

**INQUIRY CONCERNING A JUDGE  
NO. 5**

**NOVEMBER 20, 1975**

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BEFORE THE  
STATE JUDICIAL QUALIFICATIONS COMMISSION

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INQUIRY CONCERNING A JUDGE, NO. 5

NOVEMBER 20, 1975

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

RFT  
8082  
C3745  
V. 11  
COPY

1 THE MASTER: Mr. Odam, are you prepared  
2 to go forward?

3 MR. ODAM: Yes, sir.

4 THE MASTER: Mr. Mitchell, are you pre-  
5 pared to go forward?

6 MR. MITCHELL: Yes, Your Honor.

7 THE MASTER: Mr. Chatham, I want the  
8 record to reflect that at a discussion that  
9 was off the record this morning, it was  
10 agreed that our schedule would be that we  
11 will continue today and tomorrow to take  
12 testimony; that we will not take testimony  
13 next week because Judge Carrillo has a hearing  
14 Monday in federal court and because Thursday  
15 is Thanksgiving and Mr. Mitchell would appre-  
16 ciate the time, and the Master does not  
17 consider that coming down for two days of  
18 testimony is very practical.

19 I do understand, Mr. Mitchell, that you  
20 approve that schedule and appreciate it, is  
21 that right?

22 MR. MITCHELL: I sure do, Your Honor,  
23 that is fine.

24 THE MASTER: And Mr. Odam you have no  
25 objection to it, do you?

1 MR. ODAM: No, sir, the only thing  
2 would be a reconsideration if perhaps we  
3 didn't finish the evidence by Friday, but  
4 hopefully we will.

5 THE MASTER: Well, we are not fore-  
6 closed.

7 MR. ODAM: Yes, sir.

8 THE MASTER: We can reconsider.

9 MR. ODAM: But other than that objec-  
10 tion --

11 THE MASTER: But even if we are not  
12 through with the evidence, that is the  
13 Examiner's evidence.

14 MR. ODAM: Yes, sir.

15 THE MASTER: Coming down for two days  
16 of testimony with the very real possibility  
17 that the sentencing hearing may not be --  
18 it may not end Monday.

19 MR. ODAM: Yes, sir.

20 THE MASTER: It could go over into  
21 Tuesday and we have really wasted money if  
22 we do that.

23 MR. ODAM: Yes, sir.

24 THE MASTER: Your next witness is Mr.  
25 Couling, he has previously been sworn. Will

1 you get Mr. Couling please?

2 MR. ODAM: Before we get him --

3 THE MASTER: All right, Mr. Odam.

4 MR. ODAM: Your Honor, as the Court  
5 recalls yesterday we had a number of checks  
6 that were -- we had original copies of the  
7 checks and there also was a stipulation in  
8 the record with respect to stipulations --  
9 with respect to the checks, and as I recall  
10 it that if Mr. Meek were here, he would testify  
11 that certain checks -- he checked the records  
12 and they were not available in the county  
13 auditor's audit and they related to certain  
14 claim jackets and I believe the record yes-  
15 terday will reflect that the claim jackets  
16 were E-64, E-67, E-73, E-81 and E-93.

17 The checks which were unavailable which  
18 were discussed yesterday were checks which  
19 have been marked for identification as follows:  
20 E-57 is a copy of a check which relates to  
21 claim jacket E-64 and E-68 is a check, a  
22 copy signed by Mr. Meek which relates to  
23 E-67, and E-74 is a copy of a check which  
24 relates to claim jacket E-73. E-80 is a  
25 copy of a check which relates to claim

1 jacket E-81 and E-94 is a copy of a check  
2 which relates to claim jacket E-93.

3 I'm not sure the record would reflect  
4 that those were offered into evidence as a  
5 result of yesterday, and I would like to  
6 offer those into evidence pursuant to that  
7 stipulation of yesterday.

8 MR. MITCHELL: The same objection, Your  
9 Honor, that is hearsay, no -- no proper  
10 authentication.

11 THE MASTER: Excuse me, I didn't hear  
12 that.

13 MR. MITCHELL: It would be hearsay --  
14 it would be hearsay, authentication and, of  
15 course, our basic objections, Your Honor,  
16 that we previously had, non-judicial capacity,  
17 beyond the scope of the formal notice and  
18 the original notice and then, of course,  
19 beyond the term.

20 THE MASTER: Mr. Odam, I do not -- my  
21 notes do not reflect those Exhibit numbers  
22 at all. I take it these were instruments  
23 marked the other day and I don't reflect  
24 any reference to them. Am I correct in that  
25 omission?

1 MR. ODAM: That's correct, the only  
2 reference was in the record to the claim  
3 jacket numbers.

4 THE MASTER: All right, that is correct.

5 MR. ODAM: They were numbers 64 and 73,  
6 et cetera.

7 MR. MITCHELL: In addition, Your Honor,  
8 I not only don't reflect them, nor have I  
9 seen them nor have I examined them.

10 As I stated yesterday for the record  
11 in detail other than the fact that Mr. Meek  
12 on the ones that we had offered yesterday,  
13 on Meek's stipulation from about, I would say,  
14 68 -- no, I'm sorry, about 91 and forward, I  
15 haven't examined those other than the fact  
16 that Mr. Meek said that these come out of  
17 my file, so I don't want the record to  
18 reflect something that really has not occurred.

19 I have not had a chance, for example,  
20 to look at the endorsements or in detail at  
21 the documents, much less the ones he just  
22 mentioned.

23 THE MASTER: I am not sure I understand  
24 the stipulation with respect to these copies.  
25 What do you think it is?

1 MR. ODAM: The stipulation -- do you  
2 have a copy of the daily --

3 THE MASTER: I don't have it, but that  
4 is not important. You think the stipulation  
5 was if Mr. Meek were called, he would testify  
6 that this is a copy and he has searched for  
7 the original and could not find it?

8 MR. ODAM: Yes, sir, that is what it  
9 stated in the copy on page 1648 and it makes  
10 reference to those particular claim jackets  
11 on page 1648.

12 MR. MITCHELL: Well, now, that stipula-  
13 tion presupposed a bilateral understanding.  
14 I stipulated yesterday to certain matters  
15 that the record will reflect. I will not  
16 stipulate, Your Honor, that these copies are  
17 necessarily -- the genuine -- that they are  
18 original genuine specimens available of them.  
19 All I stipulated was that if he were here,  
20 he would testify as a matter of reflection  
21 on the record, I would think that there were  
22 no originals in the county treasurer's office  
23 or his custodianship, certainly not to  
24 trigger the proof by -- of these checks by  
25 secondary evidence.



1 THE MASTER: Well, the stipulation was  
2 in the record and I will simply look at it.  
3 Can you get it for me?  
4

5 (Discussion off the record.)

6 THE MASTER: Mr. Odam, the problem I  
7 have is I do not find in the daily copy  
8 transcript where there is a stipulation Mr.  
9 Meek would testify this is a correct  
10 photocopy of a check that he knew existed,  
11 but cannot find.

12 MR. ODAM: All right, sir.

13 THE MASTER: Now, the statute divides  
14 in substance that mechanically reproduced  
15 copies, such as Xerox or whatever, are  
16 admissible when the original is shown to be  
17 unavailable, but doesn't this have to be  
18 authenticated that this is a copy?

19 MR. ODAM: Sir, it says, produce the  
20 original or account for its absence, so it  
21 is my understanding that if Mr. Meek were  
22 to testify, I don't know where the original  
23 copies are, that this, therefore, would trigger  
24 the admissibility of a machine reproduced  
25 copy.

1 THE MASTER: But he doesn't have to say  
2 this is a copy of it?

3 MR. ODAM: I don't believe so.

4 MR. MITCHELL: May I address myself  
5 to this?

6 THE MASTER: Sure.

7 MR. MITCHELL: Mr. Meek says he won't  
8 ever have them, he is not supposed to have  
9 them. I say they ought to call Mr. Solis,  
10 the treasurer, and have him make an  
11 examination and if he has the originals,  
12 fine, but if he doesn't, then he is able  
13 to bring his testimony within that statute.  
14 I recall asking Mr. Meek that very question  
15 and I said the original checks should have  
16 been in that jacket and everybody pointed  
17 out to me the jackets should not contain  
18 the checks, so --

19 THE MASTER: Well, I don't know that I  
20 agree with that or disagree with it. I  
21 think there are a number of ways the original  
22 can be found to be missing, but I would think  
23 that someone would have to say this is a copy.

24 MR. ODAM: Well, we will produce today  
25 the bank officer from the First State Bank

1           who made these copies and have him identify  
2           that he made these for that purpose and  
3           that will solve that problem.

4           MR. MITCHELL: Now, John, I am going to  
5           object if the bank officer is not the man  
6           that actually made the reproduction and can't  
7           testify --

8           THE MASTER: Well, the stipulation has  
9           triggered the statute. I simply feel that  
10          someone has to say this is a copy made by  
11          some mechanical process.

12          You may call your witness.

13          MR. ODAM: We will recall Mr. Rudolfo  
14          Couling.

15  
16  
17          FURTHER EXAMINATION

18          BY MR. ODAM:

19  
20          Q Mr. Couling, you are the same witness that  
21          testified yesterday?

22          A Yes, sir.

23          Q And the Court admonished you you were under oath  
24          and still are today?

25          A Yes, sir.

1 Q Mr. Couling, you made a statement, I believe,  
2 yesterday, in the record that you set up, along  
3 with Ramiro Carrillo, the Benavides Implement  
4 and Hardware Store?

5 A Yes, sir.

6 Q And you and he were partners in that?

7 A Yes.

8 Q You made a statement yesterday that -- and we came  
9 to an objection and I am sure we will today, but  
10 you said J. P. Carrillo was a silent partner?

11 MR. MITCHELL: Yes, I would object and  
12 we would object to his leading his own  
13 witness in this matter.

14 MR. ODAM: At this time, Your Honor,  
15 and we might excuse the witness, because I  
16 would like to discuss that point.

17 THE MASTER: Would you mind walking out  
18 again, Mr. Couling.

19 MR. ODAM: Your Honor, I do not have  
20 prepared a formal, legal written brief, but  
21 I would like to make our views known for  
22 the record of hearsay and the exception to  
23 the hearsay being a declaration against  
24 interest exception to a witness' pecuniary  
25 or proprietary interests.

1                   If there are exceptions, they are  
2                   triggered when one who made the statement  
3                   is unavailable. We think the law is clear  
4                   that Mr. Ramiro Carrillo is unavailable and  
5                   the law is, as we know, may be admitted if  
6                   they meet the requirements of the declaration  
7                   against interests.

8                   Statements by a third party may  
9                   properly be admitted into evidence if they  
10                  meet the requirements of the declarations  
11                  against interests exception to the hearsay  
12                  rule. The exception may generally be stated  
13                  to the fact that the declarations of a  
14                  person, since deceased or unavailable at  
15                  the time of trial, opposed to his pecuniary  
16                  or proprietary interests, are admissible,  
17                  provided he was in a position to know of  
18                  the matters stated and had no probable  
19                  motive to misrepresent the facts. For this,  
20                  I cite 2 McCormick and Ray, Texas Law of  
21                  Evidence, 1001, 1003; and also, McCormick and  
22                  Ray, Law of Evidence, 253 and Duncan v. Smith,  
23                  393 S.W.2d 798, 803. (Texas Supreme Court  
24                  1965)

25                   One can argue that a witness who invokes

1 his privilege against self-incrimination  
2 should be regarded as unavailable within the  
3 meaning of the Rule. One state has so held  
4 for decades, and this is cited in Sutter v.  
5 Easterly, 354 Mo. 282, 189 S.W.2d 284 (1945).

6 Moreover, the commentators support  
7 this view, and again cite 2 McCormick and Ray,  
8 Texas Law of Evidence, 1003. Significantly,  
9 a Texas Court has expressly approved this  
10 result in dicta. Cited is Liberty Mutual  
11 Insurance Company v. Heard and Jones Drugstores,  
12 Inc., 446 S.W.2d 911, 913 (Texas Civil  
13 Appeals - Amarillo, 1969, no writ.)

14 Indeed, the trend in Texas is to  
15 expand the admissibility of declarations  
16 against interest to situations where the  
17 declarant is for all practical purposes  
18 unavailable. For this I cite Brown v. Brown,  
19 520 S.W.2d 571, 578 (Texas Civil Appeals -  
20 Houston, 14th District, 1975, no writ) and  
21 note the authorities cited therein.

22 As far as the unavailability, once  
23 the unavailability requisite is satisfied,  
24 the question becomes whether the declaration  
25 states facts against the pecuniary or

1           proprietary interests of the declarant.  
2           Classically, such declarations involve  
3           acknowledgement of an indebtedness or have  
4           a limitation on one's ownership of property.  
5           However, Courts have extended the scope of  
6           statements against pecuniary interest to  
7           include the acknowledgment of facts giving  
8           rise to civil liability. McCormick, Law of  
9           Evidence, 254. In Texas, facts adversely  
10          affecting the declarant's civil liability or  
11          recovery are considered against his pecuniary  
12          interest. Duncan v. Smith, 393 S.W.2d 798  
13          and also Jewell v. El Paso Electric Company,  
14          47 S.W.2d 328, 330.

15                 Though these Texas cases involve  
16          declarations by persons who were originally  
17          parties to the suits in which the statements  
18          were admitted, the opinions are expressly  
19          based on the declaration against interest  
20          exception and support the limited proposition  
21          that statements of facts adversely affecting  
22          the declarant's civil liability are against  
23          his pecuniary interest.

24                         Once the situation of the  
25          indication of the Fifty Amendment being

1           invoked, the invocation of the privilege  
2           against self-incrimination renders the  
3           witness unavailable; that former declarations  
4           which stated facts giving rise to civil  
5           liability were against the witness' pecuniary  
6           interest; and that such declarations are,  
7           therefore, admissible in the present  
8           proceeding pursuant to the declarations  
9           against interest exception to the hearsay  
10          rule.

11                       We would submit that statements  
12          we would want in by way of this witness, which  
13          Ramiro Carrillo stated against him, would be  
14          against his pecuniary interests; that they  
15          would show civil liability on the part of  
16          Ramiro Carrillo.

17                       THE MASTER: What sort of statements  
18          are you going to get out of this witness?

19                       MR. ODAM: The statements would be  
20          statements along the lines where Ramiro  
21          Carrillo -- to show whether he acted alone  
22          or with O. P. Carrillo to convert the money  
23          of Duval County. If it were brought by the  
24          terms of conversion to Ramiro to his own  
25          personal use and benefit.



1 THE MASTER: So Ramiro Carrillo says  
2 to Mr. Couling what?

3 MR. ODAM: Well, in this case, he would  
4 state that O. P. Carrillo is a silent  
5 partner in the Benavides Implement and  
6 Hardware Store. That would tend to show in  
7 that one instance that --

8 THE MASTER: Mr. Mitchell, counsel is  
9 making an argument, but I know you have to  
10 confer, so do it quietly.

11 MR. MITCHELL: I don't know what his  
12 argument is against.

13 THE MASTER: Well, you are not  
14 listening.

15 MR. MITCHELL: On a hearsay objection,  
16 I am sorry, I do appear to be distracted,  
17 and the witness testified under oath that he  
18 didn't have a partner a few months back.  
19 I don't see an admission, so, therefore, I  
20 move to strike his testimony, and further,  
21 I object on the matter of hearsay.

22 THE MASTER: Well, now, the declaration  
23 against interest is that a witness, including  
24 a non-party witness who makes an out-of-court  
25 declaration, is admissible to prove the truth.

1 MR. ODAM: And the witness that you are  
2 referring to there would be Ramiro Carrillo?

3 THE MASTER: No, let's see, I didn't  
4 state that well. It is not a witness, it  
5 is a person who makes a statement to a witness.

6 MR. ODAM: Correct.

7 THE MASTER: That is contrary to his  
8 pecuniary interest.

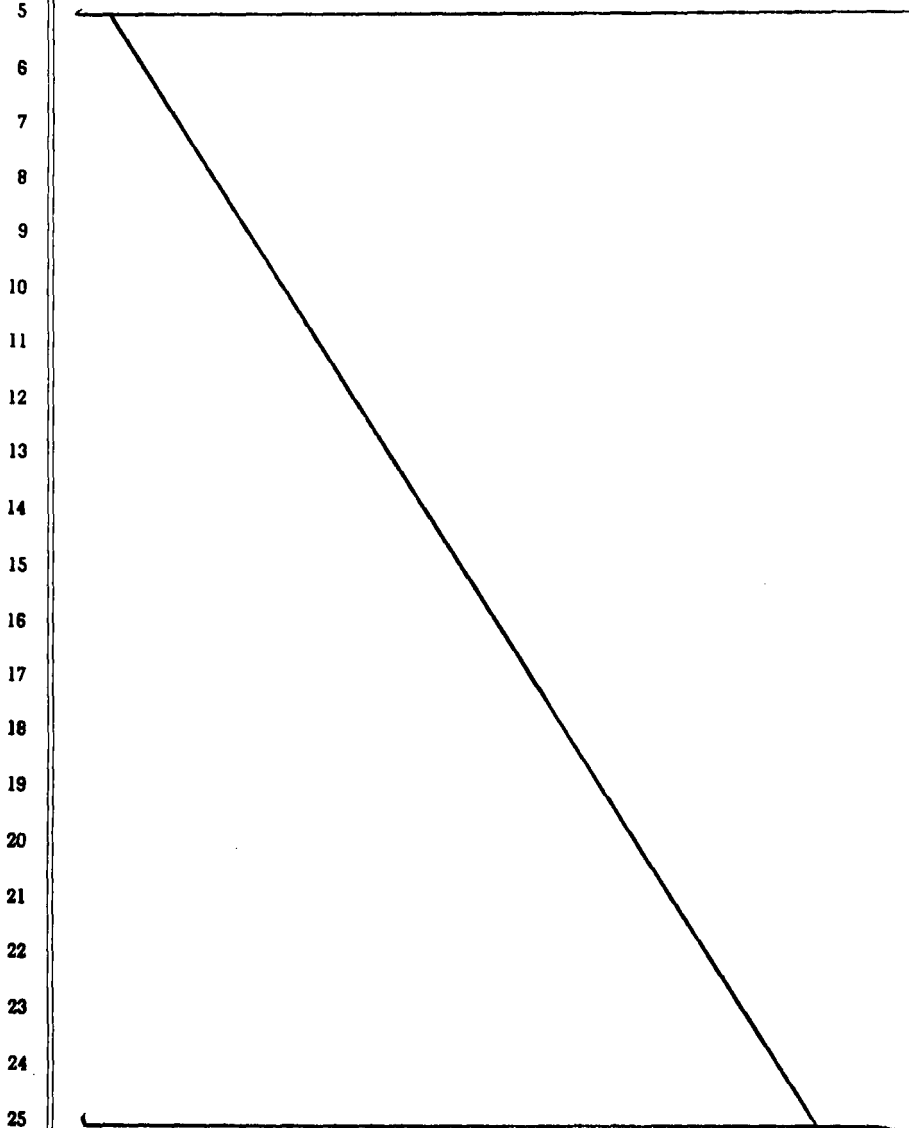
9 MR. ODAM: That is correct.

10 THE MASTER: That witness' testimony  
11 as to what the person states to him  
12 was admissible if the statement is  
13 contrary to the pecuniary interest of the  
14 person to whom the witness talked.

15 MR. ODAM: Yes, sir, and I might add,  
16 I asked about, and it was raised on this  
17 question, about silent partners.

18 Mr. Ramiro Carrillo's statement  
19 to Mr. Jouling would be statements we would  
20 think would show the entire scheme of how  
21 the money was going from the Benavides  
22 Implement and Hardware, to and from the  
23 county, and further, to O. P. Carrillo.  
24 The entire scheme of the things by way of  
25 the statements made by Ramiro Carrillo,

1                   which gives rise to civil liability in that  
2                   he, himself, participated in the conversion  
3                   of that and other moneys from the County of  
4                   Duval.



1 THE MASTER: Do you have the sections  
2 of McCormick and Ray?

3 MR. ODAM: Yes, sir, 1001 and 1003 on  
4 pecuniary.

5 (Handed to the Master.)  
6

7 THE MASTER: There is a pencil here at  
8 1564, does that mean anything?

9 MR. ODAM: It probably does, but that  
10 is for another point.

11 THE MASTER: All right, you want me to  
12 save it?

13 MR. ODAM: Yes, the best evidence rule  
14 on that page, yes, I'm sure it does.

15 (Discussion off the record.)  
16

17 THE MASTER: Mr. Odam, I think this is  
18 an instance where the Court would have to  
19 hear the testimony. You would have to put  
20 on the testimony in connection with a bill  
21 anyway.

