

**INQUIRY CONCERNING A JUDGE
NO. 5**

DECEMBER 1, 1975

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BEFORE THE
STATE JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 5

DECEMBER 1, 1975

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

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1 THE MASTER: The record will reflect
2 that we have been in recess for a week. Mr.
3 Odam, you indicated a week ago that you were
4 close to finishing, but that you might have
5 something more. What is your situation at
6 this time?

7 MR. ODAM: Your Honor, I think that we
8 probably only have just two more witnesses
9 for very short testimony to authenticate some
10 documents.

11 THE MASTER: All right.

12 MR. ODAM: And it shouldn't take any
13 time at all when we get through with Mr.
14 Couling, we will call them and those are the
15 only two I can see, subject to whatever is
16 brought out on Mr. Couling's testimony.

17 THE MASTER: Mr. Mitchell.

18 MR. MITCHELL: Yes, Your Honor, we are
19 ready to proceed. Your Honor, with the cross-
20 examination of Mr. Couling. However, for the
21 continuity of the record, and to inform the
22 Court, I would like to offer for this record
23 a motion for leave to file petition for writs
24 of mandamus and prohibition and the petition
25 for writs of mandamus and prohibition that

1 were filed, applications for leave to file,
2 in the Supreme Court with the clerk of the
3 Supreme Court in Austin on the 26th and
4 order denying the application. Judge Meyers,
5 pursuant to a conversation with Judge Greenhill
6 on the format to follow:

7 That is, that they should be filed and
8 that counsel for the Examiner would be notified
9 as well as the Court if the Court had
10 made a determination to allow them to be
11 filed, otherwise, they would be summarily
12 dismissed, but I think for the purposes of
13 this record, if it please the Court, so that
14 there is a documentation of the motion for
15 leave to file as well as the petition itself,
16 with leave of the Court I would like to have
17 them marked and introduced at this level.

18 With that background statement, if the
19 Court cares to examine me, I would be glad
20 to answer whatever questions the Court has.

21 THE MASTER: No, I do not, I think to
22 put them in the record, if you wish to do so,
23 is appropriate, and I will ask the reporter
24 to mark them. I take it you are not offering
25 them for any truth, just to show that they

1 were filed and what they were.

2 MR. MITCHELL: Yes, Your Honor, I am
3 not offering them for any truth. As the
4 Court is well aware, there has been a problem
5 that was plaguing us from the very outset
6 on the question of handling these pre-trial
7 matters and I think the action of the Supreme
8 Court on this application helped to remove
9 that cloud.

10 THE MASTER: Incidentally, did the
11 Attorney General's office reply to that or
12 have occasion to do so?

13 MR. ODAM: No, sir, we did not reply.

14 MR. MITCHELL: Let me say to the record
15 on that also, Your Honor. I was informed that
16 the Attorney General would be contacted if
17 the Court had acted affirmatively on the
18 application for leave to file. I, of course,
19 offered to the Court, to make a copy available
20 to the Master as well as to the Attorney
21 General and was informed by the Court that
22 that would not be necessary but they would
23 follow the procedure if they had granted,
24 they would have called on the Attorney General
25 as well as the Master to make appropriate

1 replies, Judge.

2
3 (Marked for identification by the
4 reporter as Respondent's Exhibits R-55 and
5 R-56.)

6 MR. MITCHELL: Your Honor, with that
7 statement, we offer 55 and 56 for no eviden-
8 tiary value, and, of course, only to show
9 the procedures that have been followed before
10 the Master in connection with this --

11 THE MASTER: They are admitted for that
12 purpose. All right. Thank you, Mr. Mitchell.
13 I take it with this you are ready to go for-
14 ward?

