

**INQUIRY CONCERNING A JUDGE
NO. 5**

NOVEMBER 19, 1975

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BEFORE THE
STATE JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 5

NOVEMBER 19, 1975

CHATHAM & ASSOCIATES
COURT REPORTERS
GUARANTY BANK PLAZA
CORPUS CHRISTI, TEXAS

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COPY

1 MR. MITCHELL: I have, Your Honor,
2 prior to the commencement of today's
3 session --

4 THE MASTER: Excuse me just a minute.
5 Let's note that the -- that we recessed last
6 Thursday the 13th so that Judge Carrillo
7 could attend the hearing in Federal Court
8 on the 14th which I understand, and you
9 correct me if I am wrong, Mr. Mitchell, did
10 not end on the 14th, but went over to the
11 17th. And the Senate commenced on the 18th
12 and we recessed and pursuant to a meeting
13 that we had right after the Senate had
14 recessed, we agreed to commence or
15 recommence this hearing on the 19th at 10
16 o'clock.

17 MR. MITCHELL: That is correct.

18 THE MASTER: We almost made it except for
19 me.

20 MR. MITCHELL: Actually, the motion,
21 Your Honor, relates to that itinerary. It
22 suggests continued due process violations
23 as bottomed on that itinerary and to continue
24 the non-waiver's posture of Judge Number 5,
25 Judge Carrillo, as well as to continue to

1 call the attention of the matter of our
2 position, I have given the Examiner a copy,
3 and I would like to advance to the Court and
4 hand the original motion suggesting continued
5 due process to the Court.

6 THE MASTER: Thank you.

7 MR. MITCHELL: Thank you, Judge.

8 (Handed to the Court.)
9

10 THE MASTER: Are you ready to proceed?

11 MR. ODAM: Yes, sir. If I could, I
12 would like to make one comment on this before
13 we proceed.

14 THE MASTER: Yes, sir.

15 MR. ODAM: With respect to the page 2,
16 paragraph 2, denial of effective counsel, I
17 have -- I don't know if Mr. Mitchell had a
18 chance to talk with Miss Fox yesterday or
19 not, but I called Mr. Mitchell again about
20 the daily copy and talked with Miss Fox and
21 told her that the Judicial Qualifications
22 Commission would make available the daily
23 copy and I -- I don't know if she picked it
24 up or not; I told her that it was there at
25 the Commission. I don't know if she went by

1 to pick it up yesterday or not.

2 MR. MITCHELL: I got a call, Your Honor,
3 at 7 o'clock this morning. She has broken
4 down in San Marcos, Texas, and I don't know,
5 I'm sorry to say, I just don't know.

6 MR. ODAM: All right.

7 MR. MITCHELL: She is on her way, Your
8 Honor.

9 THE MASTER: You assume she picked it
10 up?

11 MR. MITCHELL: I assume she did, and
12 hopefully she did, I left at 4 o'clock this
13 morning and she left a little later and had a
14 car problem at San Marcos.

15 I assume she did; she did not
16 communicate with me one way or the other.

17 MR. ODAM: Fine.

18 MR. MITCHELL: I hope that she has, I
19 would like to have it.

20 MR. ODAM: And the only other comment on
21 that is Rule 10-B of the Supreme Court, it
22 says, when a transcript has been prepared at
23 the expense of the commission, upon request,
24 and request has been made, it will be
25 available for use, and pursuant to that Rule,

1 is being made available for use and I just
2 wanted to clarify our position with respect
3 to that paragraph 2.

4 And then the only other comment
5 is with respect to the denial of due process
6 on testimony going beyond the notice and
7 amended notice, I believe the amended notice
8 includes paragraphs 7 through 12 and that is
9 what we are here on today.

10 As the Court recalls, last Thursday
11 when we met, Mr. Cleofus Gonzalez was
12 testifying and he was generally, as I stated,
13 we are now on paragraphs 7 through 12 and he
14 will be recalled for that purpose this
15 morning.

16 He had introduced, I believe, Mr.
17 Mitchell had gotten -- found out awhile ago,
18 it started with Exhibit 60 and Exhibit 61,
19 they were introduced by his testimony.

20 MR. MITCHELL: Thank you, John, yes,
21 that is true, John, thank you.

22 MR. ODAM: And then 62 and 63 were
23 introduced by his testimony and we will pick
24 up and continue this morning.

25 MR. MITCHELL: And I believe those were

1 originals and they had been withdrawn, those
2 were withdrawn and I would like to have them
3 available for my cross, but I believe that is
4 correct, John. If my memory serves me that
5 you started or commenced with this witness
6 on Exhibit 60.

7 THE MASTER: That is my -- that is what
8 my notes reflect, also.

9 MR. ODAM: Judge, you have a Xerox copy
10 of those, I believe?

11 THE MASTER: That is right.

12 MR. ODAM: You have 60 through 63?

13 THE MASTER: Is 60 -- yes, it doesn't
14 have a mark on it, but it is the one thousand
15 and eight dollar invoice.

16 MR. ODAM: Yes.

17 THE MASTER: Yes.

18 MR. MITCHELL: And 61 is --

19 THE MASTER: I have 61, 62 and 63.

20 MR. ODAM: And those copies are the ones
21 that you have, we would like to substitute
22 for the originals.

23 THE MASTER: Then 60 needs marking;
24 the others are marked.

25 MR. ODAM: All right, sir.

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THE MASTER: Off the record.

(Discussion off the record.)

THE MASTER: Will you call your next witness.

MR. MITCHELL: For the record, we will renew our running objection, our continuing objections to the testimony. Number one, beyond the term, beyond the formal and amended notice.

THE MASTER: Why don't you -- we have resumed for this after several days break. Why don't you state the three or four objections and if you want a moment or two, that is fine.

MR. MITCHELL: Beyond the scope of the formal and amended notice: the objection further dealt with a lack of notice, as I recall, and that the specifications and the testimony emanating from them are beyond the term, I mean, they are in 1971.

THE MASTER: That is right, beyond the date of the general election and on the alternative beyond the date of the oath of office, which I believe it was testified to

1 was the 2nd of December, 1975.

2 MR. MITCHELL: January of 75.

3 THE MASTER: Okay. At any rate, the
4 objection is that it was before the general
5 election of November, 1974, and before the
6 oath of office in January, 1975.

7 MR. MITCHELL: Correct Your Honor.

8 THE MASTER: You have that standing objec-
9 tion.

10 MR. ODAM: With respect to that comment
11 and also the comments about the specificity
12 in Articles 7 through 12, I wonder if we
13 could discuss that.

14 THE MASTER: Yes.

15 MR. ODAM: As I understand it, Mr.
16 Mitchell commented that with respect to
17 Articles 7 through 12, that Mr. Mitchell takes
18 the position that is not by way of the
19 special exceptions, that it doesn't tell him
20 enough about what his client is accused of.
21 We would say they should be overruled,
22 because they do state specifically enough.
23 They state the date the incident occurred,
24 the amount of money wrongfully obtained and
25 from whom the money was obtained.

1 We would initially take the position
2 that the special exception should be over-
3 ruled.

4 If it is the view of the Master, the
5 special exception should be granted, we have
6 prepared an amended notice of formal proceed-
7 ings, amended in the sense that I would call
8 it a supplemental pleading. It does not
9 plead new information, but it simply goes
10 to the special exceptions of 7 through 12.

11 If it would be the view of the Master
12 to grant those, we would tender it to the
13 Master today.

14 MR. MITCHELL: Might I also add I don't
15 think I added the objection that I had previ-
16 ously and that is that the contents of 7, 8,
17 9, 10, 11 and 12 are non-judicial and cannot,
18 as a matter of law, disqualify a judge.

19 THE MASTER: That is a standing objection.

20 MR. MITCHELL: To refresh the record,
21 I believe we objected to all of the testimony
22 of this witness on the grounds of hearsay:
23 there being no connecting link between this
24 witness' testimony and Judge Carrillo.

25 THE MASTER: Yes, sir.

1 May I see the amended pleadings?

2 MR. ODAM: Yes, sir. And as I said, it
3 could be demonstrative of supplemental and
4 we could have spoken through paragraphs 7
5 through 12 and it is page 7 where we began
6 that there is any change at all, 7, 8, 9, 10,
7 11 and 12. The rest of it is what was in the
8 first amended --

9 MR. MITCHELL: May I ask Counsel, Your
10 Honor, I have been given a copy of the second
11 amended notice and I would ask that the
12 changes be pointed out to me, which ones.

13 THE MASTER: I believe he did so.

14 MR. ODAM: Paragraphs 7 through 12 are
15 the only changes that I am aware of, beginning
16 on page 7.

17 MR. MITCHELL: Thank you.

18 MR. ODAM: And going through page 12.

19 THE MASTER: I am not sure I fully under-
20 stand. You say irrespective of my ruling on
21 the exceptions, do you tender this amended
22 notice?

23 I will receive it for the file pursuant
24 to your tender.

25 MR. ODAM: Your Honor, to that I would

1 say first of all, I believe our pleadings
2 are specific enough as they are, however, all
3 the commission wants to do is give Judge
4 Carrillo ample notice. The second thing, I
5 would say is that I do not -- I would prefer
6 that the filing of the second amended notice
7 of formal proceedings not unduly delay this
8 proceeding.

9 THE MASTER: As I read Rule 11, I and
10 the commission at any time prior to the com-
11 mission's determination may allow or require
12 amendments to the notice of formal proceedings
13 and I think I will require you to file this
14 second amended notice.

15 MR. ODAM: All right. It should be
16 spelled out, and I left a blank on the second
17 amended notice, and at this time I will file
18 the original copy.

19 THE MASTER: I would prefer that you
20 deliver it to Mr. -- he has, I think, the
21 original of all of the pleadings. I have the
22 copies, which I will keep.

23 MR. ODAM: Your copy and Arthur, on
24 your copy, on page 12, you might conform it
25 to say it was signed by Maurice Pinkin on the

1 19th day of November.

2 THE MASTER: All right. Now, 5A is
3 still sort of a trial amendment.

4 MR. ODAM: Yes, sir, one other thing.

5 THE MASTER: Has it been signed?

6 MR. ODAM: Yes.

7 On the second amended notice, "Charged
8 thereby with a reasonable period of time
9 after second amended notice", it should be
10 stated on the notice what the time is. We
11 would suggest, if Mr. Mitchell desires to
12 file an answer, that it be filed by the
13 Monday after Thanksgiving. That is almost
14 two weeks. The trial amendment is -- well,
15 what I tender to the Court now is a xerox
16 copy and I give Mr. Pinkin the original of
17 the trial amendment and Mr. Mitchell a copy.

18 The copy which I am giving to the Master
19 now is identical to what has been typed out,
20 except it is more complete.

21 THE MASTER: I see.

22 MR. ODAM: I think we have a different
23 situation with that trial amendment than with
24 paragraph 7 through 12, in that the trial
25 amendment was presented as a result of testimony.

1 THE MASTER: Yes, I remember the record
2 clearly. You are simply again, pursuant to
3 Rule 11, and particularly the second sen-
4 tence, "The notice may be amended to ^{proof} ~~prove~~" --

5 MR. ODAM: Yes.

6 THE MASTER: And you are conforming the
7 notice to proof, is that what you were about
8 to say?

9 MR. ODAM: Yes, sir.

10 What I say about the trial amendment is
11 again a reasonable period of time should be
12 given for an answer and if a longer period of
13 time is given then Monday after Thanksgiving,
14 then I would withdraw it and not file it,
15 because it is a different situation. I do
16 think they are different. If it would be the
17 view of the Master to give a longer period of
18 time, we would not tender the trial amend-
19 ment, although, I do think the 5A situation
20 and answer could be filed to the first Monday
21 after Thanksgiving.

22 THE MASTER: If there is a special answer
23 to be filed, I would agree.

24

25

1 MR. MITCHELL: Yes, Your Honor, may I
2 incorporate for the purposes of my statements,
3 the previous motions suggesting continued
4 due process, continued due process violations,
5 and I will address my remarks initially, Your
6 Honor, to the second amended notice of formal
7 proceedings having just received it, and
8 having ascertained counsel's explanations as
9 being offered under Rule 11, we would like
10 to object to the filing of the second amended
11 notice of formal proceedings and plead
12 surprise, and state, and move for a reasonable
13 time to answer and to prepare and to present
14 defenses against the matters charged in the
15 second amended notice of formal proceedings.

16 We further object on the grounds
17 that there is no compliance with the fifteen-
18 day notice rule. The matters contained in the
19 second amended notice of formal proceedings
20 not being a part of the original formal
21 proceeding are at least factually not a part
22 of the first amended notice of formal
23 proceedings and therefore should not be filed.

24 In addition, the matters contained
25 in the second amended notice of formal

1 proceedings not being made the basis of the
2 prior investigatory or preliminary hearing,
3 cannot now at this late date be -- require
4 Judge Carrillo to amend an answer.

5 We, of course, also, Your Honor,
6 reassert the due process violations and
7 implicit in the due process violations would
8 be the effective counsel and the notice, that
9 is breadth and depth type notice, not only
10 do we not have ample notice of it, but as the
11 case is unfolding, we are now required to
12 answer it and to plead it.

13 I would submit that the fact that
14 we were given ample time to answer it wouldn't
15 cure that defect. Answering is no art, the
16 preparation of evidence is the art and having
17 objected, of course, at the very outset of Mr.
18 Gonzalez' testimony, insofar as it related
19 to specifications numbered 7, 8, 9, 10, 11 and
20 12, we submit that at this late hour, Your
21 Honor, that matter cannot be cured.

22 In addition, the trial amendment to
23 the first amended notice of formal proceeding,
24 we object to it and we note that it differs
25 in the denomination -- the denomination of

1 the document, one is trial amendment and
2 the other is second amended. At any rate, we
3 plead surprise to it.

4 Also, and quite frankly, to state
5 to the Court we don't know whether this will
6 be to conform to the proof type one in
7 essence; however, the problem I have with that,
8 Your Honor, is that there is no allegations
9 at the very outset in the formal notice or
10 the amended notice to which the proof could
11 have been relevantly admitted which forms
12 a basis of 5-A; consequently our contention
13 is that it is not a rule 11-A type amendment.
14 We cannot be put to trial on it, it not having
15 been made the basis of preliminary
16 investigation or original notice or amended
17 notice. We, likewise, would plead surprise
18 and state we would like to have a continuance
19 and/or a postponement on it as well as a
20 second amended notice of proceeding, and in
21 order to draft an answer to compile a defense
22 for the purpose of meeting the allegations
23 and the trial amendment and the second
24 amended notice of formal proceeding.

25 We would like, also, Judge, to be

1 given an opportunity to at least commemorate
2 some of the matters raised. As the Court is
3 aware, I have had only about ten minutes off
4 the top of my head to compose an answer, but
5 I would like to have an opportunity to make
6 a formal answer to both the trial amendment
7 and the first amended notice.

8 THE MASTER: The first amended notice --
9 the second amended notice is what you
10 referred to rather than the first amended
11 notice.

12 The second amended notice was
13 prepared in response to your exceptions. It
14 adds nothing new, is that correct?

15 MR. ODAM: That is correct, Your Honor,
16 and along that line, the exceptions specifically
17 for the record beginning at page 46, it says
18 charges are, "Too vague, general, indefinite
19 and their allegations omitting to allege with
20 any particularity the act which the Judge
21 is alleged to have committed and thereby
22 failed to afford, to give the Judge reasonable
23 notice." And that is exactly correct, Your
24 Honor, it speaks to that special exception
25 which, as I understood the matters awhile ago,

1 you're requiring for that special exception
2 for us to amend and it does not go into any
3 more than to --

4 THE MASTER: I don't know that I required
5 you to amend, having prepared the second
6 amended notice of formal proceedings, I
7 directed that they be filed. If there be any
8 question about the detail and the
9 specificity, and I overrule the objections
10 that I heard from Mr. Mitchell.

11 If you wish to formalize them and
12 re-present them, of course, I do understand
13 you have not had enough time.

14 MR. MITCHELL: Yes.

15 THE MASTER: And I will hear them.

16 MR. MITCHELL: Yes, Your Honor, it is
17 a difference between a general theft
18 indictment which is a formal notice and now
19 conspiratorily in the new paragraph 7 in
20 answer to the question or to the proposition
21 that I forced the amendment by raising the
22 special exception.

23 THE MASTER: I don't know that you
24 forced it. Sometimes a person pleads and
25 another person excepts, and the pleader

1 then amends out of an excess of caution, that
2 is all.