22 MR. ODAM: Yes, sir.

23 THE MASTER: Bring in Mr. Couling, please.  
24

25 - - - - -

EXAMINATION CONTINUED

1  
2  
3 BY MR. ODAM:

4 Q Mr. Couling, I believe you stated yesterday that  
5 at one point, when we were discussing how the  
6 Benavides Implement and Hardware was set up, you  
7 stated that Ramiro Carrillo told you that O. P.  
8 Carrillo was to be a silent partner, is that cor-  
9 rect?

10 A Yes, sir.

11 Q Is that what he stated to you?

12 A Yes, sir.

13 MR. MITCHELL: Pardon me, Judge. Now,  
14 I don't want to waive anything. I understood  
15 that I have a continuing objection to all of  
16 this as being leading and hearsay and there  
17 is no connection where O. P. Carrillo is  
18 concerned.

19 THE MASTER: Well, and right now I am  
20 in one of those situations where I think I  
21 have to hear the evidence in order to rule  
22 on the objection.

23 MR. MITCHELL: Right, well that's all  
24 right, Judge, I'm not quarreling with the  
25 Court's procedure.

1 THE MASTER: That is fine.

2 MR. MITCHELL: May I add one more, sur-  
3 prise, move for postponement and continuance:  
4 that they could not make their conspiracy  
5 walk yesterday.

6 The Court struck that second amended  
7 notice and they have now flipped back into  
8 the partnership. I am just as surprised as  
9 I was yesterday with them trying to go the  
10 conspiracy route.

11 THE MASTER: Proceed.

12 Q (By Mr. Odam:) Mr. Couling, in addition to that  
13 statement, with respect to the silent partner,  
14 is it your testimony that Mr. Ramiro Carrillo  
15 made that statement to you about O. P. being a  
16 silent partner in Benavides Implement and Hard-  
17 ware?

18 A Yes, sir.

19 Q In addition to that, did Ramiro Carrillo at any  
20 time make a statement to you with respect to mak-  
21 ing out checks from Benavides Implement and Hard-  
22 ware to the benefit of O. P. Carrillo?

23 A Yes, sir.

24 Q And could you explain to the Court what those  
25 statements were that Ramiro Carrillo made to you?

1 A He said any time that a check was made out coded  
2 from Precinct 2, it had to go to O. P. Carrillo.

3 THE MASTER: Excuse me, Mr. Odam, how  
4 is that a declaration against Mr. Ramiro  
5 Carrillo's pecuniary interest?

6 MR. ODAM: Your Honor, the way that  
7 that would be a declaration against his own  
8 pecuniary interest would be as follows: That  
9 it would give rise to the civil liability on  
10 the part, in a civil lawsuit, not in this  
11 proceeding, and not conspiracy in this pro-  
12 ceeding, but in a civil lawsuit if brought by  
13 the county of Duval against Ramiro Carrillo  
14 in conspiring to convert the money from the  
15 Duval County for goods and services that were  
16 not rendered.

17 As the testimony has already indicated  
18 by Mr. Gonzalez's testimony the other day,  
19 there was no work done on those checks for  
20 Precinct 2, that went into the county. The  
21 county checks went into --

22 MR. MITCHELL: Excuse me, Your Honor,  
23 pardon me, Judge, I realized the Court asked  
24 this question, but this man is on the witness  
25 stand and I would object to any kind of a

1 protracted discussion because he is very  
2 nifiable, as the record is going to reflect.  
3 I wouldn't want to discuss it in front of  
4 him, if it violates the rule, Judge.

5 THE MASTER: I thought there was an  
6 echo in the room, it seems to me.

7 MR. HAYNES: I apologize, Your Honor,  
8 and admit to being the echo.

9 THE MASTER: All right, that is a  
10 sufficient explanation. I will continue  
11 hearing the evidence and withhold my ruling.

12 MR. ODAM: All right.

13 MR. MITCHELL: May I have him on voir  
14 dire, Judge, just for one or two questions  
15 and to inform myself just where he is going  
16 so I could object more intelligently if  
17 possible.

18 THE MASTER: Well, yes, I will let you  
19 take him on voir dire, although this is  
20 right now a bill.

21 MR. MITCHELL: I understand.

22  
23 - - - - -  
24  
25



VOIR DIRE EXAMINATION

1  
2  
3 BY MR. MITCHELL:

4 Q Mr. Couling, when did you have this conversation  
5 that you are testifying to under oath with Ramiro  
6 Carrillo?

7 A That was on the early part of May of 1971.

8 Q Now, was there anyone present besides you and  
9 Ramiro Carrillo?

10 A No, sir.

11 Q And where was the conversation held?

12 A I don't know if it was in my car or at the tax  
13 office.

14 Q But your testimony under oath is that there was  
15 a partnership by reason of that conversation  
16 between you and Ramiro Carrillo and as you under-  
17 stand Judge O. P. Carrillo?

18 A Yes sir.

19 Q All right and was it --

20 THE MASTER: No, wait, you said a con-  
21 versation between him and Ramiro Carrillo  
22 and Judge O. P. Carrillo?

23 MR. MITCHELL: No, a partnership.

24 THE MASTER: I'm sorry. Go ahead.

25 Q A partnership came into existence, you're testifying

1 under oath as a result of that May, 1971, conver-  
2 sation between you, Ramiro and O. P. Carrillo?

3 A That was my understanding at that time.

4 Q I want it clearly understood that you are testify-  
5 ing under oath here without any ambiguity and any  
6 doubt that you had a partnership and had one com-  
7 mencing May of 71, to date, in the Benavides  
8 Implemnet and Hardward, doing business in Duval  
9 County, Benavides, Texas?

10 A Yes, sir, as far as us three were concerned, yes,  
11 sir.

12 THE MASTER: All right, you may proceed  
13 Mr. Odam.

14  
15 - - - - -

16  
17 EXAMINATION CONTINUED

18  
19 BY MR. ODAM:

20 Q Mr. Couling, along the same line you mentioned  
21 the other day, that there was a note for three  
22 thousand dollars, is that correct?

23 A Yes, sir.

24 Q In the First State Bank in San Diego?

25 A Yes, sir.

1 Q When that note was set up, who went to the bank  
2 to set up the note?

3 A Ramiro Carrillo and myself, sir.

4 Q And were the names on that note those of -- what  
5 parties?

6 A It was Benavides Implement and Hardware Company  
7 and they were signed by myself and Ramiro Carrillo.

8 Q All right, and when Mr. Ramiro Carrillo made the  
9 statements to you about setting up the store, this  
10 slightly different, I don't know if it occurred  
11 at the same time or not, but you testified the  
12 other day that Mr. Ramiro Carrillo had approached  
13 you about setting up Benavides Implement and Hard-  
14 ward.

15 MR. MITCHELL: Pardon me, Judge, I  
16 don't know whether I'm in or out, but I would  
17 object to that testimony on that note: the  
18 best evidence is the note and I would like  
19 to ask him to produce it if he wouldn't mind  
20 and, otherwise, the best evidence rule would  
21 apply as to what it contains and we move to  
22 strike it.

23 THE MASTER: Well, you mean the testimony  
24 about who made the note?

25 MR. MITCHELL: Yes.

1 THE MASTER: It is overruled.

2 Q Now, Mr. Ramiro Carrillo discussed with you one  
3 time about setting up the Benavides Implement and  
4 Hardware Store?

5 A Yes, sir.

6 Q And why did he say it was necessary to set up the  
7 Benavides Implement and Hardware Store, if he did?

8 A Well, to my best recollection he stated that he  
9 wanted to sell goods to the county, but he wanted  
10 to sell them through the Benavides Implement and  
11 Hardware Store.

12 Q Why was that necessary?

13 A Well, he was the county commissioner and he could  
14 not sell directly to the county through the Farm  
15 and Ranch.

16 Q And why was it necessary -- what was the basis for  
17 your writing -- did he explain to you why to write  
18 checks out to O. P. Carrillo?

19 MR. MITCHEL: Excuse me, Judge, is he  
20 on the bill? If he is not, these are all  
21 leading, I don't know whether I am supposed  
22 to be objecting or not. I don't want to  
23 waive anything.

24 THE MASTER: Well, he is on -- I am  
25 taking this testimony reserving an objection --

1 a ruling on your objection is where we are.

2 MR. MITCHELL: And I suppose then the  
3 Court doesn't want to hear from me on my  
4 objections on his testimony.

5 It is obvious a lot is hearsay and all  
6 is leading and in violation of the parole  
7 evidence rule and the best evidence rule.

8 THE MASTER: I have heard no parole  
9 evidence violations whatsoever.

10 MR. MITCHELL: May I ask him a voir  
11 dire question, I will find out.

12 THE MASTER: To some extent from time  
13 to time you are leading.

14 MR. ODAM: Yes, sir, I apologize to  
15 that, I was trying to get back some of the  
16 testimony from the day before that was the  
17 purpose of leading, rather than go that way,  
18 I can rephrase the questions where they are  
19 not leading.

20 MR. MITCHELL: May I ask him a voir  
21 dire question to see if the parole evidence  
22 rule does apply, Judge

23 THE MASTER: Yes.  
24  
25

- - - - -

VOIR DIRE EXAMINATION

1  
2  
3 BY MR. MITCHELL:

4 Q Was the note executed in May of 71 pursuant to  
5 you all's agreement of partnership in May of 71?

6 A That is when we opened the store, sir.

7 Q Was the note part of the deal?

8 A Yes, sir.

9 Q And when you made your deal then you all went  
10 down and borrowed the note and that reflected  
11 your getting together as a partnership?

12 A Ramiro Carrillo and I did, sir.

13 Q He signed the note?

14 A And I did.

15 MR. MITCHELL: The parole evidence  
16 applies to that as a commeration of the  
17 partnership and we object to it.

18 THE MASTER: Overruled.

19 MR. MITCHELL: Note our exception.

20 THE MASTER: But that does not overrule  
21 your hearsay objection.

22  
23 - - - - -  
24  
25

EXAMINATION CONTINUED

1  
2  
3 BY MR. ODAM:

4 Q Let me rephrase my last questions and see if I  
5 can couch it in terms that would not be leading.

6 Did Ramiro Carrillo ever state to you to  
7 make checks out to O. P. Carrillo?

8 A Yes, sir, he did.

9 Q Why were the checks to be made out to O. P.  
10 Carrillo?

11 A He said that was money that was supposed to go  
12 to O. P. Carrillo, I don't know the reason why or  
13 what for.

14 Q Okay. Now, when we were together the other day, we --

15 THE MASTER: Are you still on your bill?

16 MR. ODAM: No, sir, I think that we  
17 will -- I will not be asking him questions  
18 right now about Ramiro Carrillo's statements.  
19 I might later on, but not right now.

20 MR. MITCHELL: Now, is this evidence  
21 being offered as primary evidence because  
22 the commission is going to read it and the  
23 Supreme Court is going to read it and the  
24 record is filled with what I consider incompe-  
25 tent testimony.

1                   Now, if the ploy is to bring this in  
2                   under the guise of some character of formal  
3                   bill, I want the record to reflect it. I  
4                   want to have a record that is not frozen when  
5                   it goes upstairs and somebody is going to  
6                   read it and if it is incompetent, I just want  
7                   the record straight.

8                   Now, Your Honor, we would object to the  
9                   inclusion of a bona fide record of this  
10                  entire testimony on the grounds as previously  
11                  assigned. We move it be extracted from the  
12                  record physically before anyone --

13                  THE MASTER: You are utterly wrong in  
14                  that request. Counsel has a right to make  
15                  any bill he wishes to make.

16                  I believe, Mr. Odam, I may change my  
17                  mind, I am going to think about it, but I  
18                  do not believe it comes within the exception  
19                  to the hearsay rule as a declaration against  
20                  entry.

21                  MR. ODAM: Your Honor --

22                  THE MASTER: I do think the testimony  
23                  with respect to who signed the note at the  
24                  bank, borrowing the three thousand dollars to  
25                  set up Benavides Implement and Hardware



1 Company is admissible, if relevant. The  
2 fact that he signed it and Mr. Ramiro Carrillo  
3 signed it is a matter of his firsthand  
4 knowledge, they went down there and signed  
5 their names to a piece of paper. But, that,  
6 of course, at this stage does not involve  
7 O. P. Carrillo.

8 MR. ODAM: And I take it by that that  
9 the statement that was made by Ramiro Carrillo  
10 to have the checks made out to O. P. Carrillo  
11 would not be admitted at this time?

12 THE MASTER: That is correct.

13 MR. ODAM: Well, -- I, of course, would  
14 ask that that evidence thus far be on our  
15 bill of exception on that point and in addi-  
16 tion not only for later purposes, but I would  
17 hope that perhaps by later questions of this  
18 witness, later on, and through discussions  
19 of paragraphs 7 through 12, that perhaps I  
20 can convince the court of the pecuniary  
21 interest.

22 THE MASTER: It is a very tentative  
23 ruling, but you are stretching, to my mind,  
24 the declaration against interest awfully far,  
25 to say that O. P. -- that it is admissible to

1           prove that what he said that Ramiro Carrillo  
2           is -- in telling this witness to make a  
3           check out to O. P. Carrillo.

4                       Somehow, that creates a potential  
5           liability of Ramiro Carrillo to Duval County,  
6           that -- I am pretty dubious about that being  
7           an exception.

8                       MR. MITCHELL: Pardon me.

9                       THE MASTER: That is your theory, is  
10           it not?

11                      MR. ODAM: Yes, sir, and, of course, I  
12           respect the Court's position on that, but I  
13           certainly feel like it is good.

14                      THE MASTER: You have urged the excep-  
15           tion and you have a bill preserving your  
16           record on that.

17                      MR. ODAM: And like I said, not to be  
18           contentuous, but at a later point, I will  
19           try to convince the Court that perhaps that  
20           pecuniary interest would lie with Ramiro  
21           Carrillo.

22                      THE MASTER: I am convinced that you  
23           are in good faith in your profert of evidence,  
24           but at this time, I think you're erroneous.

25                      MR. MITCHELL: May I reflect on the

1 record, Your Honor, a plea of surprise and  
2 beyond -- on Romans 7, 8, 9, 10, 11 and 12  
3 and also on his assertion of good faith that  
4 yesterday at about the same time this Court  
5 had before it, and I want for the purpose  
6 of this motion to introduce the pleadings,  
7 second amended notice and trial amendment  
8 where the Examiner injected in the case at  
9 this late hour, a conspiracy and upon a  
10 similar motion made by Counsel, the Court  
11 struck it, and then today I am faced for the  
12 first time with the allegation in the broad  
13 confines of 7, of a partnership.

14 I plead surprise, no knowledge, no  
15 notice and I request a postponement and con-  
16 tinuance.

17 One, so that the amended notice and  
18 the rules before the -- governing the State  
19 Judicial Qualifications Commission can be  
20 honored and followed with respect to my  
21 client, Judge Carrillo, and two, that I be  
22 given an opportunity to answer on the fifteen  
23 day rule and to marshal evidence as regards  
24 now a partnership.

25 THE MASTER: You may proceed, Mr. Odam.

1 MR. MITCHELL: Is that overruled, Judge?

2 THE MASTER: Yes, sir.

3  
4 - - - - -

5  
6 EXAMINATION CONTINUED

7  
8 BY MR. ODAM:

9 Q Mr. Couling, in your absence yesterday, we had  
10 some other documents admitted into evidence, and  
11 I will show you some of these at this time and  
12 try to refresh your memory as to where we are  
13 standing on these proceedings.

14 Yesterday you were shown a copy of Exhibit E-60  
15 and E-61. Do you recall that yesterday?

16 A Yes, sir.

17 Q I believe it was your testimony yesterday that to  
18 the best of your knowledge, Benavides Implement  
19 and Hardware did not perform that work described  
20 on what is marked as E-60, is that correct?

21 A Yes, sir, it was not performed by the store.

22 Q I believe it was your testimony that as far as  
23 you know, these items, E-60 and E-61, were prepared  
24 by Mr. Cleofus Gonzalez?

25 A Yes, sir.

1 Q And given to Mr. Ramiro Carrillo?

2 A Yes, sir.

3 MR. MITCHELL: Now, that would be  
4 hearsay and I objected yesterday and we  
5 object again and move to strike it and fur-  
6 ther, he has no personal -- he is testifying  
7 and he has no personal knowledge of 60 and 61  
8 or what happened after they were executed,  
9 Your Honor.

10 THE MASTER: Mr. Couling, how do you  
11 know that they were given by Mr. Cleofus  
12 Gonzalez to Ramiro Carrillo?

13 THE WITNESS: Because when I got the  
14 check back from these bills, Your Honor, I  
15 asked Ramiro what caused the check to be made  
16 to my store.

17 THE MASTER: The objection is sustained.

18 MR. MITCHELL: All right, Your Honor.

19 MR. ODAM: Your Honor, I would -- I  
20 think the record should reflect that E-61,  
21 which is admitted into evidence is a state-  
22 ment in the amount of one thousand and eight  
23 dollars marked on it the code 229, road and  
24 bridge fund.

25 Also, we have -- well, strike that, strike

1 the last question with regard to the check,  
2 too. We will get to that point later on.

3 Q Now, your testimony was that sometime after these  
4 were prepared, you made out a check to O. P.  
5 Carrillo, is that correct?

6 A That is correct, sir.

7 Q And again, they werenot admitted into evidence  
8 yesterday, but at that time, I showed you what  
9 was marked as Exhibit E-69?

10 A Yes, sir.

11 Q And asked if you can identify that?

12 A Yes, sir, that is a check from the Benavides  
13 Implement and Hardware Company to O. P. Carrillo  
14 for one thousand eighteen dollars.

15 Q Now, the check that you have in your hand is not  
16 an original copy of a check, is it?

17 A No, sir, it is a copy.

18 Q You made a statement yesterday, I don't recall  
19 the exact page, but your statement was something  
20 to the effect of you didn't know where the  
21 originals were and you either had them at home  
22 or had given them to the state?

23 A Yes, sir.

24 Q Do you recall that statement?

25 A Yes, sir.

1 Q Since that time, have you made a search to deter-  
2 mine where the original copies of this and other  
3 checks might be that were made out to O. P.  
4 Carrillo?

5 A Yes, sir.

6 Q Did you find any checks at home?

7 A Yes, sir, I found -- I didn't find none at home.  
8 no, sir.

9 Q And did you check with personnel from the state  
10 to whom they were given to find out where the  
11 checks were?

12 MR. MITCHELL: Excuse me, Your Honor,  
13 those were four leading questions and we  
14 object to him leading. He can ask him where  
15 it is, he ought to know.

16 The questions are leading and, incident-  
17 ally, we object to the testimony as regards  
18 69, Judge. I believe the Court had made a  
19 ruling on that and it has been excluded.

20 MR. ODAM: Your Honor, the ruling was  
21 that it was excluded because the original  
22 was unavilable.

23 THE MASTER: Correct, and the objection  
24 is overruled. The question was did he check  
25 with whom?

1 Q Did you check to determine where the checks were?

2 A Yes, sir.

3 Q And with whom did you check?

4 A I called Mr. John Blanton.

5 Q And did you obtain checks from him?

6 A Yes, sir.

7 Q And do you have those with you today?

8 A Yes, sir.

9 Q Could you produce those at this time?

10

(Handed to Counsel.)

11

12 Q All right, now, all of the copies of the checks  
13 that you are giving to me at this time --

14 THE MASTER: Excuse me, Mr. Odam, let's  
15 refer to copies as copies.

16 MR. ODAM: All right, sir.

17 THE MASTER: And originals as originals.

18 MR. ODAM: All right, sir.

19 MR. MITCHELL: And may I request, Your  
20 Honor, that someone tell the record who  
21 John Blanton is.

22 MR. ODAM: All right, sir, good question.

23 Q Can you describe for the record and inform Mr.  
24 Mitchell who Mr. Blanton is?

25 A Yes, sir, he worked for the Attorney General.



1 O And he is located in what city?

2 A In San Diego.

3 O He is working on the --

4 A He is working in San Diego right now.

5 Q With the Attorney General's office?

6 A Yes.

7 Q Okay, now, you have given me a number of original  
8 copies of checks, have you not?

9 A Yes, sir.

10 O I am sorry, originals.

11 MR. ODAM: I can't get the word copies  
12 out of my mind, I think we have more copies  
13 of things and originals, too.

14 Q I show you an item here and ask if --

15 MR. ODAM: Strike that question. Let  
16 me have this marked first.

17 (Marked for identification by the  
18 reporter as Exhibit E-151.)

19  
20 Q I'll show you what the court reporter has marked  
21 as Exhibit 151, an original check, can you des-  
22 scribe that for the Court please?