15 MR. MITCHELL: Yes, sir.

16 THE MASTER: Mr. Odam indicated he has
17 a little bit more testimony.

18 MR. MITCHELL: All right, we are ready
19 to continue with leave of the Court the
20 cross-examination of Mr. Couling.

21 THE MASTER: Right. Would you bring in
22 Mr. Couling please.

23
24
25

1 RUDOLFO COULING,
2 recalled as a witness, having been previously sworn
3 testified upon his oath as follows, to-wit:
4

5 E X A M I N A T I O N
6

7 THE MASTER: Mr. Couling, you, of
8 course, were sworn earlier; you understand
9 you are still under oath?

10 THE WITNESS: Yes.

11 THE MASTER: Have a seat, please.
12

13 Q (By Mr. Mitchell) Now, Mr. Couling, I believe
14 you know me and I know you.

15 A Yes.

16 Q We have had the experience before of one
17 examining the other in connection with other
18 procedures, am I correct?

19 Let me ask you, Mr. Couling, and I have read
20 some of your testimony again heretofore in the
21 federal case as well as having made notes of
22 your testimony in this case, and I would like,
23 if I could, to clarify in my own mind for the
24 record your businesses.

25 So, my first series of questions I am going

1 to want to find out what business you're in now
2 and have been, and I will ask you some questions
3 concerning your businesses first; do you
4 understand that?

5 A Yes, sir.

6 Q First, I believe you testified last week that you
7 were in the cattle business presently.

8 A Yes, sir.

9 Q All right. Now, let's take the cattle business.
10 Do you have your own cattle?

11 A Yes, sir.

12 Q And how many head do you have at present,
13 Mr. Couling?

14 A About a hundred and twenty, sir.

15 Q All right, sir. And are they mixed? Are they
16 bulls and heifers; you raise calves?

17 A Yes, sir.

18 Q And are they raised for the purposes of selling
19 and putting them on the market?

20 A Yes, sir.

21 Q All right. And are they on rented or your own
22 land?

23 A They are on my wife's land, sir.

24 Q Land owned by your wife?

25 A Yes, sir.

1 Q And I believe your wife was Olivera?

2 A Yes, sir.

3 Q And what is her first name?

4 A Elvira.

5 Q Sir?

6 A Elvira.

7 THE MASTER: E-L-V-I-R-A.

8 THE WITNESS: Yes, sir.

9 Q (By Mr. Mitchell) How long have you been in the
10 cattle business, Mr. Couling?

11 A I believe around 1909 or sixty -- I don't recall
12 the exact date, but it was around '68 or '69.

13 Q And did you begin the business by purchasing
14 cattle at that time?

15 A Yes, sir.

16 Q And what type of cattle did you buy?

17 A Commercial cattle, sir, and I bought a few
18 registered Beefmasters.

19 Q All right. And did you intermix the Beefmasters
20 with the commercial?

21 A Yes, sir.

22 Q And were the Beefmasters the bulls?

23 A Yes, sir.

24 Q All right, sir. And I suppose that you made an
25 effort to raise the cattle at a profit from 1969 --

1 I believe you said you're still in the business,
2 so, that would be to date, is that correct?

3 A Yes, sir.

4 Q So, that would be 1969 to 1975, is that correct?

5 A Yes, sir.

6 Q And has that been always on your in-laws'
7 property?

8 A Yes, sir.

9 Q All right. And where is that property located,
10 sir?

11 A West of Benavides.

12 Q In Duval County?

13 A Yes, sir.

14 Q Benavides is how far from San Diego; do you know?

15 A About sixteen miles.

16 Q All right. And Benavides Independent School
17 District encompasses just the town of Benavides?

18 A No, it takes care of Freer.

19 Q How far is Freer from Benavides?

20 A About twenty-four miles.

21 Q All right. Now, you have, of course, reported
22 your income from the cattle on your tax return
23 since commencing the business sometime in 1969,
24 have you not?

25 A Yes, sir.

1 Q And you're continuing to report, and I believe
2 you stated that you're presently in the business,
3 and I would suppose that your 1975 return that
4 is filed in '76 will reflect appropriate
5 schedules showing the profit and/or loss from the
6 cattle business?

7 A Yes, sir.

8 Q All right. Now, are you presently in any other
9 business other than cattle business?

10 A No, sir.

11 Q Now, you have testified earlier, I believe, in
12 questions put to you in September 15th and 16th
13 as well as questions put to you last week that
14 you were also in the merchandising business?

