'station wagon'." The check is up here. The check is on Page 824. "I gave it to him in blank." It's stamped on there, the bank in Rio Grande City was taken over, was deposited and made payable and paid on this note card which is on Page 825 for the station wagon. You have the checks where O. P. Carrillo had earlier paid for the station wagon. On through the Exhibits. You have the documentation showing that the title to the station wagon is in his own name. All of this appears beginning on Page 830.

Now, what do we have as a defense here? We're coming back to the great water well drilling rig. Here, we have to go into Mr. George Parr who is dead. Now, you have to follow this pretty closely -- are you with me? "See, there is a water well drilling rig, and Ramiro and I own this water well drilling rig. We have this water well drilling rig, and although it's carried in the name of Farm and Ranch as shown on the Depreciation Schedule." Farm and Ranch, see, they rented this water well drilling rig from Benavides Implement and Hardware. "What did they do?" "Well, I don't know but I think they rented it to George Parr and Archer Parr."

"Well, do you have any kind of a contract?" "Well, no, but I have got all of these checks, you understand that. I have got this five thousand some-odd dollar check. I went by and I said I need my rent on that water well drilling rig." "Where is it?" "Well, Mr. George Parr used it. Don't you understand, Mr. Parr, you know..." "The Parrs and the Carrillos ...He used this water well drilling rig." So, we got a check for

\$2,640.00, which paid on the water well drilling rig. We got a check for \$1,200.00; payment on the water well drilling rig. We have a check for \$5,725.00 for a total of nearly ten thousand dollars as payment on the water well drilling rig. Where is the operator of the water well drilling rig? Where is a picture of the water well drilling rig? What is to support this story of O. P. Carrillo, except a bunch of checks that say such things on them as station wagon and say such things on them as loan for the water well drilling rig. O. P. Carrillo did not know the term of the lease, did not know exactly to whom it was rented. There was no written agreement to support it. He did not know to whom it was rented or for how long. Did not know -- I submit to you no one would legitimately and honestly handle their business affairs like this, plus the fact it's totally contrary to the story of Rudolfo Couling.

Now, let's look at the equipment that did, in fact, exist, that which the County did not use but that which we would submit to you the County paid for. Let's go to E-91 on these. What you will see on E-91 is a series of invoices and a series of County checks. I'm not going to read them all off to you, you have them all before you. They start with Page 839, for \$1,006.00, an invoice prepared by Mr. Cleofas Gonzalez; rental equipment, a statement for \$1,006.00; claim jacket for \$1,006.00; County check for \$1,006.00. What's the notation on the back of that one? Well, that's \$1,006.00 -- says "note payment". "Well, Mr. Couling, what's that for?" "Well, this is what happened. We borrowed the money to set up the account in the Rio Grande City Bank. The first check for \$1,006.00 went to pay on that note." The first crack out of the box, the first payment that was made, the first check that's in evidence out of the Benavides Implement and Hardware account in Rio Grande City is a check to Massey-Ferguson for around \$2,900.00, which I submit to you is a payment to be made on that Massey-Ferguson tractor, the contract in which is in the name of O. P. Carrillo, which is in their Exhibits. And I submit to you the first check out of that account was to pay on that Massey-Ferguson tractor.

Go on through the Exhibits. I'm not going to read them to you, but you can see. The invoice on a wench truck and a dump truck, \$1,018.00; rent on two tractors, \$1,051.00. All through this book you will find the invoices, you will find the claim jackets from the County, you will find the County checks, \$1,051.00, \$1,006.00, \$1,009.00, \$1,067.00, \$998.00, \$1,006.00, \$1,020.00. All these checks from Duval County being made payable to Benavides Implement and Hardware, being deposited in the Rio Grande City account. Then, we go up to a series of checks for around \$1,500.00.

"Well, Mr. Couling, why did you start making out invoices for \$1,500.00?" Well, Ramiro and O. P. had purchased some root plows and the contracts are in evidence, they're E-161(A), Benavides Implement and Hardware, verbal by O. P. Carrillo and Ramiro Carrillo to purchase these root plows, so, we had to start getting more money from the County, to start paying for the root plows. So, we start through \$1,500.00 checks, all of which are deposited in the Rio Grande City account. \$1,500.00, \$1,500.00, \$1,500.00, invoices, claim jackets, County checks going into that account. The total amount of these checks that match up with the invoices would come to approximately \$18,805.00 for equipment the County did not use. It's clear that from this account payments went out to pay Massey-Ferguson for the contract for the Massey-Ferguson tractor that O. P. Carrillo had, they went to pay Plains Machinery, they went to pay for the two root plows purchased at B. D. Holt, all evidenced by the contract E-161.

Now, consider that contract, it's E-161 in the book. Sure, it's signed by Benavides Implement and Hardware and it has Rudolfo Couling's name on it. I'm sure Mr. Mitchell will be bringing that to your attention. Mr. Mitchell says to the Court, "Now, I want you to put your head down on that contract and look at Rudolfo Couling's signature. I don't want you to consider the testimony of Red Kurtz. I don't want you to consider what Rudolfo Couling said, I just want you to look, there's

Rudolfo Couling's name, says Benavides Implement and Hardware. The contract must have been with Benavides, they're not my Caterpillars, they belong to Benavides Implement and Hardware." I submit that this is not just a fight between Rudolfo Couling and O. P. Carrillo as you might believe.

Mr. Red Kurtz testified that the deal was made for two Caterpillars, his testimony is in this book for two Caterpillars, two bulldozers that were in stock. Two were later delivered to O. P. Carrillo. O. P. Carrillo eventually took over the contract for the two Caterpillars. The Plains Machinery men that testified, Red Craig, testified that he went out to work on the Caterpillars. The welder, Crisoforo Chapa, went out to the O. P. Carrillo's ranch, The Borjas, to work on the Caterpillars. The drivers who came in and testified, Arnoldo Alvarez, and Abel Ruiz worked on the Caterpillars on that ranch and on George Parr's ranch. And what's the defense on this one? We have got George Parr again. George Parr -- you have got to follow this one very close.

"Well, please explain to me about these County checks." "Well, you see it's like this. George Parr told me one time that he had this deal with Mr. Rudolfo Couling where he would rip off all of this County money. And while this one Caterpillar was out on his ranch he was going to steal the county money, go into Benavides Implement and Hardware, go over to the bank in Rio Grande City, from there Mr. George Parr is going to steal all that money to make rental payments on that Caterpillar while it's out on his ranch. Don't you understand, doesn't that sound believable." I will tell you it's totally inconsistent with the evidence in this case. There's no one, I would submit, to support that story. As I said, there's something magic about this contract, I guess, that has Rudolfo Couling's name on it. We have got to just look at the contract and not look at the testimony.

Rudolfo Couling has consistently said he did not have equipment to rent, he didn't have O. P. Carrillo's equipment, he didn't have Rudolfo Couling's equipment, he didn't have Ramiro Carrillo and Brothers' equipment, he didn't have any equipment to rent. When Mr. O. P. Carrillo, Judge O. P. Carrillo said, "You must have had all of this equipment to rent, see, I have got all of these charts. I got them from the Attorney General's office. They go R-91, R-92 and R-93. Look at all this money that came in. Well, he must have had equipment to rent. Got all that money, what happened to all that money? Well, Mr. Rudolfo Couling just ripped it off." Had to have equipment to rent, you don't take in \$300,000.00 from the Water District and the School District and the County. Where did all that money go, we want to know. Well, we told them where it went. You look at the bank account, you look at the bank account that starts E-192 on Page 1559. You can see where that money went. Everyone of these checks are in evidence. O. P. Carrillo, Farm and Ranch Supply, owned by O. P. Carrillo and Ramiro Carrillo, check to Ramiro Carrillo and Brothers, checks to Rogelio Guajardo, O. P. Carrillo's nephew. Checks to Oscar Carrillo, checks to Ramiro Carrillo, checks to D. H. Carrillo, his nephew. You want to know where the money goes, look at the checks.

"Now, Mr. Couling, did you rent any equipment from D. H. Carrillo?" "No, sir." "Did you rent any equipment from Ramiro Carrillo and Brothers?" "No, sir." "Why did you do it?" "Well, you see, you can follow the chart. We had all of this money coming in from the Water District, we had all the money coming in from the School District, we had all the money coming in from the County, it was time to make out the checks to O. P. Carrillo and Ramiro Carrillo, etc."

I submit to you that what you look at on Page 1555 is a money machine. You have got governmental money coming in, it cranks around in the money machine and it pays out at the other end. Not for equipment that was rented to anyone, not for equipment that belonged to anyone. I'm not going to tell you Rudolfo Couling didn't take any money, I'm not going to tell you that he's free from sin. Sure he is, we indicted him. Of course, he got money out of the deal.

We submit that this was a scheme that started back with the Zertuche General Store many years ago. That's what Mr. Gonzalez testified to. There are checks into 1971 that so indicate. Where is the rebutting evidence? Well, we had Mrs. Elvira Rodriguez who comes in and says before the hurricane she worked down at the Zertuche General Store before the hurricane in 1967. You see George Zertuche, "Mr. Zertuche, did you move the inventory?" "No, sir." "Who did?" "Well, I don't remember their names." "Well, did you help them move it?" "No, sir." "Well, what did you do?" "Well, see, I moved the safe over there." "Well, did you ever go to the store?" "Well, no, not too much." "Well, Mr. George Zertuche, did you ever see a sign above it that said Zertuche General Store?" "Well, I don't remember." "Well, where did you work?" "I worked right behind it." "Well, did you ever see a sign that said Farm and Ranch Supply?" "No, sir, I never did."

What does Mr. Oscar Kirkland say. Mr. Oscar Kirkland, an accountant from Alice, who we had the benefit of coming in here to prove up a bunch of tax returns. Mr. Lozano from the State Comptroller's Office comes in to tell us that he eye-balled a bunch of inventory back before the hurricane and also is able to tell us about zero amount of taxes that was paid by the Zertuche General Store.

Where is Arturo Zertuche, where is Hector Zertuche?

Now, let's discuss credibility. Many of you are lawyers, you know what they tell in law school, credibility means believability. Believability means who is telling the truth. The other side of that, the flip side, is who is lying. We have all thought about it, you've thought about it, I've thought about it. Who is lying in this case? You know, we use soft words, we don't say lie. I tell my little girl, I don't say lie, I say tell the truth. I say be believable, don't bear false witness. Don't give a falsehood. We don't like to use the word lie. But that's what it boils down to, that somebody in this case is lying. You know that as well as I do. Let's weigh the evidence. Maybe it's Red Kurtz from Plains Machinery, maybe he's confused, maybe he's lying. Or maybe it's Red Craig from Plains Machinery or Wanette Driska from Plains Machinery or Crisoforo Chapa. Or maybe it's Arnoldo Alvarez, maybe he's confused as O. P. Carrillo said. Or maybe Abel Ruiz, maybe he's confused or it's Fidel Saenz, who worked for O. P. Carrillo, maybe he's confused or maybe he's lying. Or maybe it's Cleofas Gonzalez who was paid by Duval County to run the Farm and Ranch Supply, not being paid by Farm and Ranch, but by Duval County, maybe he's lying too. Or maybe it's Rudolfo Couling, whose story has been totally consistent everytime we've heard it, maybe he's lying, even though it is totally documented, we will submit to you. Or maybe it's Mr. Don Lee from the Department of Public Safety, I guess he's lying too. Maybe it's Ranger Gene Powell, I guess he's lying to us, isn't he? Maybe it's Zenida Montemayor or maybe it's Oscar Kirkland or maybe it's George Zertuche, who moved this safe. Or maybe it's Mr. Lozano who said zero amount of taxes paid. Or maybe it's Mrs. Rodriguez who worked in that store prior to the hurricane. Or maybe it's Walter Meek, maybe he stuffed all of these invoices in these claim jackets. Or maybe it's somebody else.

Who got \$15,000.00 out of this deal? Who got a \$5,000.00 payment on a station wagon? Who got the use of two Caterpillars and two root plows? Who got a payment on a Massey-Ferguson tractor? Who has the most to gain from telling the truth and who has the most to lose from telling the truth. I submit to you that O. P. Carrillo watched us in the Judicial Qualifications play out our entire case, our entire case, is all laid out before him after we had called him a couple of times as a witness. He saw the whole case played out and then he came up and I would submit to you he tailor-made a story to fit around what we had. I'm not much on poetry, but one of things that comes to mind is a saying by Sir Walter Scott, "Oh, what a tangled web we weave when first we plan to deceive." Mr. Mitchell is an outstanding attorney. We were in trial in this case for two months in Corpus Christi, Texas. The highest thing that could come of that case was removal of office. That was the ultimate. You heard O. P. Carrillo say

politics is our way of life, that's what we have been all of our life, our whole family is in politics, in public life. Here's the political future of this man, O. P. Carrillo, on the line here today with you all's vote. And I figure that Mr. Arthur Mitchell would bring out the big gun. We went through the removal, we're coming up to disqualification, we're coming to the State Senate for the first time in forty-four years, here it comes. We didn't hear it down there in the Judicial Qualifications, but they're going to put it on us. Arthur and I go out and run in Corpus Christi together, we run down at the YMCA together. And I say, all right. Here it comes, you're going to lay it on us. Who do we have now in addition to O. P. Carrillo? Well, we have got Mr. George Zertuche who tells us about this safe being moved. We've got Elvira Rodriquez who tells about 6:00 o'clock one night about when she worked at the Zertuche General Store. We have Mr. Oscar Kirkland who comes in and says yes, he identifies his name on the income tax returns that were filled out with information that was given to him. Ramiro Carrillo, sure, Ramiro Carrillo is called as a witness, we took his deposition, we called him as the second witness in the Judicial Qualifications Commission. Mr. Arthur Mitchell called Ramiro Carrillo as a witness. Where is Oscar Carrillo, where's Rogelio Guajardo, where's D. H. Carrillo, where's D. C. Chapa? They have all testified and their testimony is in the record.

I submit that there is no defense in this case, only a smoke screen. What you have before you is a smoke screen; it's like a brush fire over here and we have the smoke all in front of us. And what is the smoke screen; it has politics written all over it. What do we spend our time listening to. Well, you see you've got Terry Canales, he's out to get me and you've got George Parr and he was out to get me and you see, Archer Parr came up and saw John Hill, it's all this politics, you see. It's all this politics. I submit to you it's a smoke screen to divert your attention away from the facts that are in these books. And you know why, because I would submit to you that the defense in this case on the facts rest in shambles. What we have listened to is a bunch of politics. What I tried to tell you about this morning are the facts.

You know, I wish you could go to Duval County if you haven't done so before. I have had the opportunity. Go up and see that courthouse, you go over and see the Water District office, you go over and look at the Benavides Independent School System. And I don't think anyone who has seen it will say that it is one of our best in the State of Texas. You say, "Why? I don't understand it. Look at all these oil wells out here pumping? I don't understand." Then I ask you after you have gone to Duval County to come back and look at the account of Benavides Implement and Hardware, E-191, look where the money came from and look where the money went into.

My first experience with a Judge was in practice court up at Baylor Law School, Judge Frank Wilson. The first experience I ever had, and I thought that a Judge was beyond reproach. A Judge. Our Judiciary we think so highly about. I have gone through about three months listening to the poor people of Duval County tell me about another Judge.

I tell you that a duty is owed by the public officials in this state to serve, not to steal.

I had the opportunity to go up to the United States Supreme Court with Attorney General Hill and to argue a case. As we were coming outside, I turned around to look -- my first experience in the U.S. Supreme Court. It says in marble -- right above the Supreme Court, it says, "Equal Justice under the Law." Equal. No matter how high a position you might hold, or how low a position. Equal for everyone.

I tell you that Duval County cries out for justice, equal justice for everyone in Duval County.

I submit to you the evidence that we have presented you on Article VII shows beyond a reasonable doubt that a case has been made.

Ms. Levatino at 9:47 o'clock a.m. began closing arguments on Article I.

Mr. Odam has told you about Article VII and the evidence presented to you on that Article. I will now talk about Article I of the Impeachment Articles which states, or charges that Judge Carrillo, while holding office as a District Judge for the 229th Judicial District of Texas conspired with others to have Duval County pay for groceries to which he was not entitled, and which were used for his own personal use and benefit.

Admittedly, this Article has been more difficult for you to follow. Testimony over this Article has gone over a four-month period. We did not have an opening statement on it, but I submit to you that the system used is no more difficult than the system used under Article VII. It was a fraudulent scheme, utilizing the welfare system of Duval County to get groceries which Judge Carrillo used paid for by County money.

You have heard testimony, that it is undisputed that welfare -- that Duval County had a welfare system like many other counties. This program is supposed to be used for needy persons to obtain food, medical services and other essentials of life that the County will pick up the tab for. How does it work? How is it supposed to work?

The needy person goes to the official who can authorize the welfare. The official authorizes it by signing a form. That form identifies the individual who is to receive it, the kind of goods or services to be received, the amount of goods or services to be received, and the vendor or seller of those goods or services. He signs that form on the lower left-hand side. You have heard many of them discussed up here.

The person receiving the aid is supposed to sign it on the right-hand side. The pink copy of that form is retained by the authorizing agent. The yellow and white copy are given to the person getting the aid. He takes those to the store, and then at a later time, that store takes the white copy, returns it to the County Commissioner with proof of delivery of service, which is usually an invoice from that store, and that claim is subsequently presented to the County Auditor's office for tabulation, presentation to the Commissioners Court. The Commissioners Court then issues -- authorizes the claim and authorizes the issuance of a check in payment.

This is the way the system is supposed to work. This is the way the system, in fact, has worked and does work today.

In evidence there is a series of claim jackets labeled House Exhibits 1, Subparts 1 through 38. The actual operation of this system in the correct manner is reflected in that Exhibit. I would suggest that you look at Senate Journal Pages 400, 424, 372, for example. On each one of these pages, you will find a welfare form for groceries written out to one individual.

Edna Sanchez for \$35; Daniel Villarreal for \$35.14. These were true welfare forms, as suggested and testified to by Mrs. Yzaguirre.

Yes, Mrs. Yzaguirre, Cleofas Gonzalez and the Judge himself have testified that this is the way the system is supposed to work. However, this system, paid for by the taxpayers of Duval County to aid the needy in that County, was twisted, misused and abused to allow Judge Carrillo to get free groceries.

How was it done? It was submitted by a -- it was done by submitting false claim vouchers that would be made up -- they are people having allegedly received groceries. That would be taken to the Cash Store and then submitted to the County Commissioners Court so that the Commissioners Court would write a check to the Cash Store so that part of that check could be applied to Judge Carrillo's charge account for groceries at the Cash Store.

What is the evidence as to the operation of this fraudulent system? First of all, it is undisputed that the Cash Store was a small-town grocery store in Benavides, Texas. It had a system of charge accounts, and we know how that worked. People came in, bought groceries, signed adding machine tapes that reflected how much they bought each time. At the end of the month, those were added up, the people came in and paid for their groceries. The tapes were given to the people on payment of the

groceries.

It is undisputed that the Cash Store was involved in the welfare system. It is undisputed that Judge Carrillo had an account there. He testified that he had had a personal account for fifteen to twenty years. He picked up groceries himself. His employees picked them up. They signed the adding machine tapes.

We have in evidence H-3 which is representative of Judge Carrillo's personal grocery store account for August of 1972. These groceries were used at the ranch. There is no dispute as to this.

The crucial issue, of course, is who paid for these groceries in Judge Carrillo's account? Mrs. Yzaguirre said that she applied \$300.00 off of every County check that came to that store to Judge Carrillo's account. Why did she do this? Because Ramiro Carrillo told her to. She has testified over and over again as to this. Pages 473, 456, 457, 467. She did this ever since she has been bookkeeper of the Cash Store.

She didn't deny that she knew those claims were fraudulent. Yes, she knew it. She did not give Tete Chapa or Rosa Chapa or Patricio Garza or Rosa Garza or Michael Ruiz or Consuelo Hinojosa or Jose Sendejar, or others groceries that were paid for by the welfare system. These names appear over and over and over again in House Exhibit 1.

Patricio Garza's name appears twenty-six times. Rosa Garza, twenty-nine; Mike Ruiz, nineteen. What does Mrs. Yzaguirre say? "No, I didn't give these people welfare groceries." What does Patricio Garza say? "No. The Garzas paid for their own groceries."