23 A Yes, sir, that is check number 146 made out to  
24 O. P. Carrillo on July 27th, 1971, for the amount  
25 of one thousand eighteen dollars signed by me.

1 Q And is this your handwriting on the check?

2 A Yes, sir.

3 Q All right.

4 MR. ODAM: We would offer into evidence,  
5 Your Honor, the original check Exhibit E-151.

6 MR. MITCHELL: The objections we would  
7 have to this, of course, Your Honor, would  
8 be the objection that we previously stated  
9 and that is beyond -- that the matters  
10 inquired into go beyond the formal notice,  
11 the amended notice, beyond the term rule,  
12 that they're -- it would be -- related to a  
13 non-judicial act and today also, Your Honor,  
14 we would plead on the grounds -- we would  
15 object on the grounds of surprise.

16 THE MASTER: The objection is overruled  
17 and it is admitted.

1 MR. MITCHELL: May we have a continuing  
2 objection to all the testimony that is  
3 relating to this alleged partnership between  
4 O. P. Carrillo and the witness and Ramiro  
5 Carrillo?

6 THE MASTER: Yes, sir.

7 MR. MITCHELL: John, this check that  
8 you were talking about here --

9 THE MASTER: Are you off the record?

10 MR. MITCHELL: Yes, Judge.

11 (Discussion off the record.)  
12

13 THE MASTER: Back on the record.

14 MR. ODAM: Your Honor, I would certainly  
15 make the original of this check and all other  
16 checks that I will be referring to available  
17 to Mr. Mitchell, but I would like to  
18 substitute these originals by Xerox copies  
19 that are in evidence, such as E-69.

20 THE MASTER: You said you wanted to  
21 substitute the originals for the Xerox copies?  
22 You want the originals in this record?

23 MR. ODAM: No, sir, I will want to with-  
24 draw Exhibit E-151 and by doing so, I will  
25 still have E-69. We can substitute this

1 Xerox if that is going to confuse things.

2 THE MASTER: No, I don't think that is  
3 going to confuse things as long as the  
4 originals are here for the purpose of  
5 cross-examination.

6 I think the record would be  
7 satisfactorily made by substituting for the  
8 originals Xerox copies.

9 MR. ODAM: All right, sir.

10 Q (By Mr. Odam:) Mr. Couling, once you made out this  
11 check which is marked E-151, I believe you testified  
12 yesterday -- what did you actually do with that  
13 check?

14 A Gave the check to O. P. Carrillo, sir.

15 Q And there is an indication on the back of the  
16 original check as to what happened to the check  
17 after you gave it to him?

18 A Yes, it was deposited in the First State Bank of  
19 Alice.

20 Q Which one?

21 A This one, the one in pink.

22 MR. MITCHELL: Excuse me, the exhibit  
23 would speak for itself. This witness is  
24 speculating as to what the bank endorsements  
25 would be and that is obviously not endorsed.

1 MR. ODAM: Well, we will let it speak  
2 for itself.

3 Q (By Mr. Odam:) Mr. Couling, would this E-151 be  
4 one of the checks you were instructed by Ramiro  
5 Carrillo to make out?

6 MR. MITCHELL: Leading, and we object  
7 on hearsay.

8 THE MASTER: The objection is overruled.

9 Q Mr. Couling, again, in your absence, and I believe  
10 we were up to this point yesterday, we might be  
11 covering some ground that we covered the other  
12 day, but I show you copies of E-62 and E-63.

13 To your own personal knowledge, is the  
14 description of the work performed on E-63, was that  
15 work performed by Benavides Implement and Hardware?

16 A No, sir, it was not.

17 Q Can you read into the record what you are referring  
18 to?

19 A "Rental for equipment and hauling caliche for  
20 county roads."

21 Q You identified this by Mr. Gonzalez' handwriting  
22 and being filled out by him?

23 A Yes.

24 Q And you did not fill it out yourself?

25 A No, sir.

1 MR. MITCHELL: We object to the answer  
2 of this one and the two previous questions.  
3 This witness doesn't have any knowledge of  
4 the documents contained in E-63 and it is  
5 hearsay as to my client.

6 MR. ODAM: May I ask him the basis for  
7 his knowledge?

8 THE MASTER: Yes.

9 Q (By Mr. Odam:) How do you know this ticket was  
10 made out -- how do you know it was made by Cleofus  
11 Gonzalez?

12 A That is his initials and the bills I never did see.  
13 When the checks were issued, I asked what the  
14 checks were for.

15 Q When the checks were brought from the county?

16 A Right, and he stated, Ramiro Carrillo stated, they  
17 were made from bills made up by Cleofus Gonzalez  
18 for them.

19 MR. MITCHELL: We re-urge our objection.

20 THE MASTER: The objection with respect  
21 to hearsay is sustained.

22 Do you recognize Mr. Gonzalez'  
23 handwriting, Mr. Couling?

24 THE WITNESS: Yes, sir.

25 THE MASTER: Mr. Gonzalez testified he

1                   made it out and I don't see why you are  
2                   plowing that ground again.

3                   MR. ODAM: All right, sir.

4                   Q (By Mr. Odam:) The invoice prepared by Mr. Gonzalez,  
5                   can you state the amount of that?

6                   A One thousand eighteen dollars sixty-five cents.

7                   Q And at any occasion after that, did you make out  
8                   a check to O. P. Carrillo in an amount similar to  
9                   that, one thousand eighteen dollars?

10                  A Yes, sir.

11                  MR. MITCHELL: Objection, Your Honor,  
12                  we would request that the answer contain a  
13                  time.

14                  MR. ODAM: I will rephrase the question.

15                  Q The statement for one thousand eighteen dollars  
16                  sixty-five cents, I show you the item which is  
17                  marked E-151, which was introduced and is in  
18                  evidence?

19                  A Yes, sir.

20                  Q What is the amount of that check?

21                  A One thousand eighteen dollars, sir.

22                  Q Is this the check that you were looking at that  
23                  was made sometime after the invoices were prepared?

24                  A Yes, sir.

25                  Q And it is within your knowledge that the check you

1 are looking at has a relation to this invoice?

2 MR. MITCHELL: We object to that as  
3 hearsay and this is not within the witness'  
4 knowledge. His understanding would be  
5 completely irrelevant and immaterial and he  
6 would be guessing.

7 MR. ODAM: This witness testified he  
8 owned Benavides Implement and Hardware and  
9 the tickets were sent in on the letterhead  
10 of his store. He should have some knowledge  
11 of whether it was sent to the county and on  
12 what basis and knowledge of when the check  
13 came back out from the county.

14 MR. MITCHELL: He has shown Ramiro  
15 Carrillo and he and O. P. Carrillo were not  
16 partners in this business.

17 MR. ODAM: If that is the case, I expect  
18 Mr. Mitchell can testify to that.

19 THE MASTER: Mr. Mitchell is correct,  
20 Mr. Couling's understanding has nothing to  
21 do with it.

22 You can ask him why he wrote that  
23 check to Judge Carrillo, if you wish.

24 MR. ODAM: All right, sir.

25 Q (By Mr. Odam:) Why did you write out this check



1 for one thousand eighteen dollars to O. P. Carrillo?

2 A Repeat the question?

3 Q Why did you make out a check for one thousand  
4 eighteen dollars to O. P. Carrillo?

5 A When the check from the county was brought to me,  
6 Ramiro Carrillo told me it was for O. P. and I  
7 made this check to O. P.

8 MR. MITCHELL: We would object on hearsay  
9 and surprise and no connection with our client.

10 THE MASTER: It is admitted for the  
11 limited purpose of showing why he made the  
12 check.

13 MR. ODAM: Yes, sir.

14 THE MASTER: Which is Exhibit 151.

15 MR. ODAM: Yes, sir.

16 May I have a moment, Your Honor?

17 THE MASTER: Yes, sir.

18 MR. ODAM: With respect to paragraph  
19 seven, for the purpose of the record, that  
20 is what we are going into now.

21 Q (By Mr. Odam:) I show you, Mr. Couling, the  
22 statement E-61 in the amount of one thousand eight  
23 dollars.

24 A Yes, sir.

25 Q And the invoice, E-60, for one thousand eight

1           dollars.

2           A   Yes.

3           Q   At any occasion after those invoices were prepared,  
4           did you have occasion to make out a check for a  
5           similar amount to O. P. Carrillo?

6           A   Yes, sir.

7                           MR. MITCHELL:  Judge, that certainly is  
8           a broad and global question.  Roman seven  
9           says --

10                          MR. ODAM:  Let me restate the question.

11          Q   On or about April 16th, did you have occasion to  
12          make out a check to O. P. Carrillo?

13          A   Yes, sir.

14          Q   I show you what has been marked as E-65 and ask  
15          you if you can identify it?

16          A   Yes, sir, it is a check for one thousand eight  
17          dollars made out by me to O. P. Carrillo.

18                          MR. MITCHELL:  We object to E-65.

19                          THE MASTER:  It has not been offered.

20                          MR. ODAM:  I am trying to identify it.

21                          MR. MITCHELL:  Please instruct counsel  
22          to let me see those.  He is just asking the  
23          witness questions about them --

24                          THE MASTER:  You have the right to see  
25          an instrument when it is offered, but you

1 don't have the right to read the entire  
2 instrument in the record before it is  
3 offered.

4 MR. MITCHELL: All right, sir.

5 Q (By Mr. Odam:) E-65 is a copy of a check?

6 A Yes, sir.

7 Q Do you identify this as being your handwriting?

8 A Yes, sir.

9 Q This is a Xerox copy of a check. If it is an  
10 original copy of the check, would you have brought  
11 it with you today?

12 A Yes, sir. If there had been one, I would have  
13 brought it.

14 Q And you don't know where the check is?

15 A No, sir, I don't know where it is.

16 MR. ODAM: We offer in evidence E-65,  
17 a Xerox copy of a check.

18 MR. MITCHELL: We object on the grounds  
19 of hearsay, best evidence rule, beyond the  
20 scope of the formal notice, surprise, and  
21 as I stated earlier, if it is now being  
22 offered under seven, we plead surprise on  
23 the partnership and move to postpone and  
24 have time to prepare.

25 THE MASTER: The objection is overruled

1 and the exhibit is admitted.

2 Q (By Mr. Odam:) Mr. Douling, with respect to the  
3 check, we ask you now, why did you make out the  
4 check for one thousand eight dollars?

5 MR. MITCHELL: Objection, speculation.

6 THE MASTER: Overruled.

7 Q Please state why you made out the check?

8 A I got a check from the county for that amount and  
9 I knew, or in turn found out, that it was from  
10 Precinct 2. Ramiro told me every check from  
11 Precinct 2, Ramiro told me I was supposed to make  
12 out another check in that amount to O. P. Carrillo.

13 MR. MITCHELL: May I see the one  
14 thousand eighteen dollar check? Is that  
15 what you are asking about?

16 MR. ODAM: Yes.

17 THE MASTER: That is E-151. I thought  
18 you asked the question about E-65.

19 MR. ODAM: Correct. I asked him  
20 questions about paragraph eight and realized  
21 I had not asked about paragraph seven. I  
22 meant to ask why the one thousand eight dollar  
23 check was prepared.

24 MR. MITCHELL: That is why I asked  
25 about it, because I didn't know what he was

1 talking about.

2 THE MASTER: He has offered it and it  
3 is admitted.

4 MR. MITCHELL: Yes, that is the one I  
5 just objected to?

6 THE MASTER: Correct.

7 MR. MITCHELL: I am having a hard time  
8 trying to keep up with them.

9 MR. ODAM: It is tough all the way.

10 MR. MITCHELL: I move to strike that  
11 side-bar remark. He has a hundred exhibits  
12 pre-marked and they are talking about an  
13 exhibit that is marked and --

14 THE MASTER: The only right he has is  
15 to hand it to the witness for identification.

16 MR. MITCHELL: That is right.

17 MR. ODAM: Now, for the purpose of  
18 clarification of the record, we are talking  
19 about paragraph seven.

20 Q (By Mr. Odam:) Now, Mr. Couling, I show you what  
21 has been marked as a copy of a check made out by --  
22 to Benavides Implement and Hardware, E-57.

23 A Yes, sir.

24 MR. ODAM: Your Honor, I am sure these  
25 will receive objections and it is my intention

1 to have someone from the bank identify  
2 these copies this morning. If it would be  
3 all right with Your Honor, I would like to  
4 ask these questions subject to these being  
5 properly identified and authenticated. If  
6 that is not the Court's desire, then, I  
7 cannot ask these questions at this time.  
8 I just simply thought it would be orderly to  
9 do so.

10 THE MASTER: Well, upon your representa-  
11 tion you are going to have someone or some-  
12 body here that you hope to get the  
13 instrument in evidence by, you may proceed.

14 MR. ODAM: All right, sir.

15 Q (By Mr. Odam:) Again, Mr. Couling, for clarifica-  
16 tion of the record, I am referring to E-57. E-57  
17 is a Xerox copy of a check on the County of Duval?

18 A Yes, sir.

19 Q What is the amount of money stated on that?

20 A One thousand eight dollars.

21 Q Does it state the date?

22 A Yes, sir, April 12th, 1971.

23 Q And a claim number?

24 A Yes, B-911.

25 Q Who is the payee on that check?

1 A Benavides Implement and Hardware.

2 Q Is this the check that you referred to coming from  
3 the county to you?

4 A Yes, sir.

5 Q And subsequently you made out a check to O. P.  
6 Carrillo?

7 A Yes, sir.

8 Q And who endorsed this check?

9 MR. MITCHELL: May I have the objection  
10 to this line of questioning, because I don't  
11 want the silence on my part to be a waiver?  
12 May I have the objections that I stated  
13 previously, beyond the scope of the formal  
14 notice -- I would like to have an agreement  
15 on that and I want the record to indicate  
16 no waiver on my part.

17 THE MASTER: I don't know what those  
18 objections are directed to.

19 MR. ODAM: The question was if he could  
20 identify his signature on E-57.

21 THE MASTER: It was to that question?

22 MR. MITCHELL: No, it was to the global  
23 question as to these other checks and I  
24 wanted to note that I had previously  
25 objected. I think he is going about it

1                   correctly, but I didn't want to have all of  
2                   my other objections waived by my silence.

3                   THE MASTER: Proceed.

4           Q (By Mr. Odam:) Can you identify the endorsement  
5           on the check?

6           A Yes, that is my signature.

7           Q That is your handwriting?

8           A Yes, sir.

9           Q And I believe you testified to this earlier one --  
10           well, strike that.

11                   Once you received a check from the county,  
12           what would you do with that check?

13           A Like on this particular one that came from  
14           Precinct 2, I knew it was one that I could make  
15           a check to O. P. Carrillo for.

16           Q What would you do with this check itself?

17           A Deposit it in the First State Bank of San Diego.

18           Q Referring to E-68, is this a check made out to  
19           your store?

20           A Yes, sir.

21           Q To the best of your knowledge, did you receive  
22           this check?

23           A Yes, sir.

24           Q And what is indicated on the back of the check?

25           A Benavides Implement and Hardware and it was



1 deposited in the First State Bank of San Diego.

2 MR. MITCHELL: Is that one you will  
3 have a witness on?

4 MR. ODAM: Right.

5 Q Do you know of your own personal knowledge, Mr.  
6 Couling, do you know who put the stamp of the  
7 Benavides Implement and Hardware Store on there?

8 A I did, sir.

9 Q And again, referring to your earlier testimony,  
10 this check is dated what?

11 A July 15, 1971.

12 Q Was it your testimony earlier that after this  
13 check was received by you, you made out a check  
14 to O. P. Carrillo for one thousand eighteen  
15 dollars?

16 A Right.

17 Q And the check you made out for one thousand  
18 eighteen dollars is the check you earlier  
19 identified as E-151?

20 A Yes, sir.

21 MR. ODAM: Now, moving to paragraph  
22 nine for the record, --

23 Q Mr. Couling, I show you what has been marked and  
24 admitted as E-71 and E-72. These are testified  
25 to by Mr. Gonzalez that he prepared them. Can you

1 read into the record what the description of work  
2 is on E-71?

3 A "Rental of equipment and --," I can't read that  
4 part of it. Well, and, "contract hauling for  
5 caliche."

6 Q "Rental equipment and contract hauling caliche"?

7 A Yes.

8 Q This is made out on Benavides Implement and  
9 Hardware tickets, is that correct?

10 A Yes.

11 Q Did your store actually perform the work --  
12 strike that.

13 Do you know whether or not your store performed  
14 the work described on this ticket?

15 A No, sir, I do not.

16 MR. MITCHELL: Pardon me, the  
17 question was, did he know, and I don't know  
18 whether the witness testified he did or did  
19 not. He testified it did not.

20 THE MASTER: The question was, do you  
21 know, and he really answered the next  
22 question.

23 Q (By Mr. Odam:) Do you know whether or not the work  
24 was performed?

25 A It was not performed, sir.

1 MR. ODAM: We have marked E-73, which is  
2 a claim jacket --

3 THE MASTER: Mr. Odam, is Mr. Williams  
4 the bank officer?

5 MR. ODAM: Yes, sir.

6 THE MASTER: Off the record.

7 (Discussion off the record.)  
8

9 THE MASTER: Back on the record.

10 MR. ODAM: Again, for the purpose of  
11 the record, we had introduced and admitted  
12 in evidence E-73, the claim jacket, D-1990,  
13 in the amount of one thousand six dollars,  
14 and for the purpose of continuity also, we  
15 yesterday had established the contents  
16 thereof were E-71 and E-72, which came out  
17 of claim jacket 1990.

18 Q (By Mr. Odam:) Mr. Couling, I show you a Xerox  
19 copy of a check that is identified as claim  
20 number B-1990, and ask you if you can identify  
21 this.

22 A Yes, sir, that is a check made to the Benavides  
23 Implement and Hardware Store.

24 Q Do you know whether you received this check for  
25 one thousand six dollars?

1 A Yes, sir.

2 Q And once you received the check in the amount of  
3 one thousand six dollars, dated September 20, 1971,  
4 what did you do with it?

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

6 Q And on or about September -- now, on the check  
7 that has been marked E-74, can you identify from  
8 looking at the back of the copy of the check what  
9 you did with the check?

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

11 Q How can you identify that?

12 A By the rubber stamp and the way I slanted it when  
13 I endorsed it.

14 MR. MITCHELL: The question and  
15 the answer would be subject to being a  
16 violation of the best evidence rule.

17 THE MASTER: Overruled.

18 MR. MITCHELL: And hearsay.

19 THE MASTER: Overruled.

20 Q Mr. Couling, the check that Mr. Mitchell is looking  
21 at from the county is dated September 20, 1971 --

22 MR. ODAM: I will ask the reporter to  
23 mark these.

24 (The above-mentioned documents were  
25 marked E-152 and E-153 for identification.)

1 Q I show you what has been marked E-152 and E-153 and  
2 ask you if you can identify these items?

3 A Yes, sir.

4 Q Could you describe to the Court what they are?

5 A Two checks made from the Benavides Hardware and  
6 Implement to O. P. Carrillo.

7 Q What are the amounts of money shown on them?

8 A Seven hundred dollars and three hundred six dollars.

9 Q What is the seven hundred dollars?

10 A E-152.

11 Q What is the three hundred six dollars?

12 A E-153.

13 MR. MITCHELL: Excuse me. This is the  
14 problem that I am having. He is going to  
15 ask him, without giving me an opportunity to  
16 first see them, ask him questions about them.