15 A Yes, sir.

16 Q All right. Now, let me direct your attention,
17 please, to the merchandising business.

18 I believe you testified earlier that you
19 were at one time connected with Benavides Implement
20 and Hardware.

21 A Yes, sir.

22 Q And I believe your testimony -- and I am going
23 to rush through it, was that sometime in May of
24 1971 you entered into a partnership with Ramiro
25 Carrillo and to which partnership Judge O. P.

1 Carrillo was a secret or silent partner?

2 A That was my understanding, yes, sir.

3 MR. MITCHELL: All right. Now, Your
4 Honor, may I make -- and I know I don't have
5 to make this statement at this point in the
6 procedure -- but as the Court well knows,
7 we had a continuous objection to certain
8 testimony on direct and certainly my inquiry
9 on cross does not intend to waive those
10 objections and I know -- I would just like
11 the record to reflect it. We are going to
12 go into those matters without the intent.

13 Q (By Mr. Mitchell) I believe if I am correct and
14 if I am incorrect, you correct me, that the
15 agreement was entered into between you and Ramiro
16 Carrillo sometime in May of 1971 to operate a
17 business which was later known as the Benavides
18 Implement and Hardware.

19 A Yes, sir.

20 Q Was that your testimony?

21 A I guess it is.

22 Q That was your testimony before this court, I
23 believe, under oath?

24 A Yes.

25 Q It's the truth?

1 A Yes, sir.

2 Q Now, using that May, 1971 date as a beginning
3 point, had you operated a merchandise business
4 prior to May of 1971 either by yourself or with
5 other persons, Mr. Couling?

6 A It was temporarily open like I stated before on
7 weekends and just whenever somebody needed
8 something.

9 Q All right. Was that business under any other name
10 other than Benavides Implement and Hardware?
11 Specifically, did you ever do business in the name
12 of Olivera Implement and Hardware?

13 A Yes, sir.

14 Q Or Olivera Hardware?

15 A I believe we did, sir.

16 Q Olivera Hardware? Did you ever do business in
17 the name of Olivera Hardware?

18 A I can't recall exactly, but we did -- what we
19 call the business, I don't know. It was
20 temporarily -- the store was closed most of the
21 time, sir.

22 Q I don't quite understand you, sir. Did you do
23 business in the name of Olivera Hardware or did
24 you --

25 A I told you it was closed and we opened whenever

1 we needed something or somebody needed something.

2 Q So, your testimony is that you did do business in
3 the name of Olivera Hardware and that it was open
4 at such time that people made orders and those
5 orders had to be filled?

6 A Yes, sir.

7 Q And where was the location of that business?

8 A On the same place where the Benavides Implement
9 is right now, sir.

10 Q And what is that address, please?

11 A Benavides, Texas.

12 Q Can you be a little more specific?

13 A Well, there is no streets. As far as I know, I
14 don't know the street names.

15 Q All right.

16 A It's right on Main Street or North Main Street.

17 Q All right. Now, Olivera Hardware, was it engaged
18 in the sale of merchandise much in the same way
19 that Benavides Implement and Hardware was engaged?

20 A Well, when it was originally owned by my father-
21 in-law, it used to sell tractors.

22 Q All right. I was going to get to that. I
23 wondered if I might ask you this: Was the
24 business known as Olivera Hardware different
25 from the business known as Olivera Implement and

1 Hardware?

2 A I believe it was Olivera Implement. I don't know
3 what it was.

4 Q Well, as the record reflects, there are two
5 businesses, Olivera Hardware and Olivera Implement
6 and Hardware, and I am beginning to wonder, are
7 they one and the same or are they distinct
8 businesses?