3 MR. MITCHELL: And of course, this is
4 the type of case, Your Honor, where the
5 shift is totally and completely so different,
6 it presents an entirely new theory of
7 complex schemes of false invoices on behalf
8 of the Benavides Implement and Hardware
9 Company and in seven, direct theft which we
10 were at a loss, of course, to defend, there
11 was nothing in the original allegation to
12 point up where we stole the money. I am
13 simply saying, having come in and amended
14 and pled seven, does not give us the benefit
15 of having a reasonable opportunity to defend
16 against it; that's the problem we are having.
17 But I understand we will be permitted, Your
18 Honor, to formalize our objections to the
19 filing both of the trial amendment and to the
20 second amended notice of formal proceeding.

21 THE MASTER: Go ahead, Mr. Odam, with
22 your evidence.

23 MR. MITCHELL: And may we have a
24 continuing objection to all of the testimony
25 so we are not put in a position to waive our

1 request for -- pleading our surprise and
2 pleading our reasonable time, Judge Meyers,
3 and I will not have to be put to the burden
4 of --

5 THE MASTER: Yes, how much time would
6 you want?

7 MR. MITCHELL: -- of constantly
8 interrupting. We would like to have a
9 reasonable time, 15 days is set aside in the
10 rules.

11 THE MASTER: I disagree with that
12 interpretation of the rules but now here is
13 my thought. This is evidence to be given by
14 Mr. Cleofus Gonzalez and Mr. Couling, am I
15 right?

16 MR. ODAM: Yes, in light of their
17 testimony there will have to be some -- a few
18 additional witnesses to prove -- to complete
19 that record, but they are the two primary
20 witnesses.

21 THE MASTER: All right. Did Mr.
22 Gonzalez and Mr. Couling testify on these
23 matters in the Federal Court?

24 MR. ODAM: No, sir.

25 MR. MITCHELL: No, they did not, Your

1 Honor. I will state to the Court, these are
2 entirely new matters. I wouldn't sandbag
3 the record and I don't intend to. There has
4 been no prior testimony here.

5 Of course, now, I will be required
6 to go out and get the witnesses, Mr. Carrillo,
7 Mr. Ramiro Carrillo, and go into the matter
8 in detail. This is my problem.

9 The problem is, I had no prior
10 input on these at all and I think counsel
11 will admit that these have not been made the
12 subject matter of any prior inquiry. They are
13 not in the Articles of Impeachment and nor
14 were they part of the U. S. v. Carrillo case.

15 MR. ODAM: It is not identical in nature
16 and the testimony given here would not be
17 verbatim. It is similar in nature to the
18 Federal case, as I understand it.

19 THE MASTER: But different invoices?

20 MR. ODAM: Yes, different invoices, and
21 different periods of time, but as I understand
22 it generally, I think that it would be revealed
23 that they were similar types of transactions
24 as came up in the Federal case. The scheme,
25 the scheme of the use of the invoices, the

1 store, et cetera, I understand are the same.

2 What these witnesses testify to
3 in the Federal case would be similar but it
4 would not be the same invoices.

5 MR. MITCHELL: Well, in the Federal case,
6 Your Honor, it did not involve these
7 entities.

8 THE MASTER: I understand that.

9 MR. MITCHELL: They are totally
10 different, that is right, and of course, the
11 allegations there were that it was -- that Mr.
12 Couling forged checks, forged endorsements
13 and cashed them and took the money and handed
14 it to Judge Carrillo which is an entirely
15 different concept.

16 It was on the basis of that testimony
17 by Mr. Couling that he was impeached, that
18 there was a determination that there was a
19 tax obligated to be paid on and not paid,
20 Your Honor, so it is an entirely different
21 concept which is what I'm driving at.

22 Here the checks are from Duval
23 County as versus over there the checks were
24 from the school district of which Mr. Couling
25 was president and secretary and everything

1 else. It is entirely different entity,
2 different period of time, different plan.

3 THE MASTER: Go on with Mr. Gonzalez.
4
5
6

7 CLEOFUS GONZALEZ,
8 was recalled as a witness, and having been
9 previously sworn, testified upon his oath as
10 follows, to wit:
11

12 E X A M I N A T I O N

13 BY MR. FLUSCHE:
14

15 Q Mr. Gonzalez, I believe at the close of the
16 testimony last week you had testified that you
17 were employed or had been employed by the -- by
18 the Farm and Ranch Store of Benavides, Texas, is
19 that correct?

20 A You mean like they paid me or --

21 Q No, you worked at the Farm and Ranch Store?

22 A Yes, sir.

23 Q And you worked at the Farm and Ranch Store at a
24 time when you were being paid by the County of
25 Duval, is that correct?

1 A That is correct, sir.

2 Q And I believe you testified that you had made some
3 false invoices for which no labor or services had
4 been performed and had submitted those to Mr.
5 Rudolfo Couling so that he could submit them in
6 terms of the county, is that correct?

7 A That is correct.

8 MR. MITCHELL: Well, now, we're going
9 to object to that last question. I know he
10 is getting the preliminaries, Your Honor,
11 and I appreciate that fact, but that is
12 hearsay as to what Couling is going to do.
13 He is going to testify and he is --

14 THE MASTER: I will overrule the
15 objection.

16 MR. MITCHELL: Note our exception.

17 Q Let me ask you this question, when you completed
18 these invoices which you identified last week,
19 how would you transmit them to Mr. Couling or did
20 you send them to him?

21 A I send them to him by Ramiro Carrillo after he gave
22 me the instructions to fill them out and everything.
23 He said are they ready and I said yes and well
24 give them to me, I am going over there, and he
25 took them over to him.

1 MR. MITCHELL: Now, we object to what
2 the transmittal to Mr. Ramiro -- to Mr.
3 Couling via Ramiro Carrillo, that would be
4 hearsay, Your Honor.

5 The question was, how did you
6 transmit them to Couling. The answer should
7 be, I did not transmit them to Couling, I
8 gave them to Ramiro Carrillo.

9 THE MASTER: The answer is, you gave
10 them to Ramiro Carrillo?

11 MR. MITCHELL: That is right.

12 A Yes, sir.

13 THE MASTER: Then the objection is
14 sustained.

15 MR. FLUSCHE: By way of explanation,
16 Your Honor, all of these invoices have to
17 do with the paragraphs 7 through 12 and we
18 will identify the paragraph as to each
19 exhibit.

20 THE MASTER: All right.

21 MR. MITCHELL: Is that of the amended
22 now, the second amended --

23 THE MASTER: Well, the paragraphing is
24 the same, Mr. Mitchell.

25 MR. MITCHELL: Yes, sir.

1 THE MASTER: They simply have added
2 information, detail.

3 MR. FLUSCHE: May I approach the witness?

4 THE MASTER: Yes, sir.

5 (Handed to the witness.)
6

7 Q I'll show you, Mr. Gonzalez, what has been marked
8 as Exhibit 71 and ask you if you can identify that
9 document?

10 Yes, sir, these were invoices that I made out.

11 Q And is that made in your handwriting?

12 A Yes, sir.

13 Q And what does that invoice purport to bill for?

14 A Rental equipment on county roads and contract
15 hauling caliche.

16 Q All right. Now, did, in fact, any of that labor
17 or services, was any of that actually performed?

18 MR. MITCHELL: That would be hearsay as
19 to him, Your Honor. It undertakes to
20 obligate, I understand not having seen it,
21 Benavides Implement and Hardware. This man
22 was not an employee of Benavides Implement
23 and Hardware and would not know of Benavides
24 Implement and Hardware, what work they
25 performed, him being an employee of the Farm

1 and Ranch Store, it would be hearsay.

2 THE MASTER: You need to show the basis
3 of his knowledge.

4 MR. FLUSCHE: All right, sir.

5 THE MASTER: You said that was '71?

6 MR. FLUSCHE: Yes, sir.

7 THE MASTER: It is somewhat out of order,
8 there is 64, 65, 66, 67 and 70.

9 MR. FLUSCHE: Those are other documents
10 that have to be proved up by the other
11 witnesses that Mr. Odam mentioned.

12 THE MASTER: All right. I just wanted
13 to be sure -- that is fine.

14 Q (By Mr. Flusche:) Let me ask you this question,
15 insofar as you know, were any of these services
16 performed by the Farm and Ranch Store?
17 A No, sir.

18 MR. MITCHELL: Well, that would be
19 hearsay, Judge. We object.

20 THE MASTER: The question was, insofar
21 as he knows.

22 MR. MITCHELL: I'm sorry, I stand
23 correct. I withdraw that objection. He said
24 Farm and Ranch, I withdraw the objection.

25 Q Now I will show you what has been marked as Exhibit

1 E-72 and ask you to tell the Court what that
2 document is.

3 A That is a statement I would make so Farm and Ranch
4 would get paid, so that the money would come back
5 to Farm and Ranch.

6 (Handed to counsel.)
7

8 MR. MITCHELL: Your Honor, we are going
9 to object to 71 and 72 insofar as they relate
10 to Mr. Juan Leal and insofar as this witness
11 has testified on the grounds that they are
12 hearsay as to Judge Carrillo. There is no
13 connecting link.

14 Now, in addition, Your Honor, to
15 out other objections, so we are not going to
16 waive those and no proper authentication
17 both as to 71 and as to 72.

18 THE MASTER: Let me take a quick look
19 at them.

20 (Handed to the Master.)
21

22 Q Was Exhibit Number 72 made out in your handwriting?
23 Was that your handwriting?

24 THE WITNESS: Yes, sir.

25 THE MASTER: And you said 71 was also?

1 THE WITNESS: Sir?

2 THE MASTER: You said 71 was also?

3 THE WITNESS: Yes, s'ir.

4 THE MASTER: Well, the objection is
5 overruled. Do you offer them?

6 MR. FLUSCHE: I offer them in evidence,
7 71 and 72.

8 THE MASTER: All right. Exhibits 71 and
9 72 are admitted.

10 Q (By Mr. Flusche:) I will show you now what has
11 been marked as Exhibit 78 and ask you to tell the
12 Court what that is?

13 A That is a rental equipment and -- on roads, hauling
14 caliche invoice.

15 Q Now, again, insofar as you know, were any of those
16 services performed by the store that you worked
17 for, that is the Farm and Ranch Store?

18 A No, sir.

19 MR. MITCHELL: Excuse me, Your Honor,
20 pardon me, Max, Your Honor, may the Judge be
21 excused for a minute to make a call to our
22 office? We are trying to run down the daily
23 copy. Miss Fox came in and doesn't have it.
24 It might have been delivered to our office.
25 If we could, we would like to call our office.

1 THE MASTER: What is your understanding
2 of the record with respect to what happened
3 to the daily copy?

4 MR. ODAM: The daily copy, as far as I
5 know, it is on Mrs. Pearson's desk in the
6 Judicial Qualifications office, I thought
7 after we talked yesterday you were going to
8 send somebody over.

9 MISS FOX: Right, and I think the
10 instructions got crossed up somewhere.

11 MR. PIPKIN: I will be glad to call,
12 Mr. Mitchell, and ascertain -- I wasn't
13 aware it was there yesterday.

14 THE MASTER: Well, then, Mr. Pipkin, if
15 you would call and then if it is there, ask
16 Mrs. Pearson to call Mr. Mitchell's office.
17 You have somebody over there that could pick
18 it up, do you?

19 MR. MITCHELL: Yes, sir, and put it on
20 the bus, is what we want to do.

21 MR. PIPKIN: We will do that, Your Honor,
22 to expedite it.

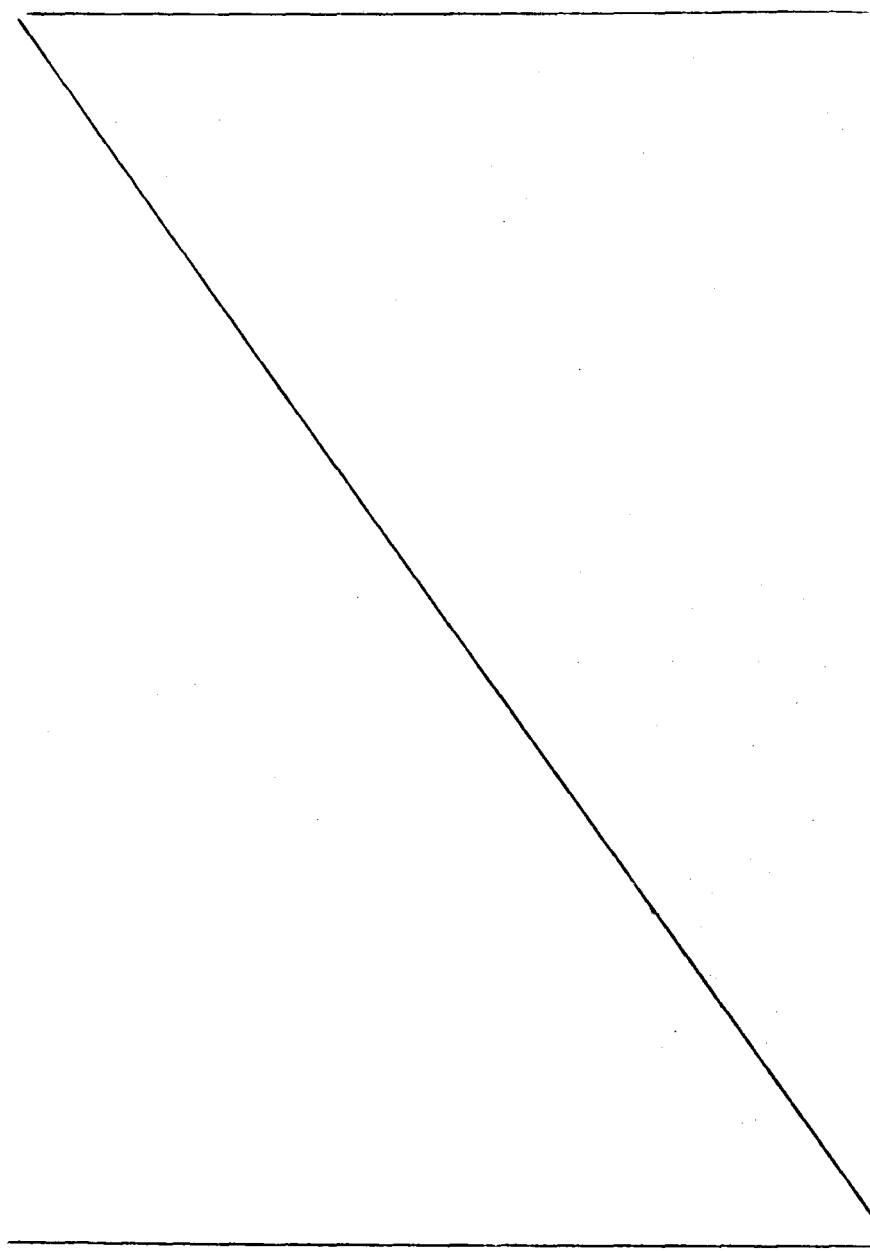
23 THE MASTER: That is fine.

24 MR. MITCHELL: We appreciate that.

25 THE MASTER: All right. That will be fine.

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(Discussion off the record.)



1 O (By Mr. Flusche:) I show you what has been marked
2 E-79 and ask you to tell the Court what that is.

3 A That is a statement sent by me.

4 Q That was based on Exhibit 78 which I just handed
5 to you?

6 A Yes, sir.

7 Q Both of those instruments are in your handwriting?

8 A Yes, sir.

9 Q And executed by you?

10 A Yes, sir.

11 MR. FLUSCHE: I offer Exhibits 78 and 79
12 in evidence.

13 MR. MITCHELL: Objection on the grounds
14 as hearsay as to Judge Carrillo, no connect-
15 ing link and this is in addition to the previ-
16 ous objection lodged, and improper authenti-
17 cation.

18 THE MASTER: The objections are over-
19 ruled. Of course, they will be disregarded
20 if they are not somehow connected up.

21 MR. FLUSCHE: They will be connected,
22 Your Honor.

23 THE MASTER: They are admitted.

24 (Examiner's Exhibit 78 and 79 admitted
25 in evidence.)

1 MR. MITCHELL: May I ask a question on
2 voir dire, Your Honor?

3 THE MASTER: Yes, sir.
4

5
6
7 VOIR DIRE EXAMINATION

8
9 BY MR. MITCHELL:

10 Q Who is Juan Leal?

11 A He is the county commissioner of Precinct Number 2.

12 MR. MITCHELL: For the purpose of that
13 objection, there is still no connection
14 between Judge Carrillo and Juan Leal. We
15 would object as to hearsay as to him.

16 MR. ODAM: Your Honor, last Thursday
17 Mr. Vernon and I went back through and marked
18 these Exhibits and these are what are being
19 offered today.

20 THE MASTER: All right.
21

22
23
24 FURTHER EXAMINATION
25

1 BY MR. FLUSCHE:

2
3 Q I show you what has been marked as Exhibit 91 and
4 ask you if you can identify that document.