17 MR. ODAM: I offer these two original  
18 checks in evidence, E-152 and E-153.

19 THE MASTER: I think we may as well take  
20 our recess at this time.

21 Mr. Odam, if you have other  
22 instruments Mr. Mitchell has not seen, let  
23 Mr. Mitchell see them at this time.

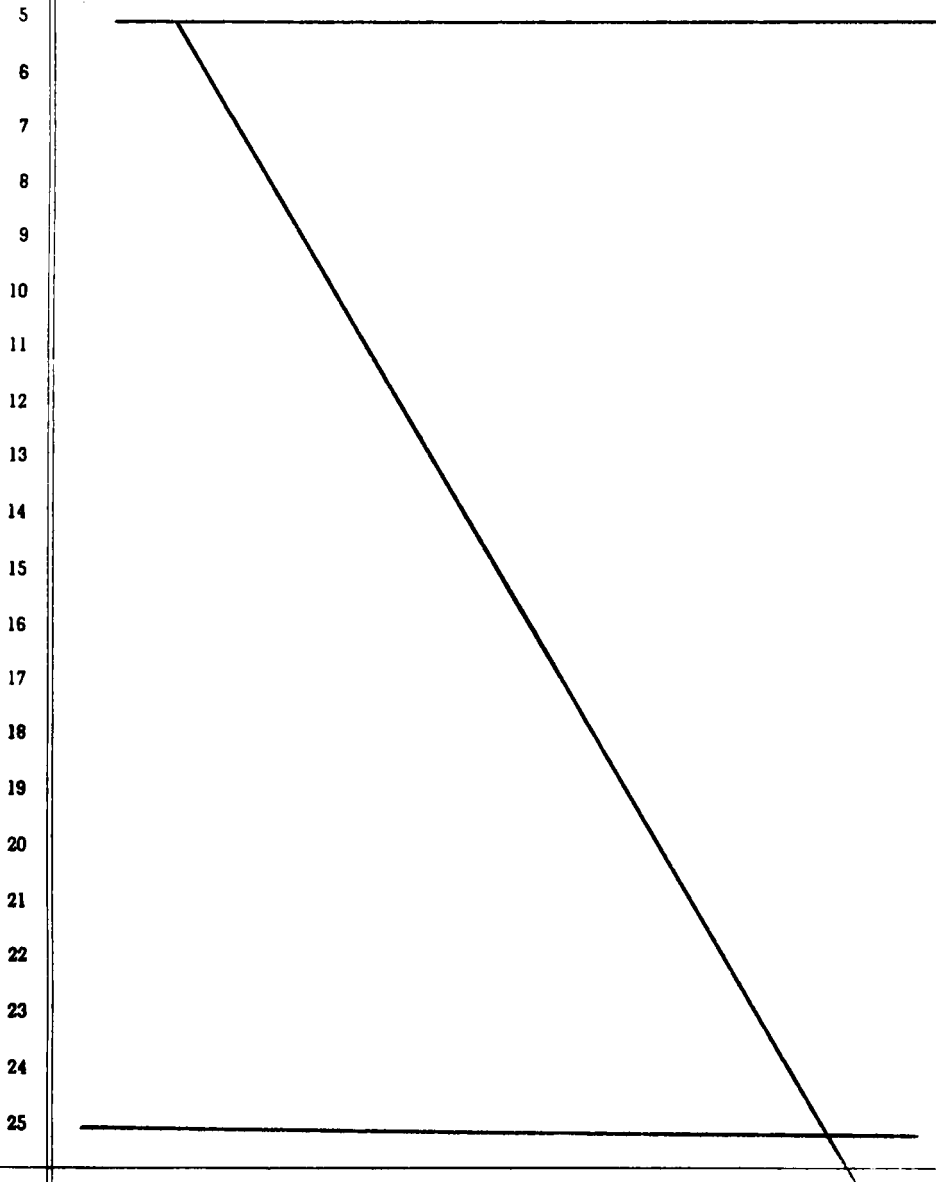
24 MR. ODAM: Yes, sir, I will do that.

25 THE MASTER: Do you want to put Mr.

1 Williams on the stand out of turn?

2 MR. ODAM: Yes, sir, I would like to  
3 put him on out of turn.

4 THE MASTER: You may do so.



1                                   KARL WILLIAMS,

2       having been first duly sworn, testified upon his  
3       oath as follows, to-wit:

4  
5                                   - - - - -

6  
7                                   EXAMINATION

8       BY MR. FLUSCHE:

9  
10      Q   Will you state your name for the record, please,  
11          sir?

12      A   Karl Williams.

13      Q   And where do you live?

14      A   I live in Alice, Texas.

15      Q   And what is your occupation, sir?

16      A   I am vice president and cashier of the First  
17          State Bank of San Diego.

18      Q   And how long have you held that position?

19      A   Five years.

20      Q   And prior to that were you formally associated  
21          with the same bank?

22      A   Yes, sir.

23      Q   And for how long a period of time?

24      A   Approximately five years at that time.

25      Q   And what years were those?

1 A 55 to 60.

2 Q And what was your position during those earlier  
3 years?

4 A I was executive vice president.

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

6 A I do.

7 Q How long have you known Judge Carrillo?

8 A I first became acquainted with him, I believe,  
9 during my first tenure in the bank.

10 Q All right, so that would be, say, twenty years  
11 ago?

12 A Approximately.

13 Q And in your capacity as a cashier of the -- of  
14 the bank of San Diego, Texas, are you the custodian  
15 of the records?

16 A Yes, sir.

17 Q Now, in recent weeks, have you had occasion to  
18 search the records of the bank and to produce  
19 certain items that are in your custody?

20 A Yes, sir.

21 Q Tell the Court how you are able to do this, by  
22 what mechanical means did you reproduce these  
23 items from the bank?

24 A The method we use, of course, is from the micro-  
25 film records of the bank, using a -- what we call



1 reader printer, a machine which blows up the  
2 microfilm picture and takes a picture of it.

3 Q Does it reproduce the item in its original actual  
4 size?

5 A Either actual size or even larger.

6 Q Now, Mr. Williams, I am going to first hand you  
7 what has been marked as Exhibit 57 and ask you to  
8 look at that document, just look it over.

9  
10 (Handed to the witness.)

11 Q Now, I will ask you whether or not that document  
12 is a reproduction of one of the items that was  
13 in your custody?

14 A It is.

15 Q And was it reproduced by the method you just  
16 described?

17 A Yes, sir.

18 Q Are you familiar with the -- with the signatures  
19 of Mr. Walter Meek, Mr. Maldonado and Mr. Soliz?

20 A I am.

21 Q And do their signatures appear on the face of  
22 that check?

23 A They do.

24 Q All right, sir. I will ask you to look at the  
25 endorsement on the back and tell the Court whether

1 or not you are familiar with the signature of  
2 R. M. Coaling?

3 A I am.

4 Q And is that a copy of his signature?

5 A Yes, sir.

6 Q All right.

7  
8 (Discussion off the record.)

9 MR. MITCHELL: Excuse me, Your Honor,

10 may I --

11 THE MASTER: Yes, I think your suggestion

12 is good, which is to prove -- take all of

13 the Exhibits and have this witness make

14 whatever identification he can and then offer

15 them all at the same time and object once.

16 MR. MITCHELL: Thank you, Judge Meyer.

17 MR. FLUSCHE: Okay, sir, I will recite

18 each, as I hand it to him.

19 THE MASTER: Yes, sir, and I will make

20 a note of it.

21 MR. FLUSCHE: Exhibit 65, 68, 69, 74,

22 75, 76, 80, 82, 85, 88, and 94.

23 (Whereupon the aforementioned Exhibits

24 were handed to the witness.)  
25

1 Q Now, Mr. Williams, you have looked and examined  
 2 each of the Exhibits, which I have enumerated  
 3 before, and I will ask you whether or not each  
 4 and every one of these Exhibits is a reproduction  
 5 of the items which came through your bank and  
 6 processed by the means that you described earlier.

7 A They are.

8 Q And do you recognize the various signatures of  
 9 the various individuals on there as being the  
 10 genuine signatures of the persons they purport to  
 11 represent?

12 A In as far as I know the signatures, yes, sir.

13 Q Let me ask you specifically about - are you  
 14 acquainted with the signature, and can you recog-  
 15 nize the signature, of Judge O. P. Carrillo?

16 A I believe so, sir.

17 Q I will hand you what has been marked as Exhibit 65  
 18 and ask you to look at the reverse side of that  
 19 item and I will ask you to state whether or not  
 20 you recognize that signature.

21 (Handed to the witness.)

22  
 23 Q Do you recognize that signature?

24 A Yes, sir.

25 O And whose signature is that?

1 A Mr. O. P. Carrillo.

2 Q I notice, Mr. Williams, that on some of these  
3 items that there appears to be a blue line felt  
4 marking pen. Can you tell the Court how those  
5 came to be on these Exhibits?

6 A Yes, sir, in reproducing these pictures from the  
7 microfilm, the machine does not single out a  
8 single frame on the microfilm because of its size.  
9 Consequently, it will at times take picture  
10 adjacent to the subject picture we are looking  
11 for and in any -- in most instances, they are --  
12 they have nothing to do with the subject matter.  
13 They just relate to individuals and we do not  
14 feel that it is fair to those people for their  
15 banking business to be displayed outside the bank.

16 Q And who put these blue line felt tip pen markings  
17 on these Exhibits?

18 A The bank did.

19 Q Now, I'm going to hand you what have been marked  
20 as Exhibits 152 and 153 and ask you to look at the  
21 reverse side of those items and I will ask you  
22 whether or not you can tell the Court whose signa-  
23 ture appears on the endorsement of those items.

24 A Mr. O. P. Carrillo.

25 MR. FLUSCHE: I'll ask the court reporter

1 to mark this document with the next number  
2 which is 154, is that correct?  
3

4 (Marked for identification by the  
5 reporter as Exhibit 154.)

6 Q I'll show you what has been marked as Exhibit 154  
7 which purports to be a check drawn on your bank  
8 in the amount of nine hundred and ninety-five  
9 dollars dated November 15th, 1971, and I'll ask  
10 you to look at the reverse side of that check  
11 and I will now ask you whether or not you recog-  
12 nize that signature?

13 A Yes, sir.

14 Q And whose signature is it?

15 A Mr. O. P. Carrillo.

16 MR. MITCHELL: May I ask Counsel a  
17 question, Your Honor.

18 THE MASTER: Yes, sir.

19 MR. MITCHELL: Mr. Odam, this is one  
20 you had given me earlier, is it not?

21 MR. ODAM: Yes, sir.

22 MR. MITCHELL: All right.

23 MR. FLUSCHE: Pass the witness.

24 MR. ODAM: Wait, offer those.

25 THE MASTER: You have not offered them.

1 MR. MITCHELL: You haven't offered these  
2 yet.

3 MR. FLUSCHE: Well, now, some of them  
4 have been offered and some of them have not.

5 THE MASTER: Well, you can reoffer all  
6 of them.

7 MR. FLUSCHE: All right, I'll reoffer  
8 Exhibit 65 --

9 THE MASTER: They are enumerated as  
10 Exhibits 65, 68, 69, 74, 75, 76, 80, 82, 85  
11 88 and 94.

12 MR. FLUSCHE: I did not offer 154 at  
13 this time.

14 THE MASTER: But you offered those just  
15 now?

16 MR. FLUSCHE: Yes, sir.

17 THE MASTER: Now state your objection.

18 MR. MITCHELL: May I have them, please,  
19 for the purpose of my objection.

20  
21 (Handed to Counsel.)

22 MR. MITCHELL: Thank you, Judge. May  
23 I ask the witness a voir dire question as  
24 to one of them?

25 THE MASTER: Yes, sir.

- - - - -

VOIR DIRE EXAMINATION

BY MR. MITCHELL:

Q Mr. Williams, did you identify E-85?

A Yes, sir.

Q Did your bank make that?

A It was made under our supervision, yes, sir.

Q All right, and how about the -- the reverse side, I can't tell whether there is an endorsement on there or not.

A As a matter of fact I cannot either.

Q Well, it doesn't appear to be made at the same time as these others. Can you tell the Court whether it was, in fact, made a different time and under what circumstances that is different from those others so that I may inform myself.

A If my recollection is right, it was made on a machine by the Internal Revenue people.

Q Well, do you know that they made it or --

A It was made under our supervision on a machine which is to my knowledge produces a picture similar to that.

Q How about 85, what would be your testimony as

1 regards it and --

2 THE MASTER: This is 85, I am sorry.

3 MR. FLUSCHE: That is Exhibit 85,  
4 Arthur.

5 THE MASTER: You have got two Exhibit  
6 85's?

7 MR. MITCHELL: He has three of them.

8 MR. FLUSCHE: Those are just extra  
9 copies.

10 MR. MITCHELL: All right, Your Honor,  
11 we would object to the introduction of 56,  
12 65, 68, 69, 74, 75, 76, 80, 82, 85, 88, and  
13 94 on the grounds it violates the best evi-  
14 dence rule: not properly authenticated and  
15 then, of course, in addition, if it please  
16 the Court, for the purpose of not waiving our  
17 record beyond the formal notice, beyond the  
18 second amended notice, relates to non-  
19 judicial acts, relates to acts not occurring  
20 during the time and further, Your Honor,  
21 we plead surprise in that the Examiner has  
22 not shifted his theory from those specified  
23 in Romans 7, 8, 9, 10, 11, 12, from the --  
24 from those alleged to one involving partnership.

25 THE MASTER: The objection is overruled



and the Exhibits are admitted.

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BY MR. MITCHELL:

Q Mr. Williams, you previously testified in Federal Court, did you not?

A Yes, sir.

Q What was the date of that testimony and the date I had the privilege of cross-examination of you before this?

A I don't recall.

Q Would that be about September, 1975?

A I believe that is correct.

Q I believe at that time you stated there was a gap in your work with the First State Bank of San Diego of a period of how long?

A From about 1960, sometime in 1960, to sometime in 1970.

Q You previously worked with the bank prior to 1960?

A Yes, sir.

Q And you left in 1960 and came to Corpus Christi, is that correct?

A Among other places, yes, sir.

Q I believe you went back to the First State Bank in 1970?

A Yes, sir.

- 1 Q And continued from 1970 to date?
- 2 A Right.
- 3 Q Do you know Rudolfo Couling as a customer of the  
4 First State Bank of San Diego?
- 5 A I do.
- 6 Q Did Benavides Implement and Hardware maintain a  
7 checking account for that business separate and  
8 apart from the personal checking account of Mr.  
9 Rudolfo Couling?
- 10 A Yes.
- 11 Q Were you asked by the Attorney General to bring  
12 the signature card for the Benavides Implement  
13 and Hardware Store owned by Rudolfo Couling from  
14 1971 through 1975?
- 15 A No, sir.
- 16 Q May I ask you, please, first, if you have any  
17 independent recollection of whether or not a  
18 signature card existed for the Benavides Implement  
19 and Hardware Store?
- 20 A I believe it does.
- 21 Q Do you have any recollection of the date of it?
- 22 A No, sir.
- 23 Q Do you have any knowledge of whether it was more  
24 than this one?
- 25 A No, sir.

1 Q May I ask you to search your records and see if you  
2 can be in a position, the next time we call you, to  
3 make a statement as to whether there was a signature  
4 care in 1971?

5 A Yes, I would be glad to do so.

6 Q You did indicate you knew Judge O. P. Carrillo?

7 A Yes, sir.

8 Q Would you characterize for the Court whether or not  
9 his goings and comings from the bank would be  
10 often, occasional, spasmodic or what?

11 A Occasional.

12 Q And so that the record is abundantly clear, as to  
13 the procedure adopted as to Exhibit 57, 65, 68,  
14 69, 74, 75, 76, 80, 82 and 85, 94, can you tell  
15 us first, were these exhibits presented to you for  
16 your reproduction?

17 A They were produced in response to a subpoena.

18 Q How?

19 A In most instances, by the select committee or by  
20 the Senate committee.

21 Q So that the record reflects they have been pre-  
22 viously testified to in the record, the House  
23 resolution committee held a hearing in Austin.  
24 Could that serve your recollection as to the first  
25 time they were reproduced?

1 A I cannot recall the dates or the occasion called  
2 for these records to be reproduced.

3 Q But if that was the only House subcommittee  
4 investigating this, could we assume that was the  
5 call for the reproduction of them?

6 A I would assume so, yes, sir.

7 Q When you were asked to go over them for this  
8 hearing, and how did you know which ones you were  
9 to be questioned about? Did you have a conversation  
10 with Mr. Flusche or Mr. Odam or Ms. Levatino  
11 concerning them?

12 A No, sir.

13 Q The ones you were asked about, when did you first  
14 see them?

15 A About 15 minutes ago.

16 Q Did you not supervise their reproduction?

17 A Yes, sir.

18 Q When was that?

19 A During the course of their reproduction.

20 Q How about time-wise?

21 A That has been over a period of several months.

22 Q I believe the record reflects there has been a  
23 task force from the Attorney General's office  
24 present in San Diego?

25 A Yes.

1 Q And when you say, over a period of months, is  
2 it your answer that various agencies have been  
3 coming in and out of the bank?

4 A No, sir, we reproduced them. They asked for them  
5 under a subpoena. It is only after they subpoenaed  
6 them that we produced them.

7 Q Do you have the subpoenas on file, and I am sure  
8 you do, since it is required by banking laws, do  
9 you not?

10 A Yes.

11 Q That call for these items, Mr. Williams?

12 A I am sure we do.

13 Q Would you make a note and see if you can match  
14 the subpoenas and what agency subpoenaed them with  
15 the exhibits?

16 MR. FLUSCHE: That doesn't have any  
17 bearing on the authenticity of these  
18 documents and that is --

19 MR. MITCHELL: That is correct and I  
20 will defer to the Court's ruling. He is  
21 correct. I am going to call him back in  
22 connection with our pleas in abatement and  
23 so forth and I am doing so with the fact in  
24 mind that maybe it can save time for the  
25 Master.

1 MR. FLUSCHE: I don't think those  
2 questions would have anything to do with  
3 pleas in abatement. They are irrelevant  
4 to the authenticity of these documents.

5 THE MASTER: I agree with the objection.

6 Mr. Mitchell, if you call him  
7 back, you can put that in the subpoena.

8 MR. MITCHELL: All right.

9 Q (By Mr. Mitchell:) Anyway, they were not prepared  
10 at the request of Mr. Flusche or Mr. Odam or Ms.  
11 Levatino?

12 A They did not ask me to present specific items. I  
13 have the subpoena right here in my pocket.

14 Q May I have that?

15 A Yes.

16 MR. MITCHELL: May I have it marked,  
17 please.

18 MR. FLUSCHE: This is cluttering up  
19 the record and it has no bearing on the  
20 authenticity of these documents.

21 THE MASTER: What is the purpose of  
22 having this subpoena marked, Mr. Mitchell?

23 MR. MITCHELL: I now note it was for  
24 the first time issued and it was not a  
25 subpoena duces tecum. The subpoena is a

1 blanket --

2 THE MASTER: Do you really need it  
3 marked and offered in evidence, couldn't you  
4 just ask him about it?

5 MR. MITCHELL: I guess I could.

6 THE MASTER: Well, let's see if it can  
7 be stipulated.

8 MR. FLUSCHE: We will so stipulate. He  
9 does need this subpoena for his records.

10 MR. MITCHELL: All right.

11 Q (By Mr. Mitchell:) I will ask you how you know,  
12 since the subpoena is not a duces tecum, how did  
13 you know which items you would be questioned about?

14 A I had no knowledge of any item to be questioned  
15 about.

16 Q You didn't know beforehand which ones you were to  
17 be questioned about?

18 A No, sir.

19 Q Are you sure your testimony stands on each and  
20 every one of them?

21 A I went over those with counsel about 15 minutes  
22 before coming onto the stand.

23 Q And you were shown each and every one of them and  
24 had an opportunity to examine them?

25 A Yes, sir.



1 Q And that is the basis of your testimony you have  
2 given?

3 A Yes, sir.

4 MR. MITCHELL: I have no further  
5 questions.

6 MR. FLUSCHE: Nothing further.

7 THE MASTER: Thank you, Mr. Williams.  
8 I expect we will see each other again from  
9 what counsel says.

10 MR. ODAM: We will recall Mr. Rudolfo  
11 Couling.

12 THE MASTER: Yes.

13 For the record, I have E-152 and  
14 E-153 as being offered. They were handed for  
15 counsel to look at at the time we took the  
16 recess and there is no objection and no  
17 opportunity to object. I have E-154 as not  
18 yet being offered.

19 Have you any objections to E-152  
20 and 153?

21 MR. MITCHELL: Thank you, Your Honor.  
22 I might add that the Court keeps up with  
23 this very well.

24 I would object to E-152 and E-153  
25 as being irrelevant and immaterial to this

1 proceeding and beyond the scope of the formal  
2 notice and the other objections which we have  
3 and I will repeat if the Court so desires.

4 THE MASTER: There is no need to.

5 Well, of course, the relevancy  
6 has not yet been made apparent. I assume it  
7 will be?

8 MR. ODAM: That is correct. These  
9 checks pertain to paragraph nine.

10 THE MASTER: They are admitted,  
11 Exhibits E-152 and E-153.

12 MR. MITCHELL: I expect that the  
13 checks are to be totaled up, is that what  
14 you are doing?

15 MR. ODAM: Yes, that is exactly right.

16 MR. MITCHELL: I object, they are not  
17 within nine, then, Judge.

18 THE MASTER: All right, sir.

19  
20  
21 FURTHER EXAMINATION OF MR. COULING

22 BY MR. ODAM:

23  
24 Q Mr. Couling, I show you the two checks, original  
25 copies -- the original checks which have been

1 admitted in evidence as E-152 and E-153 totaling  
2 one thousand six dollars, is that correct?

3 A Yes, sir.

4 Q And ask you why you wrote these checks out to O. P.  
5 Carrillo?

6 A Again, they were checks I got from the county from  
7 Precinct 2 and the same checks I was instructed  
8 earlier that I would have to make the checks to  
9 O. P. Carrillo.