9 A I believe they are one and the same. I don't
10 know.

11 Q You do not know or do you know?

12 A I don't know. I believe it was called Olivera
13 Hardware or Implement; I don't know.

14 Q Olivera was your father-in-law?

15 A Yes, sir.

16 Q And he had set up that business when?

17 A I don't know how long ago, sir.

18 Q Well, can you give us some approximation,
19 Mr. Couling? Was it in the fifties or the sixties?

20 A Well, it was somewhere in the early fifties, I
21 believe.

22 Q All right, sir. And your father-in-law actually
23 ran that business known as Olivera Hardware, did
24 he not?

25 A I don't know if it was Olivera Hardware or

- 1 Olivera Implement, sir. Yes, he ran it.
- 2 Q He ran it, is that correct?
- 3 A Yes, sir.
- 4 Q And sometime later I believe in the early sixties
5 he became blind, did he not?
- 6 A Yes, sir.
- 7 Q And you took over the operation of the business,
8 did you not?
- 9 A No, my wife did and her brother.
- 10 Q All right. So, is it a fair statement to say
11 that the Olivera Implement and Hardware that
12 commenced in the early fifties was actually your
13 father-in-law's business?
- 14 A Yes, sir.
- 15 Q And that that business was at the same location
16 that later was the location of the Benavides
17 Implement and Hardware Company; am I correct?
- 18 A Yes, sir.
- 19 Q And that the Olivera Implement and Hardware sold
20 feed, hay, parts, pipe, fencing, barbed wire,
21 Studebaker cars, tractors; is that a fair summary?
- 22 A I don't know about hay, sir, but it sold tractors
23 and cars, yes, sir.
- 24 Q And that was the business of Olivera Implement
25 and Hardware?

1 A Yes.

2 Q Did you own any interest in the Olivera Implement
3 and Hardware, Mr. Couling?

4 A No, sir.

5 Q Now, when did the Olivera -- when did you take
6 over the operation of the Olivera Implement and
7 Hardware, if you did?

8 A Well, we never did. Nobody took over. It stayed
9 there and whenever somebody needed something, if
10 I was available, I opened the store, and if my
11 brother-in-law was available, he opened the
12 store.

13 Q If your daddy-in-law was available, he would open
14 the store or your mother-in-law?

15 A Not after he was blind.

16 Q I believe you took over pretty well the operation
17 of the store after he became blind?

18 A No, sir, not completely, no, sir.

19 Q I believe those were the times that you had
20 commenced forging his names to checks payable to
21 the Olivera Implement and Hardware from the
22 Benavides Independent School District of which
23 you were the collector, am I correct?

24 A I don't recall the dates, sir. Can you specify
25 what dates you're talking about?

1 Q Well, you remember when your daddy-in-law became
2 blind and you commenced forging his name to checks,
3 don't you, and you testified to that quite clearly
4 within the last sixty days, did you not?

5 A Yes.

6 Q And I believe in 1962 was the time you testified
7 to earlier?

8 A I don't remember if it was '62, sir.

9 Q All right. We'll get back to that.

10 MR. ODAM: Your Honor, for purposes of
11 the question, the question could be more
12 specific. I don't believe this witness has
13 testified as to the forgery of any check.

14 MR. MITCHELL: I believe the objection
15 is well put. I kind of jumped the fence on
16 that. I withdraw that.

17 Q (By Mr. Mitchell) Let me ask you this, please,
18 Mr. Couling: The Olivera Implement and Hardware,
19 when did it last cease to do business? I mean
20 by that, when --

21 THE MASTER: Just a minute. Your
22 question was when did it last cease to do
23 business?

24 MR. MITCHELL: Yes.

25 THE MASTER: When it ceased to do

1 business or when it last did business? When
2 it last ceased to do business is an awfully
3 hard question.

4 Q (By Mr. Mitchell) You understand the Court's
5 explanation of my duplicitous question,
6 Mr. Couling. When did it last do business?

7 MR. MITCHELL: Thank you, Judge.

8 A Olivera Implement?

9 Q Yes.

10 A I can't recall offhand, if it was 1971 or before
11 or after. I don't recall exactly.

12 Q I don't want to be picky, but it becomes important
13 and I would ask you to give us your best
14 recollection on when it last did business. When
15 do you remember last using the name of Olivera
16 Implement or Hardware or having seen it used?