This is in accord with the testimony of the Chapas, of the Garzas.

The Chapas admitted, in 1967, they did get welfare assistance when they needed it at the birth of their first child. But, since that time, during some of the time when they were not even in Benavides, they did not receive welfare groceries.

This is also in accord with the testimony of Cleofas Gonzalez in two ways. First of all, he testified up here that he knew some of those people weren't getting those groceries. Why? Because Mike Ruiz left Benavides in 1960 or '61 when he was about twelve years old, and hasn't been back.

Why else does Cleofas Gonzalez know? As he testified, as Judge Carrillo testified, since 1967 when Ramiro Carrillo became Commissioner through 1974, Cleofas Gonzalez handled the book work for the welfare system. People came to him to help -- to get these authorization slips. Did Rosa Chapa come? No.

That's what Cleofas said. Did Tete Chapa come? Did Patricio Garza come? No.

After he left employment at the Farm and Ranch Store, he also was still involved in the County welfare system. Still, these people, these people -- Jose Sendejar, Consuelo Hinojosa -- the names that you can look throughout the entire scope of Exhibits up here, over and over again, did not come to him for assistance.

Look -- talking about the Exhibits, H-1(1) through (38), you will find a series of Duval County official claim forms backed up by Cash Store invoices, each one each month for \$160.00, and one total for \$140.00, adding up to \$300.00 a month. Of the first twenty-eight claims in evidence, twenty-four of them have this kind of configuration. Of those other ones, you find ones for \$120.00 and \$180.00 with the same names on them. You find them for \$300.00 with the same names on them. Look at those names; look at those Exhibits. You have had them for a long time, as has Judge Carrillo and his Counsel.

Also, among those Exhibits, you will find a number of them that have the initials "O. P." on the bottom. Who put those on there? Cleofas. "Why did you put those on there, Cleofas?" "I put those on there 'cause those were Judge Carrillo's orders." "Were those his welfare orders?" "No, he wasn't giving out welfare."

Judge Carrillo testified, he didn't give out welfare in the years that these claims reflect. He says, "I stopped. I was active in 1960. I stopped in '67 when my brother

came over, and I had literally no involvement from '67 to '70 except perhaps occasionally."

No, these weren't his orders that he gave out. These were the names of fake orders so that at least \$300.00 would be shown in that check coming from the County so that it could be applied to his personal charge account.

We have heard a lot of talk about these chits, these little handwritten things that Judge Carrillo says he wrote out. You will find them as examples in House Exhibit 1-(4), 1-(11), 1-(23), and 1-(2), and also House Exhibit 4, which is a set of fifteen.

The Board of Managers submits that these were fraudulent -- were written to fraudulently support these fraudulent claims.

What does Judge Carrillo say about these chits? He says that, "Yeah, I wrote them, but I wrote them in the '60's. I didn't write them past that time."

To support this, what did he introduce? He introduced the Respondent's Exhibit 104. It is an example of the kinds of books used. Of course, these books, it is true, were used in '63, '64, '65.

I submit to you, you could not find one pink copy in that book that has a list of names. If there is one, there is not much more than one. There are forty-two books over there, and I invite you to look at them.

Additionally, in those -- that book that's up here, there are examples of the chits that Judge Carrillo wrote out. Two things are interesting about that. One, each one is dated. There is a date on those chits. There is no date on the other chits which we have in evidence.

Secondly, those chits look ten years old. They have been around for ten years. Look at the actual evidence, not just the reproduction that is up here on this box. Those chits are not marred, they are not weathered. They do not look ten years old because they are not ten years old. They are, at the most, one or two years old, as Cleofas Gonzalez testified regarding H-(4).

Where did Cleofas Gonzalez keep those chits that he kept back? In the glove compartment of a truck. If they had been sitting in there for ten years, wouldn't they be weathered? Wouldn't they be battered? No, I submit to you, they wouldn't because they aren't that old. They were written in the 1970's to support this fraudulent scheme.

Judge Carrillo, himself, had a little problem with these chits. Initially, he testified on Page 1880 that all the chits were written at the same time, and there are only fifteen or maybe twenty of them. When confronted with the fact that we had more than fifteen or twenty, in fact more like forty, on Page 1897, he begins to say, "Well, maybe they were written one or two times." And, by Page 2945, they were used over a short period of time in the 1960's when they didn't have any books.

Let's look at that short period of time in the 1960's in the example of one person's name, Mike Ruiz.

Mike Ruiz' name appears on each one of these individual chits in each Exhibit. His name appears nineteen times. He moved from Benavides, according to the testimony of Cleofas, in 1960 or '61 when he was twelve years old. Did Judge Carrillo write out chits to Mike Ruiz, a person who was twelve years old; whose parents lived in the same city he did; whose father was working with Cleofas Gonzalez? I submit to you here that he did not. That was a name used to support these fraudulent documents. It is incredible to believe that even if Mike Ruiz would have come back periodically after 1960, at the time span that Judge Carrillo says he finished operating in this system in 1967, at the most, Mike Ruiz was seventeen years old. And, yet, his names appears on each one of this batches of chits.

Final comment on the documentary evidence. Many names appear on these, \$140.00, \$160.00, Duval County welfare claims. Many are Mrs. Perez, Mrs. Gonzalez. The Board of Managers has presented to this Court a number of witnesses whose names do appear with consistent frequency throughout these Exhibits. Each one of these people has gotten up and said, "We did not get groceries paid for by the County

welfare system." Not one witness -- not one witness whose name appears on those slips has appeared saying that they did get welfare groceries.

Additionally, Judge Carrillo has pointed out that there may be more than one Patricio Garza or more than one Rosa Chapa or more than one Tete Chapa in the County. We haven't seen them. Why haven't we had any of those witnesses that did get groceries or another Tete Chapa or another Rosa Chapa? Because they don't exist. Because these were nothing more than fraudulent claims.

We have alleged a conspiracy. Who is a part of this conspiracy? The Board of Managers submits Judge Carrillo was in two respects: he got groceries which he used, which he knew he didn't pay for, which he knew the County paid for. And he wrote out these chits to support -- to give documentary support to this fraudulent system.

Cleofas Gonzalez. Yes, he was part of the conspiracy. He wrote out the names on the Duval County welfare form. On the instructions of Ramiro Carrillo who was his boss and County Commissioner during this period.

Mrs. Yzaguirre. She was part of the conspiracy. She also acted on the instructions of Ramiro Carrillo and applied \$300.00 a month from that county check to Judge Carrillo's personal account. She knew the names she wrote on the invoices weren't receiving the groceries. But Ramiro Carrillo was the County Commissioner, and he told her to do it.

And who is the most integral part of this conspiracy? Once again, Ramiro Carrillo. What does he have to say on that? As Mr. Odam pointed out, we don't know. He was questioned on four different occasions, and each time, Judge Carrillo's brother did not furnish us with any information. What is Judge Carrillo's answer for how these groceries were paid for? He's introduced a bunch of checks. He said, "Here are my personal checks all made out to the Cash Store. They must have paid for these groceries."

Let's look at those checks. There are two sets, one which I refer to as the prior R-1 Series, or one through R-6, which we introduced earlier in these proceedings back in October. Then, there is the second set, R-22 through 88 and R-96 through 156. The bulk of these checks which were introduced just two days ago -- long after we had been trying this case in Corpus Christi and here; and were introduced pursuant to some probing questions by the Board of Managers.

After eliminating the duplicating checks, which I have done, look at these checks. We first of all could probably disregard the two checks written in 1962, the twelve checks written in 1963 and the twenty-two checks written in 1967. Let's look at the time period in question. In 1970, thirty-five checks were written to Cash Store. In 1971, sixty-two checks; '72, fifty-two checks; 1973, thirty-six checks, and in 1974, just through July which is all we have in evidence, eighteen. Does a person who has a charge account for groceries who can go in and charge and has had this for twenty years as we have testified, who is a regular customer of the Cash Store, does he write sixty-two checks in one year to pay for that account? Does he write fifty-two checks in another? What kind of a charge account is that? Thirty-six in another; thirty-five in another? If we are to believe that these checks were written for payment of his groceries, then Judge Carrillo has been paying his account daily, weekly or at the very least, every ten days even in the years when there were only thirty-five and thirty-six checks. Many of these checks were written on the same day. Most of them are all for the same amount, \$50.00, \$20.00, \$10.00, \$100.00. Is this the way you pay for your personal grocery account when, as everyone has testified, he could go in there, his employees went in there, but yet he was so concerned evidently about his grocery store account that every ten days, he went in and asked, "How much do I owe?" And paid some money.

The Board of Managers submits there is another answer, and that is that those checks were cashed for cash. They were not cashed to pay for his grocery bill. Mrs. Yzaguirre confirms this. She said that he came in and cashed them for cash. Everyone

knows there's no bank in Benavides. The Cash Store was open late, was open on Saturdays, was open on Sundays. People used the Cash Store as a bank in that city.

Now, the Judge admitted at Page 3082 that he did cash checks, but only one or two. In all fairness to the Judge, this statement was made before the second batch of checks were introduced two days ago. But, even then, all thirty-six checks written in 1973 were in evidence in the R-1 through R-6 Series. In light of the rest of the checks which he has introduced, one of his statements cannot hold up. Either he paid his grocery charge account every ten days or less or he cashed a lot of checks at the Cash Store as the Board of Managers contends. There is another inconsistency I'd like to point up briefly, referring you to Page 3085 and 3086 of your Journal. Again, before this most recent Series of checks were introduced, we found that there was a gap in checks in 1972. No checks were written between August and November. And we asked Judge Carrillo, "Didn't you buy any groceries then?" And Judge Carrillo very kindly offered to explain what happened. "Well, you see, we took all our cattle. We took them from all the ranches and sent them way down to Starr County, because we had a drought problem and there wasn't anything to eat. So we didn't buy any groceries from August until November of 1972. You see, that's what happened." Okay. Now, we have a new Series of checks introduced by Judge Carrillo. And I would ask you to look at those. And if you do, you will find that between August and November of 1972, \$658.00 worth of checks were written at the Cash Store. And in the month of December alone, \$670.00 were written to the Cash Store.

What is the answer to this inconsistency? Well, maybe all of a sudden, Judge Carrillo did start cashing a lot of checks during that six-month period. Not any other time, but during that six-month period, yeah, he must have cashed a lot of checks. Or maybe when Judge Carrillo was confronted with an earlier gap in those checks, he found that he had to find some excuse for that gap. And, now that remains in the record -- totally destroyed or totally in conflict with the documentary evidence.

Before leaving the checks, I'd like to make one other comment. The testimony has been that none of these checks really reflect what they were for. Of course, the Article VII checks, Judge Carrillo did manage to say what at least he thought they were for. There are three checks, however, out of this whole batch, there are three checks which tell us what they are for R-129, which is the same as R-146, said it was for trailer groceries written in October of 1973. R-136 shows "balance, '73," written in December of '73. And R-153 says, "balance of March," written on March 13, 1974. Again, this is consistent with Mrs. Yzaguirre's testimony. She said the Judge came in and paid his balance when it was -- when there was money -- a balance left over the \$300.00. She didn't deny that he never paid that. She just said that \$300.00 of his bill was paid every month by that County check.

It is also interesting to note that the term "Ranch groceries," is written on many of the checks in the R-95 through R-156 series which were written to other grocery stores. When he was not at the Cash Store, he was very consistent to write that designation. We submit that he doesn't appear on Cash Store checks because they weren't written for groceries on Cash Store.

Now, Judge Carrillo has one other answer to these charges with regard to this Article I, and that is, "Well, the County Commissioners Court proved all this, therefore, it's okay." It is ludicrous to believe that somehow approval by the County Commissioners Court composed of one member of this conspiracy makes it all right for the scheme to continue. I submit that the ignorant or knowing approval of a fraudulent scheme by any governmental body doesn't lessen the liability of the persons who took advantage of that scheme.

We have presented evidence both live and documentary with regard to Article I. And I believe that the evidence contradicts the testimony of Judge Carrillo and supports the testimony of our witnesses. But let's briefly look at the testimony of our witnesses. As Mr. Odam said, it's a game of credibility. Who are you going to believe?

Tete and Rosa Chapa. These are proud people. They admitted in 1967 they needed help. Now they support themselves and they support their families. They don't want anyone to think that they couldn't pay for their own groceries and the county was paying for them. Tete said that he was not out to get Judge Carrillo. He was not mad at them. Only that his name was used in a way that reflected dishonor or dependency or an economic status which wasn't true. Whatever was happening in this system, the Chapa's were not getting groceries paid for by the County. And that's what Tete and Rosa Chapa were saying. They paid for their own.

Cleofas Gonzalez. You've heard about his credibility through Mr. Odam, and I will not go into it extensively. But, he was not lying in Article VII, and the documentary proof shows that. He was not lying in Article I either. What did he have to gain? He had to gain keeping his job when his boss said, "Fill out these forms." That's all he did. Cleofas Gonzalez was a small part of this particular conspiracy, and there is no evidence in the record that he certainly profited at all from this particular scheme.

Finally, let's look at Patricio Garza. His name appears twenty-six times. His wife's name appears twenty-nine times. Remember, if you will, and I know it was a long time ago, Patricio Garza. He too was a proud man. He has no vendetta against Judge Carrillo. In fact, Judge Carrillo is his boss. He is still working for Judge Carrillo. He wanted this body and all of Texas to know that the Garzas paid for their own food. Not one cent, as Patricio testified, was paid for by the County. Twice he has so testified on direct and cross-examination. The Judge even admits that Patricio isn't a political enemy and is not a liar. Are the Garzas an aberration appearing throughout the H-1 series of claims? Are they the only people on this whole series of claims whose names somehow got on there when they didn't receive welfare groceries? No, they are merely an example of how people's names and indeed reputations were used in this fraudulent scheme.

Finally, Mrs. Yzaguirre. Again, it's been a long time, but please try and recall the demeanor of Mrs. Yzaguirre in your mind's eye. Here's a woman of limited education. She's been sick, her husband has been sick, her father-in-law has been sick for many, many years. They run a small family grocery store in Benavides. She has a very primitive set of bookkeeping system. Could she define the scheme which we have presented here? Was she capable of concocting such a story and telling it over and over and over again without inconsistency? I submit no. She knew what she was doing, and that was following Ramiro Carrillo's instructions and applying \$300.00 of that check to Judge Carrillo's bill. Is she a person with a political vendetta? I think not. As Judge Carrillo testified, everyone was friends down there up until about a year ago. Mrs. Yzaguirre was a friend of Judge Carrillo, he had known her for twenty, twenty-five years. He had traded with her for years. Could she go back and somehow go into the County Auditor's office and change those records? Of course not. Did she all of a sudden decide that she would make up a story about applying Judge Carrillo \$300.00 worth of his bills -- \$300.00 of the County checks to his bills? I submit not. The only reason she said that was that was the truth. That's what was happening, no more and no less.

So, it comes down to whether or not you would accept Judge Carrillo's story, complete with its inconsistencies with the documentary evidence and testimony from his own mouth; or that of Mrs. Yzaguirre, a consistent unassuming and simple story. Ramiro Carrillo told her to apply \$300.00 of each County check to Judge Carrillo's personal account. And that is precisely what she did.

Senators, I submit to you that during the time that Judge Carrillo was District Judge of the 229th Judicial District, he along with others, Ramiro Carrillo and enlisting the aid of Cleofas Gonzalez and Mrs. Yzaguirre did obtain groceries from the Cash Store for his own use. He did not pay for those groceries. Those checks are not for payment of his groceries but are payment -- or written for cash. The County of Duval

paid for those groceries to the tune of \$300.00 a month. Judge Carrillo knew he was not paying for his groceries, and he knew the County was paying for his groceries. As Mr. Odam said earlier, all we ask is that you be fair, that you look at the evidence before you, that you weigh the credibility of these witnesses. And I, too, submit to you that justice should come to every person in this State, no matter how high or how low. Thank you.

THE PRESIDENT: Would you like to take a ten-minute break?

MR. MITCHELL: I sure would, Mr. President.

THE PRESIDENT: The Court will stand in recess until 10:25.

Accordingly, the Senate, sitting as a Court of Impeachment, at 10:15 o'clock a.m. took recess until 10:25 o'clock a.m.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 10:25 o'clock a.m.

THE PRESIDENT: Senate will come to order.
Mr. Mitchell.

Mr. Mitchell at 10:28 o'clock a.m. began his closing arguments.

MR. MITCHELL: May it please the Court.

In the tradition of the ancient Greeks, of which I happen to be a descendent, I hope I do come prepared to speak of justice. I do come prepared to speak of what is fair. I do come prepared to speak of what is right, Mr. Odam. And I also agree at the outset that Duval County does cry out for justice. And I wonder why it took the death of George Parr by his own hand before somebody got down there and inventoried ten, fifteen, twenty million dollars worth of County equipment on his ranch. I do agree -- I do agree that Duval County requires justice, but I represent a man who stepped up to that colossal machine and in his own feeble way attempted to push the tide back and there he sits, accused, sought to be branded and actually ousted from office, never again to serve. Yes, I do agree and Judge Carrillo agreed that justice needed to be done in Duval County.

I submit to you further, had Judge Carrillo tipped his hat and said, "Si, si, Senor Terry", he wouldn't be here. But he had the audacity and he had the conviction of the oath of his office to say, "No, Mr. Canales, I'm not going to step down for these cases. The District Attorney, Arnolfo Guerra, has filed them, I owe the duty and the responsibility under the Constitution of the State of Texas to hear them." And he heard them. For the first time, someone stood in the way of the Parr machine.

Then he got his phone call. Checkmate. There was no other way. So, the sponsor of Mr. Canales, the record reflects he represented them, called him and said, "Judge Carrillo, if you will step down out of these cases the matter will be forgotten." How simple it would have been, I submit to you gentlemen, for him to have taken that course of action, because quite frequently the accusing finger points at each and everyone of us as we go through life. And the wheel cycles and says wait. The best way out would be to cop out. Not Judge Carrillo. Here he is in debt, here he is accused in a public forum as a public official and treated, I might say, in a most shabby fashion. He is a public official and until he is proven guilty beyond a reasonable doubt I'm going to respect that. And that constant digging as if he were a thief off of a freight train belies

his two hundred years in that County and the family of Carrillo in that County.

No, Mr. Attorney General, I agree with you, justice has not been served and it is not going to be served by the deal you made with Rudolfo Couling. And it is not going to be served by the deal you made with Cleofas Gonzalez. But more of that anon.

Let me speak, first of all, to the pleasure that I really sincerely have of being a part of this proceeding. I'm honored that you would invite me on the floor of the Senate to take part in it. And I'm not going to believe what you hear in the halls, "Look Mitchell, they're going to bounce that man out of there so they can go home. There's too much pressure on this group." No, I'm not going to believe that. I'm not going to believe when they say, "There's no way you're going to get acquitted on I and VII, because the taxpayers are on them." I'm not going to believe that. I'm not going to believe that you gentlemen, each and every one being an integral part of this wonderful body that governs us, how much taxes we pay, the air we breathe on an elevator, or where we walk and where we talk, are going to be guided by expediency. No, I'm not going to buy that. Many of you I have known for many years and I have been pleased to know many, many of you. And all I can say is I know I would rather take, the case of my Judge to a group of individuals who are steeped in the skills of politics any day. Why? Because, Senate, this is an impeachment trial, this is a trial that the ultimate sanction is, "Judge Carrillo, you are removed and you may never run for office again." To me it's like a murder case with a death penalty. Take yourself, each and everyone of you have been a politician, have been a part of your community as a politician. And please feel with me the tremendous responsibility you carry if someone had the first year or the second year or the third year of your political life said, "You shall stop. You shall not vibrate any longer in the area of politics. You shall not feel that wonderful power that comes from representing your constituency." I say, it's just like a death penalty. And I know when you get back there and you start reading these Articles of Impeachment you're going to consider it. You're not going to be hurried, you're not going to let expediency be your guide. God forbid.

We haven't had an impeachment for many, many years in this State, it is a procedure that has fallen in disrepute, because it has, as stated in our answer to this case, many times been a vehicle for political fractionalism. And, of course, we must avoid that here or history will speak unkindly to each and every vote.