10 MR. MITCHELL: Our previous objections  
11 and non-responsive and hearsay.

12 THE MASTER: Your objections are overruled.

13 Q Mr. Couling, you stated that you received a check  
14 from the bank. Would that be the check here marked  
15 as E-74 in the amount of one thousand six dollars?

16 A Yes, sir.

17 Q And would you explain why a check was made out on  
18 September 22nd in the amount of seven hundred  
19 dollars and another check a month later for three  
20 hundred six dollars?

21 A Well, it was two days after I received the check  
22 and O. P. came by and said he needed seven hundred  
23 dollars, so I made a check for that amount.

24 Q Stop right there. Would you repeat what you just  
25 said?

1 A O. P. Carrillo said he needed money, so I made him  
2 a check for seven hundred dollars.

3 Q The check you made for seven hundred dollars, he  
4 personally made this request to you?

5 A Yes, sir.

6 Q Was this in payment for services he rendered to  
7 Benavides Implement and Hardware?

8 A No, sir.

9 Q Was it your understanding that this was for his  
10 interest in the store?

11 A No, sir.

12 Q You testified earlier that Ramiro Carrillo stated  
13 O. P. Carrillo was a silent partner in the store?

14 A Yes, sir.

15 MR. MITCHELL: We continue our  
16 objection to all of that testimony and we  
17 object --

18 THE MASTER: That is an objection I have  
19 sustained.

20 MR. ODAM: That is right, and also, for  
21 the purpose of the record --

22 THE MASTER: Then, just state this on a  
23 bill, if it is. The objection is sustained  
24 as of this time, but you may certainly make  
25 a bill on it.

1 MR. ODAM: All right, sir. For the  
2 purpose of the bill of exception, we will  
3 continue with this line of questioning.

4 Q (By Mr. Odam:) Mr. Ramiro Carrillo stated to you  
5 that O. P. Carrillo was to be a silent partner  
6 in Benavides Implement and Hardware, is that  
7 correct?

8 A That O. P. and Ramiro were both to be silent  
9 partners.

10 Q That O. P. Carrillo and Ramiro Carrillo were both  
11 to be silent partners?

12 A Yes, sir.

13 Q And did O. P. Carrillo make any statements on the  
14 notes that we referred to earlier?

15 A No, not to my knowledge.

16 Q Other than the statement made by Ramiro Carrillo  
17 that O. P. was to be a silent partner in the  
18 business, at any time thereafter, did O. P.  
19 Carrillo participate in the business of Benavides  
20 Hardware and Implement?

21 A No, sir.

22 Q Did O. P. Carrillo at any time instruct you, Mr.  
23 Couling, with respect to how you were to carry on  
24 the business?

25 MR. MITCHELL: Is this still on the bill?

1           Otherwise, it is leading and we object to  
2           it as hearsay.

3           THE MASTER: The question was, did O. P.  
4           Carrillo at any time instruct Mr. Couling  
5           with respect to how to carry on the business.

6           That is off the bill.

7           MR. MITCHELL: Leading and hearsay and  
8           beyond the scope of the specifications.

9           THE MASTER: The objection is overruled.

10          Q (By Mr. Odam:) The question is, Mr. Couling, did  
11          O. P. Carrillo -- can you tell us whether or not  
12          O. P. Carrillo stated to you how to run the  
13          business in any respect?

14          A No, sir.

15          Q Did he ever come on the premises and participate  
16          in the business?

17          A No, sir.

1 Q Was his action any other than to come by and pick  
2 up the checks?

3 A He never came to the store, sir, no, sir.

4 Q For example, on this check for seven hundred  
5 dollars, Exhibit E-152, where did you -- do you  
6 recall where you were when that check was physically  
7 presented to O. P. Carrillo?

8 A I believe I made that check on the tax office  
9 where I was employed in Benavides and I don't know  
10 if I gave it to him there or gave it to him in  
11 the car, I don't remember exactly.

12 Q But it was not at Benavides Implement and Hard-  
13 ware Store?

14 A No, sir.

15 Q Now, with respect to check Exhibit 153, a check  
16 in the amount of three hundred and six dollars,  
17 what prompted you to make this check for three  
18 hundred and six dollars?

19 A I knew there was three hundred and six dollars left  
20 from the check I got from the county for one thou-  
21 sand and six dollars so on that day he came around  
22 and said he wanted a check for the rest of the  
23 money so I made the check for the rest of the  
24 money.

25 Q Again, that is O. P. Carrillo came by?

1 A Yes, sir.

2 Q He came by what location?

3 A The tax office.

4 Q If you recall, what statement did he make to you  
5 at that time?

6 A That he still had three hundred and six dollars  
7 coming from the previous check or monthly check  
8 from the county.

9 Q From this check Exhibit E-74?

10 A Yes, sir.

11 Q So you, in turn, made out this check?

12 A Yes, sir.

13 Q Now, I show you Exhibit E-153 which has been  
14 marked and admitted into evidence and also E-152.  
15 I don't know if you have done so or not, can you  
16 identify the endorsement on the back?

17 A Yes, sir, that is the endorsement of Mr. O. P.  
18 Carrillo.

19 Q And what is the basis for your knowledge that  
20 that is the endorsement of O. P. Carrillo?

21 A He was president of the school board and I had  
22 occasion to see him signing a lot of checks to  
23 the school when I took the checks to his house or  
24 he signed them at his office.

25 Q And for what period of time did he serve as



1 president of the school board that you referred to,  
2 that you were in the tax office?

3 A I believe it was from the latter part of 62 to  
4 the early part of 63 up to --

5  
6 (Discussion off the record.)

7 THE MASTER: The record at this point  
8 is unclear and the witness will be asked the  
9 questions again.

10 MR. MITCHELL: Can you have the witness  
11 speak into the microphone?

12 THE MASTER: I think it is on.

13 MR. MITCHELL: He is mumbling, Your  
14 Honor, and I am having trouble hearing the  
15 witness.

16 THE MASTER: It is on -- oh, I see, it  
17 is on over here but not over there.

18  
19 (Discussion off the record.)

20 Q All right, the question, Mr. Couling, was during  
21 what period of time, if you know, did Mr. --  
22 correction, O. P. Carrillo, as president of the  
23 school board and that you were in the tax office,  
24 for the basis of your knowledge of his signature.

25 A He was elected in 1962 in April and I don't know if

1 he went -- if he was president -- but he was  
2 nresident in the latter part of 1962 or the early  
3 part of 1963 and he served as president of the  
4 board to my best recollectin to 1967 or 66.

5 MR. ODAM: Your Honor, at this time we  
6 would move on --ardon me, to paragraph 10.

7 THE MASTER: Excuse me, a Kathy Wimberly  
8 is here.

9 MR. FLUSCHE: Yes, sir, I have just  
10 spoken to her, Your Honor, and she knows  
11 where to go and everything.

12 MR. ODAM: Is she outside?

13 MR. FLUSCHE: Yes, sir.

14 MR. ODAM: This is off the record just  
15 a second, please.

16 (Discussion off the record.)

17  
18 THE MASTER: All right, back on the  
19 record.

20 Q (By Mr. Odam:) Mr. Couling, I show you what has  
21 been marked as Exhibits E-78, E-79, and ask you if  
22 you can -- which have been offered and admitted  
23 into evidence, and ask if you can identify E-78  
24 and E-79?

25 A E-78 is a bill from the Benavides Implement and

1 Hardware Company to Duval County Precinct Number 2  
2 in care of Juan Leal, Junior -- or Juan Leal,  
3 and again it is written rental of equipment on  
4 county road and hauling caliche.

5 MR. MITCHELL: Pardon me, Your Honor,  
6 may I ask the witness one question for voir  
7 dire purposes?

8 THE MASTER: Yes, sir.

9  
10 - - - - -

11  
12 VOIR DIRE EXAMINATION

13  
14 BY MR. MITCHELL:

15 Q Mr. Couling, do you have any personal knowledge  
16 as to the composition of E-78 and E-79?

17 A No, sir, I have not, sir.

18 Q All right.

19 MR. MITCHELL: Thank you, Your Honor.

20  
21 - - - - -

22  
23 EXAMINATION CONTINUED

24 BY MR. ODAM:  
25

1 Q Now, what is the amount of money stated on those  
2 invoices?

3 A Nine hundred and ninety-five dollars, sir.

4 Q And what is the date of those invoices?

5 A October the 29th, 1971.

6 Q I believe prior testimony was that Mr. Cleofus  
7 Gonzalez testified that he had prepared these  
8 and they were admitted into evidence.

9 Now, my question to you is the store which  
10 you owned, Benavides Implement and Hardware,  
11 does it have any equipment to perform that haul-  
12 ing referred to on that job description?

13 A No, sir.

14 Q Do you know whether or not the county has it's  
15 own equipment to perform hauling?

16 A Yes, sir.

17  
18 (Discussion off the record.)

19 Q I am sorry, if you answered that question I  
20 was looking around, I didn't hear you.

21 Do you know whether or not the county itself  
22 has vehicles to perform hauling?

23 A Yes, sir.

24 Q What type of equipment would that be?

25 A They have some dump trucks, sir.

1 Q Pardon me?

2 A Dump trucks.

3 MR. MITCHELL: On the date now, so that  
4 the record reflects it, in 71 of October?

5 MR. ODAM: Right, October -- on or  
6 about October of 1971.

7 MR. MITCHELL: All right.

8 Q I show you what has been offered and admitted into  
9 evidence and as for the purposes of the record,  
10 can you identify that item?

11 A It is claim number B-445, Claim from the Benavides  
12 Implement and Hardware Company to Duval County  
13 for nine hundred and ninety-five dollars.

14 Q Now, do you know whether or not some date after  
15 October of 1971, immediately thereafter, you  
16 received a check from the county in the amount  
17 of nine hundred and ninety-five dollars?

18 A Yes, sir.

19 Q I show you what has been marked as Exhibit Number 80,  
20 which has been admitted into evidence and ask if  
21 you can identify that item?

22 A Yes, sir, that is a check from Duval County for  
23 the amount of nine hundred ninety-five dollars.

24 Q And can you turn the check or the copy of the check  
25 over on the back and is there an endorsement or

1 stamp on it?

2 A It is a rubber stamp.

3 Q And what does the rubber stamp say?

4 A Benavides Implement and Hardware Company, Benavides,  
5 Texas.

6 Q Do you know who put that stamp on there?

7 A I did, sir.

8 Q Was that a stamp -- for what purpose was that  
9 put on there?

10 A I took it to the bank and deposited it at the  
11 First State Bank of San Diego.

12 Q And is there a claim number identified somewhere  
13 on that Exhibit that you are referring to?

14 A Check number is 1490.

15 THE MASTER: No, the claim number.

16 Q The claim number, I am sorry.

17 A Claim number B-2445.

18 Q I will show you what has been marked as  
19 Examiner's Exhibit E-154, and ask if you can  
20 identify this item?

21 A That is a check from the Benavides Implement and  
22 Hardware Company made out to O. P. Carrillo on  
23 November the 15th, 1971. It has my signature.

24 Q And can you identify the endorsement on the back?

25 A Yes, sir, it says for deposit, O. P. Carrillo.

1 Q Can you identify that to be the signature of  
2 O. P. Carrillo?

3 A Yes, sir.

4 Q Now, the -- what did you --

5 MR. ODAM: I will offer E-154 into  
6 evidence, the original copy -- the original  
7 check.

8 MR. MITCHELL: Your Honor, our objection  
9 to 154 would run to our basic objections. I  
10 will repeat them if the Court would like.

11 THE MASTER: The four, I think, there  
12 are four basic objections.

13 MR. MITCHELL: That's right.

14 THE MASTER: They are overruled and the  
15 check is admitted.

16 Q E-154, the check for nine hundred ninety-five  
17 dollars, do you recall what, after you made the  
18 check out for nine hundred ninety-five dollars,  
19 what you did with the check after you --

20 A I handed it over to O. P. Carrillo, sir.

21 Q You personally gave him the check?

22 A Yes, sir.

23 Q Do you recall where you were at that time?

24 A No, sir, I don't know if it was in the tax office  
25 or out on the street, I don't know, sir.

1 Q Do you recall if it was in the Benavides Imple-  
2 ment and Hardware Store?

3 A No, sir, it wasn't in the store.

4 Q Now, was this check for nine hundred and ninety-  
5 five dollars, was this for any interest that O. P.  
6 Carrillo had in the Benavides Implement and Hard-  
7 ware Store?

8 A No, sir.

9 Q And the check, is it for services performed by  
10 O. P. Carrillo?

11 A No, sir.

12 Q All right.

13 MR. ODAM: Now, for the purposes of  
14 the bill of exception: "Is this another  
15 example of one of the checks that Ramiro  
16 Carrillo asked you to make out to O. P.  
17 Carrillo"?

18 A Yes, sir.

19 MR. MITCHELL: Well, Judge we renew  
20 our objections to that testimony, whether  
21 it is offered for the bill or not because  
22 I believe, and I want to be very careful  
23 how I state this, I believe that what is  
24 happening, it is obvious what is happen-  
25 ing is under theegis of the bill of exception,



1 he is making his case on evidence that is  
2 not competent and previously excluded.

3 THE MASTER: Well, it was not offered  
4 and I understand it -- well, the objection  
5 is sustained to whatever extent that testi-  
6 mony is offered in this hearing, but as I  
7 have said previously, you may have a full  
8 bill.

9 MR. ODAM: Yes, sir, and that was only  
10 intended for the purpose of continuity.

11 THE MASTER: Yes, sir.

12 MR. ODAM: Of the earlier statement  
13 and discussions we had about hearsay and  
14 bill of exceptions.

15 (Discussion off the record.)

16  
17 Q (By Mr. Odam:) Mr. Couling, you have testified  
18 thus far with respect to paragraphs 7, 8, 9 and 10  
19 generally as I understand it certain checks were  
20 made out by you to O. P. Carrillo, is that correct?

21 A Yes, sir, that is correct.

22 Q And thus far we have talked about four checks?

23 A Right.

24 Q Either machine copies or original copies in evi-  
25 dence.

1           On any occasion, during the period of time  
2           around these dates, in 1971, did you have occa-  
3           sion to make out other checks to O. P. Carrillo?

4           A Yes, sir.

5                     MR. ODAM: I will ask the court reporter  
6           to mark these please.

7                     (Marked for identification by the  
8           reporter as Exhibit E-155, E-156 and E-157,  
9           and E-158.)

10  
11           Q Mr. Couling, I show you original checks marked  
12           E-155, E-156, 157 and 158, and ask you if you  
13           can identify these originals?

14           A Yes, sir, they are all checks made from the  
15           Benavides Implement and Hardware Company payable  
16           to O. P. Carrillo.

17           Q And this is your signature on the checks?

18           A Yes, sir.

19           Q And turning the checks over, I will ask if you  
20           can identify the endorsement on these checks,  
21           and identify them with respect also to the  
22           Exhibit number.

23           A On 155, no, sir, I cannot identify that endorse-  
24           ment.

25           Q Okay. On 156?

1 A On 156, that is O. P. Carrillo's endorsement and  
2 157, that is O. P. Carrillo and 158 is C. P.  
3 Carrillo.

4 Q And on 155 there appears to be two names on there,  
5 can you identify either one of them?

6 A The first one is O. P. Carrillo and the next one is  
7 Jose Saenz.

8 Q That's the top one, O. P. Carrillo, I think you  
9 testified -- well, that is similar, but can you  
10 tell if that is O. P. Carrillo's signature?

11 A That is similar, but I don't think it is --

12 Q Your testimony would be that it would not be the  
13 signature of O. P. Carrillo?

14 A No.

15 Q All right.

16 MR. ODAM: Your Honor, we offer in  
17 evidence E-155, 156, 157 and 158.

18 (Handed to Counsel.)  
19

20 MR. ODAM: Arthur, these are the ones  
21 that I told you about.

22 MR. MITCHELL: In view of the witness'  
23 testimony, Your Honor, in regards 158, we  
24 would object to it's admission on the ground  
25 it is being endorsement by Cash Store, Abel

1 Yzaguirre, beyond the realm of any inquiry  
2 here and in addition to our prior running  
3 objections.

4 Now, as to 155, Your Honor, we would  
5 object in view of the witness' testimony  
6 again that it appears to be signed by some  
7 other person, it would be immaterial and  
8 irrelevant, certainly hearsay, as regards  
9 this witness, and in addition our other  
10 objections.

11 Now, Your Honor -- Pardon me, Your  
12 Honor, I would like to consult with my  
13 client.

14 (Discussion off the record.)

15  
16 MR. MITCHELL: Now, on 156 and 157 we  
17 object on the grounds of hearsay, Your Honor,  
18 and that in addition to the previously objec-  
19 tions, beyond the formal scope, beyond the  
20 second amended and related to non-judicial  
21 acts.

22 THE MASTER: You mean first amended?

23 MR. MITCHELL: Yes, sir.

24 THE MASTER: The objections are over-  
25 ruled and the Exhibits are admitted.

1 Mr. Couling, just for my own purposes,  
2 E-158 you said is signed by you?

3  
4 (Handed to the witness.)

5 THE WITNESS: Yes, sir, on the bottom  
6 here, yes, sir.

7 THE MASTER: Yes, sir, but it does not  
8 appear that the payee, and the balance of  
9 the check is made out by you?

10 A No, sir.

11 THE MASTER: Was that made out by you?

12 THE WITNESS: No, sir.

13 THE MASTER: Well, who made --

14 THE WITNESS: I gave this check blank  
15 to Mr. O. P. Carrillo with just my signature  
16 on the bottom.

17 THE MASTER: Thank you.

18 MR. MITCHELL: Pardon me, Counsel, are  
19 those stated to me in connection with number --  
20 paragraph number 10 still?

21 MR. ODAM: These would be in relation  
22 to paragraphs 7 through -- actually 7 through  
23 12, but more specifically the -- they would  
24 go to paragraph 7, 8, 9 and 10.

25 MR. MITCHELL: Then we plead surprise

1 and beyond the scope if they are 7, 8, 9  
2 and 10, Your Honor.

3 MR. ODAM: I might clarify for the  
4 record, and for the Master, and for Counsel,  
5 that the purpose of admission of these  
6 checks and the purpose of going into the  
7 questions that would be forthcoming, would  
8 be to show the general scheme of making  
9 out checks by Mr. Couling to Mr. Carrillo.

10 It would be to show the motive, the  
11 scheme and involved in 7 through 12, but  
12 particularly 7, 8, 9 and 10.

13 Now, we are not amending our pleadings,  
14 we are not stating that these amounts were  
15 also taken for purposes of the petition, for  
16 removal purposes, we are just simply showing  
17 the scheme of Mr. Couling making out the  
18 checks to Mr. Carrillo as he testified to.

19 MR. MITCHELL: They go beyond the scope  
20 then, Your Honor, and certainly we plead  
21 surprise. I believe that would be satis-  
22 factory.

23 THE MASTER: The objection is overruled.  
24 I don't know if I said for the record that  
25 Exhibits 155 through 158 would be admitted,

1 but they are.

2 Q (By Mr. Odam:) All right, Mr. Couling, 155 is  
3 a check in the amount of one thousand two hundred  
4 dollars, I believe the Master asked you a question  
5 about some of the checks and to clarify for my  
6 own purposes on the front of the check, did you  
7 personally fill in the amount of one thousand two  
8 hundred dollars?

9 A Yes, sir.

10 Q What, if you recall, was the basis -- that is June 21,  
11 1971, of making out a check for one thousand two  
12 hundred dollars to Mr. -- or to Judge O. P.  
13 Carrillo?

14 A I believe I got a check from the county for that  
15 amount or close to it.

16 MR. MITCHELL: Now, we would object to  
17 that answer, Your Honor. It would be specu-  
18 lation and conjecture what he would believe,  
19 unless he had some personal knowledge. It  
20 is certainly very critical.

21 Q Well, the check was made out for one thousand  
22 two hundred dollars. The question was why was  
23 the -- why did you make out a check for one thou-  
24 sand two hundred dollars and then let me restate  
25 that question to you and what is your reply to

1 why you made out that check for twelve hundred  
2 dollars?

3 A Well, every check that I made was because of  
4 that money from the county, previous to making  
5 these checks, sir.

6 Q Now, the check for one thousand two hundred  
7 dollars, is it for work performed by O. P. Carrillo  
8 for the Benavides Implement and Hardware Store?