5 A That is also an invoice I made out for Ranch and
6 Equipment.

7 Q What is the date of that?

8 A December 6th, 1972.

9 Q What is the amount?

10 A One thousand six dollars.

11 Q Was that document prepared by you?

12 A Yes, sir.

13 Q And it was submitted to Ramiro Carrillo?

14 A Correct, sir.

15 Q I show you what has been marked as Exhibit B92 and
16 ask you if you can identify that document.

17 A That is a statement I sent for this invoice.

18 Q That statement is based upon Exhibit 91?

19 A This one is 92.

20 Q Well, this one.

21 A Yes, it is based on this one.

22 Q And that one also is made out in your handwriting,
23 is that correct?

24 A Yes, sir.

25 MR. MITCHELL: Your Honor, I note that

1 the past Exhibits, 71, 78, 91 and 92 are
2 on yellow paper and they have apparently
3 been extracted from another document. I would
4 like to object to those as best evidence
5 along with hearsay: no connecting testimony
6 and also, Your Honor, improper authentica-
7 tion.

8 We would like to have an explanation of
9 where they come from in the event of my
10 objections to the testimony being overruled.

11 MR. ODAM: I found these little slips
12 of paper tend to get lost and I marked them
13 that way so that they will fit in a file
14 folder and certainly we can take them off.

15 THE MASTER: No, that is perfectly accept-
16 able.

17 As I understand the witness, these are
18 statements the witness prepared.

19 MR. MITCHELL: I understand that, too,
20 but they are part of a different package. Has
21 it been edited, are there claim jackets to
22 go with it and so forth, these are the ques-
23 tions we are asking. This is the reason I
24 level the objection, Your Honor.

25 MR. FLUSCHE: Well, there are other

1 documents which accompany these, but they are
2 to be authenticated by other witnesses.

3 THE MASTER: The objection is overruled.

4 MR. MITCHELL: Pardon me, I need to
5 inform myself. The Examiner has taken a
6 completed Exhibit and broken it down and is
7 introducing part of it through this witness
8 and part through another witness.

9 THE MASTER: What I understand he is
10 undertaking to do at that point is to intro-
11 duce these slips of paper prepared by this
12 witness with the representation that he will
13 show a connection to Judge Carrillo. The
14 only way to offer them is to say, did you pre-
15 pare this, and based upon what, and that is
16 what he has done.

17 MR. MITCHELL: That is fine. I am not
18 objecting to that. I want to know if this
19 document has been stripped off a package.

20 Mr. Meek testified there were checks and
21 claim jackets and warrants and if that is
22 the case, it makes it impossible for me to
23 cross-examine this witness.

24 THE MASTER: It may well be, and I
25 assume it is, that the only thing this witness

1 can do is identify what he did. To have
2 another piece of paper prepared by somebody
3 else, you have to have that done by another
4 witness.

5 In other words, this is just a brick-
6 building process.

7 MR. MITCHELL: Then we will remove the
8 piecemeal authentication objection.

9 THE MASTER: The objection is overruled.

10 MR. FLUSCHE: Exhibits 92 and 91 are
11 offered in evidence.

12 MR. MITCHELL: We renew our objection.

13 THE MASTER: The objection is overruled
14 and they are admitted.

15 (Examiner's Exhibits 91 and 92 were
16 accepted into evidence.)

17
18 MR. FLUSCHE: For clarification of the
19 record, Exhibits 61 and 62 pertain to para-
20 graph 9 and Exhibits 78 and 79 pertain to
21 paragraph 10 and the last two, 91 and 92, are
22 part of a series of invoices which relate to
23 paragraph 12.

24 THE MASTER: What does 63 relate to?

25 MR. FLUSCHE: Well --

1 THE MASTER: Well, what does 60 and 63
2 relate to?

3 MR. FLUSCHE: Well, 60 and 61 relate to
4 paragraph 8.

5 THE MASTER: Well, that is a mistake.
6 You said they related to --

7 MR. FLUSCHE: Yes, you're right, I am
8 sorry.

9 THE MASTER: All right. I can straighten
10 it out. 60 and 61 relate to paragraph 8?

11 MR. FLUSCHE: No.

12 THE MASTER: They relate to paragraph 7
13 clearly, am I correct there?

14 MR. FLUSCHE: Okay. I am mistaken.

15 62 and 63 relate to paragraph 8; 71 and
16 72 relate to paragraph 9; 78 and 79 relate
17 to paragraph 10 and 91 and 92 relate to
18 paragraph 12.

19 THE MASTER: All right.

20 Q (By Mr. Flusche:) Now, Mr. Gonzalez, each of
21 these Exhibits show they were addressed to Juan
22 Leal, who is the commissioner of Precinct 2?

23 A Yes, sir.

24 Q Why did you address them to Juan Leal?

25 A That was the way I was instructed by Ramiro

1 Carrillo, that it had to be done that way to help
2 O.P.

3 MR. MITCHELL: I object to that answer
4 and move to strike it as hearsay.

5 THE MASTER: That is sustained.

6 MR. FLUSCHE: May I speak to that?

7 THE MASTER: Yes.

8 MR. FLUSCHE: Inasmuch as we have now
9 alleged a conspiracy between Judge Carrillo
10 and Ramiro Carrillo, I believe it is a co-
11 conspiracy situation between these three
12 parties.

13 MR. MITCHELL: Who is the co-conspirator.

14 THE MASTER: Ramiro Carrillo.

15 MR. FLUSCHE: He has to be informed by
16 a co-conspirator.

17 MR. MITCHELL: He has to -- I don't
18 understand.

19 MR. FLUSCHE: I am saying that a state-
20 ment made by a co-conspirator outside the
21 presence of the conspirator is an exception
22 to the hearsay rule.

23 MR. MITCHELL: Who is the co-conspirator.

24 THE MASTER: I understand the contention.
25 It is that Mr. Ramiro Carrillo and Judge O. P.

1 Carrillo, among others perhaps, were in a
2 conspiracy and that the statement of Ramiro
3 Carrillo becomes admissible as the statement
4 of a co-conspirator.

5 MR. MITCHELL: Oh, yes, there is no
6 question about that, but that is not what
7 we are talking about here. He is talking
8 about if Mr. Gonzalez is a co-conspirator.

9 THE MASTER: No, no, this is a statement
10 made to him by Mr. Ramiro Carrillo.

11 MR. MITCHELL: Fine. If he is a co-
12 conspirator --

13 MR. FLUSCHE: No, that is not the rule.

14 MR. MITCHELL: Well, that is my objection.
15 I am not going to quarrel about it.

16 Your Honor, may I add before that rule
17 is applicable, the clearcut conspiracy must
18 be shown and the answer was purposely non-
19 responsive.

20 THE MASTER: That is, of course, certainly
21 true. Obviously he can ask the next question,
22 what did Ramiro Carrillo tell you about it.

23 MR. FLUSCHE: On the point of whether or
24 not a conspiracy has been established, these
25 statements are admissible anytime subject to

1 our being able to prove a conspiracy.

2 THE MASTER: That is true. I am sitting
3 here wondering, however, concerning the motion.
4 Mr. Mitchell made this motion at the outset
5 that says these additional pleadings take him
6 by surprise, and if you know of the allegation
7 of conspiracy, maybe you ought to strike these
8 pleadings instead of ordering them filed.

9 I am now very concerned about filing
10 pleadings at ten o five and then starting
11 to trial at ten ten.

12 MR. FLUSCHE: The substance of the alle-
13 gation has not changed. It is theft of the
14 money that has been alleged. We came back
15 and told them in ABC language how it happened.

16 THE MASTER: How much time are they
17 entitled to then to prepare their defenses to
18 those A, B and C explanation as to how it
19 happened.

20 MR. FLUSCHE: Well, of course, I think
21 the time that the Court has already set, that
22 is Monday, a week, is ample time for them to
23 prepare a defense to this matter.

24 MR. MITCHELL: I didn't know the Court
25 set a time.

1 MR. FLUSCHNE: That is the time we sug-
2 gested. I didn't know whether the Court had
3 concurred with that.

4 THE MASTER: No. Do you mean the Monday
5 after Thanksgiving?

6 MR. MITCHELL: You mean to answer?

7 THE MASTER: Well, what we discussed
8 yesterday was right after the Senate adjourned,
9 was that we would try to finish the testimony
10 of the Examiner this week and if we did, then
11 we would not resume next week, but would
12 resume on the Monday following Thanksgiving.
13 Is that a correct statement?

14 MR. MITCHELL: I see. But for the
15 record, let me say this. It doesn't make
16 any difference if the ship is sunk. They are
17 putting evidence in the record that is improper.
18 I am objecting and this does not cure the
19 terrible wrong that is done to me and my
20 client as you file A, B and C at ten o five
21 and present detailed testimony of this wit-
22 ness five minutes later.

23 THE MASTER: I have been thinking about
24 that. I would not excuse this witness, how-
25 ever, but --

1 MR. MITCHELL: Pardon me, Your Honor,
2 I know it is of concern, rightfully, to the
3 Court, Your Honor.

4 MR. FLUSCHE: Let me say this, that the
5 commission does not want to take any position
6 that will cause any further delay. If --
7 I am thinking out loud now, but if the word
8 conspired bothers the court, we would perhaps
9 strike that from the pleadings.

10 THE MASTER: What bothers me is this.
11 While I have not briefed it, I am concerned
12 that allegations 7 through 12, when attacked
13 by exceptions are not sufficient, which means,
14 of course, that the exceptions, if I am
15 right, should be sustained. If they are
16 sustained, then you must amend. If you must
17 amend, Counsel would normally have time to
18 get ready for the amendment. I need to go
19 back and see what happened on the opening
20 day or days, to see what happened on the
21 opening days, to see what the status of
22 those amendments are, I don't recall.

23 MR. MITCHELL: As I recall also, Your
24 Honor, I thought we were instructed by Counsel
25 for the Examiner, that the special exceptions

1 that this Court had no function as far as
2 they were concerned and they were not going
3 to concede it and also objected to testimony
4 that we presented that it was in support and
5 suddenly they agree that the exceptions are
6 good.

7 THE MASTER: No, that is a misstatement
8 of the record. Mr. Odam clearly said that the
9 allegations were adequate, in his opinion, but
10 if I thought the exceptions were good, they
11 were offering the second amended. I said I
12 think that should be filed in order to inform
13 you and Judge Carrillo. There is no question
14 about that, because Mr. Odam stoutly stood
15 on the first notice of amended pleadings.

16 Don't you remember him saying that?

17 MR. MITCHELL: Yes, I remember that.
18 Your Honor, but this is why the rules provide
19 for a preliminary investigation. We say the
20 record is ongoing and is going beyond the
21 boundary of the contemplation of the rules
22 and our position is as stated in the record,
23 however, already.

24 MR. ODAM: Your Honor, the only problem
25 I have with Mr. Mitchell's last statement is,

1 as far as procedural, is that on the one
2 hand that one can say these pleadings are
3 too vague and we level special exceptions to
4 them and if we deny that, come back to speak
5 to them, and then say we can't cure our plead-
6 ings. We get hit because they are not clear
7 enough and we try to clear them up and get hit
8 again.

9 I don't know how you make a point about
10 special exceptions and if you don't take
11 action and once you do you are hit again.

12 If the problem is that by talking to
13 special exceptions, you raise the problem of
14 conspiracy, then that conspiracy language
15 could be eliminated. We have talked about
16 the Benavides Implement and Hardware in that
17 manner.

18 THE MASTER: Yes, but this all came up,
19 if you recall, when Mr. Gonzalez testified
20 to something Ramiro Carrillo told him.

21 MR. MITCHELL: Pardon me, Your Honor,
22 but may we have the witness excused.

23 THE MASTER: Yes, Mr. Gonzalez, you may
24 be excused from the room, please.

25 MR. MITCHELL: Thank you, Your Honor.

1 THE MASTER: This all came up when
2 Cleofus Gonzalez was told by Ramiro Carrillo
3 to fill out these papers -- in substance, that
4 was the way Judge Carrillo wanted it, and it
5 was a voluntary statement and was hearsay. It
6 was a voluntary statement and we reached the
7 question of whether or not it was hearsay.
8 Mr. Flusche said it was not because it was a
9 statement of a member of a conspiracy and we
10 have now alleged a conspiracy.

11 Under the allegations you have in the
12 first amended notice, there is certainly no
13 alleged conspiracy and that objection would
14 have to be sustained. That is how we got to
15 where we are presently.

16 MR. ODAM: Your Honor, if I could on
17 that, last Thursday, when Mr. Gonzalez was
18 testifying, I asked him the question, "Now,
19 when did you -- if Benavides, Texas, is not
20 in Precinct 2, and I believe it is your
21 testimony it was 3, can you explain why you
22 put Precinct 2 on there?" And the witness
23 stated, "Because I was instructed to by Ramiro
24 Carrillo." And then we went into Mr.
25 Mitchell's objection of hearsay.

1 THE MASTER: Yes, that objection I
2 overrule, but the precise objection was to
3 the statement of this witness and I don't
4 remember exactly, but it was for the benefit --

5 MR. FLUSCHE: He said it was for O. P.

6 MR. MITCHELL: Pardon me. May I ask,
7 in view of the fact that Mr. Flusche -- are
8 you talking about a conspiracy between Leal,
9 O. P. and Ramiro, or O. P., Ramiro and Gonzalez
10 or just what?

11 THE MASTER: It doesn't matter. You
12 don't have to name them, you could say a
13 conspiracy with A and B.

14 MR. MITCHELL: I am talking about with
15 the purpose of being informed. I don't know
16 what conspiracy we are talking about.

17 MR. ODAM: As set forth in the amended
18 pleadings, it is with O. P. and Ramiro Carrillo.

19 MR. MITCHELL: Then my objection went
20 to the question of your documentation being
21 to Juan Leal.

22 THE MASTER: That is subject to being con-
23 nected. Right now there is no connection,
24 but I am concerned about the pleadings.

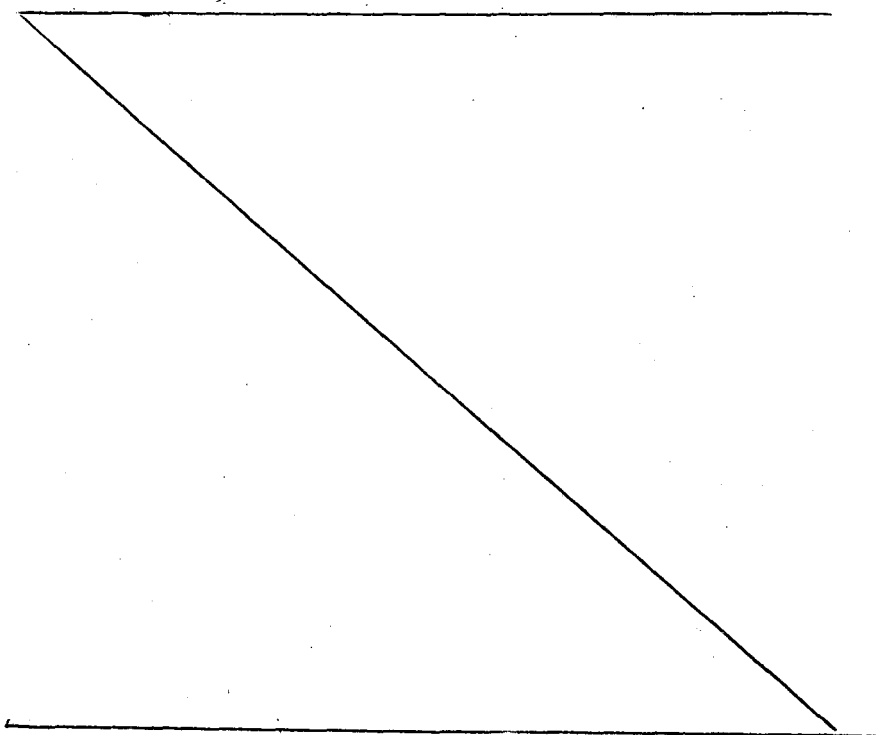
25 MR. ODAM: Your Honor, may I make a

1 comment?

2 THE MASTER: Yes.

3 MR. ODAM: The second amended, we stated
4 among other things, conspired with to wrong-
5 fully obtain. What we intended to do was to
6 explain how he wrongfully obtained. He
7 wrongfully obtained by conspiracy between O. P.
8 and Ramiro Carrillo and we are saying the way
9 was that he conspired with his brother Ramiro.

10 It is not changing the substance at all,
11 it is being specific about how it came about.
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1 THE MASTER: I understand that, and
2 that, of course, is the reason that wrongful
3 is usually excepted to. I can say that "A"
4 wrongfully -- or plaintiff wrongfully
5 injured defendant and I would draw an
6 exception on what manner was it wrongful so
7 that is what is makes me think these
8 exceptions are good.

9 Now that is really why I need to
10 go back to day one and see why we didn't
11 handle them then. Do you remember?

12 MR. ODAM: I don't remember, and as Mr.
13 Mitchell stated, I guess I said earlier about
14 exceptions and pleas in abatement that I
15 didn't, I did not intend to take the position
16 with respect to special exceptions that
17 the Master could not rule on those.