I will also say this, Attorney General's office, I will take any day of the week the battleground of credibility. And you all are going to have to pass on credibility. I know many of you are lawyers and many of you are non-lawyers, but there's not anything esoteric about credibility. How do you pass upon credibility. See, you're going to have a problem. The written documentation will say A, B, C, D, E. Cleofas Gonzalez says, "Oh, no, it's X, Y and Z" and the ever present Rudolfo Couling says, "No, no, no, it's M, N, O, Z." So we have a question of credibility. When you all write across that paper, keeping in mind the burden of proof, the question of credibility arises. And credibility is like a hurricane. It doesn't blow in one strong gust, it's made up of tiny, small, ripple-type winds. So, you can look at a man when you see him on the witness stand, you look in his eyes, you can see the trade he made. Oh, yes, justice cries out to be done. I will tell you, if there's anybody here, I would like to represent, it's Mr. Rudolfo Couling. Five indictments, freely and completely open and above board that just covered one or two of the cases, the Exxon, the Texaco, one theft and yet he is a part and parcel, jurors and Court, of a scheme to rip that County off, and I have got it right here, \$370,342.00 that I can count. But Mr. Odam says that Judge participated in a vile conspiracy with him and ripped it off for \$70.00 on one occasion. He ripped it off on another occasion for \$930.00. I will say I represent a colossal idiot if he engaged in a conspiratorial agreement and had the control and the evil soul that they attribute to him and he came out with, what? Look at the Exhibit. He came out with \$12,939.00 and you add that one check, that's \$15,600.00 on this Exhibit. That's out of the Benavides Implement and Hardware account. Don't you all be seduced.

And while he was ripping that County off for that fifteen grand my idiot client was doing what, paying \$20,000.00 in American coins to the same outfit. Now, that's a hell of a way to conduct a conspiracy, that really is. And, you know, they make light about things, but cases speak bells to me. You're going to look at these things on credibility.

"Mr. Couling, are you lying about these things?" "Yes." "Mr. Couling, were you a part of this conspiracy?" "Oh, yes." "Mr. Couling, did you steal?" "Oh, yes." "Yes, yes, quite freely." Why? Well, I will tell you why. And you all can look at this, of course, you all know.

Commencing back there after Mr. Canales hung up the telephone call, H.S.R. 161 was drafted. Now, what was the basis for that resolution? Did it say anything about Mrs. Yzaguirre's groceries? Nope. Did it say anything about them bulldozers? Nope. Did it say anything about the Zertuche Store? Nope. What did it say? That Judge Carrillo had been indicted for a 7206 violation, which is a technical misrepresentation of a tax form. I went before the committee and said, "Gentlemen, we admit it." But the cases say you can't be impeached or removed because you're indicted? Why? Thank God we have got a Constitution that says the burden -- the presumption of innocent carries unless we as frail human beings rip it up. Never mind, old H.S.R. 161 got on the track, and here we went. Now, you understand they called Mr. Couling before that committee. "I plead the Fifth." And he pled it, for page after page after page after page. We still hadn't got a case. It was amended, amended and finally in August they struck a deal.

Now, what was the deal. Brother Couling had to hold out the bait. He didn't really want anybody to know what he had to sell or what he didn't have to sell, because he was betting, see. And that's in the language of the Parrs, because you're talking about a man who speaks out of the gutter. He says, "I have got plenty of information." They say, "Fine, sign up." He signs up. Now, what was his information.

Incidentally, you ought to read that agreement, it's very interesting. He's indicted five times and they agree to dismiss every one or any and all of them, just sort of dealer's choice, I will just plead any of them -- guilty to all of them, I will just plead all of them, you all will give me probation and if there's any more revealed while I'm going through this ride of old H.S.R. 161 up and down the vales of this beautiful state of ours they will give immunity on that too. So, what does he testify. It was then that the accusing document was expanded, Jurors, to what it is today.

And that is the next subject matter. What is it expanded to?

Let's take the grocery business. Now, O. P. Carrillo is a Judge, a single man, owns five hundred cows, one hundred bulls, plenty of acreage. And if I know "mama nature" and hadn't been born and raised up here in Williamson County them cows going to give -- eighty percent of them are going to give calves. Let's say four hundred calves a year. Yet, they are accusing this Judge of stealing \$300.00 worth of groceries forever. Now, that's another problem I have as a lawyer. That Article I does not say -- there are no dates in it, there are no times in it, there are no places in it, there are no persons in it and there are no witnesses in it. I'm simply charged with a conspiracy to defraud.

Now, what is a conspiracy? Oh, you can get acceptable definitions. Generally, one is a contract, a combination, a confederacy, an agreement, an understanding between two or more persons by a lawful means to accomplish an unlawful act or unlawful means to accomplish an unlawful act. So, I said, "Wow, that's not in there. Who is he supposed to have conspired with?" So, I listened. I listened very carefully as Ms. Levatino unraveled her case, that's true. When I was up here before I took the records and I introduced Judge Carrillo's personal checks. Then when it came back, if you will recall, my position was and the evidence is, first we -- as you all know, of course, we haven't got any burden, we took it voluntarily and freely. First of all, there is

no proof beyond a reasonable doubt of any conspiracy between Lauro Yzaguirre, Mr. Lauro Yzaguirre, Cleofas Gonzalez, Ramiro Carrillo or O. P. Carrillo or anybody else as regards groceries.

Now, Ms. Levatino says, "But we are willing to gamble on Lauro Yzaguirre's testimony." Remember the facts, now, just remember them. There are two ways this could have been accomplished. One is under the welfare system. These are very detailed and intricate books we submitted. The names are furnished by the groceryman, Mrs. Lauro Yzaguirre. Now, Jurors, who got the check? Who sold the groceries? Lauro Yzaguirre. That is, the Cash Store got the check. Now, they say who got the groceries? I listened to her testimony very well, very carefully. The names would be put into the official form by Mr. Cleofas Gonzalez. I said, "Wait a minute. Credibility." So, I said, "I better go get for that Court some proof that my man has paid his own grocery bill." And I did, I must admit, I had a little fun with the way I did it. I introduced several hundred of them, if you all remember, then a little later on I introduced two hundred forty more of them and I had already introduced fifty or sixty of them, why? To demonstrate this man has paid his own way from the 1960's to date, but that's argumentative. That's really not the problem in their case. The problem in their case on that point arises from the fact that their chief witness wasn't there.

We said, "Well, wait a minute." Do you all recall? I asked her. October 7th, 1975. I said -- cross-examination. I thought, well, we might as well let it all hang out and see where I am supposed to have conspired so I can defend.

Now, you understand, there is no date on my conspiracy, '71, '72 -- I didn't know what date I was charged with. But, Mrs. Yzaguirre took the stand. Now, why would she be anxious to testify. All you had to do was just touch her and she would just flow like a brook. Why? Because she is getting a -- she had a good deal. She was selling groceries to the County, don't you see, and getting a County check for it, and old Cleofas was picking them up. That's what it was. And Cleofas could care less. Man, he had already -- and incidentally, don't you all --

I've got two points I want to make on this. I get ahead of myself because I get excited.

First, and this is the record at 3 -- 476. My question: "Mrs. Yzaguirre, how long..." -- you see, they didn't know I knew it. I let them just play that game all up and down the road. On cross, I said, "Mrs. Yzaguirre, how long were you absent from the store with your illness?" "Oh, about two years."

Two years? This is somebody I am supposed to have conspired with? This is -- somebody that I had a secret meeting -- now, you understand a conspiracy, jurors, it's an agreement, generally under the cloak of night or some place that's secretive where we are going to steal. She says, "I wasn't there." "You were absent from the store for about two years?"

And, I am still reading at 476, and I am sure you all will take that record and review it on your own.

"And what two years were you absent?" Well, of course, I knew it wasn't two years. I knew it was longer, but I thought I would just take it all the way out. See, I get fussed at a lot of times, and lawyers do that. I just -- I knew she had been gone longer than two years.

She said -- her answer on the top of Page 476: "About 1970 to about late '71." See, going to minimize it; two years. All right. And then I say, "It's an unfortunate thing, and I don't want to embarrass you, but you really weren't in the store." Her answer to me was -- she was very defensive, if you will recall. "You won't embarrass me at all."

My question, "You weren't in the store at all in '70 and '71?" Answer: "'70 and '71.' 'In perhaps '72?' Answer: 'That's right. Probably just the beginning of '72.'"

So, what does the testimony show? The Board of Managers has the duty beyond a reasonable doubt, which the cases define, excludes to a moral certainty every other

reasonable hypothesis except the Defendant's guilt beyond a reasonable doubt. It's the type of testimony we lawyers refer to as that "would you convict your grandma on?"

So, what happens. Mrs. Yzaguirre steps out of the picture for three years.

Well, then, they sat up here and point their index finger to me and say, "Why didn't you call this witness?" Listen. They have -- all they've got to do is push a button and the great mighty State of Texas furnishes them a helicopter, an airplane, a bus -- it don't make any -- they can haul anybody anywhere they want, and don't you think they couldn't. And don't you think if they didn't have a witness on that score.

Mr. Lauro Yzaguirre, as Judge Carrillo reminded you, was called, but he got on the stand upstairs, and it just didn't come out right. And she stood up and said, "Now, wait a minute. Now, he's not doing it right. Let me go and sit him down and shut him up, and bring her up there."

She was out of the store by her own testimony then -- during this period of time. So, when is the conspiracy? Was it pre -- did it predate this? Did it come afterward? With whom was the conspiracy?

There is not one iota of evidence that Judge Carrillo talked to anybody about any groceries, Cleofas Gonzalez notwithstanding. And, if he so testified, Jurors, which I'm sure they could get him to testify to anything they want. All you have got to do -- I can -- I can take the money and the wealth of the State and the resources, and I can convict anybody in this Court for crucifying the Lord. You give me that power, and that's a terrible thing. That's a terrible power, and the only thing that stands between that and this man's conviction is the God-given right to have a competent lawyer, and hopefully, and hopefully a Court that says reasonable doubt; reasonable doubt. And that's what I'm speaking to you gentlemen about. That's what I am speaking to you gentlemen about.

Now, but you, "Wait a minute, Mitchell. Wait a minute. Now, I think we are going too fast."

You all are going to have to believe -- on I, now. Still on I. You are going to have to believe -- it is hard for me to conceive how they framed it or why they framed it the way they did. And I know, I got some of the folks a little upset when I went through all these Commissioners' names, but I did it for a reason. I said, well, there is no way in the world, Jurors, that you are going to get a check out of the Commissioners Court of Duval County unless you have got a fix with them. There is -- there's four of them. They are elected by precincts, and the County Judge heads that precinct up. That claim goes into there. Who wrote that claim out? Cleofas Gonzalez. It is in his handwriting. Oh, yeah. We need to put a little "O. P." down there at the bottom because he wanted to really be -- he wanted to always have an out. He put the initials "O. P.". Not Judge Carrillo. He did.

Now, you understand the whole welfare program was authorized by the Commissioners Court. It isn't something that we all got in a poolroom at night and conceived a way to rip the County off for groceries. The Commissioners Court said, "We are going to have our system of welfare administered in this manner. Here is the welfare officer. Here is the official form. Here is what you do. This triggers the procedure."

And, you remember, Mrs. Yzaguirre said, or Mr. -- and incidentally, Mr. Abel Yzaguirre is the man that got all the checks. He endorsed the checks. You all can read them -- that the procedure would be commenced where she would take the list, don't you see, and Cleofas would fill it out. He would take it to the Commissioner, he would sign it, and it would go -- and Mr. Meek said it would be then put into the procedures for the meeting every month of the Commissioners Court. He would take them, he would arrange the claim, give them to the good old Mr. Hinojosa. He would stamp them, bang, they would go into the docket, they would be approved or disapproved in a public hearing and paid. Not with a check to O. P. Carrillo, but a check to Cash Store. That record is replete with checks to Cash Store.

If there were no groceries being delivered, or if they were being delivered to Cleofas Gonzalez, Mrs. Yzaguirre had to come up here, had to take the position. Why? She was directly in that conspiracy, and I think Counsel admits that. I think she admitted it, that she was a part of the conspiracy, and I agree. And I agree that Cleofas was a part of the conspiracy.

All right. That leaves one final out. Cleofas Gonzalez conspired with O. P. Carrillo.

I've got to say one final out because there is no evidence. Now, they have brought in evidence of Mr. Juan Leal from Concepcion and all these other folks. I had them listed here. All these Commissioners. Archer Parr who presided -- there is no evidence of any conspiracy between O. P. Carrillo, Ramiro Carrillo and Archer Parr, Felipe Valerio, Ramiro Carrillo, the rest of -- Juan Leal. None. Nor was there any evidence -- and that's why I ask the question about the successor Court. You see, I am trying -- I was trying to find out what I was charged with. I knew there was one Court in '71 and it flipped around in '75 and, "Well, maybe we had a conspiracy with the '75 Court."

So, I ask Judge, "What are they? Who was on that Court?" There is no evidence of any conspiracy.

So, that leaves a conspiracy between O. P. Carrillo -- now this -- and Cleofas Gonzalez. Now, I submit, the House Board of Managers ain't in no better shape when they get Cleofas, and they have got to hang it on Cleofas. Why? Because Cleofas ain't talked to this Judge, by his own admission, since May of 1972. They had a quarrel. O. P. Carrillo went into the store on one of those few occasions that he went in, and confronted him with the fact that a man down the country had said something about a bill from Farm and Ranch that hadn't been paid, and he said, "If you don't like the way I'm running this store, you can have it." Judge Carrillo says, "I think you are right." He went to Corpus Christi and went to work for Page Aviation.

So, what happens to the conspiracy under Article I? What happens to it? Mrs. Lauro Yzaguirre wasn't there, by her own testimony. Cleofas Gonzalez was gone. I'd say this, that the Board of Managers has failed in every essential element under Article I. I say further that the evidence revealed that Judge Carrillo maintained a personal account and that he paid it. And, if you gentlemen have any question about it, here are the original checks.

God knows, if I had ever -- would ever be called on to produce paying for groceries in 1962.

Had I not had these checks, Mr. Odam would have said, "Look here. You can't produce no checks." I'm damned if I do and damned if I don't. I produce a check. He says it's a forgery. I produce a check that says "tubing". That's a lie. I produce a check that says "counter". That's false. Thank God, I produced them, though.

And, thank God, I produced my tax returns. You saw how blase that was yesterday. Here's a tax man says, "Why we don't -- we are not contesting the fact that all that went in there."

You should have heard it at the Judicial Qualifications Commission. We were stealing everything, throwing the neighbor's cat through the window, everything. I'm going to get to that Number VII next.

But at any rate, don't you all step out and guess this man into political oblivion. Please don't. Don't you all brand him and put outlawry on him, because that is what it amounts to. A man whose life is politics.

You all know it, and that is why I'm pleased -- I'm pleased that I've got this forum. I really am, because I know you all. You are political animals. You are tough. You have got an esprit de corp, and it's great. I watch the in-fighting here, and you think, "My Lord. They are getting ready to bounce each other out." But, boy, you let somebody else take on one of you.

But remember. Suppose you were up here. What state of mind -- what subjective state of mind would you want to judge you, pass on you? Flip out there and buy that hogwash? No, sir. The "Terry Canales Special" hadn't quit yet. It hadn't quit yet. H.S.R. 161 now ends up in VII, Roman Seven (VII). I was pleased to have tried it at the Judicial Qualifications Commission, and I will try to be accurate with the record.

Now, at the Judicial Qualifications Commission level -- and if you all will recall, now. Let's kind of read it together because we've got the same burden.

It says -- Article VII -- "While holding office..." Now, I have had -- incidentally, that is a phrase in both of them, I and II. I don't know what office he's -- what they are talking about. I have always understood -- I am going to digress a minute with you all's permission -- that the impeachment process was to remove a person from office for misdeeds in office which impaired his official function. Now, administration.

Now, incidentally, on that score, jurors, Randall Nye's testimony I submitted to you. I didn't bring him up here, but he testified that in his actions in the Court, he was punctual, he treated the jurors with courtesy, the Bailiffs, the litigants, and he did business with dispatch.

So, "While a Judge", puts me at a disadvantage. I don't know when they are talking about.

And, I submit this, incidentally. There is no evidence, absolutely no evidence that involves under I or VII beyond November of 1974, November the 22nd being Judge Carrillo's -- the date of his Certificate of Election. The only exception to that is a check coming out of the Duval County Treasury to Cash Store dated a few days after that date. That's the only evidence that comes anywhere near being after the date of the Certificate of Election.

Let me ask you something, gentlemen. You say, you can read the history of the impeachment procedure. Here is a man in office who is abusing his office, who is guilty of maladministration and the procedure was used to remove him. Suppose he hadn't run. Or suppose the act had occurred while he was J. P. in his first term? I say that, first of all, the Certificate of Election and his announcement. You know, we all get rocks thrown at us. Good Lord, you gentlemen in politics, you get accused of everything there is. If everytime one of you got accused, a State Representative, they can pop up here and file one of those things on you, you would be dead. But what does the law in its wisdom do. The law in its wisdom says this: That everytime a man announces for office and he seeks the election and he declares his qualifications to the people and the people honor him with the majority vote, and issue a Certificate of Election, issue it out of the proper Secretary of State's office, out of the proper agency, that Certificate washes out.

Suppose we undertook tomorrow to impeach any one of you gentlemen on both terms in this Body for an act that occurred during your first term or during another office? You say, "My Lord, is there never ending?" Sure. It's the same species of cat as the statute of limitations. We say, "If there is going to be a movement against this public official, it must move diligently, and it must move within the current office." So, I am at somewhat of a disability because I don't know what they are talking about. But they say, going back now when I made that little speech on current term, I don't think, if it please the Court, and my opinion is set out in my Answer, I think the prior term doctrine is satisfied here, and I don't think -- I think it's stipulated there are no acts of misconduct, in no way, fashion or form in any of them after Judge Carrillo was elected.

Now, let's take Article VII. Now, you see, Mr. Odam tries to render Article VII today a very simple Article. It's a question to generate money and stealing it. Let's examine that. Now, at Corpus, and in this hearing, I discern that Article VII, which charges my client, Judge Carrillo -- now, let's follow it. You lawyer folks and non-lawyers, read it carefully. Says, "O. P. conspired with others." O. P. Carrillo at a

given date, unnamed, at a given time, unnamed, at a given place, unnamed, conspired, the contents of which is unknown, with others, the identity of whom is unknown. Now, that's just about what the charge is. Now, you lawyers try to defend that if you want something to keep you up all night. What did it charge him with? To charge and collect money. Now, Judge Carrillo conspired with others at these indefinite times, places, etc., etc., to charge and collect money from governmental entities for rent of equipment that did not exist, and -- not disjunctive, for rental of equipment that did not exist and for rental of equipment that the government entities did not use. Now, I don't have to talk about the disjuncted and conjuncted to this group. You all have been disjuncting and conjuncting in the legislation of this State long enough. The burden is there to prove the conjunctive.

Now, the Board of Managers had a little difficulty with this at the outset. They started out with the Zertuche General Store. Said, "Oh, listen. Damn, they got down there and got indicted, and the Zertuche Store is the way to do this." So, they took off with the Zertuche Store, said it was a sham, didn't exist. And all the time they did, they had the tax returns in their pockets showing that that store had reported its sales taxes through 1970 just like I said. All the time they told you all that it was a sham, they had Arturo Zertuche's tax returns showing he reported income up to December 30, 1970. That part of the great railroad train, H.S.R. 161, began to wobble real quick. They thought they had an easy one.

What happened was this: the House Board of Managers took the position that the vehicle of the Zertuche Store was a sham and was used to rent non-existing equipment to the County and, under the Article, rent equipment that the County did not get the benefit of. Let's examine it. First of all, I don't know how else I could prove the reality of a business. I have proven the store license. Now, you all understand we're talking about conspiracy. Let's say you and I step back in a back room and we are going to create a false vehicle, and we're going to use that false vehicle to rip the County off for three hundred, four hundred, five, half a million dollars. Do you think I'd file an application off up here and tell who was all in that? Do you think I would ever write a check to anybody if I really had an evil heart, if I was a felon and I was going to steal, do you think I'd --

And, you know, jurors, occasionally a bell rings to me in cases. Really, a bell rang here. Mr. Odam said, "Mr. Kirkland, what's that Mexican money in that man's work papers for? \$889.00." Good Lord. Mr. Kirkland said, "Oh, well, he had gone to Mexico and cashed some checks, cashiers checks, and had that Mexican money brought back and deposited and put it in his account." I said, "Good Lord. Here's a man that had cash." I mean, you know -- and Mexican money -- that says, "Mr. Accountant, please put this in the account." And it's there to read. That's the heart and soul of a man bent on mischief and thievery? Absolutely not. And it's ridiculous.