9 A No, sir.

10 Q Was it for an interest he has in the store?

11 A No, sir.

12 Q Was it -- well --

13 MR. ODAM: That is enough on that.

14 Q Now, 156, can you state what is written on the  
15 check down in the lower lefthand side?

16 A It says store counter for the Carrillo drug store.

17 Q And what is the amount of money on that check?

18 A One thousand dollars, sir.

19 Q Did you write in the one thousand dollars?

20 A Yes, sir.

21 Q And you wrote in the name of O. P. Carrillo?

22 A Yes, sir.

23 Q And now, can you explain --

24 MR. ODAM. Strike that.

25 Q Did you make out the description down there about



1 the drug store?

2 A Yes, sir.

3 Q Can you explain to the court why you wrote on the  
4 check that description with respect to the drug  
5 store?

6 A Well, I had to write something on the check so I  
7 could remember what it was.

8 Q Now, that says store counter.

9 A Yes, sir, there was no store counter purchased  
10 from O. P. Carrillo, sir.

11

12

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1 Q Then why did you put store counter on the check?

2 A I don't remember, sir.

3 Q But there was no store counter purchased?

4 A No, sir.

5 Q On E-56, would your testimony be, as to why you  
6 made out a check for one thousand dollars --

7 MR. MITCHELL: On 156.

8 MR. ODAM: Yes.

9 Q On E-156, why did you make out a check number E-156  
10 for one thousand dollars?

11 A I had gotten a check from the county from Precinct  
12 Number 2 and made it out for that reason.

13 Q This is a check in May, 1971, and E-155 was in  
14 May, 1971, and E-157 in July.

15 Did you fill in the amount of money there, is  
16 that your signature on the nine hundred ninety-  
17 two dollars?

18 A Yes.

19 Q Did you put in the name of O. P. Carrillo?

20 A Yes, sir.

21 Q Could you describe what the check is written for?

22 A It says tubing and the store didn't buy tubing for  
23 Judge O. P. Carrillo.

24 Q Why did you put tubing on there?

25 A I can't recall, but there was no tubing purchased at

1 all.

2 Q Why would you make out a check in July for nine  
3 hundred ninety-two dollars?

4 A I had to have received the check from the county  
5 for close to that amount from Precinct 2.

6 Q And finally, I show you a check which I think the  
7 Master referred to earlier as E-158. You identified  
8 your signature on there.

9 Can you state, if you know, who filled in the  
10 amount and the payee on that check?

11 A No, sir, I cannot be positive.

12 Q You did not fill in the amount?

13 A No, sir.

14 Q This is what date?

15 A November, 1971.

16 Q And can you state why you would make out a check  
17 totaling blank?

18 A No, sir, he was going to buy something he needed  
19 and I made him a check in blank and signed it.

20 Q Do you recall what you did with this check?

21 A I gave it to Judge O. P. Carrillo in blank.

22 Q You gave that check to O. P. Carrillo in blank?

23 A Yes, sir.

24 MR. ODAM: I move, at this time, Your  
25 Honor, to paragraph eleven.

1 THE MASTER: All right, sir.

2 Q I show you what the reporter has marked as E-84  
3 and ask you if you can identify that for the record?

4 A Yes, sir, this is a check from the Duval County  
5 Water Conservation and Reclamation District made  
6 payable to Benavides Implement and Hardware in the  
7 amount of five thousand six hundred twenty-five  
8 dollars and is dated January 11, 1972.

9 Q Do you recall personally having received that check?

10 A Yes, sir.

11 Q And can you identify on the back of the check any  
12 endorsement?

13 A Yes, it is stamped by the rubber stamp and I wrote  
14 on the bottom, for deposit.

15 Q Can you identify who caused that check -- strike  
16 that.

17 Can you identify on that check who caused that  
18 check to be issued?

19 A No, sir, I don't recall seeing those invoices.

20 Q Are there any other signatures on that check?

21 A Yes, sir, the secretary of the board, Mr. Jose  
22 Tovar and D. C. Chapa.

23 Q Do you know Mr. Jose Tovar?

24 A Yes, sir, I know him.

25 Q And can you identify his signature?

1 A Yes, sir, I can.

2 Q And D. C. Chapa?

3 A Yes, sir.

4 Q Do you know that to be his signature?

5 A Yes.

6 Q D. C. Chapa, is he related to Judge O. P. Carrillo?

7 A He is his father.

8 MR. ODAM: Exhibit E-84 is offered in  
9 evidence.

10 MR. MITCHELL: Judge, it is all stapled  
11 down and the enforcement is critical. May  
12 I have permission to unstaple it, at least  
13 one end?

14 THE MASTER: Yes.

15 MR. MITCHELL: Our only objection to  
16 this exhibit would run to our general  
17 objection to the previous exhibits before  
18 the Court. I can restate them if the  
19 Court desires.

20 THE MASTER: You are talking about the  
21 basic four?

22 MR. MITCHELL: Right.

23 THE MASTER: The objection is overruled  
24 and the exhibit is admitted, Exhibit E-84.

25

(Examiner's Exhibit E-84 was admitted)

1                   into evidence.)

2

3       Q (By Mr. Odam:) I have before you, Mr. Couling,  
4       E-84, a Xerox copy of the same check, and I refer  
5       you to the lower left-hand portion. Can you read  
6       into the record the description of the purpose of  
7       that check?

8       A For invoices 289, 290, 291 and 292 to Benavides.

9       Q What would -- well, what would be the general  
10      description or reason that was placed on there?

11      A I can't tell you for sure. It could be Benavides,  
12      Texas, or Benavides Implement and Hardware.

13      Q 289, 290, 291 and 292, did your store do work for  
14      Duval County water district for those invoices  
15      and those invoices would be related to?

16      A No, not that I know of.

17                   MR. MITCHELL: I object on the grounds  
18                   the invoices would be the best evidence.

19                   THE MASTER: The objection is overruled.

20      Q The invoices, number 289 through 292, is it your  
21      testimony that your store did not perform work  
22      pursuant to those invoice numbers?

23      A No, sir.

24      Q Can you state why those invoices would be numbered  
25      on this check?

1 A No, sir, the only one was the Farm and Ranch that  
2 should be invoiced.

3 Q Did you actually and personally receive an original  
4 check, the one the Master has in his hand?

5 THE MASTER: No, it is now in front of  
6 him.

7 THE WITNESS: Yes, sir.

8 Q What did you do with that check?

9 A I believe I deposited it in the First State Bank of  
10 San Diego.

11 Q Who did you receive that check from?

12 A I don't know whether it was from O. P. Carrillo or  
13 Rogelio Guajardo, Jr.

14 Q Could you spell into the record how you spell that  
15 name?

16 MR. MITCHELL: Rogelio is R-o-g-e-l-i-o  
17 and Guajardo, G-u-a-j-a-r-d-o.

18 Q (By Mr. Odam:) Your testimony is, O. P. Carrillo  
19 or his nephew, Rogelio Guajardo, gave you that  
20 check?

21 A Yes.

22 Q You stated you deposited that check in the First  
23 State Bank of San Diego?

24 A Yes, sir.

25 Q And again, I think we discussed this earlier, the

1 endorsement on the back is what?

2 A Benavides Implement and Hardware Company, and I  
3 wrote myself, for deposit.

4 Q So you personally endorsed that check?

5 A Yes, sir.

6 Q Now, if it was your testimony that no work was  
7 performed pursuant to these invoice numbers, could  
8 you state if you know why the water district would  
9 make out a check for you in that amount?

10 A Yes, a week or so earlier, O. P. came by and told  
11 me --

12 MR. MITCHELL: We object to this, any  
13 conversation between O. P. and the witness  
14 would be hearsay and beyond the scope of  
15 the specifications.

16 THE MASTER: Overruled.

17 Q Could you state what Judge O. P. Carrillo told you?

18 A Yes, that the water district was going to give him  
19 a check so he could buy a station wagon with it.

20 Q Where were you at that time this conversation took  
21 place?

22 A Either in my office or riding around in a car, I  
23 can't tell you for sure.

24 THE MASTER: Off the record.

25 (Discussion off the record.)



1 THE MASTER: Back on the record.

2 Q I show you what has been marked as Exhibit E-85,  
3 which has previously been admitted, and ask you  
4 if you can identify this?

5 A Yes, it is a check from the store with my signature  
6 on the bottom and the date of January 13, 1972.

7 MR. MITCHELL: Excuse me, may I see that?

8 THE MASTER: Yes.

9 Q And the check you are referring to there, E-85,  
10 was it -- you actually made that check out?

11 A I signed it and wrote the date on it.

12 Q Who is the payee on that check?

13 A The First State Bank and Trust of Rio Grande  
14 City, Texas.

15 Q Did you fill that out?

16 A No, sir, I didn't fill out the amount of the check,  
17 either.

18 Q Did you make the check out in blank?

19 A Yes.

20 Q What did you do with that check made out in blank?

21 A Turned it over to O. P. Carrillo, sir.

22 Q Now, you made reference to that check, do you have  
23 any idea as to what that check is for?

24 A It states one station wagon.

25 Q Would that be the same station wagon O. P. Carrillo

1           talked to you about before the check was made out?

2           A   Yes, sir.

3           Q   Are you familiar with that particular station wagon?

4           A   Yes, I saw it.

5           Q   Can you describe what that station wagon was?

6           A   It was a Pontiac.

7           Q   Did you ever personally see Judge O. P. Carrillo  
8           driving it?

9           A   Yes.

10          Q   Once the check was made out in blank, you stated  
11          you gave it to O. P. Carrillo?

12          A   Yes, sir.

13                           THE MASTER:   What is the exhibit number?

14                           MR. MITCHELL:   85.

15          Q   I show you what has been marked as E-88 and ask you  
16          if you can identify that item?

17          A   Yes, sir, this is a bank deposit from the Benavides  
18          Implement and Hardware dated January 13, 1972,  
19          in the amount of five thousand six hundred twenty-  
20          five dollars.

21          Q   Now, is that a deposit slip for the check from the  
22          water district?

23          A   Yes, sir.

24          Q   Where you testified earlier you deposited the check  
25          in the First State Bank?

1 A Yes, sir.

2 THE MASTER: What is the exhibit number,  
3 Mr. Couling?

4 THE WITNESS: E-88.

5 THE MASTER: Is this an appropriate time  
6 for a break, Mr. Odam?

7 MR. ODAM: Yes, but I would like to offer  
8 in evidence certified copies of the document  
9 of title on a station wagon. These papers  
10 have been -- are tracing the title on a  
11 station wagon and speak for themselves and  
12 have been filled out and received by the  
13 Texas Highway Department.

14 I offer them in evidence and they  
15 have been marked as E-90, and I offer them  
16 at this time. They are certified on the  
17 back from the Texas Highway Department.

18 The certification is dated  
19 October 6, 1975.

20 THE MASTER: Well, let's take a recess.

21 Are these just copies?

22 MR. ODAM: Yes, sir.

23 THE MASTER: Well, we will let Mr.  
24 Mitchell examine them and then be back at  
25 12 o'clock.

(Short recess taken.)

1  
2 THE MASTER: E-90 had been offered and  
3 handed to Counsel.

4 MR. MITCHELL: We object to it, Your  
5 Honor, on the basis of hearsay, no connection,  
6 improperly authenticated, beyond the scope  
7 of formal and amended, and specifically beyond  
8 the wording of Roman -- excuse me, Judge  
9 Meyers.

10 THE MASTER: I think it is 11 you are on.

11 MR. MITCHELL: Yes, sir, I believe it  
12 is, too, yes, sir, Your Honor, beyond 11.

13 THE MASTER: Now, I require, when you  
14 say improperly authenticated, to tell me  
15 in what manner it is improperly authenti-  
16 cated.

17 MR. MITCHELL: Well, Your Honor, there  
18 is no testimony as to the predicate fact  
19 of where it came from, and I assume that the  
20 offer relies on that certificate, and as  
21 to the sufficiency of the certificate, that,  
22 we will challenge.

23 THE MASTER: In what way?

24 MR. MITCHELL: Incomplete, I don't know  
25 from personal knowledge is that the one on

1 the front, Judge Meyer?

2 THE MASTER: It is this one. (Indicating.)

3 MR. MITCHELL: Oh, I didn't see it. It  
4 might be in compliance with the statute, I  
5 was looking at this one, Judge Meyer.

6 (Discussion off the record.)  
7

8 MR. MITCHELL: Your Honor, I simply  
9 must plead ignorance, I don't know if that  
10 certificate on the back page of page 8 of  
11 the Exhibit is sufficient or not and for  
12 that reason we would level the objection of  
13 improper authentication in answer to the  
14 Court's question, that would be the reason.

15 THE MASTER: All right, the objection is  
16 overruled and Exhibit 90 is admitted.

17 MR. ODAM: Your Honor, we will step  
18 aside on Mr. Couling here for a moment  
19 because this other witness we would like to  
20 take out of order is from Alice and Mr.  
21 Flusche is getting her.

22 THE MASTER: That is fine, I think every-  
23 body understood that.

24 MR. ODAM: Do you want to wait on  
25 Judge Carrillo?

1 THE MASTER: Oh, I am sorry.

2 MR. MITCHELL: No, it is satisfactory  
3 to proceed. He had an urgent call, just go  
4 ahead and proceed without him for the moment.  
5 Your Honor.

6  
7 - - - - -

8  
9 KATHYRN WIMBERLY,  
10 called as a witness, having been first duly sworn,  
11 testified upon her oath as follows, to-wit:

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

14  
15 BY MR. FLUSCHE:

16 Q Will you state your name for the record?

17 A Kathryn Wimberly.

18 Q Where do you live?

19 A About six miles out of Orange Grove.

20 Q Texas?

21 A Yes, sir.

22 Q And where are you employed?

23 A At the Bank of South Texas, in Alice.

24 Q Now, let me ask you this, with regard to the  
25 Bank of South Texas, did it recently merge with

1 another bank?

2 A Yes, sir.

3 Q And what bank was that?

4 A That was the First National Bank in Alice.

5 Q All right, now directing your attention to, say,  
6 the summer of 1975, where were you employed at  
7 that time?

8 A At the Bank of South Texas.

9 Q Now, first of all, I called you on the telephone  
10 and asked you to come over here voluntarily, and  
11 I have told you that I would furnish you with a  
12 subpoena whenever you got here, is that correct?

13 A Yes, sir.

14 Q And unfortunately, we have run out of blank forms  
15 for subpoenas at the time being, so is it satis-  
16 factory with you if I furnish you one for the  
17 bank records after this hearing?

18 A Yes, sir.

19 MR. MITCHELL: And we would have no  
20 objection to that proceeding, Judge Meyer.

21 Q Now, have you been requested recently to repro-  
22 duce certain items relating to the bank account  
23 of O. P. Carrillo?

24 A Yes, sir.

25 Q And do you remember who made that request?

1 A It was out of Austin, I don't remember who.

2 Q Did they furnish you with a subpoena?

3 A Yes, sir, we had a subpoena on file.

4 Q And what was requested in that subpoena?

5 A That we make copies of all of the items and the  
6 statements on O. P. Carrillo.

7 Q All right now, and did you do that?

8 A We made copies of all of the deposit slips and  
9 statements. We did not make copies of the checks.

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1 Q Now, you and I have had occasion, just within the  
2 last few minutes, to go over certain items shown  
3 to you, and do you recognize those as having been  
4 reproduced under your supervision?

5 A Yes, sir.

6 Q What relationship is there between the First State  
7 Bank of Alice and your current employer?

8 A Two years ago, the First State Bank of Alice  
9 name was changed.

10 Q I see. At the time that you made these items I  
11 have shown to you, what was your position?

12 A I was assistant cashier.

13 Q And in that position, were you custodian of the  
14 records?

15 A Yes, sir.

16 Q I am going to show you four items marked E-66,  
17 E-70, E-77 and E-83, and ask you to look at those.

18 Now, will you tell the Court, first of all,  
19 do you recognize those as being the copies that  
20 were made under your supervision?

21 A Yes, sir.

22 Q Would you describe to the Court the mechanical  
23 means by which you used to reproduce those?

24 A When checks from deposits and are made, we film  
25 these on microfilm. We take individual pictures

1 of them ourselves.

2 Q Did you do that in this instance?

3 A Yes, sir.

4 Q Let me ask you this. Referring to E-85, it depicts  
5 a deposit in the amount of nine hundred ninety-five  
6 dollars and immediately above it is a reproduction  
7 of a two dollar check. Can you recognize the  
8 signature on that two dollar check?

9 A Yes, sir.

10 Q Whose signature is that?

11 A O. P. Carrillo's.

12 Q I show you what has been marked as E-66, which  
13 purports to be a deposit slip in the amount of  
14 one thousand nine hundred ninety-one dollars.  
15 There are two checks below that and I will ask you  
16 if you recognize those signatures?

17 A Yes, sir.

18 Q Whose signatures are those?

19 A Mr. Carrillo's.

20 MR. MITCHELL: Pardon me, may I ask  
21 counsel a question?

22 THE MASTER: Yes, sir. Would you read  
23 those exhibit numbers to me, please?

24 MR. MITCHELL: E-66, 70, 77 and 83.

25 Your Honor, the purpose of my

1 question is demonstrated by E-66.

2 May I ask counsel, is he offering  
3 by that one number all the exhibits on this  
4 Exhibit E-66?

5 MR. FLUSCHE: Primarily and only for  
6 the deposit slip. My question is relating  
7 to the identification of the signature and  
8 was using these for merely further  
9 authentication.

10 MR. MITCHELL: Well, E-77 has a check  
11 to Marshall Studios from Ramiro Carrillo  
12 and Brothers and I see no relevancy to that  
13 check. I certainly object to that on the  
14 grounds as having no relevancy.

15 MR. FLUSCHE: Well, it could be taken  
16 off.

17 MR. MITCHELL: Likewise, I object on  
18 E-83, unless counsel can make it relevant,  
19 the VFW check in the amount of two dollars  
20 and the check on the bottom from someone to  
21 someone else. All I need is some statement  
22 of counsel, if it is relevant, and likewise,  
23 Judge Meyers -- may I address to counsel a  
24 question?

25 THE MASTER: Yes.

1 MR. MITCHELL: On 70, what are you  
2 offering there, this thing at the top, does  
3 that have anything to do with that?

4 MR. FLUSCHE: I don't know.

5 MR. MITCHELL: I would object to that  
6 if it has no relevancy.

7 THE MASTER: Well, there are some  
8 extraneous instruments, Mr. Flusche, which  
9 I think you could take a pair of scissors  
10 and cut out.

11 MR. FLUSCHE: I will agree to do that.

12 MR. MITCHELL: May I request counsel  
13 point out to me which ones he is not offering?

14 THE MASTER: Most of them have a red  
15 mark on them.

16 MR. FLUSCHE: There is a red mark to  
17 indicate the items germane to this hearing.

18 MR. MITCHELL: I see.

19 All right. Then, Your Honor, with  
20 that statement and with leave of the Court,  
21 I assume on 66 the checks will be cut off  
22 that exhibit?

23 MR. FLUSCHE: Yes.

24 MR. MITCHELL: And on 70, the document  
25 at the top, is that correct?

1 MR. FLUSCHE: Yes.

2 MR. MITCHELL: And I assume, further,  
3 that on E-77, the check on the bottom will  
4 be cut off?

5 THE MASTER: That is Mr. Flusche's  
6 agreement. It doesn't matter to me, since  
7 there is no jury, it doesn't matter if he  
8 offers the pertinent things, but if you want  
9 to keep the record clean, that is fine.

10 MR. MITCHELL: Or it could be covered.  
11 We object to 10, to the others and the offer  
12 of 66, 77 and 83, to the extent that these  
13 are marked in red on the grounds of hearsay  
14 and irrelevant and immaterial and no proper  
15 authentication.

16 THE MASTER: The objection is overruled  
17 and the exhibits are admitted.

18 MR. FLUSCHE: I believe that is all.

19

20

21

E X A M I N A T I O N

22

BY MR. MITCHELL:

23

24

Q Do you have a subpoena with which these documents  
25 were reproduced?

- 1 A Yes, we have it at the bank.
- 2 Q May I request that you make a copy of that for the  
3 purpose of future testimony?
- 4 A Yes.
- 5 Q Now, the ones that have been reproduced, that is  
6 the ones marked in red, who requested they be  
7 reproduced?
- 8 A It was on the subpoena from Austin.
- 9 Q It was in connection with the subpoena that I  
10 asked you about?
- 11 A Yes, this is the one you asked me about.
- 12 Q Looking at those exhibits, and let's take 66,  
13 what is that document reflecting on the ones in  
14 red? I believe you identified that as a deposit  
15 slip?
- 16 A Yes, sir.
- 17 Q And did you personally search the records for that  
18 document?
- 19 A Yes, sir.
- 20 Q Now, on looking at E-70, I am referring only to  
21 the one marked in red, what is that?
- 22 A A deposit slip.
- 23 Q Did you search that out personally?
- 24 A Yes, sir.
- 25 Q Looking at E-77, please, only the ones marked in

1 red, what is that document?