18 I did take the position that pleas
19 in abatement -- on special exceptions, I have
20 always thought that special exceptions go to
21 evidentiary questions and that is within the
22 prerogative -- I think pleas in abatement
23 are questions of law. I just want to
24 clarify that for Mr. Mitchell on the special
25 exceptions.

1 The other thing on the special
2 exceptions, the pleadings of the Commission
3 is, you know, what we are talking about,
4 going back to the Commission to have them --
5 to have a hearing to grant or deny their own
6 pleadings, which they have theoretically,
7 and all I am saying is that I think the
8 special exceptions are within the province
9 of the Master because they are evidentiary
10 matters and if I led Mr. Mitchell to believe
11 earlier that we couldn't get in the special
12 exceptions, I apologize for that.

13 MR. MITCHELL: Now, Your Honor, that is
14 precisely the reason that at the time of my
15 filing of my original answer to the first
16 amended notice, I requested that that point--
17 with a letter of transmittal, some
18 determination of those pre-trial matters so
19 that after two weeks of trial we would not
20 be faced with this posture of the case,
21 where this case is entirely shifted. That
22 is the reason we sought at the outset to
23 produce --

24 THE MASTER: I am going to recess and
25 get my copy of the proceedings of November

1 the 3rd and 4th and see what the situation was
2 and I don't know how long we will be in
3 recess.

4 MR. ODAM: All right, sir.

5 (Whereupon, the hearing was in recess
6 from 11:20 a.m. until 12 o'clock noon.)
7

8 THE MASTER: Mr. Ojam, I am prepared at
9 this time, after looking at some cases and
10 reviewed the exceptions to paragraphs 7
11 through 12, to overrule the exceptions. And
12 in light of that ruling, I will permit you
13 to withdraw the second amended notice and
14 we will proceed on the first amended notice.

15 The reason I will permit you to
16 withdraw it, if you wish, is that I think
17 the conspiracy allegations change somewhat
18 the evidentiary aspects of the case and that
19 change might well affect the progress of
20 these proceedings. Do you wish to withdraw
21 it?

22 MR. ODAM: Yes, sir, I do.

23 THE MASTER: It is withdrawn. Will you
24 get Mr. Gonzalez back in.

25 MR. ODAM: If I could, Your Honor, so

1 that it is straight in my own mind, if I
2 could withdraw the copy from you and from
3 Mr. Mitchell so we are back to the first
4 amended notice.

5 THE MASTER: Mr. Mitchell may wish to
6 keep his.

7 MR. MITCHELL: Yes, sir, and I certainly
8 want the record to reflect it because my
9 position will be that that has not been
10 corrected, the basic objections of no notice,
11 Your Honor.

12 THE MASTER: Yes, I understand.

13 MR. MITCHELL: I think the record ought
14 to reflect it.

15 THE MASTER: But the ruling of this Master
16 is that it is withdrawn. Obviously, Mr.
17 Mitchell, you have the right to have the
18 record show what was withdrawn and that will
19 be preserved, but we are proceeding on the
20 trial pleadings as being the first amended
21 notice of formal proceedings and the trial
22 amendment to the first amended notice of formal
23 proceedings.

24 *Mitchell - JWS*
MR. ~~OBAN~~: And our answer to the first
25 amended notice.

1 THE MASTER: Of course.

2 MR. MITCHELL: Right, okay, Judge.

3 MR. ODAM: I am sure it will be difficult
4 to have the last questions asked Mr. Gonzalez
5 on the record. I think we just got to the
6 point where these were all introduced and we
7 came to the point where the exception was made
8 on Mr. Juan Leal.

9 THE MASTER: The point we were in
10 testimony, as I recall it, was that Mr.
11 Gonzalez had testified that Mr. Ramiro
12 Carrillo directed him to make out these
13 exhibits 60, 61, 62, 63, 71, 72, 78, 79,
14 91 and 92, all being Examiner's Exhibits.

15 Well, as I say, at the request of
16 Mr. Ramiro Carrillo, and he added that
17 Ramiro Carrillo said they were for Judge O. P.
18 Carrillo or for O. P., I am not sure what the
19 exact words were.

20 There was at that time objection
21 that that statement was voluntary and hearsay
22 and both objections are sustained.

23 MR. ODAM: Am I correct, then, that the
24 portion as he testified previously that he is
25 instructed to do so, that at least remains in?

1 THE MASTER: That remains in.

2 MR. MITCHELL: It is just the O. P.
3 Carrillo voluntary statement?

4 THE MASTER: It is just that Ramiro told
5 him to do it for O. P., that is the testimony
6 to which the objection is sustained.

7 MR. ODAM: All right. Fine, thank you
8 sir.

9 MR. FLUSCHE: Your Honor, could I ask the
10 Court to -- I still think that even though a
11 conspiracy is not alleged, that when a
12 conspiracy is proved that the acts of the
13 co-conspirator are admissible against the
14 person prosecuted and I would like to ask --
15 I have a case here, Walter E. Heller and
16 Company versus Barnes, 412 Southwestern 2nd
17 at 747 in which that principle is enunciated,
18 quoting from --

19 THE MASTER: Well, we have covered this
20 in our earlier discussions. I sustained the
21 objections. If you wish to make a further
22 bill, well, of course, you may do so and it
23 may well be the Judicial Qualifications
24 Commission and the Supreme Court or the
25 Supreme Court may disagree with me and

1 consider the evidence.

2 But for the purposes of my
3 decision and fact-making processes, I will
4 sustain the objection.

5 Now, if you wish to make a further
6 bill, you may do so. Obviously the
7 testimony has already been given. It is in
8 the record and that constitutes that much of
9 a bill, but if you want to develop it further,
10 you may do so at this time.

11 MR. MITCHELL: Pardon me, Your Honor,
12 may I also ask in line with the Court's
13 ruling, are all of the special exceptions
14 that we have filed in our amended answer
15 overruled? Is that the thrust of the Court's
16 ruling? I am simply trying to get my own --

17 THE MASTER: I did not know you filed
18 an amended answer. I thought you filed an
19 answer to first amended notice of formal
20 proceedings.

21 MR. MITCHELL: I did, Your Honor. I
22 am misstating it. The one I have reference
23 to is the first amended answer to formal
24 proceedings.

25 THE MASTER: The exceptions are overruled.

1 yes, sir.

2 MR. MITCHELL: All right.

3 THE MASTER: I say 7 through 12 because
4 that is what we were specifically concerned
5 with. I overruled all of them, yes, sir.

6 MR. MITCHELL: And may we then
7 formally move, Your Honor, in view of that,
8 I think I am going to -- I have to, as a
9 matter of cosmetics on my case record, move
10 for postponement and plead surprise and
11 opportunity to amend; that the Rules of
12 Civil Procedure I believe carry over --

13 THE MASTER: I don't -- you have lost
14 me. I have only overruled exceptions --

15 MR. MITCHELL: Well, I am not -- I am
16 not prepared to go forward, Your Honor, on
17 the general allegations in 7 as in the
18 amended -- as set out in our answer, the
19 first amended notice of formal hearings, and
20 I think in order not to waive my position,
21 I have to move for a continuance, to be
22 allowed to prepare for it. I just want to
23 be abundantly careful.

24 THE MASTER: Well, the motion is
25 denied. You may proceed, Mr. Flusche.

1 Q (By Mr. Flusche:) Mr. Gonzalez, did Ramiro
2 Carrillo --

3 THE MASTER: This is on a bill?

4 MR. FLUSCHE: Yes, sir, this is on a
5 bill, Your Honor.

6 MR. MITCHELL: That is leading and we
7 object to the question.

8 THE MASTER: Let him finish before you
9 object to it.

10 Q (By Mr. Flusche:) Did you have any other conver-
11 sation with Ramiro Carrillo about the purpose to
12 which this money would be put?

13 MR. MITCHELL: May I ask Counsel to put
14 that in a time frame and an Exhibit frame in
15 terms of whether it is 70 or 71.

16 THE MASTER: He may be addressing him-
17 self to all these invoices, but the time
18 frame is a proper request.

19 MR. FLUSCHE: All right.

20 A (By Mr. Flusche:) Let me ask you this. At any
21 time, since January, 1971, did you have conversa-
22 tions with Ramiro Carrillo about what this money
23 was to be used for that resulted from these
24 invoices?

25 MR. MITCHELL: We object to the general

1 nature of the question and it would be hear-
2 say.

3 THE MASTER: This is on a bill, Mr.
4 Mitchell. The objection has been sustained.

5 MR. MITCHELL: I will withdraw it.

6 THE MASTER: You can develop anything
7 on a bill in the way of testimony.

8 MR. MITCHELL: I want to observe for
9 the record that I will object to it, because
10 usually it is to pollute the record in order
11 to get what he could not get in under ordin-
12 ary evidence.

13 THE MASTER: That may be your conclu-
14 sion, not the Master's.

15 Q (By Mr. Flusche:) Did you have any such conversa-
16 tion with Ramiro Carrillo?

17 A No, sir.

18 Q You didn't have a conversation with him about
19 what the money was to be used for?

20 A No, sir.

21 MR. MITCHELL: He has already answered
22 the question.

23 THE MASTER: He answered it again.

24 MR. MITCHELL: The witness is clear on
25 his answer, or was the first time.

1 O (By Mr. Flusche:) The last question we asked you
2 before we started all of this discussion, do you
3 remember your answer to that question?

4 A Yes, sir.

5 Q What was your answer to that?

6 A You see, what I meant was, for example, Ramiro
7 got in at eight o'clock in the morning. On the
8 first of the month, when I was supposed to turn
9 in these bills, he would tell me, Cleofus, make
10 these and this and that. Later on, he said, did
11 you make O. P.'s invoices and I told him yes.
12 That is what I meant.

13 MR. FLUSCHE: All right. That is all
14 I have.

15 THE MASTER: The bill is completed and
16 you may proceed with the examination of the
17 witness on the merits.

18 MR. FLUSCHE: Pass the witness.

19 MR. MITCHELL: I don't believe I am
20 going to cross-examine this witness. I am
21 going to stand on the record and I am not
22 going to be in contempt with anybody, but
23 I am not prepared to cross-examine and I
24 don't want to waive our position and I have
25 certainly a professional pride and I don't

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want to appear to know what I am doing when
I don't know what I am doing.

THE MASTER: You may step down, Mr.
Gonzalez.

In view of the fact we may be in recess
next week, do you want Mr. Gonzalez released
or still available by phone?

MR. MITCHELL: We would like to have
him retained.

THE MASTER: Are you still available
by phone. Mr. Gonzalez?

THE WITNESS: Yes, sir.

THE MASTER: Okay. You may be excused.
You may call your next witness.

MR. FLUSCHE: We call Rudolfo Couling.

- - - - -

RUDOLFO COULING,
having been duly sworn by the Court, testified upon
his oath as follows:

E X A M I N A T I O N

BY MR. ODAM:

1 Q Would you please state your full name.

2 A Rudolfo M. Couling.

3 Q Where do you reside?

4 A Benavides.

5 Q I believe that is Duval County?

6 A Yes.

7 Q How long have you resided in Benavides?

8 A Most of my life, sir.

9 Q How long have you resided in Duval County?

10 A Since I was born, with the exception of when I
11 was in the service.

12 Q What towns have you lived in besides Benavides?

13 A Rosita and San ^{Bodge juo} Benito.

14 Q Let me finish. What towns have you lived in other
15 than Benavides?

16 A On a ranch out of Rosita and in San Diego.

17 Q What is your present employment?

18 A Rancher.

19 Q How long have you been in the ranching business?

20 A I started in since April of this year.

21 Q Where were you employed prior to April of this
22 year?

23 A At the tax office of the Benavides Independent
24 School District.

25 Q For what period of time were you employed in the

1 tax office?

2 A I started working in October, 1962.

3 Q And what was your position in the tax office?

4 A Tax collector.

5 Q Is that an appointive or how did you come to get
6 that job?

7 A I was appointed.

8 Q By whom were you appointed?

9 A By the Benavides Independent School District.

10 Q How old are you?

11 A Fifty-four.

12 Q Do you know Judge O. P. Carrillo?

13 A Yes, sir, I do.

14 Q And do you recognize him as being present in the
15 courtroom today?

16 A Yes, sir.

17 Q How long have you known Judge Carrillo?

18 A On and off, I would say, for twenty-five years.

19 Q Before you worked for the Benavides Independent
20 School District, what type of work were you
21 engaged in?

22 A Grocery store and oil field.

23 Q What counties, when you were in the oil fields,
24 did you work in?

25 A The surrounding counties of Duval County, Webb,

1 Jim Hogg, Jim Wells, McMullen and LaSalle.

2 Q I believe you stated you left the school office
3 in April of this year?

4 A Yes.

5 Q Why did you leave?

6 A On April 3rd, the school board had two meetings,
7 one was the new board and one the old board, and
8 the appointed board relieved me of my duty.

9 Q Was Judge O. P. Carrillo on the Benavides Independ-
10 ent School District board?

11 A Yes, sir, he was.

12 Q In addition to your work at the Benavides Independ-
13 ent School District, did you have other employ-
14 ment at that time?

15 A Yes, I had a store.

16 Q What was the name of that?

17 A Benavides Implement and Hardware.

18 Q When did you began to run that store?

19 A It was opened in that name around May, 1971.

20 Q And prior to May, 1971, was there a store to
21 which the Benavides Implement and Hardware was a
22 successor?

23 A Oliver's Implement.

24 Q Where does that name come from?

25 A From my father-in-law.

1 O When you began the Benavides Implement and Hard-
2 ware, why did you began that store in May, 1971?

3 A Well, about a month before, around May, Ramiro
4 came by and told me I should open the store.

5 Q All right. Please use full names.

6 A Ramiro Carrillo told me I should open the store.

7 MR. MITCHELL: I object to that and
8 move to strike on hearsay.

9 THE MASTER: It is admitted, not to the
10 truth, but to show the reason he opened the
11 store.

12 O As the Court just indicated, you can state your
13 answer.

14 A He said he wanted to do business through my store
15 from the Farm and Ranch and sell goods to the
16 county.

17 Q He said what?

18 A For me to open the store so I could sell goods to
19 the county that I could buy from the Farm and
20 Ranch store.

21 O And when did Mr. Ramiro Carrillo make this state-
22 ment to you?

23 A It was the early part of May and we went to the
24 bank.

25 MR. MITCHELL: What year was this?

1 THE WITNESS: May, 1971.

2 MR. MITCHELL: Your Honor, we object to
3 the testimony of this witness on the grounds
4 of hearsay. It is beyond the original notice
5 and beyond the scope of the formal notice and
6 involves non-judicial capacity conduct and
7 we assert our plea of surprise and request a
8 postponement.

9 THE MASTER: The objection is overruled.

10 Q (By Mr. Odam:) The question was when Ramiro
11 Carrillo stated this to you, was in May of 1971,
12 I believe you stated?

13 A Yes, sir.

14 Q When that statement was made to you, what action
15 did you take to get the store started?

16 A Ramiro and I went to -- Ramiro Carrillo and I went
17 to the bank, the First State Bank of San Diego and
18 we borrowed three thousand dollars and the note was
19 signed by myself and Ramiro Carrillo.

20 Q And it was your understanding at that time that you
21 and Ramiro Carrillo were the only two parties
22 involved with the Benavides Implement and Hardware?

23 A He told me that O. P. would be a silent partner,
24 too.

25 MR. MITCHELL: We object to that and

1 move to strike it. It would be hearsay.

2 THE MASTER: Sustained.

3 Q Mr. Couling, to your own personal knowledge, were
4 you and Ramiro Carrillo the only parties responsible
5 in setting up the Benavides Implement and Hardware?

6 MR. MITCHELL: That would be negative
7 hearsay, the same question, that would just
8 be hearsay.

9 THE MASTER: I didn't get the question.

10 MR. ODAM: The question is, were you and
11 Ramiro Carrillo the only parties responsible
12 for setting up Benavides Implement and
13 Hardware?

14 THE MASTER: No, the objection is over-
15 ruled. You may answer the question, Mr.
16 Couling.

17 A Well, at that time he specifically told me that
18 him and O. P. were going to be partners.

19 THE MASTER: The objection was sustained
20 to that.

21 Q Let me restate the question to you: As you can see
22 the objection is what was stated to you as being
23 hearsay.

24 My question was, simply, were you and Ramiro
25 Carrillo the only parties involved to the best of

1 your knowledge in setting up the store, that would
2 simply require a yes or no answer.

3 A Yes, sir.

4 Q You and Ramiro were the only two involved?

5 A Yes, sir.

6 Q There was no one else involved? Okay.

7 What -- and from now on, unless I indicate
8 otherwise, when I refer to the store, I am talking
9 about the Benavides Implement and Hardware Store.