Well, let's get back to this Article VII. So, I put the accountant on the board. And I did it for a reason, jurors and Senate, Members of this Body. For what reason? To show -- "what other evidence, what other criteria do you have running your business? You have an address?" "We had an address." You remember, they fought around about that, till I brought in -- what? Elvira Rodriguez says, "Yes, I run it. It has merchandise. The storm damaged the building. We moved it." "Who moved it?" "George Zertuche, Sr." George Zertuche on the stand, "Yes, I moved it. I moved the big safe with a fork lift, and there was -- the rest of the equipment and merchandise was moved." I submit to you about a long about there, the vehicle of VII had flip-flopped and was beginning to wiggle and gasp very badly for air. And I'll tell you when it died. When the tax returns showed that the last time they ever reported was December 31st, 1970, before Judge Carrillo took office on his first term.

So, we got away from that real quick. Did you notice that? So, I'll tell you the next device they used on me. Now, you understand they have not answered any of my discovery. They hadn't furnished me any evidence at all that I would be entitled to

going into trial. Nothing. And I will say I resent that horribly. For what reason? Because, again, jurors, I represent a public official. Do you mean to tell me that I can get the worst Chicano, the worst black man, the worst poverty-stricken man in this County and give him the benefit of every vehicle that's known to God and man and take a man who is a Judge and can't get it? What are we coming to? That's terrible. That's terrible. I mean, I'm not having anything -- because, you know, Lord knows there ain't as many Greeks in this County as none of them. I have nothing to quarrel with the Court but I'm talking about why has that been the attitude of this case? If I represented a poverty-stricken man, I could file a motion in the Federal Court and I'd have forty-two people doing forty-two different flips.

But, Don Lee, the D.P.S. employee would sit down with Cleofas Gonzalez, an admitted indicttee, a man who he had gathered evidence, and has proudly stated, "I got him indicted five times," and ripped out information from those two thieves and those two thugs that are found in R-90, 91 and 92 and wouldn't have the courtesy or decency to crawl, walk across the street to a man who is a District Judge of that community. And you tell me that this man is subject to impeachment. I say turn him loose and I'll guarantee he'll clean it up. It's terrible. Terrible. Don Lee sits here, and I say, "Well, look, Mr. Lee, you're a D.P.S. man. You're a secret servant. You hold all these appellations and everything." I just hope the Lord old H.S.R. or nothing like it ever gets ahold of me.

Yes, two hundred years in the community. Officials from year end and year out. He is not entitled to the courtesy of a talk? And I submit to you if Don Lee had walked over there and talked to him that Cleofas Gonzalez would have been indicted and put in jail. But they weren't interested in that because it is politically oriented. When the time came that the power forces were out, you could, by the District Attorney of that County, have filed those pleadings with this man and he removed them -- and, incidentally, the Supreme Court affirmed that action four, five, six times. I know. I handled these cases. Yes, it was politically oriented and it's still is politically oriented. You can't tell me that an agent of the State of Texas, a D.P.S. man, a representative of the District Attorney's office, a representative of the Attorney General, the executive branch, in its full-bloom, pristine glory, can't walk across the street and talk to a man who was a County Attorney, talk to a man who was a District Judge twice and elected by his community? If that's the case, then take your Certificates of Election and tear them up and throw them in the fire, because they are not worth anything. That's not how I think. I say they are. And I say they are badges of accomplishment. And I say when you get them and you put them on the wall and you come up here, by God, I'm going to respect it. And when a man walks in my office and says thus and so and thus and so, the first call I'm going to make is call that man. That's a terrible way to handle an investigation.

But, I'll get back to that.

Cleofas had a deal to make. And he poured it out. Because he knew once the truth ever got out, he wasn't going to be able to bargain, don't you see? He pled his immunity on August 28, he got his deal, his contract, then here comes all the evidence, and that's what we meet at the Judicial Qualifications in Article VII.

Zertuche Store? Forget it. I would say without any doubt, I would look you all in the eye any day, now, or if the Lord leaves me here that long, fifty years from now to say, "That won't walk." And, for the purpose of clearing any atmosphere, I tried the Federal case, and the conviction there was based on a technical reporting of that income, Schedule C. The government's position was it shouldn't have been reported on Schedule C. And that's on appeal. That's on appeal.

Now, that left us with a second deal. Now, you understand, when we got old Rudolfo up here, this second one didn't walk too far. They got him down there. Now, he didn't testify in Federal Court. I gave you all the transcript on that. He said Benavides Implement and Hardware was a sole proprietorship. See, that was under

oath in September. And I said, "You know, that rascal, they're just liable to walk some more miles." Let me tell you what the problem is, Jurors. See, they didn't have no checks going to Judge Carrillo. There were no checks coming out of those counties. There are none. They all went to Benavides Implement and Hardware, deposited "For deposit only" in Benavides Implement and Hardware account, an account which I've got the signature card on that Rudolfo Couling has sole and absolute control. See the problem they've got? Why, sure, if I was on that side, I would see that problem.

So, how do they try to solve it in the Judicial Qualifications Commission? Rudolfo takes the stand. "Raise your right hand and swear." Lord, he rose his right and swore. "Tell us, how did Judge Carrillo get mixed up in all this?" "We were partners." I say, "My Lord." I took the transcript, called the reporter, the one I introduced here on cross-examination, and I says, "Mr. Couling, did you testify over there just about three or four weeks ago that the sole proprietorship --?" "Oh, yeah." Well, I knew when he got me up here, that cat, he would bounce around at the rate he does bounce around, I bet he'll get some more documentaries. So, I went over here and got the Comptroller's application, 1972, sole proprietorship. Rudolfo Couling. Nothing about a partnership. Now, this occurred down at the Judicial Qualifications. And then I said, "Well, that scamp is pretty slick. He'll get us there and skin my Judge, fool a bunch of folks, so I better watch him very carefully." So, I said, "Mr. Couling, give me your '71, '72 and '73 tax returns." He delivered the '70 -- not the '71. You heard him up here. He wasn't going to get it. He said, "I can't get it." That's the gimmick. "I can't go get it." Unless he says, "Okay. Get it." So, he had me on that. But I did get the '72 and '73. And, lo and behold, what does it reflect? It reflects there was no partnership, that under the pains and penalties of perjury, under the Federal statute, he had reported it as it really was, a sole proprietorship, Benavides Implement and Hardware owned by Rudolfo Couling. And one other factor appeared. And this chipped away at the balance of that case. You know now, you see, we're talking about that partnership. Well, that's out the window. He didn't report it. He didn't -- he didn't report it on Schedule C, and one of the Senators, one of the Senators asked the question -- and, incidentally, the reason I asked that Schedule C bit, you remember the Schedule C is a profit and loss from business. See, the Federal law requires you to be honest. But there are two calculations. He couldn't come up here and say, "Hey, Jurors, I made a mistake. 'King's X, it really should have been a partnership,' because, you see, Schedule C is used for two purposes, determining the income of a sole proprietorship, don't you see, and also the Social Security computation, both of which are in his return. So, unfortunately, that old horse didn't walk. That didn't walk.

Then, down in Corpus Christi, I'll tell you what else they pulled. It's in the record. When they got to the chart, they had two other separate deals. One was that there was a deal whereby there \$750.00 coming out \$500.00 was to go to Oscar Carrillo and \$250.00 was to go off up here to somebody else. That was the separate contracting agreement. No evidence of it. But, when they get up here, what is their position? Their position is that "Where we have those checks, there was a conspiracy between Judge Carrillo and Rudolfo Couling." Now, let me examine that. I'm not going to comment any further on the Zertuche Store. I'm not going to comment any further on the partnership. I think it's ridiculous. I'm not going to dignify it. If they want to get back up here in rebuttal and talk about it all this day, that's their business. Why? His own application when there wasn't nothing on the line. See, in '72, there wasn't no deal. He hadn't been indicted five times. He didn't have a bargain to make and he wasn't valuable to anybody. He was just good old thieving Rudolfo Couling. But he had to make himself valuable. And when he did make himself valuable, he just opened up his heart. "Yes, sir, me and Judge Carrillo had been partners all these years."

Now, could I have, please, Exhibits -- the original of the checks?

How much time do I have, please, Mr. President? I'm sorry. I lost track. I have got plenty of time. Good.

THE PRESIDENT: Forty-six minutes, you're just halfway through.

MR. MITCHELL: Fine. That's the series -- I will take them up later. Let's start with sixty, sixty-five. These are in Volume Two. Now, before I get into those checks, Jurors, the first part of VII, as I conceive it -- now, follow me -- the first part of VII, as I conceived it, was that there was a deal between O. P. Carrillo and others. See, there again, I'm not given any insight into the accusation or the charge. To rent non-existing equipment and equipment the County didn't get any benefit for. And they settled on two tractors. The two tractors. Now, that's the first way that a conspiracy was carried out. I can't comment on when the conspiracy was made, because I don't know. And I submit it to you and I'm not being facetious, I haven't heard any testimony where anybody sat down and said, "Hey, let's make a deal." I heard testimony about a partnership, which I say belies the facts. I heard nothing about any agreement to lease non-existing equipment. But what do we have. We have the documentary evidence. Now, Mr. Odam says, "Jurors, you have got to talk to documentary." And I'm glad he said it. Let's forget O. P. Carrillo's testimony, let's forget Rudolfo Couling's testimony and let's forget Cleofas Gonzalez' testimony and let's look at the documentary, the immutable documentary shows Cleofas Gonzalez executed an invoice on the Benavides Implement and Hardware stationery, printed. And I will submit to you, if you look at that record there was one for the rental of two DC-8 tractors in early December, even prior to the time that he bought those tractors. Right there (indicating) December --early December of '73, the evidence being that he entered into a contract with Plains. I say he cranked up that money machine long before he had anything to do with Judge Carrillo. What does the documentary show, Jurors? The documentary shows that Cleofas Gonzalez or Rudolfo Couling initiated the claim procedure, triggered it, by a printed Benavides Implement and Hardware voucher. Was he working for Benavides Implement and Hardware? No, he was working at the Farm and Ranch on the County payroll.

Question, what was he doing with the Benavides Implement and Hardware invoices? Now, they juggle around in a typical Gaston and Alfonse act whether Carrillo took it or Ramiro took it. The truth of the matter is that Rudolfo Couling and Cleofas Gonzalez had themselves a whale of a deal. This is not -- the handwriting -- forget the testimony. The handwriting of Cleofas Gonzalez is on this Benavides Implement and Hardware voucher. The statement of receipt is in his signature and his handwriting. Where does Carrillo come in. The check is to him, Benavides Implement and Hardware. The check is deposited "For deposit only Benavides Implement and Hardware." The signature account is solely and only Rudolfo Couling. That's the documentary. And when he paid Judge Carrillo a check that check would say "Rent". Mr. Odam says, "Why, that is of no consequence." I can say, "Thank God, I got it" and "Thank God, it's in Couling's handwriting." Suppose I didn't have it? Suppose when they dealt, they didn't put "rent" or "tubing" or "store counter" or "loan" on it? Where would I be today? He'd still be up there raving and ranting about this terrible scheme to take this \$1,200.00, this \$70.00, this \$257.00, this \$995.00 and \$930.00 from the county. No, don't play ball that way. You either are going to believe Rudolfo Couling in his entirety and take that rattlesnake to your breast and walk up and down the road of life with him or you're going to disgorge him where he should be. He ought to be in the penitentiary, but he made a good deal. But you say yet, "Wait a minute, that's a little harsh on him." No, it isn't. Let me show you all some very interesting facts about that deal. Isn't it very strange -- do you all realize, Jurors, that Cleofas couldn't have made a deal with my client because he testified in May of 1972 and hasn't talked with him since. So it couldn't have been him. And lo and behold he jumped the fence in May of '74 and who ends up owning Benavides Implement and Hardware? O. P. Carrillo? The monster of Duval County who is responsible for the shabbiness of the courthouse and the poverty of the people and the purchase of the equipment on George

Parr's ranch? Who ends up owning Benavides Implement and Hardware? Mr. Rudolfo Couling sold Benavides Implement and Hardware to Mr. Cleofas Gonzalez, the man who initiated those invoices back in December before the tractors were bought.

And this bespeaks to me a thousand words. What was the purchase price? He said -- I asked him four times, he said gobbledegook, gobbledegook, gobbledegook, gobbledegook, gobbledegook. What was the purchase price? The accounts outstanding? He would pay the accounts outstanding. Judge, that's why you never could get no information out of him. If he owed you \$50, \$60, \$12, \$10, \$30,000 for equipment rental you weren't about to get it, because, man, the people that could put the cross on your forehead had done got in bed together. And you put them both on the witness stand in a civil suit today for an accounting and you're going to hear that testimony from Rudolfo, "We don't owe him nothing." You're going to hear that testimony from Cleofas, "We don't owe him nothing." So, let's look at the documentary.

Now, the House Board of Managers attorneys were very surprised, not here, but in the Judicial Qualifications Commission. I will tell you what the surprise was. The surprise was they really thought Judge Carrillo had gone down, taken two tractors, rented them to the County, ripped off the money from the County and was having a heyday. But you know what the facts are? The facts are the County -- the facts are -- the tractors were brought by Benavides Implement and Hardware. It's in the evidence, December of '72. The facts are that Benavides Implement and Hardware rented them to Judge Carrillo and he paid Benavides Implement and Hardware \$20,000.00. That's what threw their case. When we produced those checks, you could have said a rosary and you could have gone on about your way. Twenty thousand dollars O. P. Carrillo, being a participant in this massive scheme to rip off the County, paid Benavides Implement and Hardware. Now, what did Benavides Implement and Hardware do? It paid Plains Machinery up until what, December of '73 and then continued to collect the rents from Judge Carrillo and didn't remit, with the result that the contract went into default and Judge Carrillo -- boy, if I had had that much money in rental I would have gone and got it too. He went down there and bought it again. Now, my scheming, conspiring, conniving Judge is so dumb he paid twenty more thousand dollars. Do you realize that? After he bought them from Plains, Jurors, he paid roughly \$20,000 more money for a total of thirty -- let me see, the twenty plus -- year, \$39,000.00. Now, there is evidence of an evil man. Yes, sir. And they want to bring that before this August Body that has Lord knows five million things to attend today from fixing your baby's breakfast to being with your wife at the movie tonight. And they want to haul that garbage in here, roll it up in a truck and dump it on you and hope somebody goes back there and picks out that half-eaten celery, that half-eaten carrot and dignifies it. I tell you, it would be a dark day for our State -- dark day for our State if that occurred.

And I'm just as sincere as I can be. I would have walked him out of that office before I would have subjected him to this if that man had the guilt. I would have said, "Resign, O. P. Don't put yourself through what you're going to have to be put through. Get out of the way of that train that has geared up against you with the DPS and the IRS and the Texas Rangers and the Attorney General and every conceivable enforcement agency from here to Israel. O. P., I want to tell you something. You have got the power structure against you. You are a poor Mexican from Duval County and you ain't going to get no justice, because first you're a Duval County man and second you are a Mexican." He says, "Don't tell me that. I'm a Judge, I took an oath and I'm going to stand before them and tell the truth." So, I say go down there and get Couling and put him in the penitentiary where he belongs.

Now, if they had any evidence don't you see it would be here, but they can't refute -- they can't refute the documentary, forget the verbal. The contract with Plains, Benavides Implement and Hardware and Plains Machinery. The checks from O. P. Carrillo to Benavides Implement and Hardware, not Plains, Jurors, not Plains. He

rented them from Benavides Implement and Hardware and paid Benavides Implement and Hardware. The check from Benavides Implement and Hardware to Plains, not O. P. Carrillo. Unfortunately -- you see what they got in is they got in on that scheme. You say, now, where are you going to get this. I don't know how much that television program said, several million dollars of equipment was on George Parr's ranch. And while I hope my Savior forgives me for maligning a man who's gone, it's obvious to me that those arrangements and those agreements were between him and Couling to take the money from the County and to pay that money into Benavides Implement and Hardware -- or wherever. Now, I'm not going to sit here and tell you all Judge Carrillo didn't get any money out of Benavides Implement and Hardware Account. I went through those checks, item for item, check for check.

Now, let's talk about 'em. This is where I need a little help with the original of those checks, please. While you're looking for them -- while you're looking for them, let me start out with the Cash Store check. That's the \$257.00 check, Benavides Implement and Hardware -- do you recall it, "O. P. Carrillo." And it's endorsed "O. P. Carrillo Cash Store, Abel Yzaguirre." That's part of the rip-off scheme. I've either got the littlest operator in the Country or I've got an innocent man. And I choose the latter. The Attorney General makes light of that. He says, "Why, you mean to tell me you're going to believe that that was part of a deal where Mr. Couling was pitching in the hunting money." Well, there again, I'm damned if I do and I'm damned if I don't. I will take that check any day of the week as evidence. Why? Because of the endorsement. O. P. Carrillo in blank, "Cash Store Yzaguirre," indicating the money went to Mr. Yzaguirre, not Judge Carrillo. There are two of those, incidentally, two of those. Scheme? Rip-off? No, I choose to believe the guys went hunting. That's great hunting country. I've been down there quite a bit lately and that's all they talk about. They hunt, love it and it's part of their life. Never saw anything like it. Lord, you get down there in deer season or dove season, it's something. Sure, I choose to believe it. Why? Because, one, the improbability that this mastermind criminal of a judge would deal in a two hundred and fifty-seven dollar and umpteen cents rip-off scheme from the County. And two, because he didn't get the money by the documentary. The documentary shows the final endorsement's "Cash Store." I don't see anything in that allegation in VII where there's a rip-off scheme between Cash Store and him, there might be.

Take the other allegations, loan, \$1,200.00. Do you all remember that? Here's a check for \$1,200.00 from Benavides Implement and Hardware to O. P. Carrillo for twelve. Now, incidentally, remember this, Jurors, there is no transaction with O. P. Carrillo out of the Benavides Implement and Hardware account. And I'm going to be extremely accurate on this. None, no checks to O. P. That's E-155, E-176, Page 810, Page 812, 65 series, et cetera. There are none to O. P. during '73, '74 or '75. The last check was in '72.

The last to Farm and Ranch was -- January, February, March, April -- May 31st, '74. Now, let's take that one: "Loan, \$1,200.00."

Now, you see -- there is another thing you lawyers will understand. You've got a client and you've got a question about disbursement of funds, and you get a check that says, "Loan" on it, \$1,200.00. I said, "Hey, Judge. That's great." A loan is not taxable, so if it is not in the tax return, I had an explanation. See? Pat.

A loan that's endorsed -- it's in old Cleofas -- I mean, Rudolfo Couling's handwriting. I said, "Judge, what is this check?" Did you all hear his testimony? Incredible. If I wanted to make him testify, I couldn't. He said, "It was a question of how much they owed me on some rent. They said they was going to make this advance, and they did."

If I ever -- if I wanted to conjure up his testimony, if I wanted to coach him, I would have said, "Say, Judge, the documentary says \$1,200.00. Why don't you just let it go there." And he says, "Mr. Mitchell, that ain't the truth. The truth is it was a

\$1,200.00 advance against the account that they owed me." I says, "Well, thank God. Take the oath and tell it the way it is." And that's what he did.

I could have taken that check and walked almost to heaven and back with it because it was a check that said, "Loan for \$1,200.00." That's another one of those rip-off checks.

Now, you understand. Do not be confused as regards the amount of these checks. We have a chart that there is a total of \$12,936.00, and these that I am calling off are in that twelve thousand.