2 A Also a deposit slip.

3 Q Did you search that document out and photograph  
4 it?

5 A Yes, sir.

6 Q Now, if you please, the last, Exhibit 83.

7 A This one?

8 Q Yes. Now, referring, please, to the one in the  
9 middle, what is that?

10 A Also a deposit slip.

11 Q I will ask you the same question, did you search  
12 that out and reproduce it?

13 A Yes, sir.

14 MR. MITCHELL: I have no further  
15 questions of this witness, Your Honor.

16 THE MASTER: Are you working on a  
17 subpoena form for her?

18 MR. FLUSCHE: Yes, I will have it typed  
19 up and give it to her before she leaves.

20 THE MASTER: Do you want me to sign it?

21 MR. FLUSCHE: Yes, sir.

22 THE MASTER: You make sure it is typed  
23 properly.

24 MR. FLUSCHE: Yes, sir.

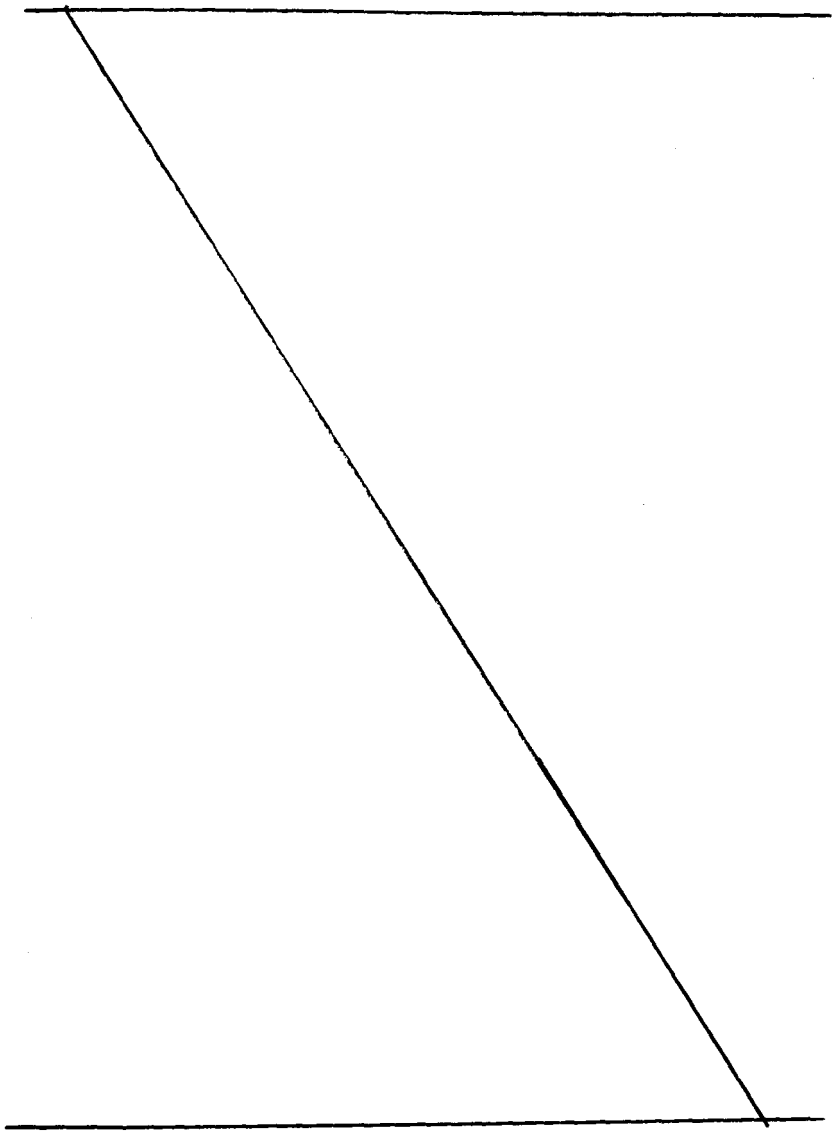
25 THE MASTER: Do you have any other

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questions?

MR. FLUSCHE: I have none.

THE MASTER: Thank you, ma'am, you may  
step down.





1 RUDOLFO COULING,

2 recalled as a witness.

3  
4 - - - - -

5  
6 E X A M I N A T I O N (continued)

7  
8 BY MR. ODAM:

9 THE MASTER: You may proceed, Mr. Odam.

10 Q Mr. Couling, I remind you that you are still under  
11 oath.

12 A Yes, sir.

13 Q As previously -- the oath still applies to your  
14 testimony here as previously when you testified  
15 today and the day before.

16 A Yes, sir.

17 MR. ODAM: We move now to paragraph  
18 number 12.

19 Q I show you, Mr. Couling, what has been marked as  
20 Examiner's Exhibit 91 and 92 and ask if you can  
21 identify these items, 91 and 92?

22 A Yes, sir, 91 is the invoice from the Benavides  
23 Implement and Hardware Company for the amount of  
24 one thousand and six dollars.

25 Q All right and --

1 A Rental on tractor -- rental equipment and --

2 Q That is working --

3 A Working on county road.

4 Q Mr. Gonzalez has already testified that he filled  
5 out the ticket. My question to you is did Bena-  
6 vides Implement and Hardware Company perform for  
7 the county of Duval Precinct Number 2 the work  
8 described on that statement invoice E-91?

9 A No, sir.

10 MR. MITCHELL: Excuse me, that is to  
11 his knowledge.

12 Q All right, to your personal knowledge, did your  
13 company perform that work?

14 A No, sir.

15 Q Did you company have any rental equipment to be  
16 rented to the county?

17 A No, sir.

18 Q E-91 and E-92 previously admitted into evidence  
19 and went into E-93 which is a claim jacket.

20 Now, the claim jacket is -- can you identify  
21 the number at the top?

22 A C2908.

23 Q And I'll ask you if you can identify what is  
24 marked as E-94 and previously admitted into  
25 evidence.

1 A Yes, sir, it is a check from Duval County claim  
2 number C2908 for the amount of one thousand and  
3 six dollars.

4 Q All right.

5 A Payable to Benavides Implement and Hardware Com-  
6 pany.

7 Q All right, can you identify the --

8 A The endorsement, yes, sir.

9 Q All right.

10 A Yes, sir, this is my endorsement.

11 Q Now, this was in December of 1972. Do you recall  
12 generally having received a check in the amount  
13 of one thousand six dollars?

14 A Yes, sir.

15 MR. ODAM: Now, 94, Your Honor, is a  
16 xerox copy of a check. As a matter of fact --

17 THE MASTER: Yes, it is offered and  
18 admitted in the string of exhibits starting  
19 with 57.

20 MR. ODAM: Those were in connection  
21 with Mr. Karl Williams' testimony, too.

22 THE MASTER: Yes, it is in evidence.

23 Q Next, I'll show you what has been marked and  
24 entered into evidence as E-95 --

25 MR. ODAM: Correction, strike that.

1 Q I'll show you what has been marked as E-95 and  
2 ask you if you can identify this item?

3 A Yes, sir, this is a bill from -- prepared from  
4 Benavides Implement and Hardware Company dated  
5 October the 27th -- no, December the 27th, 1972 to  
6 Duval County Precinct Number 2 for rental of  
7 winch number 2 and one truck, a dump truck number  
8 10.

9 Q And can you identify who put that writing on that  
10 slip?

11 A That is my handwriting, sir.

12 Q Now, what is the amount of money stated on there?

13 A One thousand and eighteen dollars and ten cents.

14 Q And you filled out that amount of money?

15 A Yes, sir.

16 Q Work performed on rental on winch number two and  
17 truck and dump number 2. Can you describe the  
18 work that was performed for Duval County with  
19 respect to that job?

20 A There was nowork performed for Duval County.

21 Q What is your testimony with respect to why you  
22 put that description on that ticket?

23 A When this ticket was made, I was told by O. P.  
24 Carrillo that he had purchased two D-8 tractors  
25 and I had to make bills to Precinct Number 2 so

1 he could pay the rent for the tractors to Plains  
2 Machinery.

3 Q Where is Plains Machinery located?

4 A Corpus Christi, sir.

5 Q Now, after you filled out this invoice, what did  
6 you do with that invoice?

7 A Ramiro picked them up from the tax office.

8 MR. MITCHELL: Wait a minute, that  
9 would be hearsay as to this witness. We  
10 object, and move to strike it.

11 MR. ODAM: I thought he said he picked  
12 it up.

13 MR. MITCHELL: No, he said Ramiro picked  
14 it up from the tax office.

15 A From me.

16 THE MASTER: The objection is overruled.

17 MR. MITCHELL: Judge, I simply mis-  
18 understood what he said. I heard him say  
19 Ramiro picked it up from the tax office. It  
20 would not be a good objection if he picked  
21 it up.

22 THE MASTER: All right.

23 MR. MITCHELL: May I have the witness  
24 requested to talk into that microphone,  
25 Judge. I am not able to hear a lot of his

1                   answers.

2                   THE WITNESS: I am sorry.

3                   MR. MITCHELL: That is the reason that  
4                   was a false start. I just simply didn't hear  
5                   him say from her personally.

6                   THE MASTER: Yes.

7                   Q (By Mr. Odam:) Mr. Ramiro Carrillo picked up the  
8                   invoice from you at the tax office?

9                   A Yes, sir.

10                  Q I show you what has been marked as E-97. Can you  
11                  describe that for the Court?

12                  A Yes, sir, that is a check from Duval County made  
13                  in the amount of one thousand eighteen dollars,  
14                  claim number D75.

15                  Q All right, and it is admitted into evidence,  
16                  E-96, and can you -- I'll ask you if you can  
17                  identify that.

18                  A That is the claim jacket, D-75.

19                  MR. ODAM: And as the Court recalls  
20                  from the stipulation on Mr. Meek's testi-  
21                  mony, E-96 was the claim jacket and D-75  
22                  the contents stipulation was contents was  
23                  E-95, which was the invoice and now we move  
24                  the check, E-96, the original copy of which  
25                  is in that box.

1 Q Now, the check for one thousand and eighteen dollars  
2 and ten cents made out to Benavides -- made out  
3 to Benavides Imolement and Hardware is E-97, can  
4 you identify that?

5 MR. ODAM: Well, strike that.

6 Q On E-97 after you -- did you receive the original  
7 copy of E-97?

8 A Yes, sir.

9 Q And what did you do with E-97?

10 A I deposited it at the bank in Rio Grande City,  
11 Sir.

12 Q Why did you deposit it in the Rio Grande City  
13 bank?

14 A I don't recall what date we opened an account,  
15 but O. P. came by and told me that he made  
16 arrangements for me to open an account at the  
17 Rio Grande Bank and Trust Company and he brought  
18 me a signature card for me to sign to issue  
19 checks out of that account.

20 Q And why did he want you to open an account at  
21 the -- or why was it opened at the Rio Grande  
22 City Bank?

23 A So that we could pay the Caterpillars from that  
24 account, from the Rio Grande Bank and to keep it  
25 separate from the store in Benavides.

1 Q And what was the -- could you explain to the  
2 Court why these Caterpillars were being purchased  
3 or leased, which we will get to in a moment.  
4 What was the purpose for the Caterpillars?

5 A He needed to clear some land on the ranch, sir.

6 Q Were the Caterpillars to be used for the county?

7 A No, sir.

8 Q For what purpose were they intended to be used?

9 A For his own personal use, sir.

10 Q All right.

11 MR. MITCHELL: That would be hearsay  
12 to this witness, he doesn't know what they  
13 were for, Your Honor. We submit it is out-  
14 side of his personal knowledge.

15 THE MASTER: What is the basis of your  
16 knowledge with respect to that, Mr. Couling?

17 A Mr. O. P. Carrillo told me himself.

18 THE MASTER: Objection is overruled.

19 MR. MITCHELL: Note our exception, Judge.

20 Q But I take it that the appearance was, with  
21 respect to this county ticket, or correction,  
22 with respect to E-95, that the county was paying  
23 for those bulldozers?

24 A Yes, sir.

25 Q Or Caterpillars?



1 A Yes, sir.

2 MR. MITCHELL: That would be hearsay,  
3 Judge, and we move to strike it and object.

4 MR. ODAM: Well, let me rephrase the  
5 question.

6 THE MASTER: All right.

7 Q E-95, can you identify again what is stated on  
8 E-95?

9 A Yes, sir, it states rent on winch truck, on  
10 winch number 2 truck and dump number 10 truck.

11 Q And why was -- why did you -- I think we covered  
12 that earlier. Why did you put that information  
13 on E-95?

14 A We had to put some kind of information so we  
15 could get the money from the county, sir.

16 Q So you could get this check issued?

17 A Yes, sir.

18 Q Which went into the Rio Grande City account?

19 A Yes, sir.

20 Q After the check went into the Rio Grande City  
21 account, what generally happened after that with  
22 respect to the Rio Grande City account?

23 A The checks were made to Plains Machinery here  
24 in Corpus Christi for payment on the D8 Tractors.

25 Q Who made out those checks -- who made those checks

1 A I made them out, sir.

2 MR. ODAM: Your Honor, if I recall the  
3 status of the record, the invoices which  
4 were contained in jackets up to this point  
5 have been filled out by Mr. Gonzalez.

6 This now is a ticket filled out by  
7 Mr. Couling and as I understood, the offer  
8 thus far was simply for purposes of show-  
9 ing it was in the jacket and I would offer  
10 now E-95, which Mr. Couling testified that  
11 he filled out for the purposes of his testi-  
12 mony, authenticity of what this document is,  
13 not only was it in the jacket, but as Mr.  
14 Gonzalez testified that he filled out the  
15 ticket in all of his testimony with respect  
16 to the filling out of this ticket.

17 MR. ODAM: And my objections would  
18 be only then, Your Honor, as to the hearsay  
19 and the basic objections which we had previ-  
20 ously.

21 THE MASTER: Well, but 95 is now --  
22 Mr. Odam, 95 was previously admitted as a  
23 document in the jacket. It has simply been  
24 further identified now.

25 MR. ODAM: Yes, sir.

1 (Discussion off the record.)  
2

3 MR. ODAM: Your Honor, if it is all  
4 right with Mr. Mitchell, I would imagine that  
5 we are not going to complete Mr. Couling's  
6 testimony today on direct and cross. I  
7 think that is probably a fair assumption.

8 MR. MITCHELL: Yes.

9 MR. ODAM: Mr. Red Kurtz is standing  
10 outside with Plains Machinery and if it  
11 would be all right with Arthur, I hate to  
12 continue to interrupt Mr. Couling's testi-  
13 mony, but it might be an appropriate place  
14 to take him back off the stand and get Mr.  
15 Kurtz in. I hate to have witnesses standing  
16 around. Is that all right with you, Arthur?

17 MR. MITCHELL: That is perfectly all  
18 right.

19 MR. ODAM: Also, Mr. Kurtz has to be  
20 in Houston tomorrow.

21 THE MASTER: All right. Mr. Couling,  
22 we will have to impose on you again. You  
23 wouldn't get through today, I'm afraid.

24 MR. MITCHELL: The only stipulation is  
25 that something that he testified to is a

1 surprise and needs and extended cross-  
2 examination, I know it is twelve-thirty and  
3 I know the Court's working schedule, but if  
4 I would just have a right to call him back  
5 at a future date.

6 THE MASTER: Absolutely, we wouldn't  
7 excuse him. But I want Mr. Odam back in  
8 here to put this witness on right now.

9 (Discussion off the record.)  
10

11 THE MASTER: Mr. Kurtz, come up please  
12 and be sworn.

13 MR. ALBERT KURTZ,  
14 called as a witness, having been first duly sworn,  
15 testified upon his oath as follows, to-wit:  
16

17 E X A M I N A T I O N  
18

19 BY MR. ODAM:  
20

21 THE MASTER: And let the record reflect  
22 that you are --

23 MR. AUFORTH: I am Fred Auforth, Your  
24 Honor, and I am Mr. Kurtz's attorney.

25 THE MASTER: And I want the record to

1 reflect that and I take it there is no  
2 objection to his being present.

3 MR. MITCHELL: Oh, no, Your Honor.

4 THE MASTER: Have a seat right here,  
5 please.

6 Q (By Mr. Odam:) Would you please state your name  
7 for the record.

8 A Albert Kurtz.

9 Q Mr. Kurtz, how do you spell your last name?

10 A K-U-R-T-Z.

11 Q Have we met prior to this morning?

12 A No, sir.

13 Q I think I informed you that your name is the  
14 same as my wife's maiden name, maybe we are  
15 distantly interrelated in some way.

16 Anyway, we have never met prior to this  
17 morning?

18 A No, sir.

1 Q By whom are you employed?

2 A Plains Machinery Company.

3 Q Where is that located?

4 A The main office is in Amarillo, Texas.

5 Q Mr. Kurtz, you stated the main offices are in  
6 Amarillo?

7 A Yes.

8 Q Do you know whether or not Plains Machinery has  
9 offices in Corpus Christi, Texas?

10 A Yes, we do.

11 Q Are you employed here in Corpus Christi?

12 A Yes.

13 Q What is your position with Plains Machinery?

14 A Store manager with the Corpus Christi store.

15 Q And how long have you been employed with Plains  
16 Machinery?

17 A Since 1971.

18 Q Where did you work prior to that time?

19 A Jess McNeil Machinery Company.

20 Q What are your duties generally as store manager  
21 with Plains Machinery?

22 A Over-all management of the store, sales and service,  
23 parts and so forth.

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

25 A Yes.

1 Q Do you identify him as being present here in the  
2 courtroom today?

3 A Yes.

4 Q I don't know you previously and it should be stated  
5 to you that these proceedings are confidential and  
6 the statements I make to you and the statements  
7 you make here today should remain confidential and  
8 you should not discuss your testimony you gave here  
9 today with anyone. It should remain inside this  
10 room until it becomes public, if at all, do you  
11 understand that?

12 A Yes, sir.

13 Q The store you work for, Plains Machinery Company,  
14 what type machinery is that?

15 A Construction machinery, road building equipment.

16 Q Could you be more specific as to types?

17 A Bulldozers, draglines, dirt moving equipment,  
18 cranes, heavy lifting cranes.

19 Q Is a Caterpillar, is that a particular brand name?

20 A Yes, there is a brand name called Caterpillar.

21 Q What is that?

22 A It is a crawler type of dozer to move dirt, brush,  
23 or whatever.

24 Q So when you refer to a Caterpillar, that word could  
25 be used interchangeably with dozer?

1 A Yes.

2 Q But there is a brand name called a Caterpillar  
3 tractor?

4 A Yes.

5 Q You stated earlier you know Judge O. P. Carrillo.  
6 Could you please state the basis for your knowledge  
7 of O. P. Carrillo?

8 A Well, of course --

9 Q Strike that. Let me be specific.

10 Did Judge O. P. Carrillo, who you identified  
11 here as being in the courtroom, did he come into  
12 Plains Machinery to see you on business?

13 A The only time was when he purchased these tractors.

14 Q At the time Judge O. P. Carrillo came into the  
15 store, was there anyone else with O. P. Carrillo  
16 at that time?

17 A There may have been one or two others, sir.  
18 I think there was one or two others, but I could  
19 not identify them.

20 Q At the time he came into the store, this was in  
21 Corpus Christi?

22 A Yes.

23 Q Can you recall generally what time -- give us a  
24 date as to what year that was, first of all?

25 A '73.



1 Q Several years ago?

2 A Well, approximately at the time of those contracts,  
3 the date of those contracts.

4 Q We will get into that in a minute, but around the  
5 date of the contracts we will get into?

6 A Yes.

7 Q And Judge O. P. Carrillo came in to see you at that  
8 time, do you recall the general nature of the  
9 conversation you had with him at that time?

10 A It was pertaining to some equipment he wanted to  
11 purchase, some equipment for his own use.

12 Q Did he specifically say to you it was for his own  
13 use?

14 A Yes.

15 Q Did he say it was for the use of the county?

16 A No, sir.

17 Q Did he say --

18 MR. MITCHELL: Excuse me, objection as  
19 to leading.

20 MR. ODAM: I will rephrase the question.

21 Q (By Mr. Odam:) When Judge O. P. Carrillo came to  
22 see you, at that time, could you state whether or  
23 not if he indicated it was for personal use or for  
24 county use?

25 A Personal use.

1 Q And he made that statement to you?

2 A Yes, he said he wanted to clear some land.

3 Q Now, the equipment -- you generally talk about  
4 what when you got down to the models and could you  
5 describe to me what you agreed upon with Judge  
6 Carrillo?