10 What type of inventory, equipment, et cetera,
11 did you have when you set up the store back in
12 1971?

13 A We had some barb wire, pipes and leather goods for
14 the windmills.

15 Q What type?

16 A Leather goods.

17 Q Leather goods?

18 A Pump leathers.

19 Q All right.

20 A Staples, nails and toilet repair kits, for toilets
21 at home.

22 Q What type of vehicles did you have available?

23 A None, sir.

24 Q What employees were there? Who worked at the
25 store?

1 A In 1971 the store was partly opened, only on
2 weekends, and at that time I used to have a deputy
3 sheriff, Eloy Carrillo, to open the store.

4 Q What was the first name?

5 A Eloy, E-l-o-y.

6 Q And the last name was what?

7 A Carrillo.

8 Q Is that Mr. Carrillo any kin to O. P. Carrillo, to
9 your knowledge?

10 A They are first cousins.

11 Q You stated that it was only open at first on the
12 weekends?

13 A And sometimes when the supply -- somebody wanted
14 to buy some goods, I went and opened the store or
15 he opened the store, but it was not open
16 continuously eight hours a day.

17 Q And after you started in, Mr. Eloy Carrillo began
18 working, were there any other employees ever
19 connected with the store other than the two of you?

20 A No, sir.

21 Q Just the --

22 A Not until 1973.

23 Q 1973?

24 A Or the latter part of 1972.

25 Q Who became connected with the store in the latter

1 part of 1972?

2 A Lorenzo Garcia.

3 Q Is he any relation to you?

4 A Yes, sir, he is an uncle by marriage.

5 Q I don't know, maybe you stated this earlier, when

6 you and Mr. Ramiro Carrillo set up the store, I

7 believe you stated you got a note from a bank?

8 How much was that note for?

9 A For three thousand dollars.

10 Q What position, if you know, did Ramiro Carrillo

11 have in 1971?

12 A He was a county commissioner for Duval County for

13 Precinct Number 3.

14 Q And what geographical area is that Precinct 3?

15 What towns, for example?

16 A It was Benavides, Freer and Rialitos.

17 Q Could you state for the Court if you ever heard of

18 an entity called the Farm and Ranch Store?

19 A Yes, sir.

20 Q Do you know of your own knowledge where the Farm

21 and Ranch Store is located?

22 A Yes, sir.

23 Q Of your own personal knowledge, do you know by whom

24 the Farm and Ranch Store was owned?

25 A Well, as far as I know, it was owned by O.P. and

1 Ramiro Carrillo.

2 Q And what is the basis for that knowledge?

3 A I believe I saw the name on the store license once
4 way back in 1971.

5 Q Of your own personal knowledge, do you know who was
6 employed and actually worked at the Farm and Ranch
7 Store?

8 A Cleofus Gonzalez and a man by the name of Pat or
9 Patricio Gonzalez.

10 Q Are those two gentlemen, if you know, related to
11 each other?

12 A Not that I know of, sir, no, sir.

13 Q Where is the Farm and Ranch Store located physically
14 in relation to the -- your store?

15 A Well, it is about four blocks east from Benavides
16 Implement and Hardware Store.

17 Q All right.

18 MR. ODAM: I would -- may I approach
19 the witness, Your Honor?

20 THE MASTER: Yes, sir.

21 Q Mr. Couling, I show you what is on file in this
22 proceeding as a first amended notice of formal
23 proceedings and ask if you can scan, beginning
24 with paragraph seven through twelve.

25 Now, my question to you is whether or not you

1 have any personal knowledge about what is stated
2 therein?

3 MR. MITCHELL: Well, now, Your Honor, I
4 am going to object. I can't cross-examine
5 him to begin with, but asking him to look at
6 seven through twelve and asking him if he has
7 personal knowledge, there is no way in the
8 world I know that I could intelligently ask
9 him a question on that type of examination.

10 I request that he be instructed
11 to put a question to the witness in a
12 conventional manner and have the witness
13 answer it.

14 MR. ODAM: Your Honor, I -- I make no
15 comment in this instance.

16 THE MASTER: I am going to sustain the
17 objection.

18 (Handed back to counsel.)
19

20 MR. ODAM: May I approach the witness,
21 Your Honor?

22 THE MASTER: Yes, sir.

23 Q Mr. Couling, I show you what has been admitted into
24 evidence as Exhibit -- I will come back to them and
25 discuss them in detail individually, but Exhibits

1 61 and 60, I will ask you if you can identify these
2 two items?

3 A One is an invoice from the Benavides Implement
4 and Hardware Company dated March -- or May the 30th,
5 whatever -- I can't -- made out to Duval County
6 Precinct Number 2 for a thousand and eight dollars.
7 It says contract on fencing and road and hauling.

8 Q And what is your -- I know you say you, at that
9 time, owned the Benavides Implement and Hardware
10 Store. How would you describe your position with
11 the store? Were you -- other than owner, were you
12 actually the manager of the store or what, of the
13 Benavides store?

14 A I used to go once in awhile to the store and at
15 this time, I don't believe it was open. That is
16 what I stated awhile ago, it was open just on the
17 weekends or sometimes when somebody needed something.

18 Q Did you -- I take it, then, by your testimony that --
19 did you fill out the information on that invoice
20 yourself?

21 A No, sir. This is the first time I have seen this
22 invoice.

23 Q Do you know of your own personal knowledge who did
24 fill out the invoice number E-60?

25 A Yes, sir, by the handwriting and the initials on

1 the corner, it was made out by Cleofus Gonzalez.

2 Q The initials -- which initials are you referring to?

3 A Right here where it says, "Sold by," on the
4 left-hand corner.

5 Q And if you look at item 61, that is there before
6 yaf

7 A Well, that is a blank statement made out to Duval
8 County Precinct Number 2 in care of Juan Leal for
9 invoice number 6, which is this invoice for one
10 thousand eight dollars.

11 Q Now is that statement filled out or is it intended
12 to be, to your own personal knowledge, is it
13 intended to be on the Benavides store?

14 A The Benavides store did not -- Benavides Implement
15 and Hardware Store did not have any statements.

16 Q Okay. Of your own personal knowledge, do you
17 know what -- Mr. Gonzalez, you stated filled those
18 forms out, what he did with those forms after he
19 filled them out?

20 A As far as I know, he gave them to Ramiro Carrillo
21 and Ramiro Carrillo took them to the courthouse.

22 Q Of your own personal knowledge, do you know what
23 happened to them after they went to the courthouse
24 by way of Mr. Ramiro Carrillo?

25 A I imagine a check was issued because -- they brought

1 the check later on.

2 MR. MITCHELL: We're going to object to
3 that. He doesn't know, it would be
4 speculative. We move to strike it. We move
5 to strike the preceding answer on the same
6 grounds, it would be hearsay.

7 THE MASTER: You must show the basis of
8 his knowledge.

9 MR. MITCHELL: Quite frankly, Your
10 Honor, I have been misled because the witness
11 Cleofus Gonzalez, when questioned by counsel
12 for the examiner, testified previously, and
13 I objected, that he gave these documents to
14 this witness. Now, this witness says --

15 THE MASTER: No, sir, no, sir.

16 MR. MITCHELL: -- he does not have any
17 personal knowledge.

18 THE MASTER: No, sir, you mis-recall
19 the record. Mr. Cleofus Gonzalez testified
20 he gave them to Ramiro Carrillo.

21 MR. MITCHELL: Who gave them to this
22 witness?

23 THE MASTER: But that was stricken upon
24 your objection.

25 MR. MITCHELL: That is why I say I am

1 somewhat misled because --

2 THE MASTER: But you must show the basis
3 of this witness' knowledge, Mr. Odam.

4 MR. ODAM: Yes, sir.

5 Q (By Mr. Odam:) Now, it is your statement that --

6 THE MASTER: The objection in this state
7 of the record is sustained.

8 MR. ODAM: Okay, Your Honor.

9 Q My question, one question I posed to you, is do
10 you know what happened to those -- well, first of all,
11 let me put it this way: Did Mr. Ramiro Carrillo
12 bring those documents E-60 and E-61, did he
13 personally bring those to you?

14 A No, sir.

15 Q Of your own personal knowledge, do you know what Mr.
16 Ramiro Carrillo did with those documents when he
17 did not bring them to you? Do you know what -- do
18 you know what he did with the documents?

19 A Well, he --

20 Q Just yes or no answer, do you know what he did
21 with them?

22 A No, sir.

23 Q Now, if you would, refer back to, I guess it is
24 the invoice itself, and could you read into the
25 record what it stated to be the -- I think it is

1 under description there --

2 MR. MITCHELL: Wait a minute. Excuse me.
3 Are you talking about 60 or 61?

4 MR. ODAM: 60.

5 MR. MITCHELL: We object, counsel -- on
6 the ground, Your Honor, that the witness
7 stated he doesn't -- he has no personal
8 knowledge, he didn't make it up, he doesn't
9 know where it went.

10 THE MASTER: All he has been asked is to
11 read it. It is in evidence.

12 MR. MITCHELL: I understand, Your Honor,
13 but we would object. I don't know where he
14 is going with it. The witness has no knowledge
15 of it.

16 THE MASTER: But the objection to the
17 question, "Will you please read it," is
18 overruled. You mean read it to himself?

19 MR. ODAM: No, I would like for him to
20 read it into the record.

21 Q What is stated --

22 THE MASTER: It is in the record, in the
23 sense it is admitted in evidence.

24 MR. ODAM: All right, s'r.

25 Q Then, if you would, look at what it says on E-60

1 and read it to yourself, what it states there.

2 A Yes, sir.

3 Q Now, you were the owner -- what is the date that is--
4 that is on the invoice?

5 A I don't know if it says March or May, I can't --

6 Q Is there a date on E-61?

7 A Yes, that is March the 30th, 1971.

8 Q Okay. Now, at that time you -- March the 30th,
9 1971, you owned the Benavides Implement and
10 Hardware Store?

11 A Yes, sir.

12 Q Now, as stated under the description as certain --
13 I suppose work being performed, of your own
14 personal knowledge, do you know whether or not your
15 store performed the work for the county as stated
16 there?

17 A No, sir.

18 Q To your own personal knowledge, did your store have
19 a -- do any fencing or make a contract for fencing
20 with the county?

21 A No, sir.

22 Q I believe ~~to~~ the last word on that was, "hauling;"
23 did you have that Mr. --

24 MR. MITCHELL: Pardon me, Mr. Odam, we
25 renew our objection as to this witness. We

1 move to strike as to our client on the grounds
2 of what he is testifying to is hearsay. There
3 is no connection, Your Honor, and beyond the
4 scope of his personal knowledge.

5 THE MASTER: Objection is overruled.

6 Q The question was, it states hauling on the Benavides
7 Implement and Hardware ticket. To your own
8 knowledge, did your store perform hauling for the
9 county?

10 A No, sir, it did not.

11 Q Did your store have at that time any trucks to do
12 any hauling for the county?

13 A Not at that time, no, sir.

14 Q Did your store have any employees other than yourself
15 and this Eloy Carrillo to do fencing for the county?

16 A No, sir.

17 Q Well, if this ticket is made on your store, which
18 you own, what is the basis for this thousand and
19 eight dollar amount here?

20 A Not at the time the ticket was - I don't know on
21 that particular ticket, since I never did see it,
22 but I know where it went afterwards.

23 Q So it is your testimony that as far as you know,
24 the amount of money here for the work described
25 there was there was no work done?

1 A No, sir.

2 Q Pursuant thereto?

3 A No, sir.

4 MR. ODAM: Your Honor, I have what has
5 been marked as Exhibit E-64 which is a claim
6 jacket, claim number B-911 and I have a Xerox
7 copy of the front of it and I would offer
8 it into evidence at this time.

9 MR. MITCHELL: We object, hearsay, no
10 proper authentication, irrelevant and
11 immaterial.

12 MR. ODAM: Your Honor, the other day
13 when Mr. Meek was here, one of the things I
14 went over with Mr. Meek was not only checks,
15 but claim jackets, et cetera, which ordinarily
16 are kept in Mr. Meek's custody.

17 If that objection -- and my
18 understanding at that time was that with
19 respect to some original checks as well as
20 the original claim jackets that we would not
21 have a problem as far as authentication of
22 those.

23 If that is -- if the Court sustains
24 the objection, we will get Mr. Meek back
25 over here.

1 THE MASTER: Obviously, the objection is
2 good. You're not asking if I sustain it
3 because it is not authenticated. You say it
4 is a Xerox copy of a claim jacket and I
5 certainly accept your word for it, but that
6 is not evidence, then.

7 MR. MITCHELL: And, Your Honor, also
8 that is the reason I ask the original question
9 as to its total authenticity, if there were
10 other documents in it, it has apparently
11 been -- the material has been stapled to it,
12 anyone can observe it, and has been taken
13 from it.

14 I would submit that if counsel
15 would just simply make a statement for the
16 purpose of the record and to me, I can
17 perhaps evaluate the objection.

18 At this point, I don't know what
19 was in it, what came out of it and where it
20 came from. I just want to be informed.

21 THE MASTER: Well, I thought that was
22 what Mr. Odam was telling me that this was
23 among the claim jackets that Mr. Meek brought
24 with him that you, he and Mr. Meek went over
25 together. Am I wrong about that?

1 MR. ODAM: No, you are not wrong about
2 that, that is correct.

3 MR. MITCHELL: I didn't -- did I go over
4 this with you?

5 MR. ODAM: Yes, I pulled out all of the
6 claim jackets.

7 MR. MITCHELL: But counsel, you are not
8 square with the record. The record at this
9 time I went over with Mr. Meek, as I recall,
10 there were about two or three other documents
11 put together. There were some pink invoices,
12 there was a claim jacket and there was some
13 other material, and that is the reason I knew
14 that my objection earlier was good because
15 I had seen it all put together and that is
16 why I was objecting. If I could see it all
17 put together in the 911 as I saw it, I would
18 have no objection to it.

19 MR. ODAM: The items in that were in a
20 claim jacket at that time, they were the
21 items that are in evidence that had been
22 marked on them, for example, E-62 states on
23 it and written across there 229/R and B,
24 229 what is stated on the claim jacket as
25 road and bridge -- correction, road and bridge,

1 R and B, and the 229 is on the other side
2 on the claim jacket, so what I am saying is
3 what came out of that is what has been
4 introduced into evidence.

5 The reason I went that way on it
6 is because Mr. Gonzalez, the prior witness,
7 could testify he actually filled the document
8 out. If I had waited and put this in this
9 way, then I think the objection would have
10 been as to what was on there.

11 THE MASTER: As you are correct, Mr.
12 Meek -- I mean Mr. Odam, you can proceed
13 witness by witness to prove whatever you intend
14 to prove, but the witness who created the
15 document and so forth, and that is what Mr.
16 Cleofus Gonzalez testified to, but the
17 objection here is that that claim jacket has
18 not been authenticated.

19 You do not have any written
20 stipulation with Mr. Mitchell concerning that
21 matter and the objection is sustained.
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1 MR. MITCHELL: Your Honor, out of an
2 abundance of precaution, I had stipulated
3 with Counsel on certain documents concerning
4 Mr. Meeks. I don't want that stipulation to
5 go beyond the total package.

6 THE MASTER: Was that stipulation dic-
7 tated to the record?

8 MR. MITCHELL: No, it was a private
9 agreement.

10 THE MASTER: That is what I thought.

11 MR. ODAM: What I am saying is in that
12 packet was these other two items.

13 MR. MITCHELL: It is most critical to
14 my cross-examination that I have that packet
15 out together, otherwise, there is no way I
16 can properly cross-examine. I am willing to
17 stipulate to that total package, however.

18 MR. ODAM: My thinking was, that if the
19 contents were in evidence and the jacket gets
20 in evidence, I can drop the contents into
21 that package at that time.

22 MR. MITCHELL: I know I sound like I
23 am quibbling, but the witness Gonzalez
24 testified as to the routing of a white copy
25 and a pink copy and all of this found it's

1 way into this jacket. I would like to have
2 that testimony as it was, as the packet
3 found itself to Mr. Meeks' hands. That is
4 what I am objecting to, that it is not
5 authentic as to the way Mr. Meeks produced it.

6 THE MASTER: You gentlemen may be able
7 to reach a private agreement on this again
8 that you may wish to state for the record.
9 If you do, that is fine, that the claim
10 jacket is not at this time identified by
11 this witness or by Mr. Meek.

12 MR. ODAM: All right, sir.

13 THE MASTER: And it is a good objection
14 and it is sustained.

15 MR. ODAM: I understand and I will, at
16 the break, iron these matters out with Mr.
17 Mitchell. For the purpose of a bill of
18 exception, I would like to offer just the
19 jacket.