Now, there are some for tubing. Now, if that tubing were written in the handwriting of O. P. Carrillo, then I would have said, "Well now, Judge. You know, Mr. Couling issued that check and that's -- that would be an attempt to really -- for me to tell them -- those people up there that you are generating your own evidence." He said, "No." I said, "Mr. Couling, whose handwriting is it?" "Mine." "Is it your name as drawer?" "Yes." "Is it your -- did you put it at the date?" "Yes." "Did you put in the payee?" "Yes." "Did you put in there on the lower left-hand corner?" "Yes." "Well, is it true?" "Oh, no." It's all true but that recital.

Why? He is still trading. He has got to make himself valuable at that point, see? He didn't have but \$12,000.00 worth, and out of that \$12,000.00, about ten of them had legitimate purposes of recital. But, no. Couling, at that point, didn't care. Why should he? He's got a contract. He's got a contract by then. He will go anywhere and take on the Judiciary. That's the tragedy of this thing. This man is a member of the Judiciary. You get a yahoo off the street who's been indicted and banged around the head. He denied his own signature. He denied his own handwriting. He would deny his own progeny I will guarantee you, if it served his purposes, and he so admitted.

The agreement is: "Rudolfo Couling agrees to testify as a witness for the State of Texas or the United States of America in any criminal proceedings for which he has been furnished information or evidence," and goes on and on. He has -- he agrees to enter a plea of guilty to one felony under the Penal Code of the State of Texas. Now, they had done indicted him five times by then, see. They were sitting on him real hard, as we call it. "Give. We want information. We made a deal with you, man." And you know that's just exactly how it works.

You give the man -- you give a man the immunity that you've got the most mileage off of, and he was there, ready to make it. And he was there ready to make it.

They talk about Ramiro Carrillo, they talk about these other people. They call him up there and say, "Mr. Carrillo, we are going to give you immunity. Now, tell this panel what the story is." See? The Article is, "may grant immunity." That's why we put up a fuss over that "must". They have been beating me around the head and shoulders with that before the Judicial Qualifications Commission, and everywhere.

I got down there and I did subpoena these people, every one of them. And, I filed petitions which are in the record. I petitioned that Court -- says, "You grant these people immunity. Their lawyers are coming in." I wasn't -- I didn't represent -- their lawyers were coming in and I respect the lawyer, and I respect him representing -- and I am not going to belittle the Fifth Amendment. My God, is there no extreme to which we are going to go in this hearing? Banter it around and play with it as if it were an accusation. It would be reversible error for him to have commented that in a criminal case, and he knows it.

Sure. I subpoenaed all these people, and these people's lawyers came in and said, "We are going to plead the Fifth." And then, I filed petitions under the rules of the Judicial Qualifications Commission which are in the record. "Judge, please let these people testify. I want to hear them." Judge, "Overrule your petition."

Sure. If they can haul Rudolfo Couling around and let Mr. Cleofas Gonzalez feed off the fat of the land -- incidentally, you all better watch him. He is going to be you all's next problem. You got a new Duke coming on and his name if Cleofas. He's tough.

Why, they would pick them up, they would take them here, there and yon, give them all of the immunity and everything they want. But, not one witness could I get up here who would testify under the guaranty and protection of the Federal Constitution, that document which we all operate under. And, he stands up here and has the audacity -- that's the galling thing to me. He has the audacity to address this August Body in those terms, and say, why, he can bring them up. He knows I can't. I've done it before. He could. The Attorney General could, could bring them all up here and say, "Look. These people -- These are Senators, my Lord. These people run our State. They are entitled to have that testimony." Why play games on a lower level, chicken-yard basis, and seek to con off something on you gentlemen. You are the Senate of Texas. If I can't go out and give immunity, and if I can't be fair before this Body, where can I be fair? That's a terrible thing.

And then, to constantly berate me because I haven't done it. Well, I will offer to do it right now, and if you all will give them immunity, or do whatever their lawyers say, I have no fear of them. I have no fear of them.

Now, there are two checks, one for \$1,008.00 and one for \$1,018.00 that are not marked. There is about two more that are not marked, and those are the ones -- Judge Carrillo's testimony was that they were on account of equipment rental. Now, the damaging thing about that is that Rudolfo Couling, you see, had just previously started that money-making machine with Cleofas Gonzalez going in and getting the money, so you've got the check for that amount and the check being written by Benavides Implement and Hardware to Judge Carrillo on about three items. But, the testimony is, Jurors, that those invoices were written by Cleofas Gonzalez, and he could not have had an agreement with or been pushed into that action, or had had an understanding with this man because he hadn't even talked to him since '72.

I say there was an agreement to rent equipment. Now, thank God, we've got the Depreciation Schedule on the tax return. And incidentally, I am not going to belittle that he does have a water well rig. Mr. Odam says, "Why, he said he had equipment to rent."

And incidentally, while we are talking about tax returns, you know, he made a great point. He said, "About this equipment to rent, Rudolfo Couling does not have any equipment to rent." Well, he had to take that position because he swore. You all look at his tax return. He's got trucks. He's got equipment to rent. He had equipment to rent. And, Judge Carrillo had equipment to rent, had lots of equipment to rent. Now, what is the corresponding theory if Judge Carrillo had a scheme to rip-off the County money, school district money, or money from the various entities for a period of '71, '72, '73, '74, '75, or however you want, and he was willing to gamble his reputation; gamble his whole life on it, I submit, he would have got more than \$15,000.00.

If you all think that that's the kind of man he is -- and you understand, there is no transaction on that grocery -- on that Article VII where Judge Carrillo, in '72, '73, '74 -- but, if that is what you think, then you are going to find him -- you are going to impeach him.

But, I submit to you that even if you assume that that's correct -- and Lord knows, how I know that there was a conspiracy or agreement between O. P. and Rudolfo and the Members of that Commissioners Court on those two items. I just don't know how that was accomplished, but if you believe it, then you must believe that back there when that occurred in '71, '72, that act, not related to the exercise of his judicial function and his judicial capacity is of such a detrimental nature as to destroy his ability to function as a Judge today.

Do not go back and vote on the way that the case has been fractured. It's like that shooting gallery, all them Articles, and don't you think I don't sense it. We've got one, two, three, four, five, six, seven -- right on down the line. I say to myself, "You know, they are tired. They are in a hurry. They are spending taxpayers' money. They

are politically sensitive to this. So, what are they going to do? They are going to go back there and flip him out on one, find him on two, and let's go home."

Don't do that. I will be back here Monday morning, 9:00 o'clock, and let this gang over here take in after me on them others. I will guarantee you, there ain't none of them any better. There ain't none of them any better. And, if they had been, I guarantee you, they would be trying them. I would rather do that, honest to God, and be able to face my Maker with an honest soul as to do this other. I do not want it, and I know some of you all feel that way. Don't do that for posterity. Don't be put down in the books as the only Senate in forty-four years that impeached a man on something as flimsy as I and VII. Please.

And please put a halt, once and for all, to this uncontrolled, destructive vehicle that we call "accusations". Say, "Wait a minute. If you accuse, you produce, and you produce in a forum that is a proper forum." And, we will face those forums. Yes, we will face them.

Remember, Jurors, on the conspiracy counts, there is -- and of course, you must take that in tandem, now, with the "beyond a reasonable doubt". Beyond a reasonable doubt on each and every element of I and VII. Remember that the dramatus persona, their chief witness -- Lauro Azaguirre and Cleofas Gonzales -- Lauro wasn't there for three years, and Cleofas ain't talked to him. Now, you all tell me how he's going to have a conspiracy and a contract and agreement with a man that can't talk. Now, I've heard about a case where you got a nod and you got an agreement, but I ain't willing to buy that here.

You are going -- you have got to find that there was -- that both parties -- Cleofas and O. P. -- were lying when they said they hadn't talked to each other since May of 1972, and worked out the schemes of a very intricate plan to rip-off the County by sign language, or something.

And in addition, on the last Article, the Zertuche Store, I believe I've covered. It was, first of all, out of existence December 31st. It was owned by Arturo Zertuche. He reported it. All the documentary indicates it. It's not even relevant.

The partnership? I wouldn't further dignify it. The partnership is out because all of the documentary -- the man filed his returns as a Schedule C. His application with the State of Texas for sole proprietorship, etc.

The bulldozers? There ain't no question in my mind. The title to those bulldozers was in Benavides Implement and Hardware. He paid the price of the rental. And on the other checks -- as I said, you can go right down them, and you can choose to disbelieve the recital that Mr. Rudolfo Couling put in himself. And remember, you are dealing, now, with a period of time prior to 1973 in those checks.

I further remind you that as to the credibility of Rudolfo Couling, he is an admitted felon. He admits he will trade, contractually or otherwise -- see, now that's another disability I had going in. The Attorney General took the position -- the same people that represented the Judicial Qualifications Commission -- they took the position before this group, and I couldn't reveal it, "Why, we don't want that 'must,' in that rule about the privilege." Why? Why, hell, they had their deal made with Couling. They didn't need nobody to anoint with immunity. See, I knew that. They come up here -- they didn't really -- they didn't really square with you all, see. They didn't have anybody they wanted to give immunity to. They had a contract dated in August of 1974 and had the squealer of all times with them. So, they said, "Now, Mr. Mitchell, if you're going to flop behind this privilege, we want this Body to say the 'may' or the 'must'." What were they telling me? They were telling me, "We're going to corner you so when it comes time to argue, we're going to jump right square down your throat and hope to sell a bill of goods to the Senate of Texas that you should have called these other people." Well, I'll tell you why I didn't. Because they would not move for immunity. They would not move for immunity. And I say, had they wanted truth to prevail in these halls, and had they wanted justice in these halls, and had they wanted a

fair trial in these halls, and had they wanted what was right in these halls, they would have opened up their hearts and said, "We want truth, and we will put these people on the stand where O. P. is concerned and let the Senate of the State of Texas hear. They are all grown people. They are all mature. They are all responsible. They all have sound judgment." No. You've got an in-fighting deal that's an extension of the same viciousness of Couling, an extension of the same viciousness of Cleofas Gonzalez. And I am ashamed as a citizen of **this** state that my tax dollars have been used time again, month in and month out to **support** that type of a prosecution which rapidly becomes persecution.

Thank you very much, gentlemen.

MR. DOYLE: May I proceed now?

THE PRESIDENT: It is a quarter of twelve. What is the pleasure of the Senate? Do you want to break for lunch now or hear Mr. Doyle and close after lunch?
Mr. Doyle.

At 11:45 o'clock a.m. Mr. Doyle began final arguments for the House Board of Managers.

MR. DOYLE: May it please the Court, Members of the Senate. Mr. Mitchell said it, Mr. Odam said it, and I'm going to say it. This is a High Court of Impeachment. That language is not used accidentally. That language means something. It means something to me. When I announced that I was not going to run for office again and that I was getting out of the House of Representatives, I thanked the people of the District that elected me, and I told them that serving the State of Texas and House ranked with marriage and both of your children. Well, I can tell you that being the lawyer representing the Board of Managers in the first impeachment case in Texas in forty-four years ranks right there with it. I appreciate more than the Board of Managers will ever know the opportunity to have been a part of this historical process. And, on behalf of the Board of Managers, I've been instructed and asked to perform a pleasurable task and to thank the Senate, the Presiding Officer, the Members of the Attorney General's Task Force, and more specifically the staff that's participated in the prosecution of this case, to let these people know how much the Board appreciates the way this matter has been handled in the Senate of Texas.

Mr. Mitchell has argued for an hour, a little over an hour, and he's talked about a lot of things. But I really don't think he's talked about what we're here about today. And I think perhaps we **need** to take a moment to look at that. We're here about impeachment. We are here in a High Court of Impeachment. Impeachment comes to us from the common law. It's been around for six hundred years. It's the method that a democracy uses to give the legislative branch of government some control over the administrative and judicial branches of government. It is an integral part of our system. It's been in the United States Constitution since it was framed. It's been in the Texas Constitution ever since there was a Texas Constitution. It's been in the Constitution of 1876 for one hundred years. It has not been abused. It has not been abused at the national level. There have been thirteen convictions, thirteen impeachment resolutions voted out of the United States House of Representatives. Ten of those were against Judges. Eleven of those were tried in the Senate. There have been three in the entire hundred-year history of Texas voted out of the Texas House of Representatives, and over here in the Senate. Two of those have been Judges. There is no question about the authority of the Senate to try O. P. Carrillo on Articles of Impeachment which have been presented to you by the House of Representatives. Mr. Mitchell alluded to that fact. Mr. Mitchell has mentioned questions in his answers, questions on the floor here today about jurisdiction. There are no jurisdictional

questions.

What is before you now is a very simple problem, a very simple issue. The issue before you now is the conduct of the Judge of the 229th District Court of the State of Texas. That's all that's here. Our statutes, our Constitution, say quite clearly that the Senate has authority to try Impeachment Articles that have been presented to it by the House of Representatives. That's what's here. That's what we're here to decide. The question is the conduct of the Judge of the 229th District Court. More specifically, it is the conduct that is set out in Article I and Article VII of the Articles of Impeachment.

Now, let's take a look at those Articles. Mr. Odam talked to you about Article VII. He went into some detail. He read it to you. Ms. Levatino did the same thing with Article I. She read that to you. What do they allege? What is this conduct that the Texas House thought was bad enough that by a vote of over one hundred votes sent an Impeachment Resolution over here? You know what it amounts to? It amounts to another one of those ugly words. It amounts to another one of those things that Mr. Odam says he doesn't like to refer to when he talks to his kid. It amounts to stealing. Stealing. Now, one of the questions you'll have to answer before you get to the question of "Are we going to sustain the Articles of Impeachment?" is, "Is the conduct that we allege impeachable conduct?" That's a legitimate question before the Senate. Well, I would submit to you that stealing is always impeachable conduct. And when it's a District Judge stealing, it's sure impeachable conduct. And when it's a District Judge stealing tax dollars, it is definitely impeachable conduct. Now, if anybody was stealing, it was a District Judge. And what he was stealing, if he was stealing, was tax money. Now, Benavides and San Diego, they are not just names on a map. They are places. And people live there. People that bleed, people that hurt, people that do without, people that rear children, people that pay taxes, people that would like to have good highways, good school systems, good utilities, good public utilities. That's what they want. That's what you want. That's what I want. Their water district is in conservatorship. Their school district has lost its accreditation. It's broke. For months, the County employees couldn't be paid. And what is the question before you with respect to Articles I and VII? Stealing. Stealing tax money, stealing tax money that was supposed to be used for these things. I would submit to you that the conduct is impeachable conduct. Impeachable conduct under the law is whatever you say is impeachable conduct. If stealing tax dollars, if stealing at all is not impeachable conduct, then we don't need impeachment in the Constitution of Texas, the United States, and we don't need it in the common law.

Now, I've told you what I think is in issue. What is in issue is the conduct of the Judge of the 229th District Court of the State of Texas. Now, I'm forced now to say what I think is not in issue, because the Defense has based its whole case on what is not in issue before this Body. One thing that is not in issue before this Body is the conduct of George and Archer Parr. I wish it were. I wish that we could say with the judgment that's going to be entered by this Court -- George is dead. He's had his judgment. I wish we could say by the judgment of this Court, "Archer, you're going to the penitentiary. You're a crook." I wish we could say that about all these people that we've heard about that are stealing. It wasn't a one-man operation. Everybody here knows that. But, we can't do that. Those issues will be decided another day in another forum. That is not an issue before this Body.

Terry Canales and his political philosophy or where he stands with respect to how he feels about O. P. Carrillo or Archer Parr, that makes no difference. The conversation that Judge Carrillo said he had with Terry Canales, do you think that we -- if we had put Terry Canales on the stand, do you think he'd have said, "Yeah, I called O. P. Carrillo and threatened him with impeachment?" Well, of course, he wouldn't have said that. What difference does it make? It makes no difference at all. Terry Canales' motive for the introduction of H.S.R. 161 is not an issue in this case. The fact is that the Texas House of Representatives by a vote of that Body has sent an

Impeachment Resolution through that door. And until that Impeachment Resolution is disposed of by this Body, it's here. So, the motives of people, the angers of people, whatever people have done that is wrong is not the issue. That's just what they want you to look at. That's just what they want you to not -- to spend your time on so you don't look at the main issue. The main issue is stealing. The politics of Duval County is well-known to all of us. Unfortunately, the politics of Duval County is not just known in the State of Texas. It's known nationwide. None of us are proud of it. None of us like to hear about it. But, that we can't do anything about here today. It is not an issue before this Body today, and I submit to you that you shouldn't consider it as an issue before this Body today. It has never been an issue since we started this case many months ago.

Let's look at the two Articles. Article I says that O. P. Carrillo conspired with others to get his groceries paid for out of County funds. Cleofas Gonzalez was not the only witness. Walter Meek, Mrs. Yzaguirre, Pat Garza, Rosa Chapa, Tete Chapa, all testified about that Article. Are they all liars? Pat Garza, is he a liar? Did Pat Garza, Judge Carrillo's longtime employee, take the stand and perjure himself? Of course not. Cleofas Gonzalez filled out the forms. That's correct. He did. He told you he did. But, whose name appears on the bottom of the form authorizing the county to pay the money? Ramiro Carrillo. Who sat in the Commissioners Court meetings where the Commissioners Court decided which claims to pay and whether the claims were valid or invalid? Ramiro Carrillo. That's the conspirator. That's the guy we're talking about. It's as plain as the nose on your face.

Let's look at Ramiro Carrillo for a minute, because this is the first time his name has come up. Mr. Mitchell would have had us grant immunity to Ramiro Carrillo. Mr. Mitchell would lead you to believe that he called him to the stand, he took the Fifth Amendment and that he tried to give him immunity and that's the whole story. That's not the whole story.

The first time Ramiro Carrillo was called upon to make an explanation about what was happening unusual in Duval County that I know anything about or that any of the rest of us know anything about was across the hall, upstairs, in the old Supreme Courtroom where the House Impeachment Committee was having its meetings. Ramiro Carrillo was put on the stand there. That is the first time Ramiro Carrillo took the Fifth Amendment. Also, I would point out to you that that was the first time Judge O. P. Carrillo was asked, "Judge, do you want to tell us about this thing? Do you want us to, you know, hear your side of the story?" "No". He wasn't asked that one time, he was asked that many times. The transcript of the proceedings of the House Impeachment Committee is public record. I have seen copies of it laying around here. I'm sure it was made available to each Member of this Body. It is replete with requests by the Board of Managers, "Judge Carrillo, do you have anything you want to say?" "No." "Mr. Mitchell, does your client have anything he wishes to say?" "No."

That was the first time anybody had an opportunity to tell their side of this story. Let me point out something to you that I think you really need to think about. The Defense has not left anything laying on the table. If you think that they haven't fired not only their best shot, but every shot, take a look at the facts. This is a District Judge, this is a responsible position in the political structure of Duval County. In May he was informed of impeachment proceedings in the Texas House of Representatives. Now, that's not where you handle parking tickets, you know, that is serious business. That's not something that happens every day. This is only the third time that that's happened in the history of this State. If you think that O. P. Carrillo has another shred of evidence to offer to this Body then you're just kidding yourselves. He doesn't. He sat here on the stand and told you, "I have had four lawyers, I have had three accountants." He and his attorney sat through every session of the House Impeachment Committee that was held. I don't remember any that they missed. They were there, they knew that they were facing a serious, serious, most serious problem.

They went through a tax trial that this Body adjourned for down in Corpus Christi. They knew it was serious business. He wasn't accused of spitting on the sidewalk, he was accused of a felony offense against the laws of the United States of America. That trial lasted many weeks.

He had a hearing before the Texas Judicial Qualifications Commission Examiner in Corpus Christi that lasted for -- you know how long that lasted, thirty days of testimony. We adjourned again to let that go on. They didn't come here half prepared. They didn't fail to find witnesses because they didn't try. They didn't show you anybody that got free groceries, because they didn't look for somebody that admitted that they got free groceries whose names were on that list. Four lawyers, three accountants. Is there a doubt in your mind, can there be a doubt in your mind that they didn't shake every bush, turn over every stone. The reason they have no more than they have offered you is because there is no more than they have offered you. When you go through three trials, this being the -- a continuing part of the one that started in the House. When you spend money, that kind of money to pay four lawyers, three accountants, when you take your time, when you spend your money, when you have this much at stake you don't come in here half-cocked, you fire every shot you've got, brother. And I would guarantee you they fired every shot they had.