7 A It was two dozers we had there in stock and I think  
8 the Judge came in specifically talking about those  
9 two tractors.

10 Q Now, after he came in and talked to you about those  
11 dozers, are these Caterpillars?

12 A Yes, sir.

13 Q What next took place with respect to those  
14 transactions?

15 A Well, it was twice he came in, possibly. He  
16 definitely made up his mind he wanted them and  
17 asked us to get them ready, which we did, to  
18 deliver to him.

19 Q And who prepared getting the tractors ready?

20 A My service department.

21 Q Are there any names of anyone specifically there  
22 in the service department?

23 A That I don't remember at this time. It was our  
24 service people, probably two or three different  
25 individuals.

1 Q I guess you were talking about loading?

2 A Yes, getting them ready and servicing the  
3 equipment. It is quite a bit involved in getting  
4 them ready to get delivered.

5 Q Once the tractors or Caterpillars were prepared,  
6 what next happened to them?

7 A Well, they were taken to Benavides, Texas.

8 Q Where, if you know -- could you state where they  
9 were taken?

10 A We instructed our people to take them to his land,  
11 to Benavides, with instructions to the hauling  
12 contractor.

13 Q Who was that?

14 A O. R. Hale Trucking Company.

15 Q You did not take them yourself?

16 A No, sir.

17 Q And I presume this O. R. Hale Trucking Company did  
18 take them over?

19 A Yes.

20 Q Took them to Judge Carrillo's ranch?

21 A Yes, he took them over to -- where we were asked  
22 to deliver them. Those instructions were given  
23 to my service people.

24 Q How did you know where they were supposed to be  
25 delivered?

1 A Judge Carrillo -- it maybe was one of his people  
2 that worked for him, because I can't state the  
3 Judge stated specifically where to take them and  
4 be sure.

5 Q All right. Would you please speak in the  
6 microphone so we can all hear your testimony?

7 A Yes.

8 Q Now, Mr. <sup>ni</sup>ale's trucking company took them to the  
9 ranch?

10 A Yes.

11 Q Did you, yourself, ever make a trip to Benavides?

12 A Yes.

13 Q What was your purpose for going to Benavides?

14 A I took a contract for him to sign.

15 Q To whom did you take a contract?

16 A Mr. Couling.

17 Q Rudolfo Couling?

18 A Yes.

19 Q Have you seen him in the area of the courtroom  
20 today?

21 A No, sir.

22 Q You took a contract to Mr. Rudolfo Couling for  
23 these Caterpillars?

24 A Yes, sir.

25 Q What did he do with the contract?

1 A He signed them.

2 Q Then what happened to the contracts?

3 A I took them back to Corpus Christi and they were  
4 signed by the president of the company.

5 Q Who is that?

6 A Ward Harrell, or he was at the time.

7 MR. ODAM: Would you mark this?

8 (The above-mentioned document was  
9 marked Examiner's Exhibit 159 for identifi-  
10 cation.)

11  
12 Q I show you what has been marked as E-159 and ask  
13 you if you can identify this piece of paper?

14 A Yes.

15 Q Could you describe for the court what this is?

16 A It is a financing statement we filed with the State  
17 of Texas on equipment we sell or all rentals.

18 Q Who filled out this financing statement?

19 A Mr. Harrell. Well, our secretary typed it out and  
20 Mr. Harrell signed it.

21 Q And that is Ward Harrell's signature?

22 A Yes.

23 Q Would you be able to identify that signature?

24 A Yes.

25 Q What is this other signature?

1 A Mr. Couling.

2 Q And this is for a financing of the two Caterpillars?

3 A Yes, any contract or chattel mortgage we make in  
4 our firm, we file them with the State of Texas,  
5 regardless of whether it is lease contracts or  
6 chattel mortgage contracts. This is a filing  
7 instrument on a lease contract.

8 Q Now, the debtor on this would be whom?

9 A Benavides Implement and Hardware.

10 Q And it was signed by Mr. Rudolfo Couling for that  
11 company?

12 A Yes.

13 MR. ODAM: We offer in evidence the copy  
14 of the financing statement.

15 MR. MITCHELL: We object on the grounds  
16 to this respondent that it would be hearsay  
17 and beyond the scope of the formal notice  
18 along with the previous objections allowed  
19 by the Master.

20 THE MASTER: Your objections are  
21 overruled and Exhibit 159 is admitted.

22 MR. ODAM: Mark this, please.

23 (The above-mentioned document was  
24 marked Examiner's Exhibit 160 for  
25 identification.)

- 1 Q Mr. Kurtz, I ask you if you can identify what has  
2 been marked as E-160?
- 3 A Yes, this is the original lease agreement on those  
4 two tractors.
- 5 Q All right. Can you identify that fully as to what  
6 E-160 is?
- 7 A The lease agreement between Benavides Implement  
8 and Hardware and Plains Machinery concerning the  
9 two tractors we have discussed.
- 10 Q All right. And this is signed by what parties,  
11 Mr. Kurtz?
- 12 A Benavides Implement and Hardware, by R. M. Couling,  
13 and Plains Machinery by Ward M. Harrell.
- 14 Q And it states the owner of the Caterpillars are  
15 Benavides Implement and Hardware?
- 16 A Yes.
- 17 Q And can you identify this as being Mr. Harrell's  
18 signature?
- 19 A Yes.
- 20 Q Could you describe the other documents attached  
21 to it? Is this a part of the lease agreement, also?  
22 I believe the items that you were looking at there  
23 is a copy?
- 24 A Yes, this is a copy of the UCC-1.
- 25 Q The filing statement just introduced?

1 A Yes.

2 Q What is this?

3 A This is a recap sheet outlining the selling price  
4 and insurance and interest for the term of the  
5 contract.

6 Q Who prepared that paper that you are looking at  
7 there?

8 A Mr. Harrell had the secretary type it, he signed  
9 it.

10 Q And the next page?

11 A This is the insurance covering these two crawler  
12 tractors, insurance policies.

13 Q To Benavides Implement and Hardware?

14 A Yes, and signed by Mr. Harrell.

15 Q And finally, could you describe the last item?

16 A That is an invoice to Benavides Implement and  
17 Hardware.

18 MR. MITCHELL: Are we on a separate  
19 exhibit?

20 THE MASTER: It is all 160.

21 THE WITNESS: This is our invoice for  
22 the two tractors.

23 Q And this is a copy of the invoice you would keep  
24 in your files at Plains Machinery?

25 A Yes.



1 Q And the final page is what?

2 A That is the invoice covering the amount of the  
3 insurance.

4 MR. ODAM: We would offer in evidence  
5 the equipment and lease agreement on the  
6 Caterpillar tractor in question.

7 MR. MITCHELL: Our objection would be,  
8 irrelevant and immaterial, beyond the scope  
9 of the specifications in the amended or  
10 original notice of hearing and as to this  
11 client would be a question of surprise as  
12 to the relevancy of a lease between  
13 Benavides Implement and Hardware and Plains  
14 Machinery Company. We have no notice of  
15 relevancy of it.

16 THE MASTER: Your objection is overruled  
17 and Exhibit E-160 is admitted.

18 MR. ODAM: I believe we have no further  
19 questions of this witness, Your Honor.

20 MR. MITCHELL: May I have just one  
21 minute?

22 THE MASTER: Yes, sir.  
23  
24  
25

E X A M I N A T I O N

1  
2 BY MR. MITCHELL:  
3

4 Q Mr. Kurtz, my name is Arthur Mitchell, and I  
5 represent Judge Carrillo. I have not visited  
6 with you or met you before, have I?

7 A No, sir.

8 MR. MITCHELL: May I have marked,  
9 please, Mr. Reporter, these three documents.

10 (The above-mentioned documents were  
11 marked as Respondent's Exhibit 50 for  
12 identification.)  
13

14 MR. MITCHELL: May we also have these  
15 marked.

16 (The above-mentioned documents were  
17 marked as Respondent's Exhibits 51, 52, 53,  
18 and 54 for identification.)  
19  
20  
21  
22  
23  
24  
25

1 Q Mr. Kurtz, actually there were two transactions  
2 relating to the D8 Cat tractor 36A143?

3 A Yes.

4 Q Am I correct?

5 A Yes, sir.

6 Q And the one that you have told us about is one  
7 that occurred between your company, the Plains  
8 Machinery Company and the Benavides Implement and  
9 Hardware Company which occurred at the latter part,  
10 according to the documents, E-160, of 1972, and  
11 before you answer that, out of fairness to you,  
12 let me --

13 A Please.

14 Q -- hand you the Exhibit 160, and 159. You may  
15 refer to those, please, sir, if need be, to  
16 refresh your recollection.

17 (Handed to the witness.)  
18

19 A That is correct.

20 Q Yes, and they appear to be an installment sales  
21 contract from Plains Machinery Company with the  
22 supporting documentation for the sale of D8 Cat  
23 tractor and I believe the designation is 36A143,  
24 am I correct?

25 A Yes.

1 Q And 36A470?

2 A Yes, sir.

3 Q All right, sir. Now, do you have a record of  
4 the payments made by the Benavides Implement and  
5 Hardware to the Plains Machinery Company on account  
6 of the obligations arising out of this sale at  
7 the tail end of 1974?

8 THE MASTER: You said tail end of 74.

9 MR. MITCHELL: Yes, sir, the December,  
10 74 contract in order to distinguish it, one  
11 that occurred at a later date, Your Honor.

12 THE MASTER: All right.

13 A Now, we have, our records, our ledger sheet shows  
14 the payments we received from Benavides Hardware  
15 and Implement.

16 Q Now, isn't it a fact that a year or so later,  
17 Benavides Implement and Hardware defaulted and I  
18 believe that your company undertook to foreclose?

19 A Yes, we have.

20 Q And then, I will hand you now what has been marked  
21 as R-50 constituting three pages or three docu-  
22 ments, the security agreement, conditional sales  
23 notice of insurance and a promissory note signed  
24 by O. P. Carrillo and ask you if you recognize  
25 those documents. Do you recognize them, Mr. Kurtz?

1 A Yes, I recognize them.

2 Q Now, the documents reflected, I believe, in your  
3 Exhibit number 50, appear to be between Plains  
4 Implement Company, your company, and Judge O. P.  
5 Carrillo?

6 A Yes.

7 Q And are they not, from looking at them, agree-  
8 ments whereby Judge Carrillo purchases the same  
9 tractors that were previously sold to Benavides  
10 Implement and Hardware at the tail end of 1974,  
11 the identical Caterpillars?

12 A Yes, they are the same tractors.

13 Q Judge Carrillo, at the time that Exhibit 50 is  
14 indicated, came in and purchased those same  
15 tractors that had been repossessed by Plains,  
16 had he not, or took over the contract on them?

17 A Took over the contract, yes, sir.

18 Q And paid down, I believe, some -- well, read  
19 the figure, how much money did he pay down at  
20 that time, Mr. Kurtz. I'm talking about now at  
21 the time he came in there under --

22 A Well, the contract was reduced to the selling  
23 price of nineteen thousand six hundred and eighty-  
24 seven dollars, which did not include any interest.  
25 But -- had it reduced to approximately that

1 figure.

2 Q All right, now at the same time, that is the  
3 time that R--

4 MR. MITCHELL: Well, strike that, I  
5 want to be sure.

6 Q R-50, you recognize your signature on that?

7 A Yes.

8 O Signing for Plains, do you not?

9 A Yes.

10 MR. MITCHELL: Your Honor, we would  
11 like to offer R-50, if we might at this  
12 time, it would be Respondent's R-50.

13 MR. ODAM: Your Honor, we would have no  
14 objection to the offer of R-50 and take by  
15 the offer of this evidence, that this waives  
16 the objections of surprise to Article --  
17 specification number 12.

18 MR. MITCHELL: No, it would not, Your  
19 Honor. The fact of the matter is I did not  
20 know the pre-existing agreement and the  
21 reason of a plea of a surprise was I knew  
22 we had a contract for the purchase of those  
23 Caterpillar tractors and as the date reflected  
24 by the documents, there is no inter-relations.

25 THE MASTER: The Exhibit is admitted.

1 Q All right, now at the time the contract R-50 was  
2 entered into between Judge Carrillo and your  
3 company, I believe he gave a check, did he not,  
4 and I will hand you R-52 that you may refresh  
5 your recollection of six thousand dollars to  
6 Plains.

7 I will ask you in that connection, with that  
8 check, whether that check was given in connection  
9 with R-50, if you know, Mr. Kurtz. Do you know?

10 A Yes.

11 Q All right.

12 A Yes, it was.

13 Q All right, now, from the date of R-50, which  
14 appears to be May of 1974, Judge Carrillo has --  
15 has Judge Carrillo caused to be paid to your  
16 company the payment called for in the document  
17 R-50?

18 A He has, yes.

19 MR. MITCHELL: I would like to offer at  
20 this time R-52 which the witness identified  
21 as being the check given contemporaneous to  
22 R-50.

23 MR. ODAM: No objection to R-52.

24 THE MASTER: Admitted.

25 Q I'll hand you R-51, R-53 and R-54 and ask you,

1 they appear to be checks given to your company  
2 on account of the purchase of the Caterpillars  
3 reflected in R-50 for the various months since  
4 the R-50 is dated.

5 A Yes, they are paymentson this document here, this  
6 contract.

7 Q And R-50 is an agreement signed by Judge Carrillo  
8 individually with your company?

9 A Yes.

10 Q And the checks given and introduced as R-52, 53,  
11 51 and 54 are checks given by Judge Carrillo appar-  
12 ently relating to the purchase contract, R-50?

13 A Yes, it is.

14 Q All right, now the -- let me ask you about 160.

15 THE MASTER: What is the date of 160?

16 MR. MITCHELL: Your Honor, the date is  
17 December 14th, 1972.

18 THE MASTER: All right. You refer to  
19 it as a late 1974 transaction and that is  
20 when I interrupted.

21 MR. MITHELL: And Judge, you are correct,  
22 I meant late 1972. The Judge is correct and  
23 may I, at this time, have the record corrected,  
24 Your Honor, to reflect that E-160 was not  
25 a late 74 but a late 72 agreement?



1 THE MASTER: Yes, sir.

2 MR. MITCHELL: Thank you, Your Honor.

3 Q (By Mr. Mitchell:) Was the security agreement and  
4 the financing document, if you know, as shown in  
5 E-160, were they released at the time of the con-  
6 tracting agreement of R-50, at the time it was  
7 executed, do you know?

8 A Well, I just --

9 Q They appear to be on the same piece of equipment  
10 and E-50 might be, if I might describe it for you,  
11 for you recollection to answer my question, E-50  
12 has a security agreement on file, Plains Machinery  
13 by yourself and Judge Carrillo is the debtor.

14 A Which one is this?

15 Q This is the --

16 A Between this one --

17 Q Yes, R-50 is the May of 74.

18 A This may not have been released, I think this  
19 one has been released.

20 Q All right, and by this one, for the record, you  
21 are referring to the old agreement?

22 A The old agreement.

23 Q In R-160?

24 A E-160.

25 Q All right, you are right, it is -- I stand corrected,

1 it is E-160, you are right.

2 All right. now --

3 MR. MITCHELL: Strike that, may I have  
4 just a second, Your Honor?

5  
6 (Discussion off the record.)

7 Q May I ask you, not necessarily from the purpose  
8 of tomorrow, I understand you have a commitment,  
9 would you mind examining your records when you are  
10 excused by the court to get, if there are other  
11 checks paid by Judge Carrillo to the Plains  
12 Machinery Company on the contract, that have now  
13 been introduced by this Court as R number 50, if  
14 we don't have them all here, my client --

15 THE MASTER: He wouldn't have the checks,  
16 will he, Mr. Mitchell?

17 MR. MITCHELL: Evidently, he will have them.

18 THE MASTER: If he has negotiated them.

19 MR. MITCHELL: He will have the payments  
20 of the checks, Your Honor. My client informs  
21 me, Your Honor, we don't have some of the  
22 originals, they likewise have been scattered  
23 out and I would like to request of this wit-  
24 ness if he has some record of payments that  
25 perhaps is more accurately reflected by the

1 records, then I have reflected by the checks  
2 produced.

3 THE WITNESS: Mr. Mitchell, now, when  
4 we receive a check such as this --

5 Q Yes.

6 THE WITNESS: We have a cash deposit  
7 where we deposit that check in our bank.

8 Q I understand.

9 A Now, I can have my secretary go back and --

10 Q And check that?

11 A Give you the dates of our deposits.

12 Q All right. As a matter of fact, my client informs  
13 me -- maybe your recollection serves you as it  
14 serves him, and that is that there is some owed  
15 on it right now, I believe about three thousand  
16 dollars?

17 A Yes, there is the balance on this contract.

18 MR. MITCHELL: I would appreciate if  
19 the Court has no objection, and by requesting  
20 you to make inquiry of your secretary to  
21 make sure we have for the record all of the  
22 payments made by Judge Carrillo to your com-  
23 pany, pursuant to the contract that has been  
24 introduced as E-50, that would be sent  
25 May of 1972.

1 THE MASTER: R-50.

2 Q Do you understand my question?

3 A Yes, I understand the question.

4 MR. ODAM: Your Honor, on that point  
5 we have no objection to the introduction of  
6 these checks that are before the witness  
7 right now, these checks evidence the payment  
8 made on the Caterpillar by Judge O. P.  
9 Carrillo.

10 We would object to the introduction at  
11 a later time by Mr. Kurtz of his record.

12 As Mr. Mitchell well knows, the best  
13 evidence would be the payment, the checks  
14 themselves, and if Judge O. P. Carrillo wants  
15 to take the stand and testify as to the  
16 unavailability of those original checks and  
17 preserve that, to get around the best evi-  
18 dence rule, that could be met, but our objec-  
19 tion would be on the grounds of best evidence  
20 because the best evidence is those checks  
21 which Mr. Kurtz is looking at right now.

22 THE MASTER: But Mister -- I don't know  
23 that his records show who made the payments,  
24 but his records that payments have been made  
25 are admissible evidence.

1 MR. MITCHELL: And, Judge, I got in  
2 trouble trying to work around the witness'  
3 schedule. We have the checks, but we are  
4 not prepared for this witness.

5 The Judge has got to go back to his  
6 home tonight and pick them up. He can bring  
7 them, but I understand this gentlemen wants  
8 to be out of town tomorrow and I didn't want  
9 to call him back and, of course, the hour  
10 is late and I didn't want to skirt the best  
11 evidence rule and didn't intend to.

12 If I can have an understanding that we  
13 will just call him back, we will have the  
14 originals to authenticate and introduce.

15 THE MASTER: That may or may not be  
16 necessary. Get the checks up here and give  
17 them to Counsel and see.

18 MR. MITCHELL: Well, Mister -- I am  
19 sorry, Judge.

20 Q Mr. Kurtz, you do know Judge Carrillo has paid  
21 those, that he has paid on his personal account  
22 as indicated by some of those checks?

23 MR. MITCHELL: I have no further ques-  
24 tions of this witness, Judge Meyer.

25 MR. ODAM: We would -- we have no

1 further questions of this witness, Your  
2 Honor.

3 THE MASTER: Thank you, Mr. Kurtz, you  
4 are excused.

5 THE WITNESS: Thank you.

6 THE MASTER: Mr. Mitchell, you did not  
7 offer 51 and 53, if you did, I do not have  
8 it noted.

9 MR. AUFORTH: Your Honor, may the wit-  
10 ness be excused from any subpoena that he  
11 may be under for him to leave tomorrow?

12 THE MASTER: Yes, he is.

13 MR. AUFORTH: Thank you.

14 (Discussion off the record.)  
15

16 MR. ODAM: We have no objection to  
17 R-51 and 53.

18 MR. MITCHELL: I am sorry, it is R-54,  
19 John.

20 MR. ODAM: I have no objection to the  
21 original copy of these checks.

22 MR. MITCHELL: And, Your Honor, I want  
23 to call the Court's attention that some of  
24 them like this, like this one on R-54 is for  
25 two payments. In other words, John, did you

1 note that, that some of them are for two  
2 payments?

3 MR. ODAM: Yes, sir.

4 MR. MITCHELL: And we would like to  
5 have permission of the Court to withdraw the  
6 originals at such time as Counsel has had an  
7 opportunity to examine them or to cross-  
8 examine with them, with regard to them and  
9 substitute copies that we might have the  
10 originals for our records.

11 THE MASTER. Of course.

12 MR. MITCHELL: Thank you, Judge Meyers.

13 THE MASTER: And I guess we ought to  
14 recess now until tomorrow morning at eight  
15 thirty.

16 (Whereupon the hearing was in recess  
17 from 1:10 p.m., November 20th, 1975, until  
18 8:30 a.m. on November 21st, 1975.)  
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