20 THE MASTER: The offer is noted and it
21 is not admitted in view of the objection.

22 What is the claim number there?

23 MR. ODAM: B-911.

24 THE MASTER: What is 229?

25 MR. MITCHELL: That is a code number,

1 Your Honor.

2 THE MASTER: Thank you.

3 MR. ODAM: May I have just a moment,

4 Your Honor.

5 THE MASTER: Yes.

6 Q (By Mr. Odam:) Mr. Couling, what you have before
7 you are Exhibits 60 and 61?

8 A Yes, sir.

9 Q What is the amount of money referred to in those
10 documents?

11 A One thousand eight dollars.

12 Q I show you what the court reporter has marked as
13 Exhibit E-57 and ask you if you can identify this
14 item?

15 A Yes, sir, that is the county check made out to
16 Benavides Implement and Hardware in the amount of
17 one thousand eight dollars.

18 Q Did you personally receive this check made out
19 to Benavides Implement and Hardware?

20 A Yes, sir.

21 MR. ODAM: I would offer in evidence
22 what has been marked as Exhibit E-57, a
23 photostatic copy of this check.

24 MR. MITCHELL: Objection, not best
25 evidence and no connection with Judge Carrillo.

1 THE MASTER: The best evidence objection
2 is good.

3 MR. ODAM: Well, there again, this is a
4 copy of a check Mr. Meek signed, similar to
5 what we went through the other day with Mr.
6 Meek. I certainly do not want to misstate,
7 and we can get Mr. Meek back to identify his
8 signature of this check, but the best evidence
9 would be the check itself, I understand that.

10 THE MASTER: Yes, but -- I mean, I have
11 no choice. The check is best evidence.

12 If you and Mr. Mitchell have gone over
13 this and not reached an agreement -- well, I
14 don't know, but the objection is sustained.

15 MR. ODAM: Well, the problem -- well,
16 we will get into it later. The check is not
17 available. I know that is testimony and --
18 well, at this time, I offer for continuity of
19 the record Examiner's Exhibit 57 and approach
20 the matter of proving it by the best evidence.

21 THE MASTER: It is then offered and
22 still not admitted.

23 MR. ODAM: All right, sir.

24 Q (By Mr. Odam:) Again, for your clarification,
25 Mr. Couling, this Exhibit E-57 has not been

1 admitted into evidence.

2 I will ask you if you can identify what is
3 a copy of the back of the check and state whether
4 or not you identify that to be your signature or
5 not.

6 A Yes, it is my signature.

7 Q Did you endorse this check?

8 A Yes, sir.

9 Q Mr. Couling, is your testimony that you received
10 from the county a check in the amount of one
11 thousand eight dollars?

12 A Yes, sir.

13 Q Is that check, to your personal knowledge, is that
14 check connected with those statements you have
15 there?

16 A Yes, sir.

17 Q And is in payment of those statements you have
18 there?

19 A Yes, sir.

20 MR. MITCHELL: We move to strike that
21 in the face of the witness' testimony that
22 he had no knowledge as to 60 and 61. The
23 check is based on that and it is speculative
24 and a guess and would be hearsay.

25 THE MASTER: What is the basis of your

1 knowledge, Mr. Couling, that this thousand
2 and eight dollar check is connected with
3 invoices 60 and 61.

4 THE WITNESS: At the time the check was
5 brought to me by Ramiro Carrillo, he stated it
6 was payment for those invoices by the county.

7 THE MASTER: The objection is sustained.

8 Q (By Mr. Odam:) Now, again, the check itself is
9 not in evidence, but my last question was whether
10 or not you received a check for one thousand eight
11 dollars.

12 A Yes, sir.

13 Q My next question is, after you received that check,
14 what did you do with it?

15 A Deposited it in the First State Bank of San Diego.

16 Q I show you what the court reporter has marked
17 E-65 and ask you if you can identify the item
18 that has a checkmark by it?

19 A Yes, sir, that is a check from my store, Benavides
20 Implement and Hardware.

21 Q What is the amount of that check?

22 A One thousand eight dollars.

23 Q And the date?

24 A Fourth month, 16th day, 1971.

25 Q And who signed the check?

1 A I signed it.

2 Q Can you identify that as being your signature?

3 A Yes.

4 Q And to whom is the check made out?

5 A O. P. Carrillo.

6 MR. ODAM: I offer in evidence E-65.

7 MR. MITCHELL: Best evidence, hearsay,
8 not properly authenticated, beyond the scope
9 of no formal complaint.

10 THE MASTER: All but the best evidence
11 objection is overruled.

12 Where is the original?

13 MR. MITCHELL: May I say, a reproduction
14 of this check is incomplete, -- well, are
15 you saying this is the endorsement copy?

16 MR. ODAM: Yes.

17 MR. MITCHELL: I am sorry, that last
18 remark is withdrawn.

19 MR. ODAM: Well, the question is where
20 the original check is and that would be a
21 check that was made out to Judge Carrillo.
22 I will have to have another witness to authen-
23 ticate where the check is for best evidence.
24 My purpose is, if I can present the case in
25 this manner --

1 THE MASTER: Of course, you can, but
2 the objection is good at this point. If this
3 is a check that this man wrote and it were
4 negotiated, it would come back and be in this
5 man's possession.

6 MR. ODAM: Yes, sir, I will have to
7 have somebody come over from the bank to
8 authenticate it. It is a copy of the check
9 from the bank.

10 THE MASTER: The bank should not have
11 the original check.

12 Do you have it, Mr. Couling?

13 THE WITNESS: I don't know if I have
14 them or the state has them.

15 THE MASTER: I see.

16 Q (By Mr. Odam:) Do you know where the original
17 copy of this check is?

18 A I don't know, sir, whether it is in Austin or
19 where it is, I don't recall.

20 Q Could you place your hands on -- for the purpose
21 of the record, could you get this check?

22 A If it is in Austin, I could get them.

23 MR. ODAM: Well, I will go through
24 authentication with this witness or another
25 witness at a later time. I understand the

1 objection is on the best evidence of the
2 other check, E-65.

3 Q (By Mr. Odam:) Again, simply for identification at
4 this point on E-65, the check has been signed on
5 the back and I direct your attention to the back
6 of the check with the red checkmark and ask you
7 if you can identify that signature?

8 A Yes, sir.

9 Q Who do you identify that signature to be?

10 A O. P. Carrillo's.

11 Q How do you know that?

12 A He was a board member of the Benavides Independent
13 School District and he was president of the board
14 and I took a lot of checks for him to sign when he
15 was president of the board.

16 Q Mr. Couling, assuming that -- strike that.

17 Where we are, as far as evidence in the
18 record, for clarification of the record and mine,
19 what we have in evidence are Exhibits 60 and 61?

20 A Yes, sir.

21 Q Your testimony is that you were paid by the county
22 for those invoices?

23 A Yes, sir.

24 Q And your testimony is --

25 MR. MITCHELL: Wait a minute. I previously

1 leveled an objection to that and the previ-
2 ous objection was sustained.

3 MR. ODAM: All right. Strike that.

4 Q (By Mr. Odam:) You have Exhibits 60 and 61, which
5 have been identified so far. We have gone through
6 a check, not in evidence, and we have gone from
7 the county to the store and gone to a check which
8 you signed to Judge O. P. Carrillo.

9 My question to you at this time is whether
10 or not at any time after E-60 and E-61 were filled
11 out and you stated that you believe that went to
12 the county, at any time after that, did you make
13 out a check to O. P. Carrillo in the amount of
14 one thousand eight dollars?

15 A Yes, sir, I did.

16 Q Why did you make out a check to O. P. Carrillo?

17 A When the check was brought to me by the county,
18 I was told by Ramiro Carrillo that O. P. wanted
19 it for his own personal use and I made out the
20 check.

21 MR. MITCHELL: We object to that as
22 beyond the scope of the formal notice and
23 complaint and hearsay.

24 THE MASTER: Overruled.

25 Q Now, Mr. Couling, what we have gone through there

1 if on the Item 60 and 61. I believe it is your
2 testimony that you would make out a check sometime
3 thereafter for one thousand eight dollars?

4 A Yes, sir.

5 Q Did you personally present that check to O. P.
6 Carrillo?

7 A Yes, sir.

8 Q You personally did?

9 A Yes, sir.

10 Q To your personal knowledge, do you know what he
11 did with that check?

12 MR. MITCHELL: Objection, hearsay.

13 THE MASTER: It is not proper to ask
14 a question on personal knowledge. You must
15 show the basis of his knowledge.

16 MR. ODAM: All right, sir.

17 Q Let me ask you this question first.

18 Once your check -- you gave it to Judge
19 O. P. Carrillo, do you know what O. P. Carrillo
20 did with that check?

21 That calls for a yes or no answer.

22 A I can answer yes and testify why.

23 MR. ODAM: Your Honor, I think if it
24 is hearsay, certainly that objection --

25 THE MASTER: What is the basis of your

1 knowledge?

2 THE WITNESS: When my check came back
3 on the statement, it was marked that it was
4 deposited by O. P. Carrillo. You can tell by
5 the stamp the bank uses.

6 THE MASTER: Is this endorsement on the
7 check that shows the basis of the knowledge
8 you have?

9 THE WITNESS: Yes, sir.

10 THE MASTER: So what you know is what
11 the check itself shows?

12 THE WITNESS: Yes, sir.

13 Q (By Mr. Odam:) Again, for clarification of what
14 we are speaking of, referring to E-65, this check
15 on this -- what are you talking about that is on
16 the back of the check that you can identify?

17 A Right up here on the date, it went to the bank,
18 and was deposited. If it was cashed, it would
19 have a red stamp and a number and it would be
20 stamped on the front of the check.

21 MR. MITCHELL: Hearsay and move to strike.

22 THE MASTER: Overruled. The check is
23 not in evidence. The whole testimony depends
24 on the authentication.

25 MR. MITCHELL: That is correct and that

1 poses the conclusion that the stamp is being
2 used for the ultimate fact proven by and
3 that is hearsay.

4 THE MASTER: Overruled.

5 Q (By Mr. Odam:) Now, was this check -- well,
6 strike that.

7 Do you know whether or not the check you
8 made out to O. P. Carrillo for one thousand eight
9 dollars, do you know whether or not that was for
10 any interest he had in the business?

11 A No, it was not for any interest.

12 Q Was the check for a thousand and eight dollars
13 made out by your store, was that check for any
14 services performed by Judge Carrillo for the
15 store?

16 A No, sir.

17 Q Did your store ever have occasion to actually
18 make sales to the county?

19 A Very small ones, yes, sir.

20 Q Could you describe for the Court what was sold to
21 the county?

22 A Sometimes, axes, posthole diggers, barbed wire.

23 Q Did you ever make any big sales, anything bigger
24 than that?

25 A Yes.

1 Q What was that?

2 A Barbed wire.

3 Q How large a sale was that?

4 A I believe twelve thousand dollars.

5 Q But the rest were sales of small items?

6 A Yes, sir.

7 Q At any time while you owned Ben's Implements
8 and Hardware, did the store have any trucks doing
9 business for the county?

10 A No, sir.

11 Q At any time, did you instruct personnel that worked
12 for the store to go out and perform work for the
13 county?

14 A No, sir.

15 Q Did you have a contract with any other store to do
16 work for the county?

17 A No, sir, no other contracts with any other store.

18 THE MASTER: I think this is a good
19 time for a recess.

20 MR. ODAM: Yes, sir, that completes
21 this witness' testimony on paragraph 7 and
22 we will move to paragraph 8.

23 THE MASTER: We will be recessed until
24 two o'clock.

25

1 THE MASTER: You had a stipulation
2 to state, you had something about these
3 Exhibits 64 and 65?

4 MR. ODAM: Yes, sir, on the claim jacket
5 and the contents of the claim jacket and
6 there are -- let me go through them.

7 Now, what Mr. Mitchell and I did
8 just then, Your Honor, was to go through
9 the claim jackets which have been identified
10 and I will --

11 THE MASTER: This is on the record.

12 MR. MITCHELL: Go through the claim
13 jackets and the contents of what was in the
14 claim jackets.

15 THE MASTER: All right.

16 MR. ODAM: And what I can do, Arthur, is
17 to read the numbers of the claim jackets.

18 MR. MITCHELL: All right.

19 MR. ODAM: The exhibit numbers, what
20 went in.

21 MR. MITCHELL: All right.

22 MR. ODAM: And then which would have
23 the claim jackets and their contents, that
24 step accomplished --

25 MR. MITCHELL: That if Mr. Meek were

1 called to testify, he would testify that
2 the following exhibits would appear together
3 in the claim jacket number blank.

4 THE MASTER: You're not stipulating that
5 they were in fact there, you're stipulating
6 that Mr. Meek would so testify?

7 MR. MITCHELL: Yes, Your Honor, and that
8 is the only one, Your Honor, I am prepared
9 to enter into because Mr. Meek did so state
10 to me.

11 MR. ODAM: Plus the stipulation that it
12 is his signature on the original copies of
13 the checks.

14 MR. MITCHELL: Yes.

15 MR. ODAM: You remember when we get down
16 to those, in a few minutes.

17 MR. MITCHELL: That is also correct.

18 THE MASTER: All right. Go ahead and
19 state the claim jackets.

20 MR. ODAM: All right.

21 THE MASTER: The exhibit number that
22 constitutes the claim jacket, the first one
23 that you have, incidentally, is --

24 MR. ODAM: Is 60.

25 THE MASTER: Actually, I have Examiner's

1 Exhibit 58 is a claim jacket that was
2 admitted, Examiner's Exhibit 57 was not
3 admitted, and is not now yet in the record.
4 I don't know whether you reached a stipulation
5 on that one or not.

6 MR. ODAM: No, sir, that was --

7 THE MASTER: That is the thousand and
8 eight.

9 MR. ODAM: What was a thousand and
10 eight?

11 THE MASTER: That one was.

12 MR. ODAM: Is that a number or a dollar
13 amount?

14 THE MASTER: That is the check amount.

15 MR. MITCHELL: That is dollars.

16 THE MASTER: That is the amount of the
17 check.

18 MR. MITCHELL: The Judge is correct.

19 THE MASTER: That is count seven, isn't
20 it?

21 MR. MITCHELL: Yes, Judge.

22 MR. ODAM: Okay.

23 MR. MITCHELL: 60 and 61 is count seven.

24 MR. ODAM: Starting with count seven,
25 we have got the -- let's see, claim jacket is

1 number 64.

2 THE MASTER: That's correct.

3 MR. ODAM: And the E-50 goes in it and
4 E-61 goes in it. 60, 61, 64 and that all
5 pertains to paragraph seven.

6 THE MASTER: All right. Does that now
7 mean -- and I am addressing this question to
8 Mr. Mitchell, that you withdraw your
9 objection and only your objection with
10 respect to the authenticity of 64?

11 MR. MITCHELL: Yes, Your Honor.

12 THE MASTER: You had another of other
13 ones.

14 MR. MITCHELL: Yes, Your Honor.

15 THE MASTER: And they were overruled,
16 I think quite clearly, in the record.

17 MR. MITCHELL: Yes, Your Honor.

18 THE MASTER: But I was sustaining the
19 authenticity objection.

20 MR. MITCHELL: That is correct, Judge.

21 THE MASTER: And so 64 is now admitted.
22 Now, that does not, as I understand it, get
23 57 or 65 in evidence. Did I say 67? I meant
24 57.

25 MR. MITCHELL: 57, Your Honor.

1 MR. ODAM: That is correct, 57 is a copy
2 of a check for one thousand eight dollars and
3 I will have to have the witness on that to
4 prove the unavailability of the original copy.

5 MR. MITCHELL: That's right.

6 THE MASTER: In accordance with the
7 statute.

8 MR. MITCHELL: Right.

9 THE MASTER: Well, 60 and 61 were
10 already admitted but it is now stipulated
11 that 60 and 61 were inside -- I'm sorry, let
12 me see if I can state the stipulation
13 correctly.

14 It is stipulated that if Mr. Walter
15 Meek, and is it M-e-e-k or M-e-e-k-s?

16 MR. ODAM: Meek, no S, Judge.

17 MR. MITCHELL: That's right, no S.

18 THE MASTER: If Mr. Walter Meek were here
19 as a witness, he would testify that inside of
20 Examiner's Exhibit 64 was Examiner's Exhibit
21 60 and Examiner's Exhibit 61 and that that was
22 all that was in that jacket.

23 MR. MITCHELL: That is correct, Your
24 Honor.

25 THE MASTER: Is that the stipulation?

1 MR. ODAM: Yes, Your Honor, and pursuant
2 to that stipulation, we are offering the
3 claim jacket itself.

4 THE MASTER: It is admitted.

5 MR. ODAM: E-67.

6 THE MASTER: No, E-64.

7 MR. ODAM: That's right, I have got the
8 next one in my hand, E-64.

9 THE MASTER: It is admitted.

10 MR. ODAM: All right. Now, that was on
11 paragraph seven. We will move next to the
12 same proceeding on paragraph eight and the
13 jacket here is jacket number 67.