And what did they come up with? They came up with Elvira Rodriguez, they came up with an accountant, they came up with -- I will have to think a minute. They came up with four witnesses, plus the Judge and that was it. So, let's clear the air about Ramiro Carrillo and O. P. Carrillo and what they can and cannot show you and immunity. They can't show you any more than they have shown you. There's not a doubt in my mind about that. I don't think there's a doubt in anybody else's mind about that.

Now, in Article I we showed you what we had. We had a lady who said "I took the County's money and I applied it to his bill and he paid what was left over and he cashed a lot of checks for cash." His defense to that -- What was his defense to that? A stack of checks and "I didn't do it and she's a liar." Not one person who we say are phony names did they produce, who said, "Yeah, I have got the groceries. That's not a phony name."

Credibility. "Cleofas Gonzalez is a liar and he's politically aligned against me." That's their answer.

Article VII. Phony rentals, stealing, funny money. Mr. Mitchell suggested to you that it's a swearing match between Rudy Couling and O. P. Carrillo. That ain't the facts. Look at the witnesses whose testimony is in the record, Walter Meek, Kathryn Wimberly, James Bates, Jr. -- Mr. Bates, for some of you who don't remember is one of the bank officers who proved up the signatures. He was from the bank at Rio Grande City. Wanette Driska, Plains Machinery employee, proved up documentary evidence. Octavia Hinojosa, County employee, proved up documentary evidence, Carl Williams, another banker who proved up signatures and bank records. Red Kurtz, who you heard discussed time and again. William Craig, Crisoforo Chapa, Arnoldo Alvarez, Abel Ruiz, Fidel Saenz. These people testified. Why do you think that they jumped up and said put the whole record in, let it all hang out. Can you imagine how much more devastating the evidence on Article VII would have been had you sat here and watched us laboriously prove up each one of these documents. Can't you see why they said "Let it all in." They didn't want you to look at all these witnesses, because their credibility is beyond reproach. What reason would a bank officer have to come up here and lie about whose signature that was or whether or not that was a real true copy of a check. You would have had an opportunity to watch all these people who pieced together this case, which they say is a pack of lies. These were witnesses, look at what they said if you think I'm pulling your leg.

I think one of the things that you need to look at most closely in this case is the sequence of time. We've got a fairly good picture of what took place in a man's life for

some period of time. The earliest documentary has been introduced by the Judge, it's checks back in 1962 and '63. Take a look at those checks. You will see them made out to pay his grocery bill, \$12.37, a check for cash for \$1.50. You know, it's just like most people, nothing unusual about it. But then a significant occurrence occurred in 1967 -- 1967. Now, think about that a minute. What happened in '67? Two things happened in '67. First, Ramiro Carrillo was appointed to the County Commissioners Court upon the death of Atlee Parr and the hurricane came through and the Zertuche Store moved over to the Farm and Ranch building and they started selling stuff to the county. And Cleofas Gonzalez says, "We sold Farm and Ranch goods to the County through Zertuche by the tons." Look at the tax records, that's accurate. That's exactly what took place.

Now, I think the significant period runs from, say mid-1967 until April of '71. Now, the next date on the schedule or the next time that is significant is mid-'71, because that's when Benavides Implement and Hardware opened up. So, from mid-'67 or late '67 until April of '71 we got the Cleofas Gonzalez -- Zertuche Store situation, where the goods were going to the County, the Farm and Ranch goods, the money is going to O. P. Carrillo through Zertuche Store. Look at the tax returns, see where Zertuche -- see how much sales tax Zertuche paid. It's exactly as Cleofas Gonzalez told you it was. Then look from April of '71 until late '72. Now, that's the period of time that Rudy Couling says, "I got money from the County school district and water district and I paid it out to them in checks, in cash and so forth." That's the period when O. P., Ramiro, Rogelio Guajardo, Ramiro Carrillo and Brothers, Oscar, D. C. Chapa -- That's when they were getting their cash money.

Look at Exhibit 192 and you will see that period of time the money just flowing out of that thing by the tons. And stop and think about that a minute. He says this is a pack of lies. How much more believable would his story be if these people had come in and said, "Yeah, that's not true, man, I didn't take that money. I didn't get that money." What if D. C. Chapa takes the stand and says, "Yeah, I got these checks from him, but it was because he rented my bulldozer, here's a contract. It was because Benavides Implement and Hardware -- I sold them something." Or if Oscar comes in Oscar Carrillo comes in and says, "Yeah, here, I did get this money, but look what I gave them." What did they say, "I refuse to answer on the grounds that it might tend to incriminate me, incriminate me. That's what they all said.

Do you believe his story or do you believe Rudy Couling? Rudy Couling says, "Here's how it happened? I paid them the money, there was nothing coming to me. There was no equipment to rent." What does D. C. Chapa say, "It might tend to incriminate me." What does Rogelio Guajardo say, "It might tend to incriminate me." What does Oscar Carrillo say. "It might tend to incriminate me." What does he say, "It's a lie."

From April '71 to the end of '72 that's how the money went. Then at the end of '72 we had a slight change. In November of '72 two significant things occurred. O. P. Carrillo bought a car for \$5,700.00 and the water district paid for it. He also made his first trip to Plains Machinery to discuss with Mr. Red Kurtz the purchase of two Caterpillars. From that point forward he didn't get his money by way of check directly to him. From that point forward he got the same amount, roughly \$1,000.00 a month, just like Cleofas told you, just like Rudy Couling told you and just like the documentary evidence shows. He got about \$1,000.00 a month, but how did he get it from then on. He didn't get it the same way. He got \$5,700.00 in one lump sum when he got that car. Then in December of '72 they start making the payments on the Cats. No doubt about what occurred. Same amount of money, going right on back into '67 when Ramiro got on the Court and when they started doing business through Zertuche. And from December of '72 to the middle of 1974 they rocked on, him getting his thousand a month, upped it slightly when they got the root plows.

I think it's significant that Mr. Mitchell didn't talk about the root plows. Mr. Mitchell would have you believe that the Judge paid \$39,000.00 for two D-8 tractors. Well, he got a little more than that. He got two D-8 tractors -- and that contract called for \$39,000.00. He also got \$11,000.00 worth of root plows. That contract, also -- remember that's the one, "Telephone, Ramiro Carrillo; telephone, O. P. Carrillo" he got both of those. So, even if you believe his story he got \$50,000.00 worth of goods for \$39,000.00, if you believe it. I find it inconceivable that you would believe it. From the end of '72 to mid-'74 everything rocks along beautifully. Mid-'74, things start happening. There's a falling out between the Parrs and the Carrillos over a school board election. The Internal Revenue Service folks swoop down, problems arise and the ball game is over.

So, look at it chronologically. Mr. Mitchell made several comments which I will attempt to briefly reply to. He talked about O. P. Carrillo standing up to the Parr machine. That's absurd. O. P. Carrillo was part and parcel of the Parr machine. He's been a member -- an employee of the County since 1960 when he was County employed or elected as County Attorney. He didn't stand up to them, it fell apart. Why did it fall apart? It fell apart because the Internal Revenue Service came in looking for tax dollars. That was what the problem was. It had nothing to do with him standing up to anybody and everybody here knows that. O. P. -- how much of a part was he? His grandfather was a County Commissioner, his daddy was President of the School Board, his daddy was President of the Water Board, his brother is now a County Commissioner, his nephew is a member of the Water Board. He didn't stand up to anybody. It fell apart, not because of him, because people didn't pay their taxes. They didn't pay any taxes. They have a terrible aversion to paying taxes.

Credibility. Credibility of Couling, credibility of Cleofas -- look at the credibility of O. P. Carrillo. The State Bar is after his license. Are they part of the Terry Canales, John Hill, Archer Parr plan, plot? The Judicial Qualifications Commission -- real serious problems, are they part of this scheme? Of course, not. Of course, not.

The Terry Canales Special. Do you remember that? H.S.R. 161? Terry Canales didn't bring that Resolution over here, ladies and gentlemen. The Texas House of Representatives brought it over here.

"George Parr made a deal. Archer Parr made a deal. Rudy Couling made a deal. Cleofas Gonzalez made a deal. Nobody talked to me. Don Lee didn't have the courtesy to come over and talk to me."

You might buy that. I don't believe you will. I served through two sessions with you. I know most of you, went through a Constitutional Convention with you and know you from that. I am not at all concerned about what you will do. I am not at all concerned about your being fair. You are going to be fair.

I don't want O. P. Carrillo to be my District Judge. I don't think the people of Duval County want him to be their District Judge. I don't think any of you want him to be a District Judge in Texas. Heaven help us, if you do.

Thank you very much for your kind attention.

SENATOR AIKIN: Mr. President.

THE PRESIDENT: Senator from Lamar.

SENATOR AIKIN: Mr. President, I move the Court stand in recess until 2:00 o'clock. At that time, Mr. President, I intend to make a motion for the Senate to go into Executive Session, and I sincerely hope that every Member will be here at 2:00 o'clock.

THE PRESIDENT: The Senator from Lamar moves the Court stand recessed until 2:00 o'clock this afternoon.

All in favor say "Aye". All opposed, "No".
The "Ayes" have it. The Senate stands recessed.

Accordingly, the Senate, sitting as a Court of Impeachment, at 12:16 o'clock p.m. took recess until 2:00 o'clock p.m. today.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 2:00 o'clock p.m.

THE PRESIDENT: The Senate will come to order.
Senator from Lamar.

SENATOR AIKIN: Mr. President, I move the Senate resolve itself into Executive Session at 2:02 today.

THE PRESIDENT: Senator from Lamar moves that the Court resolve itself into Executive Session. All in favor signify by saying "Aye," those opposed, "No." The "Ayes" have it. The motion prevails.

EXECUTIVE SESSION

Accordingly, the President at 2:02 o'clock p.m. directed all those not entitled to attend the Executive Session of the Court to retire from the Senate Chamber and instructed the Bailiff to close all doors leading from the Chamber.

IN SESSION

At the conclusion of the Executive Session, the President called the Court to order at 2:41 o'clock p.m.

THE PRESIDENT: The Senate will come to order. The record will show that Judge Carrillo and Mr. Mitchell are in place in the Courtroom. The Chair will lay out Article I.

The question is on Article I. The question is, "Shall this Article of Impeachment be sustained?"

Secretary will read Article I.

SECRETARY/CLERK: "ARTICLE I. While holding office as District Judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to have Duval County pay for groceries, to which he was not entitled, for his personal use and benefit."

THE PRESIDENT: Question is, shall this Article of Impeachment be sustained. As many as favor sustaining the Article will vote "Aye," those opposed will vote "No" as your name is called.

Secretary, call the roll.

Yeas: Adams, Andujar, Braecklein, Clower, Creighton, Doggett, Farabee, Hance, Jones, Kothmann, McKinnon, Meier, Mengden, Patman, Schwartz and Snelson.

Nays: Aikin, Brooks, Harrington, Harris, Longoria, Mauzy, McKnight, Ogg, Santiesteban, Sherman, Traeger and Williams.

Present-Not voting: Moore.

Absent-excused: Lombardino.

THE PRESIDENT: There being 16 "Yeas" and 12 "Nays," Article I is not sustained.

Secretary will read Article VII.

SECRETARY/CLERK: "ARTICLE VII. While holding office as District Judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to charge and collect money from governmental entities for rentals of equipment that did not exist and for rental of equipment that the governmental entities did not use."

THE PRESIDENT: The question is, shall this Article of Impeachment be sustained. As many as favor sustaining the Article will vote "Aye," those opposed will vote "No" as your name is called.

Secretary, call the roll.

Yeas: Adams, Aikin, Andujar, Braecklein, Clower, Creighton, Doggett, Farabee, Hance, Harris, Jones, Kothmann, Longoria, McKinnon, McKnight, Meier, Mengden, Ogg, Patman, Santiesteban, Schwartz, Sherman and Snelson.

Nays: Brooks, Harrington, Mauzy, Traeger and Williams.

Present-Not voting: Moore.

Absent-excused: Lombardino.

THE PRESIDENT: There being 23 "Yeas" and 5 "Nays," Article VII is sustained.

The question now comes on the question of disqualification from office. The Chair will recognize Mr. Doyle.

SENATOR McKNIGHT: Mr. President.

THE PRESIDENT: Senator from Smith.

SENATOR McKNIGHT: Parliamentary inquiry. Would a motion be in order at this time in regard to the limitation of time of debate on the matter of disqualification?

THE PRESIDENT: What period of time did you have in mind, Senator? Let me just inquire of Counsel if it's acceptable.

SENATOR McKNIGHT: I beg your pardon?

THE PRESIDENT: What period of time did you have in mind, Senator?

SENATOR McKNIGHT: Do you want me to make it in form of a motion, Mr. President?

THE PRESIDENT: Well, if you'll state the period of time you had in mind, I'll just ask Counsel.

SENATOR McKNIGHT: I would say fifteen minutes to each side.

THE PRESIDENT: Is a fifteen-minute limitation agreeable with you, Mr. Doyle?

MR. DOYLE: The amount of time is fine, Mr. President. I would like to know if we have the right to open and close as we did in the previous situation.

SENATOR McKNIGHT: I can't understand Counsel.

THE PRESIDENT: Yes, speak louder, Mr. Doyle.

MR. DOYLE: Mr. President, my inquiry was -- on the opening -- on the arguments this morning, we were given the opportunity to open and close. If we have that same opportunity at this time, I would like to have Mr. Odam open, and I'll close with respect to whatever time you'll allow us, whether it's ten minutes or fifteen minutes or whatever.

THE PRESIDENT: It would be the opinion of the Chair, Mr. Doyle, that the prosecution ought to have that right since they carry the same burden --

MR. DOYLE: Yes, sir.

THE PRESIDENT: -- that you carry on conviction.
Mr. Mitchell, is a fifteen-minute limitation acceptable to you?

MR. MITCHELL: As a matter of fact, I've probably said all I want to say on the subject, Mr. President. I don't know whether fifteen minutes would be adequate to speak my mind on that point and not having over two minutes to prepare for it. I believe I've spoken pretty well to it. The Senate is now cognizant of it. We're just weighing them out discussing it. I'll take the fifteen minutes, however, and cast whatever light I might be able to on it.

THE PRESIDENT: All right. Mr. Doyle, you are recognized for a combined period not to exceed fifteen minutes for your opening and closing.

HOUSE BOARD OF MANAGERS ARGUMENT

MR. ODAM: Mr. President, may it please the Court, the action which the Senate has taken by the vote today of this Body is the action which, if the Master's Report of the Judicial Qualifications, whatever it may be, had gone on through the process, if the Judicial Qualifications Commission had acted to remove this Judge, if the Supreme Court had taken its ultimate burden, this Court thus far today has done what we could have done over in the Supreme Court building. Mr. Mitchell and I could have argued this case, Ms. Levatino, about all the Articles that you have before you in the Judicial Qualifications. If we took that all the way through the Texas Supreme Court and if we eventually won, the Judicial Qualification examiners, eventually won, what we would have gotten out of that would have been what you just did, and that is the removal of O. P. Carrillo, the Judge of the 229th District Court.

Now, I recall Senator McKnight and a number of other Senators, from time to time, we were down in Corpus Christi or getting ready to go down, the question of

whether or not to yield to that body or go here or go there. And, finally, we resolved we're going to go here. What I would submit to you is, by your vote, you've gone up the line of where the Supreme Court has gone. By your next vote, in my judgment, you can take the one additional step which could have never ever been accomplished across the street. I submit to you that if your vote of removal is to make any difference at all, we cannot stop at removal, but it must extend to disqualification. If impeachment and your vote means anything, that the ultimate vote if it would be against Judge Carrillo, the Texas Supreme Court would mean, then I submit to you you have to go the one step forward to make it meaningful, and that is the disqualification to make this process something other than what could have been accomplished over there.

I submit to you one other thing. Refer back to the fact that in my argument this morning, I said, "Go down to Duval County." And you look at that County. I didn't say just look at the County courthouse. I said look at the water district. And I said look at the school district. And I said look at the County facilities. I refer you back to that chart, E-191. You have it before you on the desk. All of the County money, all of the water district money, every governmental entity where people were elected to office was funneling into Benavides Implement and Hardware. And who was on the other end getting it out? How about a County Commissioner? Would you believe that? How about a president of the water district? Would you believe that? How about a member of the water district? Would you believe that? I submit to you, if this gentleman is allowed to just be removed from office, that what you've convicted him of doing, and that is stealing -- I mean, we can take the cover off the ball now. That's what we're talking about. You've convicted him of stealing. Let's just take him off the bench. But let's allow him to go ahead and hold public office in Duval County. Not District Judge. No, that's not all right. We'll remove him from office. And maybe, just maybe the voters of Duval County might not put him into office next time. Then, maybe they will. He might come back to District Judge the next term, which there is nothing you can -- if you stop right now, there is nothing to prevent it from happening. But if he didn't come back as District Judge, how about on the water district? Mr. D. C. Chapa is getting pretty old. We could take up on the water district. How would you like County Attorney again? How about County Judge?

I submit to you by your vote to convict this man of stealing that you said, "We don't want that man on the bench." I submit to you, unless you disqualify him, he can be back on the bench during the next term. All you have to do is go back down to Duval County, crank out the votes again and he will be elected the next time unless your vote that you take in a few minutes makes any difference. Maybe he won't be District Judge. Maybe he'll just be County Attorney now. Maybe he'll be County Judge. Again, if your process which we've gone through together for the last twenty-two days means anything, it's got to go the one step further. Not just to say that he's removed from office. My gosh, we could have eventually accomplished that across the street. You've got to go the extra mile to make it meaningful to disqualify him from ever holding public office again. I know that's severe. I know that's harsh. Mr. Mitchell has referred, and I'm sure he'll refer to again your own political future. But, think about the vote that you made this morning, just awhile ago. You say, "We convict this man of stealing." Now, are you going to say, "We convict him of stealing." "But, Judge, while we remove you, you go ahead and go back down and run for office again." I submit it would be a travesty of justice. And I mean that very sincerely. If the process is going to have any meaningful effect other than what it is set up through the legislative process or the Judicial Qualifications, you've got to go the one step further. You cannot let this man go back down to Duval County to become involved in the water district and the school district and the County to start all over again. I pray to you, just think about your vote. Make your vote that you just cast meaningful. Those five Senators, I believe it was five, that voted against it. Think about your votes. The man is already convicted now. He is going to be removed from

public office. Think about your vote. Make your vote meaningful.

THE PRESIDENT: Mr. Mitchell.

MR. MITCHELL: Thank you, Mr. President. Gentlemen of the Court, I'm aware of the Court's ruling on Article VII, of course, I'm limited in my remarks to address to you now on the question of permanent disqualification. I'm not good at begging, I don't think it's appropriate. I'm also not good at drawing the last drop of blood and spilling it on the floor of this Senate. Now, I say that this is not a case for the ultimate sanction. And you say, "Well, why lawyer?" I say it's not a case for the ultimate sanction in that the acts as set out in Article VII do not involve directly the exercise by Judge Carrillo of his judicial function, they relate at most to a collateral matter. Secondly, they do not involve in the fullest meaning of the word, maladministration of his office as Judge of the 229th Judicial District. If you will recall the testimony of Mr. Randall Nye, and I think the stipulation of Counsel that just addressed you calling for the ultimate sanction, that there has never been any question as regards Judge Carrillo's administration of the duties and responsibilities of the 229th Judicial District.

You have been patient with us today. You have heard tons and tons of testimony and nothing more that I could say would enlarge on the position that we would take that though Article VII stands for impeachment, we do not feel that it is a type of extreme case that calls for disqualification. And I respectfully request that he not be disqualified and be precluded from running from office if the people of that community want him in office.

Thank you.

THE PRESIDENT: Mr. Doyle. You have eight minutes remaining.

MR. DOYLE: Mr. President and Members, I thought from the very beginning that this was a point that we would come to. Twenty-three of you have decided that you feel that the conduct of the Judge of the 229th District Court was reprehensible conduct. It makes no difference whether you have based that decision on conduct that he engaged in in administration of his duties as a District Judge. You are the ultimate determiners of what you base your judgment on.

It is apparent to me that by the verdict you have said that this man is not fit to hold public office at this time. It seems inconceivable to me that after what this Senate -- the House -- has been through, after the evidence that you have viewed that you could now say to the people of Texas, "Yes, he is guilty; yes, his conduct overreached what is acceptable to the Senate of the State of Texas, but it's okay for him to do that sort of thing again next year." Remember -- remember what he told you. "My grandfather was a County Commissioner, a good close friend of Archer Parr -- Archie Parr", the old Senator Parr. "My father, school board president, water board president at the same time." Remember what he told you about himself, County Attorney, member of the school board, at the same time. Remember what he told you about himself, while he was County Attorney he sought legal advice for a way to get around the intent of the statute which prohibited County Commissioners from doing business with the County. He told you this, remember he took half the profits of Farm and Ranch while Cleofas Gonzalez was its sole employee who was paid only by the coffers of Duval County. Now, these things he did before he was a District Judge. These things he did back when he was a County Attorney, 1967, when his brother went on to be County Commissioner.

Judge Carrillo has displayed a course of conduct which I attempted in my closing arguments to show you. It began in 1967 when his brother became County Commissioner, it continued until mid-1974 when the Internal Revenue Service swooped

down on Duval County and started taking a look at why people weren't paying any income tax. Now, nothing ever stopped that course of conduct. He stood on the stand or sat on the stand and told you, "If I had obeyed Terry Canales," in his alleged conversation, "Everything would have been all right." I hope that's not the case. I'm confident -- I am absolutely confident that he sits there now thinking, "If they don't keep me from holding office again in the future everything is going to be all right."

All of us know the storms that the Parr empire weathered. For God's sakes let's not -- don't let it weather another storm. Let's put an end, as far as this body can, in this instance -- let's put an end to the career of one corrupt public official in Duval County.

I appreciate your kind attention.

THE PRESIDENT: Question now is upon the disqualification of Judge Carrillo from future office holding. Does any Member desire to be heard?

Question is on disqualification, Members in favor or disqualification vote "Aye" those opposed vote "No" as your name is called.

Secretary, call the roll.

Yeas: Adams, Aikin, Andujar, Braecklein, Clower, Creighton, Doggett, Farabee, Hance, Jones, Kothmann, Longoria, McKinnon, McKnight, Meier, Mengden, Ogg, Patman, Santiesteban, Schwartz, Sherman and Snelson.

Nays: Brooks, Harrington, Harris, Mauzy and Williams.

Present-Not voting: Moore and Traeger.

Absent-excused: Lombardino.

THE PRESIDENT: There being 22 "Yeas" and 5 "Nays" the penalty of disqualification is imposed.

The following Committee appointment.

SECRETARY/CLERK: The Committee to prepare a final judgment: Aikin, Chairman; Sherman and Creighton.

THE PRESIDENT: Senator from Lamar.

SENATOR AIKIN: Mr. President, I would like to have a caucus of the Senate at 3:10 today.

THE PRESIDENT: Senator from Lamar moves the Senate will resolve into a caucus of the Senate in the Lieutenant Governor's Committee Room at 3:10.

Is there objection? The Chair hears none. It is so ordered.

Accordingly, the Senate, sitting as a Court of Impeachment, at 3:10 o'clock p.m. took recess Subject to Call of the Chair.

AFTER RECESS

The President called the Senate, sitting as a Court of Impeachment, to order at 3:49 o'clock p.m.

THE PRESIDENT: The Senate will come to order.

SENATOR ADAMS: Mr. President.

THE PRESIDENT: Senator from Jasper.

SENATOR ADAMS: Mr. President, it appears that people have been boxing up materials and taking them to their office, and I would like to announce that the Sergeant-at-Arms Office will box up all of the materials on the individual Members' desks and take it to their offices. It is not necessary for them to do it. It will be done.

THE PRESIDENT: The following resolution:

SENATE RESOLUTION 7

Senator Jones offered the following resolution:

WHEREAS, During the current interim, members of the Senate Administration Committee, and the committee's able and dedicated chairman, the Honorable Don Adams, have been called upon to devote their undivided attention to the compelling duties of the committee; and

WHEREAS, Senator Adams has worked unceasingly and with utmost fairness in guiding committee efforts toward achieving results conducive to the efficiency of Senate operations and most satisfactory to all in the Senate family; and

WHEREAS, The current proceedings of the High Court of Impeachment of the Senate of the 64th Legislature have further taxed the energies and resources of Senator Adams and members of the Senate Administration Committee, but all needs have been met competently and graciously; and

WHEREAS, It is appropriate that the Senate of the 64th Legislature, now convened as the High Court of Impeachment, take this opportunity to commend Senator Don Adams and all members of the Senate Administration Committee for their exceptional service to their colleagues and for their administration of Senate affairs; now, therefore, be it

RESOLVED by the Senate of the 64th Legislature, now convened as the High Court of Impeachment, That the Senate of the State of Texas hereby congratulate Senator Don Adams, chairman, and members of the Senate Administration Committee on the dedication and competency with which the Senate Administration Committee has carried out its work, on the unbiased manner in which administrative problems have been solved, and on the extra time and effort which Senator Adams and each committee member have given to the difficult work of the committee; and, be it further

RESOLVED, That official copies of this Resolution be prepared for Senator Adams and each member of the committee as a token of gratitude from their fellow members of the Senate for a job well done.

JONES
HANCE
PATMAN
FARABEE
HARRINGTON
ANDUJAR
CLOWER
MEIER
BROOKS
KOTHMANN
AIKIN
MOORE

McKNIGHT
 OGG
 WILLIAMS
 SNELSON
 SHERMAN
 SANTIESTEBAN
 DOGGETT
 CREIGHTON
 HARRIS

The resolution was read and was adopted.

THE PRESIDENT: Senator from Lamar. Following resolution:

SENATE RESOLUTION 8

Senator Aikin offered the following resolution:

WHEREAS, The Senate of the State of Texas has been called upon to discharge its Constitutional duty to sit as a Court of Impeachment to consider charges preferred by the House of Representatives against Judge O. P. Carrillo; and

WHEREAS, This impeachment trial presented legal and procedural difficulties encountered in no previous trial, it being the first such to be conducted under the provisions of Article 5963, VACS, and the first such to be conducted in the face of simultaneous and often conflicting legal proceedings involving the same defendant; and

WHEREAS, Leon Jaworski has served his nation, state, and profession as Special Prosecutor of offenses related to the Watergate scandal, Special Counsel to the Warren Commission, Chief of the War Crimes Trials section of the Army in the European Theater, member of the Permanent Court of Arbitration at The Hague, member of the President's Crime Commission, the President's Commission on Causes and Prevention of Violence, Chairman of the Governor's Committee on Public School Education, President of the American and Texas Bar Associations, President of the Houston Chamber of Commerce and Rotary Club of Houston, Assistant City Attorney and Acting Municipal Judge of Waco; now, therefore, be it

RESOLVED, That the Senate of the State of Texas sitting as a High Court of Impeachment, by this Resolution formally express its thanks to Leon Jaworski for his invaluable assistance to the Senate, its President, and to the Counsel for the Board of Managers and the Respondent in the Conduct of this trial.

Adams	Harrington	Mengden
Aikin	Harris	Moore
Andujar	Jones	Ogg
Braecklein	Kothmann	Patman
Brooks	Lombardino	Santiesteban
Clover	Longoria	Schwartz
Creighton	Mauzy	Sherman
Doggett	McKinnon	Snelson
Farabee	McKnight	Traeger
Hance	Meier	Williams

Hobby, President of the Senate

The resolution was read and was adopted.

SENATOR AIKIN: Mr. President, I sent it up, but not before Senator Adams and some of the others of us passed it around and every member of the Senate signed it. I think it speaks for itself to try to express appreciation to a great Texan, a great American and a great lawyer. It expresses the appreciation of the Senate to him for coming here and helping us at this time.

THE PRESIDENT: Senator from Lamar.

SENATOR AIKIN: Mr. President, I have a resolution.

THE PRESIDENT: The following resolution:

SENATE RESOLUTION 9
(Caucus Report)

Senator Aikin offered the following resolution:

Honorable William P. Hobby
President of the Senate
Austin, Texas

Sir:

At a caucus held on January 23, 1976, and attended by thirty Members of the Senate, the following recommendations were made, to-wit:

BE IT RESOLVED BY THE SENATE.

The Lieutenant Governor may employ such employees as are necessary for the operation of his office from the closing of this session and until the convening of the next session, and in addition thereto he and the Secretary of the Senate shall be furnished postage, telegraph, telephone, express and all other expenses incident to their respective offices.

The Secretary of the Senate shall be retained during the interval between adjournment of this session and the convening of the next session of the Legislature. The Secretary of the Senate may employ such employees as are necessary for the operation of his office and to perform duties as may be required in connection with the business of the State from the closing of this session and until the convening of the next session, all subject to the prior approval of the Administration Committee.

The Sergeant-at-Arms shall be retained and a number of assistants as necessary in the operation of the Senate until the convening of the next session.

The Journal Clerk shall be retained until the convening of the next session.

The Administration Chairman is authorized to retain a sufficient number of staff employees to conclude the work of the Enrolling Room, Staff Services Room, Calendar Clerk and Journal Clerk. The Committee on Administration shall establish the salaries to be paid the Senate Staff.

The Chairman of the Senate Committee on Administration is hereby authorized and directed to cause the Senate Chamber to be placed in order and to purchase such supplies and to make all such repairs and improvements as are necessary between the adjournment of this session and the convening of the next session of the Legislature and make an inventory of all furniture and fixtures in the Senate Chamber and in the private offices of the Members, as well as of the supplies and equipment on hand in the room of the Sergeant-at-Arms and close his books for the Regular Session of the 64th Legislature. No equipment shall be acquired on a rental/purchase plan unless such equipment be placed on the Senate inventory at the termination of such plan. He shall also examine records and accounts payable out of the Contingent Expense Fund as shall

be necessary properly to approve all claims and accounts against the Senate, and no claim or account shall be paid without his consent and approval, and he and any member of the Administration Committee shall be entitled to receive his actual and necessary expenses incurred during the interim; and, be it further

RESOLVED, That there shall be printed 325 volumes of the Senate Journal of the Impeachment Session of the 64th Senate and 325 volumes of the Court of Impeachment and when complete 250 copies shall be bound in buckram and delivered to the Secretary of the Senate and one volume thus bound shall be forwarded by the Secretary of the Senate to each member of the Senate, each member of the House of Representatives, on request, to the Lieutenant Governor, and 75 paper bound copies shall be furnished to the State Library. The printing of such Journals shall be done in accordance with the provisions of this Resolution under the supervision of the Chairman of the Committee on Administration; provided, further, that it shall be the duty of said Chairman to refuse to receive or receipt for said Senate Journals until corrected and published in accordance with the pre-existing law as finally approved by the Chairman of the Committee on Administration of the Senate. When the accounts have been certified by the Chairman of the Committee on Administration of the Senate, said accounts shall be paid out of the Contingent Expense Fund of the 64th Legislature; and, be it further

RESOLVED, That all salaries and expenses herein authorized to be incurred and paid for shall be paid out of the per diem and Contingent Expense Fund of the 64th Legislature as follows: The Senate shall request the State Comptroller of Public Accounts to issue general revenue warrants for payment of the employees of the Lieutenant Governor's office, the Lieutenant Governor, members of the Senate, and employees of the Senate committees upon presentation of a payroll account signed by the President of the Senate and the Secretary of the Senate; for payment of employees of the Senate, except as provided in Section 20 of the Legislative Reorganization Act (Article 5429f, Vernon's Texas Civil Statutes), upon presentation of the payroll account signed by the Chairman of the Administration Committee and the Secretary of the Senate as approved by the Administration Committee and for the payment of materials, supplies and expenses of the Senate, including travel expenses for members and employees, upon vouchers signed by the Chairman of the Senate Committee on Administration and the Secretary of the Senate after approval by the Administration Committee, and, be it further

RESOLVED, That in the absence or inability of the Chairman of the Senate Committee on Administration to perform any of the duties or functions specified in this resolution, the Vice Chairman may act; and that in the absence or inability of the Secretary of the Senate, the Journal Clerk may so act, and, be it further

RESOLVED, That in furtherance of the Legislative duties and responsibilities of the Senate, the Administration Committee is hereby authorized and directed to charge to the individual members' office budget as hereinafter authorized: (1) reimbursement of all actual expenses incurred by the members when traveling in performance of such duties and responsibilities or incident thereto, and (2) payment of all other reasonable and necessary expenses for the operation of the office of the individual Senator during any period the Legislature is not in session. Expenditures for these services by the Administration Committee as hereby authorized as an expense of the Senate shall not be restricted to Austin, but may be incurred in individual Senatorial Districts. Such expenses shall be paid from funds appropriated for the use of the Senate on vouchers approved by the Chairman of the Administration Committee and the Secretary of the Senate in accordance with regulations governing such expenditures; and, be it further

RESOLVED, That for the time period from the end of the Regular Session until the convening of the next regular or special session, each Senator shall be permitted to employ secretarial and other office staff at a maximum payroll of \$3,900.00 per month

under the classification schedule hereinafter provided. Other expenses including actual travel expenses or other reasonable and necessary expenses incurred in the furtherance and performance of legislative duties or in operation of his office or incident thereto shall be provided in addition to the maximum salary authorized; and, be it further

RECOMMENDED, That each employee of the Senate except elected officers be classified and paid pursuant to the following schedule to include salary changes made by the General Appropriations Act.

Clerk I . . . . .	.0051	02	424(1) - 500(2) - 517(3)
Messenger . . . . .	.0011	02	534(4) - 552(5) - 571(6)
Clerk Typist II . . . . .	.0106	04	552(1) - 571(2) - 590(3)
Stenographer I . . . . .	.0126	04	610(4) - 630(5) - 651(6)
Secretary II . . . . .	.0133	05	673(5) - 696(6) - 719(7)
Secretary III . . . . .	.0135	07	768(5) - 794(6) - 820(7)
Adm. Sec. . . . .	.0138	09	876(5) - 906(6) - 936(7)
Information Spec. I . . . .	.1892	14	1068(1) - 1104(2) - 1141(3)
Admn. Tech. I . . . . .	.1501	08	820(5) - 848(6) - 876(7)
Admn. Tech. II . . . . .	.1502	11	968(4) - 1000(5) - 1034(6)
Admn. Tech. III . . . . .	.1503	13	1068(3) - 1104(4) - 1141(5)
Admn. Tech. IV . . . . .	.1504	15	1219(3) - 1259(4) - 1302(5)
Information Spec. II . . . .	.1893	16	1259(2) - 1302(3) - 1345(4)
Attorney III . . . . .	.3533	17	1302(1) - 1345(2) - 1391(3)
Research Asst. II . . . . .	.1517	13	1179(6) - 1219(7) - 1259(8)
ADP Equip. Oper. I . . . .	.0221	07	673(1) - 719(3) - 768(5)
Rep. Equip. Oper. I . . . .	.0309	09	768(1) - 820(3) - 876(5)

Employees who do not readily fit one of the above classified positions may be assigned a title under the General Classified Positions outlined in the General Appropriations Act upon authorization of the Administration Committee; and, be it further

RESOLVED, That the Lieutenant Governor shall have the authority to appoint any member of the Senate, the Secretary of the Senate or other Senate employees to attend National Legislative Conferences and other similar meetings. Necessary and actual expenses are hereby authorized upon the approval of the Chairman of the Administration Committee and the Secretary of the Senate; and, be it further

RESOLVED, That the Chairman of the Finance Committee have authority to employ such additional employees of his own selection as may be needed by said committee, said employees to receive the same compensation paid similar positions as herein fixed, who shall discharge the duties of the Finance Committee; and, be it further

RESOLVED, That each of the Standing Committees and Subcommittees of the Senate of the 64th Legislature be authorized to continue to meet at such times and places during the interim as determined by such committees and subcommittees and to hold hearings, recommend legislation and perform research on matters directed either by resolution, the Lieutenant Governor or as determined by majority vote of each committee. Each continuing committee and subcommittee shall continue to function under the rules adopted during the legislative session where applicable. Expenses for the operation of these committees and subcommittees are hereby authorized to be paid pursuant to a budget prepared by each committee and approved by the Administration Committee; and, be it further

RESOLVED, That there is hereby created a committee whose membership shall consist of all 31 senators and the Dean of the Senate shall preside as Chairman. The

Chairman may appoint a vice-chairman or chairman pro tempore to preside in the absence of the Chairman.

The committee has the duty and authority to supervise all matters relating to the elected officers of the Senate. The committee has the power to do all things reasonable and necessary in carrying out its responsibilities including, but not limited to, the discharge of elected officers, filling vacancies in any elected office, determining salaries of elected officers, and prescribing the powers, functions, responsibilities and duties of the several elected officers of the Senate. The committee shall meet at the call of the Chairman or at a date specified in a written request of eleven members, or as may be determined by the committee after its initial meeting. Twenty-one members shall constitute a quorum and a majority of the quorum may take action.

The operating expenses of this committee shall be paid from the contingent expense fund of the Senate and the committee members shall be reimbursed for their actual expenses incurred in carrying out the duties of the committee, and, be it further

RESOLVED, That the cash balance on hand under the provisions of Senate Resolution No. 15 of the Forty-Seventh Legislature be turned over to the Secretary of the Senate and he is directed to have full charge of the vending machines and to expend receipts thereof as now authorized by said Resolution; and, be it further

RESOLVED, That the Sergeant-at-Arms is specifically directed not to permit the removal of any of the property of the Senate from the Senate Chamber or the rooms of the Senate except as authorized by the Chairman of the Administration Committee.

Respectfully submitted,

/s/
A. M. AIKIN, JR.
Chairman of the Caucus

/s/
W. E. SNELSON
Secretary of the Caucus

The resolution was read and was adopted.

RECORD OF VOTE

Senator Patman asked to be recorded as voting "Nay" on the adoption of the resolution.

THE PRESIDENT: Senator from Lamar. The following Committee Report:

SPECIAL COMMITTEE REPORT

The Honorable William P. Hobby, Jr.
President
Senate Court of Impeachment

Sir:

We, your Committee to Prepare a Final Judgment, to whom was referred the question of the formation of the judgment in the impeachment trial of O. P. Carrillo, Judge of

the 229th Judicial District, have considered the same and recommend that the form of the judgment be as attached.

Respectfully submitted,

AIKIN
Chairman
Committee to Prepare a
Final Judgment
SHERMAN
CREIGHTON

THE PRESIDENT: Read the judgment, Mr. Secretary.

FINDINGS AND JUDGMENT OF THE SENATE SITTING AS A COURT OF IMPEACHMENT

In the matter of impeachment charges preferred by the House of Representatives of the State of Texas against O. P. Carrillo, Judge of the 229th Judicial District, and tried before the Senate of the State of Texas sitting as a Court of Impeachment.

In accordance with its duties under Article XV of the Texas Constitution, the Senate convened on September 3, 1975, and resolved into a Court of Impeachment to consider impeachment charges against Judge O. P. Carrillo. Judge Carrillo and the Board of Managers of the House of Representatives appeared in person and by counsel. The matter proceeded to trial. After a hearing of all evidence and argument relevant to Articles of Impeachment numbered I and VII, the Senate sitting as a Court of Impeachment voted separately on each of the two Articles as follows:

Article I

The Article was not sustained by a vote of 16 to 12.

Article VII

The Article was sustained by a vote of 23 to 5.

Whereas Article I was not sustained by the vote of two-thirds of the Senators present, a finding of acquittal was entered as to that Article.

Whereas Article VII was sustained by the vote of two-thirds of the Senators present, a finding of conviction was entered as to that article. Under the Constitution of Texas, conviction results in removal from office. The Senate then proceeded to vote on Article VII to determine whether the judgment of conviction should extend to disqualification from holding any office of honor, trust, or profit under this State. The vote was as follows:

Article VII

Disqualification was approved by a vote of 22 to 5.

Whereas, under Article XV, Section 4 of the Texas Constitution, no judgment in cases of impeachment may extend beyond removal from office and disqualification from holding any office of honor, trust, or profit under this State, the Senate sitting as a Court of Impeachment declares that it would prolong unnecessarily the impeachment trial of Judge O. P. Carrillo to proceed to the introduction of evidence and presentation of argument on the remaining articles of impeachment. Therefore, Articles II, III, IV, V, VI, VIII, IX and X of the Articles of Impeachment preferred by the House of Representatives against Judge Carrillo are hereby dismissed without a decision as to their merits. This dismissal does not constitute a conviction or acquittal of any charge contained in the aforementioned Articles.