14 THE MASTER: No, it is Exhibit 67,
15 Examiner's Exhibit 67.

16 MR. ODAM: All right, I am sorry, all
17 right, Examiner's Exhibit 67. Claim jacket
18 is identified as B-1587 and it's contents are
19 E-62 and E-63 and we would offer into evidence
20 Examiner's Exhibit 67.

21 THE MASTER: Mr. Mitchell, you have all
22 of the objections to 67 that you made to 64
23 with the exception that you're not any longer
24 complaining of its authenticity, is that
25 correct?

1 MR. MITCHELL: That is correct, Judge.

2 THE MASTER: It is admitted.

3 MR. ODAM: The same stipulation
4 applies that if Mr. Meek were here, this
5 applies to the contents of all of these we
6 are getting ready to go through.

7 THE MASTER: That's correct, that's
8 right, Mr. Mitchell?

9 MR. MITCHELL: Yes, Your Honor, that is
10 correct.

11 MR. ODAM: That was count eight.

12 MR. MITCHELL: Count eight.

13 MR. ODAM: The next is count number nine
14 and the claim jacket is Examiner's Exhibit
15 E-73 and its contents are E-71 and 72, which
16 have previously been admitted and now we are
17 offering the claim jacket E-72.

18 THE MASTER: On the same stipulation?

19 MR. ODAM: The same stipulation.

20 THE MASTER: The same stipulation and
21 objections except authenticity?

22 MR. MITCHELL: Yes, Your Honor.

23 THE MASTER: Admitted.

24 MR. ODAM: That is paragraph nine and
25 paragraph ten is jacket -- it is claim number

1 B-2445.

2 THE MASTER: You did not identify the
3 claim number on 73.

4 MR. ODAM: 73 is B-1990.

5 THE MASTER: All right. Now, we are on
6 Examiner's Exhibit --

7 MR. ODAM: It's Examiner's Exhibit 81
8 and E-81 contains what has previously been
9 admitted Examiner's Exhibits 78 and 79 and
10 we would offer at this time the jacket
11 Examiner's Exhibit 81.

12 THE MASTER: Under the same stipulations?

13 MR. ODAM: Under the same stipulations.

14 THE MASTER: Yes, sir, and the same
15 objections except authenticity, it is
16 admitted.

17 MR. ODAM: The next paragraph is
18 paragraph 11 and there are no claim jackets
19 in paragraph 11.

20 Then the next one we move to is
21 paragraph 12 and paragraph 12 there are a
22 number of them. The first one we come to
23 is claim jacket, it is for claim number
24 C-2908, claim jacket is identified as E-93.

25 THE MASTER: It is B-908?

1 MR. ODAM: C as in Charles.

2 THE MASTER: I am sorry.

3 MR. ODAM: C-2908 and the jacket is
4 Examiner's Exhibit 93. Its contents are 91
5 or Examiner's Exhibits 91 and 92 which have
6 previously been offered and admitted and we
7 would offer at this time the claim jacket.

8 MR. MITCHELL: Which is number what
9 again, please?

10 MR. ODAM: 93.

11 THE MASTER: Under the same --

12 MR. ODAM: Under the same stipulations.

13 THE MASTER: Under the same stipulations
14 and objections except authenticity, it is
15 admitted.

16 MR. MITCHELL: Pardon me, I don't
17 recall seeing that, John. Is that a check
18 in that jacket of nineteen thousand one
19 hundred twenty-two dollars and forty-five
20 cents?

21 MR. ODAM: No, E-93 is for claim C-2908
22 and it is stated on the front to be for
23 one thousand six dollars and the two
24 statements are for one thousand and six
25 dollars.

1 MR. MITCHELL: We would -- Your Honor,
2 note for the record the additional
3 objection to the Exhibits 91, 2 and 3, and
4 81, 78 and 79, 71, 72 and 73 in that there
5 is a discrepancy or difference between what
6 is setout in the corresponding paragraph
7 and what the evidence is.

8 MR. ODAM: What paragraph is this, 12?

9 THE MASTER: Well, he is saying that
10 the --

11 MR. MITCHELL: Subject, of course --

12 THE MASTER: He is saying the evidence
13 does not conform to the pleadings.

14 MR. MITCHELL: That is correct, it can
15 be cured, and we would like to note for the
16 record our exception.

17 MR. ODAM: Did I offer 93?

18 THE MASTER: You did, it is admitted,
19 and the objection just stated is overruled.

20 MR. ODAM: Next, and this is still with
21 count number 12, is jacket identified claim
22 numbered D as in dog, D-75 and the
23 identification on it is E-96.

24 Now, this contains an invoice which
25 is E-95. Now, E-95 and the rest of these were

1 in the claim jacket like 95 and the rest of
2 them I will read out and we are offering at
3 this time the jacket E-96 and the invoice 95
4 was its content. There are only two in
5 there.

6 MR. MITCHELL: In connection with
7 paragraph 12?

8 MR. ODAM: Yes.

9 THE MASTER: Well, E-95 has not been
10 authenticated.

11 MR. ODAM: It has not been -- no, Your
12 Honor, because it was not one filled out by
13 Mr. Gonzalez.

14 MR. MITCHELL: That's right. Pardon me,
15 nor is 90 -- that's right, Judge, you're
16 right.

17 MR. ODAM: We are simply offering it for
18 the proof that if Mr. Meek were here, he would
19 testify that yes, this is what is in it.

20 THE MASTER: Oh, all right. But not --
21 but not evidence at this stage of this
22 proceeding as to who prepared --

23 MR. ODAM: No, sir.

24 THE MASTER: -- the instrument marked
25 E-95?

1 MR. ODAM: Right, sir.

2 THE MASTER: It is just identified by
3 Mr. Meek under the stipulation as a paper
4 found in the jacket that is marked E-96.

5 MR. ODAM: Yes, sir.

6 MR. MITCHELL: And, Your Honor, we would
7 then have, because it hasn't been previously
8 authenticated, we would object to hearsay
9 subject to our connection and everything,
10 but the authentication objection.

11 THE MASTER: And that objection is
12 sustained to E-95: it is admitted only as
13 being some paper contained in E-96.

14 MR. MITCHELL: Okay.

15 MR. ODAM: Yes, sir.

16 THE MASTER: Without identification or
17 authentication.

18 MR. ODAM: Also, Exhibit E-97 is an
19 original copy of the check in payment of
20 claim D-75 which was signed by Mr. Meek and
21 if Mr. Meek were here, I would ask him to
22 identify the original copy of the check that
23 he filled out and I would offer it into
24 evidence.

25 Of course, I would like to

1 substitute a Xerox for it later on, but
2 this is the original copy of the check. This
3 is what I was showing you awhile ago that has
4 the thing stapled to it.

5 THE MASTER: Now state a stipulation
6 for 97 and let's see if it is agreed to.

7 MR. ODAM: The stipulation for 97 is
8 that E-97 is a check on the County of Duval
9 in the amount of one thousand eighteen
10 dollars and ten cents signed by Mr. Walter
11 Meek and the stipulation is that if Mr.
12 Walter Meek were here testifying that he
13 would testify that this is his signature
14 and that he did sign the check.

15 MR. MITCHELL: All right.

16 MR. ODAM: And it was issued to
17 Benavides Implement and Hardware.

1 MR. MITCHELL: Now, Your Honor, may I
2 invite Counsel to also stipulate the correl-
3 ary, that is, there were no original checks
4 in the claim jackets other than the one
5 mentioned?

6 May I ask Counsel to frame a stipulation
7 to the effect there were no original checks
8 in the other jackets and to call those off
9 by Exhibit numbers. We know there was an
10 original check in E-93.

11 THE MASTER: You mean --

12 MR. MITCHELL: 96, the one just intro-
13 duced.

14 May I ask counsel to stipulate there
15 were no original checks in 93?

16 MR. ODAM: I would stipulate that and
17 the reason for that is that no claim jackets
18 contain any checks. None of them would
19 contain checks.

20 MR. MITCHELL: That is correct. Then
21 I would have to reword it and ask if you would
22 stipulate there were no original checks in
23 claim jacket 64, 77, 73, 81, 93 --

24 THE MASTER: You are correct.

25 The stipulation is that with respect

1 to all of the claim jackets previously iden-
2 tified by Exhibit number, other than Exhibit 96,
3 there were no original checks possessed by
4 Mr. Walter Meek --

5 MR. MITCHELL: Or the county treasurer.

6 THE MASTER: Off the record.

7 (Discussion off the record.)
8

9 THE MASTER: Back on the record.

10 Let me see if I can state the stipula-
11 tion.

12 It is stipulated by and between the
13 parties that with respect to the claim jackets,
14 being Exhibits E-64, E-67, E-73, E-81 and E-93,
15 Mr. Walter Meek, if called as a witness,
16 would testify that he is the county auditor
17 of Duval County and that he cannot find,
18 among the records of Duval County, the
19 original of the county checks in payment of
20 those claims and that he does not know where
21 the originals are. He further would testify that
22 with respect to the jacket E-97 -- I mean
23 E-96, that Exhibit E-97 was an original
24 check contained in that jacket and signed
25 by him. He would further testify that with

1 respect to all the jackets, they were claim
2 jackets containing the instrument earlier
3 identified by Mr. Odam that were kept by
4 him and under his supervision and control.

5 Is that the stipulation?

6 MR. MITCHELL: Yes, sir, Judge.

7 MR. ODAM: Yes, sir.

8 THE MASTER: Do you want to add some-
9 thing?

10 MR. ODAM: Or to change it to say the
11 checks were not physically contained in the
12 jackets.

13 THE MASTER: Yes, not normally kept in
14 the jackets.

15 Is the stipulation that E-97 was in a
16 jacket?

17 MR. ODAM: No, sir.

18 THE MASTER: But he was able to find it?

19 MR. ODAM: Yes, sir.

20 THE MASTER: And was not able to find
21 the rest of them?

22 MR. ODAM: No, sir.

23 THE MASTER: Is that stipulated to,
24 Mr. Mitchell?

25 MR. MITCHELL: Yes, sir.

1 THE MASTER: All right.

2 MR. ODAM: I will not take the time to
3 do it right now, but with respect to that
4 stipulation, I will go back through here and
5 get the photocopies from the bank of those
6 checks that were unavailable and offer them
7 in evidence.

8 THE MASTER: I am not sure you offered
9 anything, you may have.

10 MR. ODAM: I will offer E-97.

11 THE MASTER: It is admitted.

12 (Examiner's Exhibit 97 admitted in
13 evidence.)

14
15 MR. MITCHELL: Subject to our objections
16 previously made?

17 THE MASTER: With the exception of
18 authentication.

19 MR. MITCHELL: Right.

20 THE MASTER: It is admitted.

21 MR. ODAM: Next is -- we are still on
22 paragraph 12 and I have jacket E-99, which --

23 MR. MITCHELL: These are others that
24 no previous predicate has been laid on. I
25 suppose we could do it and let me object,

1 whatever the court wants.

2 THE MASTER: You have not seen these
3 before?

4 MR. MITCHELL: I have and I am prepared
5 to stipulate, but like 71 through and includ-
6 ing 92, these were offered during the course
7 of the development of the testimony where we
8 were able to object.

9 THE MASTER: Oh, you are willing to
10 stipulate as to what Mr. Meek would testify
11 as to the jackets and to contents, but you
12 are saying the contents have not been iden-
13 tified, like 95?

14 MR. MITCHELL: That is right.

15 THE MASTER: Of course, they are
16 admitted only as papers contained in the
17 jackets without any testimony as to who
18 created them.

19 MR. MITCHELL: Yes, but I will have
20 a hearsay objection and other objections.
21 I would not object on the grounds of their
22 not being authentic.

23 THE MASTER: Well, the only thing that
24 is authenticated is the jacket itself and
25 the fact that it had contents.

1 MR. MITCHELL: That is right.

2 MR. ODAM: We tried it both ways and
3 either way, it poses the problem of proce-
4 dure.

5 THE MASTER: I think I told you you
6 could do it one witness at a time.

7 MR. ODAM: Yes, Your Honor.

8 We have Exhibit E-99, which is claim
9 number D-453, and the stipulation would be
10 as previously, that it's contents were E-98
11 and further stipulation is this is the
12 original copy of a check signed by Mr. Meek,
13 which is E-100 and this was in payment of
14 claim D-453.

15 THE MASTER: Is E-100 an original?

16 MR. ODAM: Yes, sir.

17 THE MASTER: And the stipulation is
18 with respect to E-100, is it the same as
19 with respect to E-97?

20 MR. ODAM: Yes, sir.

21 THE MASTER: And you offer E-99, it is
22 admitted. E-100 is admitted and E-98 is
23 admitted as another paper in that jacket.

24 MR. MITCHELL: We have the objection of
25 hearsay and beyond the scope on 98, 99 and 100.

1 THE MASTER: Yes, plus pre-November,
2 1974 and 1975.

3 MR. MITCHELL: Yes, in the non-judicial
4 capacity.

5 THE MASTER: Yes, sir.

6
7 (Examiner's Exhibits 98, 99 and 100
8 received in evidence.)

9 MR. ODAM: Next is E-102 and it is
10 regarding E-720 and Mr. Meek would testify --

11 MR. MITCHELL: Does that relate to
12 Roman 12?

13 MR. ODAM: Yes, sir. All hereafter are
14 to 12, too.

15 MR. MITCHELL: All right.

16 MR. ODAM: His testimony would be that
17 it's contents, which I am getting ready to
18 state, came out of E-102. The contents are
19 marked by the reporter as E-101 and E-101-1,
20 E-101-2 and E-101-3 and E-101-4, and further
21 Exhibit E-103 is an original copy of a check
22 signed by Mr. Meek in payment of claim B-720
23 in the amount of one thousand sixty-seven
24 dollars seventy cents.

25 THE MASTER: And it is subject to the

1 same stipulation as E-97?

2 MR. ODAM: Yes, sir.

3 MR. MITCHELL: And we have the same
4 objection as to hearsay and the basic objec-
5 tion that the Court has kindly allowed us
6 going in.

7 THE MASTER: Yes, sir.

8 MR. ODAM: Next is claim jacket --
9 identified as 104 and it is claim number
10 D-985, and it's contents are E-104. The
11 jacket is 105 and the contents is an invoice
12 which has been marked E-104 and that is all
13 of it.

14 Further, this is the original copy of
15 a check, E-106, for identification in the
16 amount of nine hundred ninety-eight dollars
17 in payment of Claim Number D-985.

18 THE MASTER: And subject to the same
19 stipulation as E-97?

20 MR. MITCHELL: Yes, and we object to
21 hearsay and beyond the scope of the formal
22 notice and amended notice and -- well, our
23 basic objections allowed by the Court.

24 THE MASTER: I think those were some
25 of them, but fine.

1 E-102, I don't think I stated for the
2 record is admitted. E-101, E-101-1, E-101-2,
3 E-101-3 and E-101-4 are all admitted solely
4 as to the content of E-102.

5 E-103 is admitted and E-105 is admitted
6 and E-104 is admitted solely as to the
7 content of E-105 and E-106 is admitted.

8
9 (Examiner's Exhibits E-101, E-101-1,
10 E-101-2, E-101-3 and E-101-4; E-102, E-103,
11 E-104, E-105 and E-106 admitted into evidence.)

12 MR. ODAM: Next are Exhibit Numbers
13 E-107, 108 and 109. E-107 and the invoice
14 which is contained in E-108 and E-108 is
15 the claim jacket. The claim D-1161 and 109
16 is an original copy of a check signed by Mr.
17 Meek in payment of that claim, D-1161, --

18 THE MASTER: Subject to the objection of
19 authenticity of the jacket and its content,
20 although he could not identify those Exhibits
21 are admitted.

22
23 (E-107, 108 and 109 admitted in evidence.)

24 MR. ODAM: Next are E-110, 110A, B and
25 C. 110, A, B and C, those are contained in

1 Exhibit 111, which is jacket number D-1328
2 and E-112 is an original copy of a check
3 signed by Mr. Walter Meek in the amount of
4 one thousand twenty dollars eighty-five cents
5 in payment of claim number D-1328.

6 THE MASTER: All right. E-110A, B and C
7 are admitted under the stipulation as to what
8 Mr. Meek would testify to as to the contents
9 of E-111 and they are admitted as the con-
10 tents of that Exhibit. Also Exhibits E-111
11 and E-12 are admitted.

12 (Examiner's Exhibit E-110A, B and C,
13 E-111 and E-112 admitted into evidence.)
14

15 MR. MITCHELL: And we would have the
16 same objection as before, that it is hear-
17 say and irrelevant and immaterial and beyond
18 the original notice.