Now, therefore, it is declared by the Senate of the State of Texas, sitting as a Court of Impeachment, that O. P. Carrillo, Judge of the 229th Judicial District, be and hereby is removed from office and is disqualified from holding any office of honor, trust, or profit under this State. This judgment is the judgment of the Senate sitting as a Court of Impeachment and a certified copy shall be deposited in the office of the Secretary of State.

W. P. HOBBY
President of the Court of
Impeachment

I hereby certify that the
above judgment was adopted
by the Senate, sitting as a
Court of Impeachment on
January 23, 1976.

CHARLES SCHNABEL
Clerk of the Court of
Impeachment

THE PRESIDENT: Question is on the adoption of the report. As many as favor adoption will vote "Aye"; those opposed, "No".
Secretary, call the roll.

Yeas: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Hance, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Schwartz, Sherman, Traeger and Williams.

Nays: Harrington.

Absent: Santiesteban and Snelson.

THE PRESIDENT: There being 27 "Yeas" and 1 "Nay", the report is adopted.
Senator from Lamar.

SENATOR OGG: Mr. President.

THE PRESIDENT: Senator from Harris, Senator Ogg.

SENATOR OGG: Mr. President, may I be heard on personal privilege.

THE PRESIDENT: Senator from Harris is recognized on personal privilege.

SENATOR OGG: Members, this is primarily directed, and it is not intended with any chastisement, or anything, but I don't think anyone here likes what had to be done, and to the Attorney General's office of this State and to anyone else within hearing, it is equally as distasteful to have seen men take that stand under oath, admitted thieves, perjurers and liars, and to walk the streets of this State to not be removed, to not be disgraced, and to be able to run for public office again if they want to, and for our hands to be tied.

And if, as you told us, and apparently as we believe, if this is just the tip of the iceberg and if this is the top, then this Senate and the people of Texas deserve that Duval County will not happen again. And, we understand, that in a conspiracy, it is almost impossible to get a conviction without some form of immunity or something from a co-conspiratory, but it is not a good feeling to see one man go down in a system that pretty obviously is run by a different standard than most of us are used to complying with. And, for other men who have held public office, who can, or were publicly employed to walk away probably as free men, or certainly with a lot lighter sentence than the man that we have convicted here today.

And, we feel that we've done what we had to do whether we wanted to or not, and we ask that the Department of Public Safety, Texas Rangers, the Attorney General and even the Federal government, if they can, to do what now must totally be done in Duval County, and that no one else who deserves that fate be allowed to walk away as a free man.

COMMENTS - REASONS AND EXPLANATIONS FOR VOTES

The process of impeachment of high public officials is a matter authorized in Texas, by the Federal government and every other State in the Union except Oregon. Impeachment originated in England, although similar processes date back to ancient Greece. Unlike most of her sister states and the Federal government, the Texas Constitution specifies no specific grounds of impeachment. The traditional separation of powers in Texas requires the House of Representatives to prefer an impeachment and the Senate to act upon it. Impeachment trials are neither a civil nor criminal action but more of a hybrid procedure. Their genesis many times is political. The forum, trappings and overview are certainly political throughout. The case of the impeachment of Judge O. P. Carrillo and his subsequent trial is unique and worthy of comment.

Judge Carrillo has been the District Judge of the 229th District of Texas since 1971. The District comprises Duval, Starr and Jim Wells Counties of the Lower Rio Grande Valley. The political climate and processes of this area differ widely from the balance of Texas. The area is predominately agricultural, the people primarily Texans of Mexican descent. The "patron system" of Mexico still dominates this area. Through a machine known as the "Old Party", the Parr family has dominated this area politically for the entire 20th century. For reasons that never have been agreed upon, the Old Party fractured sometime in 1974 or 1975 and polarized into two factions; the Old Party led by the Parr family and the New Party led by the Carrillo family. The scenario has been that of a western gunfight without cowboys and bullets. On at least two occasions lawful order was near collapse and actual weapons in evidence. Each side has freely employed every maneuver available through the public positions and governmental entities it controlled. Neither side has been bashful about misusing their power or position. But for the seriousness of the situation and the gross results that this type government brings to the governed, the entire matter could be comic. Hollywood would be pressed to fictionally improve this real life script. Both sides have continually claimed political foul from the other while never hesitating to resort to any method within its use. The real losers have, of course, been the taxpaying citizens of this area who have been at the mercy of the governmental units controlled by these warring political factions. The tragedy is that even today both sides actually believe their demeanor has been correct, proper and legal. Yet when one considers the condition of affairs incident to this type system together with its own code of belief, ethics, honor and retribution, it is plain to see that these men have operated within their own peer-system and the only community standard for politics they have ever known is the one we now witness. Were this an area not in a State of the Union, were this not the twentieth century and most importantly were this a private matter between families,

rather than misconduct of public officials, they could be judged by their own rules and standards. However, these are public officials. Misconduct in offices has occurred. Lawlessness and a total disregard for democracy, justice and the law-abiding element cannot be rewarded. Wrongful and corrupt acts by public official must be censured and punished. It is with much regret that the framework of these proceedings only encompass one public office and one individual officeholder. It is with regret that we witness other officials who by their own admission are equally guilty of misuse and misabuse of their office. It is painful that they walk forth with immunity in exchange for their testimony. Time will show the wisdom, if any, exercised by the Federal Government, Attorney General and House Board of Managers in granting immunity or offers of probation or light sentences to men who have committed equally despicable acts. Consequently, the decisions at which we arrive must be based on the reams of documentary evidence and the conclusions that are reached from the testimony of the witnesses rather than on the truth or veracity of that testimony. It is tempting to say that throughout this entire trial not one witness gave truly credible testimony. In reading the volumes from previous hearings, and in watching one public official after another give biased and untrustworthy testimony, it became analogous to the search through Sodom and Gomorrah for ten moral men. Yet this feeling for righteousness must always be tempered with the words of Bishop George Berkeley in his *Maxims Concerning Patriotism*, which stated, "He who says there is no such thing as an honest man, you may be sure is himself a knave."

We, the Senate of Texas, sitting in judgment chose to adopt the criminal test of "beyond a reasonable doubt" in giving weight to these charges. We further decided in effect to sever the counts charged. We have been given reams of evidence and voluminous testimony. In spite of the fact that most of the jury is composed of persons educated in the law (and all are makers of the law), and in spite of our sworn duty to reach our decisions based only on the evidence presented on Articles I and VII, every Member of the Senate is aware of other charges, convictions, and accusations against the accused and the political situation in Duval County. This is not a blindfolded jury. This is not an ordinary jury. Every member is an elected public official and in his own right, a political animal of sorts. We are aware the general public expects conviction irrespective of due process, the rights of the parties and the intricacies of the law and the legal system. Each juror must wrestle with these questions within his own conscience in reaching his decision. We are called the High Court of Impeachment. Let us hope that history so acquits our actions and verdict. It is painfully obvious that this entire procedure is political from beginning to end. One must reject out of hand the conclusions reached in the House Journal of August 4, 1975, when the House, in effect, felt they were not wasting taxpayers' money and not dealing with a matter of political revenge. Such actions are the constitutional duty of the House of Representatives and the Senate, but this is a political matter. All the participants are political. None of the participants escape criticism; the House of Representatives for commencing an action at taxpayers expense that is being duplicated in three other on-going forums; other political officeholders who joined the fray in fact or in print at opportune times; the jury for its cavalier come and go attitude; the lawyers, who in spite of their ability, at times did much to confuse the issue either by slow, methodical presentation or carnival flamboyance; the House Board of Managers, the accusers, who with one exception, seldom bothered to even be present for the trial; and, last, but certainly not least, the legal scholar or scholars who drafted the Articles of Impeachment. Much criticism can be levelled at the prosecution for not presenting its evidence more clearly and concisely. But, the real fault was in being saddled with Articles of Impeachment couched in verbiage so much stronger than necessary to accomplish the same result. It must have taken effort, inspiration and genius to allege conspiracy with all its legal pitfalls when an allegation of official misconduct would have sufficed.

Because of the trap that the House Board of Managers set for itself, I must vote "Nay" on Article I. While there were reams of testimony that continually circled the issue, the accusers did not discharge the burden of proof as to Count I. In fact, the proof was so slim and indirect, I do not believe the State even had a preponderance of the evidence based on the wording of the charge alleged in Count I. There was never conclusive documentary or circumstantial evidence to back up the uncorroborated testimony of the alleged co-conspirator, Cleofas Gonzalez, that Judge Carrillo participated in the scheme and received the groceries. Gonzalez's testimony totally lacked credibility. He is a man, who, by his own testimony, disliked the accused, blamed Judge Carrillo for the death of his parents, admitted to being vengeful and was a member of the rival political faction. There was ample evidence that the groceries were not received by the parties intended. Evidently, a scheme existed, but Judge Carrillo was not made a part of the conspiracy nor a recipient beyond a reasonable doubt.

Count VII is another matter. Little, if any, weight and credibility can be given to the testimony of Rudolfo Couling or Zenida Montemayor standing alone. By their own admission, they were either thieves, possessors of immunity or discharged or fired by Judge Carrillo. Both were members of the Parr faction. However, when you weigh the documentary evidence of invoices, checks, contracts, lack of other sources of income to the Benavides Implement and Hardware except for rentals to units of Government, coupled with the testimony of Red Kurtz and Walter Meek, you reach the inescapable conclusion that self-dealing and wrongdoing occurred and that the accused was most certainly involved. Judge Carrillo's testimony does contain an explanation for each check and each act. He does contradict his accusers on each and every point. His appearance and demeanor are likeable. Standing alone on the testimony of the witnesses, I could not convict the accused. One is tempted to feel affinity for a man who is being tried in so many forums. However, all of his explanations are not sound. He could never refute the initial meeting with Couling at Plains Machinery when the D-8 Dozers were purchased. He could not refute his address on the initial contract. He does not deny indirectly dealing with the units of Government. What public officials cannot do directly, they cannot accomplish indirectly. A different standard and duty is demanded and expected by the public. Mr. Justice Cardozo expressed it in the Meinhard case, when he stated, "A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior." The most damaging evidence of all was the thirteen checks for the identical amount of money, many on the same date flowing from the County, school district or water district to Benavides Implement and Hardware, and then to Judge O. P. Carrillo. No explanation other than coincidence of amounts and dates was offered. No documentary proof was submitted by the accused to show what machines were used for what period of time, for what purpose and at what rate of rent. No credible testimony was elicited on these points. Time frames were vague at best. No witnesses were produced who operated the supposed equipment. I cannot believe that a person of the accused's intelligence would not keep records and books on these facts. The explanations of loans and advances for a water-well rig and a station wagon did not ring true. If you were to throw out all other testimony save that of the accused, he still schemed to indirectly rent equipment to unit or units of Government of which he is a part. I am left with no other conclusion. All other reasonable hypotheses have been eliminated. While the State has the burden of proof, beyond a reasonable doubt, I am not called on to ignore judgment and the logical thought processes. Judge Carrillo is guilty as charged. I vote "Aye" on Count VII.

Twenty years ago I witnessed parts of the criminal trial of some of the same principals who are again involved. The accused was found not guilty on all but one of those charges and it was reversed by the U.S. Supreme Court. I hold very highly the

principle, that a person is innocent until proven guilty. Certainly accusations and indictments standing alone prove nothing. I believe in giving the accused the benefit of every doubt until those charges are proven. However, I think they have been proven. In spite of all of the rightful criticism of this entire proceeding and in spite of its political nature and irrespective of duplication and the cost to the taxpayer, if we can prevent corrupt people from ever holding public office, then perhaps we have accomplished an honorable mission. If this will be the beginning for honest government and officeholders, with a sense of integrity and justice in Duval County, then this can be a time to which we can all reflect with pride. It is my fervent hope that what has occurred in Duval County for almost a century will cease. That what I witnessed twenty years ago and what I have witnessed in this trial will not have to be witnessed twenty years hence by my son and daughter. Never Again.

JACK OGG

THE PRESIDENT: Any other Member of the Senate desire to be heard?

THE PRESIDENT: Senator from Lamar.

SENATOR AIKIN: Mr. President, I move the Senate, sitting as a High Court of Impeachment, adjourn sine die.

THE PRESIDENT: The Senator from Lamar moves that the Senate, sitting as a High Court of Impeachment, adjourn sine die.

All in favor, signify by saying "Aye"; those opposed, "No".

The "Ayes" have it. The Senate stands adjourned.

Accordingly, the Senate, sitting as a High Court of Impeachment, at 4:02 o'clock p.m. stood adjourned sine die.

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ATTORNEY GENERAL OF TEXAS JOHN L. HILL

(See also House Board of Managers, Counsel for)

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BROOKS, SENATOR CHET

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CARRILLO, JUDGE O. P.

(See Respondent)

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DEFENDANT

(See Respondent)

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DOYLE, TERRY

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ENROLLING CLERK

Mary Hobart Key appointed as Temporary,	1
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FOX, JAN WOODWARD

(See Respondent, Counsel for)

GAMMAGE, SENATOR BOB

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(Chief Justice, Supreme Court of Texas)

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HAYNES, RICHARD

(See Respondent, Counsel for)

HOUSE BOARD OF MANAGERS

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HOUSE BOARD OF MANAGERS, COUNSEL FOR

(See also Terry Doyle, John L. Hill, Elizabeth Levatino, John W. Odam)

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Notified that Senate organized 4

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Notified that Senate organized 4

SUBPOENAS ISSUED

(Microfilm copies of Subpoenas available at Records Division, State Library, and Legislative Reference Library)

Subpoena #1

Tomas Elizando
 Executed On 10/4/75 12:30 p.m.
 To Appear 10/7/75 1:00 p.m.
 Issued 10/2/75
 Requested By: House Managers

Subpoena #2

Walter W. Meek
 Executed On 10/4/75 1:41 p.m.
 To Appear 10/6/75 2:00 p.m.

SUBPOENAS ISSUED--(continued)

Issued 10/3/75

Requested By: House Managers

Subpoena #3

Mrs. Lauro Yzaguirre

Executed On 10/4/75 12:40 p.m.

To Appear 10/6/75 2:00 p.m.

Issued 10/3/75

Requested By: House Managers

Subpoena #4

Rudolfo 'Tete' Chapa

Executed On 10/4/75 1:14 p.m.

To Appear 10/6/75 2:00 p.m.

Issued 10/3/75

Requested By: House Managers

Subpoena #5

Rosa Chapa

Executed On 10/4/75 1:14 p.m.

To Appear 10/6/75 2:00 p.m.

Issued 10/3/75

Requested By: House Managers

Subpoena #6

Rosa Garza

Executed On 10/4/75 12:53 p.m.

To Appear 10/6/75 2:00 p.m.

Issued 10/3/75

Requested By: House Managers

Subpoena #7

Patricio Garza

Executed On 10/4/75 12:46 p.m.

To Appear 10/6/75 2:00 p.m.

Issued 10/3/75

Requested By: House Managers

Subpoena #8

Cleofas Gonzalez

Executed On 10/6/75 12:03 p.m.

To Appear 10/6/75 2:00 p.m.

Issued 10/3/75

Requested By: House Managers

Subpoena #9

Mrs. Beulah Gonzalez

Executed On 10/6/75 3:22 p.m.

To Appear 10/8/75 9:00 a.m.

Issued 10/3/75

Requested By: House Managers

Subpoena #10

Zenida Montemayor

Executed On 10/6/75 1:14 p.m.

To Appear 10/8/75 9:00 a.m.

Issued 10/3/75

Requested By: House Managers

Subpoena #11

George E. Powell

Executed On 10/6/75 12:20 p.m.

SUBPOENAS ISSUED--(continued)

To Appear 10/8/75 9:00 a.m.

Issued 10/3/75

Requested By: House Managers

Subpoena #12

F. H. Canales

Executed On 10/6/75 1:56 p.m.

To Appear 10/8/75 9:00 a.m.

Issued 10/3/75

Requested By: House Managers

Subpoena #13

Joe Coudert

Executed On 10/6/75 12:31 p.m.

To Appear 10/8/75 9:00 a.m.

Issued 10/3/75

Requested By: House Managers

Subpoena #14

Aurelio Correa

Executed On 10/7/75 9:30 a.m.

To Appear 10/8/75 9:00 a.m.

Issued 10/3/75

Requested By: House Managers

Subpoena #15

Manuel Amaya

Executed On 10/6/75 1:18 p.m.

To Appear 10/8/75 9:00 a.m.

Issued 10/3/75

Requested By: House Managers

Subpoena #16

B. C. Hamm

Executed On 10/6/75 2:25 p.m.

To Appear 10/8/75 9:00 a.m.

Issued 10/3/75

Requested By: House Managers

Subpoena #17

Cleofas Gonzalez

To Appear Instantly

Issued 10/6/75

Requested By: Respondents - not returned

Subpoena #18

Rudolfo Couling

To Appear Instantly

Issued 10/6/75

Requested By: Respondents - not returned

Subpoena #19

Arturo Zertuche

To Appear 10/13/75 9:30 a.m.

Issued 10/6/75

Requested By: House Managers - not returned

Subpoena #20

Gordon Ross

To Appear 10/13/75 9:30 a.m.

Issued 10/6/75

Requested By: House Managers - not returned

SUBPOENAS ISSUED--(continued)

Subpoena #21

Raul Serna

To Appear 10/13/75 9:30 a.m.

Issued 10/6/75

Requested By: House Managers - not returned

Subpoena #22

Sgt. Silverio Valadez

To Appear 10/13/75 9:30 a.m.

Issued 10/6/75

Requested By: House Managers - not returned

Subpoena #23

Jerry Parmer

To Appear 10/13/75 9:30 a.m.

Issued 10/6/75

Requested By: House Managers - not returned

Subpoena #24

Ramiro Carrillo

To Appear 10/9/75 10:00 a.m.

Issued 10/6/75

Requested By: House Managers - not returned

Subpoena #25

Dennis Hendricks

Executed On 11/6/75 9:15 a.m.

To Appear 11/18/75 10:00 a.m.

Issued 10/9/75

Requested By: O. P. Carrillo

Subpoena #26

Arnulfo Guerra

Executed On 10/31/75

To Appear 11/18/75 10:00 a.m.

Issued 10/9/75

Requested By: O. P. Carrillo

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Executed On 10/21/75 9:15 a.m.

To Appear 11/18/75 10:00 a.m.

Issued 10/9/75

Requested By: O. P. Carrillo

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Morris Atlas

Executed On 11/6/75 8:50 a.m.

To Appear 11/18/75 10:00 a.m.

Issued 10/9/75

Requested By: O. P. Carrillo

Subpoena #29

Randall Nye

Executed On 11/12/75

To Appear 11/18/75 10:00 a.m.

Issued 10/9/75

Requested By: O. P. Carrillo - not returned

Subpoena #30

Rufus Lopez

Executed On 10/31/75

SUBPOENAS ISSUED--(continued)

To Appear 11/18/75 10:00 a.m.
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 Requested By: O. P. Carrillo

Subpoena #31

John Mullen
 Executed On 10/31/75
 To Appear 11/18/75 10:00 a.m.
 Issued 10/9/75
 Requested By: O. P. Carrillo

Subpoena #32

Francisco Serda
 Executed On 10/31/75
 To Appear 11/18/75 10:00 a.m.
 Issued 10/9/75
 Requested By: O. P. Carrillo

Subpoena #33

Rudolfo Couling
 Executed On 1/6/76 10:10 a.m.
 To Appear 1/6/76 9:30 a.m.
 Issued 1/6/76
 Requested By: House Managers

Subpoena #35

Terry Canales
 Executed On 1/9/76 10:15 a.m.
 To Appear 1/12/76 2:00 p.m.
 Issued 1/7/76
 Requested By: Respondents

Subpoena #36

J. R. Alamia
 Executed On 1/12/76 9:00 a.m.
 To Appear on notice of 24 hours
 Issued 1/9/76
 Requested By: Respondents

Subpoena #37

Tom Berry
 Executed On 1/12/76 9:20 a.m.
 To Appear on notice of 24 hours
 Issued 1/9/76
 Requested By: Respondents

Subpoena #38

Praxedes Canales
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