19 THE MASTER: Yes, sir.
20
21
22
23
24
25

1 MR. ODAM: Next is generally for
2 identification, Exhibit 113-A and 113-B,
3 and then 114 and 115.

4 Going back to identify E-113-A and
5 113-B are invoices that were contained in
6 E-114 which is the claim jacket for claim
7 B-1433 and E-115 is a check in the amount of
8 one thousand thirteen dollars and thirty
9 cents in payment of B-1433 signed by Mr.
10 Walter Meek and made out to Benavides
11 Hardware, the original copy of the check.

12 I might note, to be sure this is
13 right, I am going to make a change. When
14 we were marking them, we marked the check
15 as 114. I am going to strike that out and
16 put 115 because the next one you have is 116.
17 I will just -- there were just two items marked
18 as 114.

19 MR. MITCHELL: I wonder if I could have
20 all of these and make an examination of them.

21 MR. ODAM: Sure.

22 MR. MITCHELL: While you're getting them
23 in, things like endorsements --

24 MR. ODAM: Sure.

25 MR. MITCHELL: I guess I will be given

1 ample time, I just haven't been -- haven't
2 had an opportunity --

3 THE MASTER: I assume you're going to
4 have available to you, wherever we finally
5 light, for as long as you want, Mr. Mitchell,
6 sure.

7 MR. MITCHELL: Fine, thank you, Judge.
8 I didn't want the record to reflect that --
9 Judge, I had made a -- I didn't want the
10 record to reflect that I have made a
11 thorough examination. I have not, for
12 example, looked in detail at the documents,
13 whose handwriting and so forth. I was
14 assured by counsel, as I stated previously
15 in connection with the stipulation, that they
16 came from Walter Meek's possession, but I
17 didn't want the Court to be misled by that,
18 that I have noted, for example, the
19 endorsements.

20 THE MASTER: And by my saying they are
21 admitted, they are admitted simply over the
22 objections you have made.

23 MR. MITCHELL: Right.

24 THE MASTER: If you have some additional
25 ones, of course --

1 MR. MITCHELL: Thank you, Judge.

2 THE MASTER: -- I will hear them. Now,
3 let's see, 113-A and B, were they offered?
4 You identified them. I don't know --

5 MR. ODAM: I offered them.

6 THE MASTER: And you offered 113, 114,
7 113-A and B are admitted under the contents
8 of Exhibit 114 which is admitted over the
9 objection, since the authentication objection
10 is withdrawn, and 115 is admitted since the
11 authentication objection is withdrawn.

12 (Discussion off the record.)
13

14 MR. ODAM: Let's get back on the record.
15 I missed a piece of contents, this is 113-C.
16 113-C is an adding machine tab which is also
17 the contents of 114 and so it is A, B, and
18 C, 113-A, B, and C.

19 MR. MITCHELL: The same objection, Judge.

20 THE MASTER: And Exhibit 113-C is
21 admitted as being a paper contained in --
22 in E-114.

23 MR. ODAM: Next is E-116 which is an
24 invoice that was contained in E-117 which is
25 a claim jacket D-1751 and E-118 is a check,

1 original copy of a check signed by Mr. Walter
2 Meek for the amount of one thousand ninety-
3 five dollars in payment of claim D-1751.

4 I offer those into evidence.

5 MR. MITCHELL: Same objection, Judge
6 Meyer.

7 THE MASTER: And pursuant to the
8 stipulation 116 is admitted as the contents
9 of E-117 which is admitted and E-118 is
10 admitted as the original check.

11 Are you indicating you want leave
12 to withdraw these at some time or other and
13 substitute legible Xerox copies which, of
14 course, you can do?

15 MR. ODAM: Thank you.

16 MR. MITCHELL: Pardon me, Your Honor.

17 THE MASTER: Yes.

18 MR. MITCHELL: The only thing I would
19 request of that, Judge, is that I, of course,
20 have no objection, but I would like to have
21 them available, and their copies. There is a
22 significance in the copies, the pink and
23 white, for cross.

24 THE MASTER: No question about it.

25 MR. MITCHELL: Yes, Judge.

1 THE MASTER: It would be a question of
2 cancellation, there could be questions of
3 the stamps that the bank placed, you may need
4 the originals.

5 MR. MITCHELL: Right.

6 THE MASTER: But I mean just ultimately.

7 MR. MITCHELL: Fine, that is all right,
8 Judge.

9 THE MASTER: And you certainly should
10 have the right to examine the originals.

11 MR. MITCHELL: Thank you, Judge Meyer.

12 MR. ODAM: The next is E-119-A, 119-B
13 and 119-C. Those three items were contained
14 in E-120 which is claim jacket for claim
15 D-2158 and E-121 is a county check in the
16 amount of one thousand ninety-six dollars and
17 fifty cents for payment of D-2158. The
18 original copy signed by Walter Meek and I
19 offer E-119-A, B, and C and 120 and 121.

20 THE MASTER: 119-A, B, and C are
21 admitted as the contents. 120 is admitted
22 and 121 is admitted and the original
23 objection or the objection previously noted
24 to 116, 117 and 118 and the similar
25 exhibits are overruled.

1 MR. MITCHELL: Thank you, Judge Meyer.

2 MR. ODAM: Next is Examiner's Exhibits
3 122, 123 and 124. E-122 is an invoice which
4 is contained in E-123, which is claim jacket
5 numbered D-2378. E-124 is a check in the
6 amount of one thousand five hundred dollars
7 in payment of D-2378, the original copy
8 signed by Mr. Meek and those three items are
9 offered into evidence.

10 THE MASTER: And they are admitted.
11 122 as the contents, 123 is admitted and 124
12 is admitted and the objections made to other
13 similar exhibits previously admitted are
14 overruled.

15 MR. MITCHELL: May I ask counsel a
16 question, Your Honor?

17 THE MASTER: Yes.

18 MR. MITCHELL: At the outset, counsel
19 for examiner stated that the items under 12,
20 and I believe if my recollection serves me
21 correctly, were to be twenty-five thousand
22 dollars, although it is clear that nineteen
23 thousand one hundred twenty-two dollars and
24 forty-five cents.

25 Now, for the first time, he is

1 breaking these down into various checks.
2 May I ask or have the Court ask him whether
3 or not all of these are going to yield
4 nineteen thousand one hundred twenty-two
5 dollars forty-five cents or twenty-five
6 thousand dollars or some other figure?

7 MR. FLUSCHE: The total of all of these
8 checks will yield some other figure in excess
9 of nineteen thousand dollars, whatever --

10 MR. MITCHELL: All right. Well --

11 MR. FLUSCHE: And the nineteen thousand,
12 whatever figure will be arrived at by showing
13 the checks that were issued from Benavides
14 Implement and Hardware Company to pay for
15 the Caterpillar tractors.

16 MR. MITCHELL: Then, Your Honor, we would
17 like to level -- I didn't know where they were
18 going because they are building a wall by
19 little bricks, and then the objection would
20 be further lodged, we are not on notice at
21 all of the new figure that lies above nineteen
22 thousand one hundred twenty-two dollars and
23 fortyfive cents and I suppose under twenty-
24 five thousand dollars.

25 THE MASTER: Well, I understood that to

1 be an evidentiary matter. I thought I
2 understood Mr. Flusche to say you're going
3 under your theory of the case to show that
4 some of these checks were truly in payment
5 of something. I don't understand -- you
6 better say that again, what you said to Mr.
7 Mitchell.

8 MR. FLUSCHE: These checks were
9 deposited into an account and from that
10 account, in the name of Benavides Implement
11 and Hardware Company, there were issued other
12 checks which were in some instances less than
13 the amount that was deposited. In other
14 words --

15 MR. MITCHELL: I am not concerned so
16 much, Your Honor, with that, but the problem
17 I am having is whether I am going to be
18 charged with stealing nineteen thousand one
19 hundred twenty-two dollars and forty-five
20 cents or twenty-five thousand dollars.

21 MR. ODAM: That is what that is.

22 MR. FLUSCHE: Nineteen thousand one
23 hundred twenty-two dollars is the figure
24 that is being charged as theft.

25 MR. MITCHELL: Well, then, the total

1 of these figures that we are going through
2 now should yield the nineteen thousand one
3 hundred twenty-two dollars and forty-five
4 cents.

5 THE MASTER: No, they say that it will
6 yield a larger amount and that some of the
7 larger amount will be checks that went to
8 pay for the tractors, is that what you said?

9 MR. FLUSCHE: Yes.

10 MR. MITCHELL: But I am not charged with
11 stealing that

12 MR. ODAM: Right.

13 MR. MITCHELL: That is my problem,
14 Judge, I don't know what to defend against.

15 THE MASTER: Well, it seems to me, I
16 am not sure I understand your problem.

17 MR. MITCHELL: Well, the amount is
18 going to be more than the nineteen thousand,
19 Judge Meyer. It is going to be considerably
20 more and I am, again, wrestling with the
21 question of notice under twelve, the
22 allegation is that I continue -- that I stole
23 nineteen thousand one hundred twenty-two
24 dollars and forty-five cents which
25 apparently is not correct, I have stolen more

1 than that.

2 MR. ODAM: Oh, no, that is -- nineteen
3 thousand plus.

4 THE MASTER: You're just talking about a
5 tracing problem, is that right? You're going
6 to trace it down, you say?

7 MR. ODAM: Yes, sir.

8 THE MASTER: The nineteen thousand
9 some odd dollars?

10 MR. ODAM: Yes, sir, and we are not
11 intending to -- all of this is not going to
12 yield that, you're being charged for theft
13 for more than nineteen thousand dollars.
14 All these are are checks from the county to
15 Benavides Implement and Hardware.

16 MR. MITCHELL: Right.

17 MR. ODAM: That is the tracing we are
18 referring to.

19 MR. MITCHELL: All right.

20 MR. ODAM: And they are going to add
21 up to more, but I am correct in stating that
22 that is not going to change the fact that
23 you are on notice right now for nineteen
24 thousand and we are not making a case for
25 more than that.

1 MR. MITCHELL: Well, I understand that,
2 Your Honor, that is fine and dandy except
3 that we have got a question of due process,
4 if I am charged with notice -- if I am
5 charged with a theft of nineteen thousand
6 one hundred twenty-two dollars and forty-
7 five cents, and you are now -- we have
8 stipulated to certain checks that I would
9 assume they would yield nineteen thousand
10 one hundred twenty-two dollar and forty-
11 five cents and it has dawned on me they
12 might not, and if not, my question was what
13 are they going to yield so I can be informed
14 to intelligently level an objection as to
15 the variance between the proof and the
16 allegations. That is the reason for the
17 inquiry, Your Honor.

18 MR. ODAM: I think my feeling on that
19 would be a question of the relevancy which
20 would be raised as we start playing this out
21 on XII.

22 THE MASTER: Well, I think the inquiry
23 has been answered.

24 MR. ODAM: Mr. Chatham, what was the
25 last offer into evidence?

1 (Discussion off the record.)
2

3 MR. ODAM: The next item is E-125 and
4 E-125-A and E-126 and E-127 and I will ask
5 the court reporter at this time to mark what
6 is E-125-A. We failed to do that the other
7 day.

8 (Marked for identification by the
9 reporter as Exhibit E-125-A.)
10

11 MR. ODAM: 125 and 125-A are contained
12 in E-126 which is claim number D-2504,
13 claim jacket, and 127 is an original check
14 signed by Mr. Meek in the amount of one
15 thousand five hundred fifty dollars in
16 payment of claim number D-2504. I offer those
17 four items into evidence.

18 MR. MITCHELL: The same objection, Your
19 Honor, and may we add the one that it goes
20 beyond the specific allegations of Roman XII.

21 THE MASTER: Yes, sir. The exhibits
22 are admitted with the understanding that 125
23 and 125-A are admitted only as being
24 contained in 126 which is admitted and
25 127 is also admitted.

1 MR. ODAM: Next are numbers 128, 129 and
2 130. 128 is contained in the jacket, which
3 is identified as 129, which is a claim
4 numbered D-2868 and E-130 is a check in payment
5 of said claim in the amount of one thousand
6 dollars, the original copy signed by Mr.
7 Walter Meek. I offer those into evidence.

8 THE MASTER: Admitted on the same basis
9 as previously.

10 MR. MITCHELL: Note our same objections,
11 Judge Meyer.

12 THE MASTER: Yes, sir, and they are
13 overruled.

14 MR. ODAM: Next is E-131 which is
15 contained in E-132, which is claim jacket
16 A-52.

17 THE MASTER: I didn't keep up with you.

18 MR. ODAM: E-131.

19 THE MASTER: Is content?

20 MR. ODAM: Is content, and it is
21 contained in 132 which is the claim jacket
22 A-52 and E-133 is the check, the original
23 copy signed by Mr. Meek in payment of claim
24 A-52 in the amount of one thousand five
25 hundred dollars.

1 MR. MITCHELL: I am sorry. I didn't
2 hear that.

3 MR. ODAM: One thousand five hundred
4 dollars.

5 MR. MITCHELL: That is 132?

6 THE MASTER: That is 133.

7 MR. MITCHELL: I am sorry.

8 MR. ODAM: I offer those into evidence.

9 MR. MITCHELL: The same objection, Your
10 Honor.

11 THE MASTER: They are admitted, the
12 objection being overruled.

13 MR. ODAM: The next items are 134,
14 135 and 136. 134 is the contents, it is
15 contained in E-135, the claim jacket A-234.
16 136 is an original copy of a check signed
17 by Mr. Meek in the amount of one thousand
18 five hundred dollars in payment of claim
19 A-234 and we offer that into evidence.

20 MR. MITCHELL: The same objection, Judge
21 Meyer.

22 THE MASTER: And the objections are
23 overruled and the exhibits are admitted with
24 the understanding that E-134 is admitted only
25 as the contents of E-135.

1 MR. ODAM: The next three items are
2 137, 138 and 139. 137 is the contents, it
3 is contained in 138.

4 THE MASTER: For the record, when you
5 say the contents, you usually mean some sort
6 of invoice.

7 MR. ODAM: Yes, sir.

8 THE MASTER: Occasionally there is a
9 tape.

10 MR. ODAM: Yes, sir, and 137 is an
11 invoice and 138 is the claim jacket for
12 claim A-440 and the item 139 is the original
13 copy of a check signed by Mr. Meek in the
14 amount of one thousand five hundred dollars
15 in payment of a claim A-440 and we offer
16 those three items into evidence.

17 MR. MITCHELL: The same objection, Your
18 Honor, and I would like to have them without
19 the necessity of repeating them and to include
20 also going beyond the scope of XII, Roman XII.

21 THE MASTER: Well, may I also have your
22 agreement that I don't have to say with
23 respect to the contents?

24 MR. MITCHELL: Yes.

25 THE MASTER: It is admitted for a limited

1 purpose.

2 MR. MITCHELL: Yes, I think also, Judge,
3 there is a question of the appearance of the
4 record. I would like for the record to show
5 we are doing our work.

6 THE MASTER: I do, too, and the exhibits
7 are admitted, the objections being overruled.

8 MR. ODAM: Your Honor, that completes
9 the ones I think that we probably could agree
10 to and we would recall Mr. Couling and
11 proceed through the authenticity process
12 as we were going on paragraph seven, and
13 proceed into paragraph eight at this time.

14 THE MASTER: All right. How long do
15 you think -- I am just wondering, we have
16 got anywhere between 15 and 30 minutes, we
17 do have to find a home for tomorrow.

18 MR. ODAM: Well, Mr. Couling is going
19 to take us through paragraph seven -- from
20 paragraph seven through 12 and he is going to
21 be here probably all day. Well, he will be
22 here tomorrow definitely. There is no way
23 we could complete him this afternoon.

24 THE MASTER: What is your preference,
25 then, to go on a bit or --

1 MR. ODAM: If it is all right with Mr.
2 Mitchell, we could go on for a few more
3 minutes or stop. We are just-- we will make
4 15 minutes progress or do it tomorrow. I defer
5 to my honorable counsel.

6 MR. MITCHELL: I am not going to be
7 prepared to cross-examine him on the facts,
8 anyway. I would just notice him now. I will
9 be willing to -- capable of intelligently
10 cross-examining him to impeach him on prior
11 indictments and convictions, but not on the
12 facts because I have had some experience
13 with him in other procedures and that is the
14 reason I know about the impeachment factors,
15 but not on the subject matter of your --
16 consequently, Your Honor, it is of no
17 consequence to me if he wants to go ahead.
18 I will be pleased to do so.

19 THE MASTER: I believe it would be a
20 mistake to get him -- this lengthy witness
21 on this short of time. Let's go look for a
22 courtroom.

23 MR. ODAM: That is fine, sir.

24 THE MASTER: We will be in recess until
25 8:30 tomorrow morning.

(Whereupon, the hearing was in recess
from 3 o'clock p.m. on November 19, 1975,
until 8:30 a.m. on November 20, 1975.)

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