17 A I can't remember the exact date, sir.

18 Q We know that in May of 1971 it became Benavides
19 Implement and a partnership composed of O. P.
20 Carrillo and Ramiro Carrillo, according to your
21 testimony. So, using that as a reference point,
22 would you say your best recollection is that it
23 was used prior to May of 1971, Mr. Couling?

24 A It could have been. I cannot state clearly if it
25 was or not. I can't remember the exact date, sir.

1 Q Well, there are checks in the record here dated
2 in April of 1971, specifically E-57 and those
3 are payable to Benavides Implement and Hardware.
4 Let me show you that exhibit for the purpose of
5 refreshing your recollection of when perhaps --

6 A Yes, sir, it could have been around 1970 or --
7 I don't know, sir.

8 Q You don't know?

9 A No, sir.

10 Q Well, you recall, don't you, that -- well, strike
11 that.

12 Was it in existence in May of 1971 when the
13 Benavides Implement and Hardware business came
14 into existence?

15 A I don't remember, sir, if it was or not. I don't
16 remember.

17 Q As a matter of fact -- strike that.

18 Well, I am asking you. You still have one
19 more business that you were in. You were, I
20 believe, weren't you, a tax assessor-collector?

21 A Yes, sir.

22 Q All right. So, let me go into that. I want to
23 know -- that was for the Benavides Independent
24 School District, is that right?

25 A Yes, sir.

1 Q And is that an appointed position, Mr. Couling?

2 Is that an elected position?

3 A An appointed position.

4 Q And who does the appointment in Benavides?

5 A The school board.

6 Q When were you first appointed?

7 A Around 1962, sir.

8 Q And what was your capacity in 1962?

9 A I was tax collector for the school district.

10 Q And how long were you tax collector for the
11 school district?

12 A Up until 1975, sir, April.

13 Q And were you removed in 1975 or did you resign?

14 A I was removed, sir.

15 Q And who removed you?

16 A The school board, sir.

17 Q And that was after you had been indicted, what,
18 five or six times?

19 A No, sir.

20 Q How many times?

21 A It wasn't before -- it was before.

22 Q You were indicted prior to the time that you were
23 removed?

24 A No, sir, that was after, sir.

25 Q All right. Your duties as tax assessor-collector

1 from '62 to '75 were what, please, sir?

2 A To see that taxes were collected, sir.

3 Q And those taxes were those, I suppose, that were
4 levied by the Benavides Independent School
5 District?

6 A Yes, sir.

7 Q And did the tax assessor-collector of Benavides
8 have an office?

9 A Yes, sir.

10 Q And where was your office located during this
11 time?

12 A At the school grounds, sir.

13 Q And did the Benavides Independent School District
14 do business with Olivera Implement and Hardware
15 or Olivera Hardware?

16 A It used to, yes, sir.

1 Q Sold quite a -- or bought quite a few products,
2 commodities, merchandise from the Olivera Hard-
3 ware, wouldn't you say?

4 A Sometimes, yes, sir.

5 Q All right, and those sales occurred, of course,
6 during the time that you were the tax assessor-
7 collector, were they not, or did they not?

8 A They used to occur even before I was tax collector.

9 Q The removal, that is the board that removed you
10 was the board, I believe, was it not, that Judge
11 Carrillo named after the removal of the old
12 school board, was it not, Mr. Couling?

13 A Five of them were, sir.

14 Q Yes, the old school board was removed by petition
15 of the District Attorney down there in Duval
16 County and that new board that was -- that
17 replaced the old board is the board that fired
18 you, isn't that correct?

19 A That was my understanding, yes, sir.

20 Q And when was it that you were removed in '75?

21 A In April.

22 Q Now, in -- when did you appear before the House
23 committee, sub-committee, in Austin, was that in
24 May?

25 A Not that I recall, it was in May, no, sir, I don't

1 believe so.

2 Q When was it in 1975?

3 A I don't remember when it was, sir.

4 Q Had you been removed by then?

5 A Yes, sir.

6 Q And I believe you were asked many questions
7 and you were represented there by a -- by a
8 gentlemen out of the city of Houston, were you
9 not?

10 A Yes, sir.

11 Q Who was he?

12 A Mr. Charlie Orr.

13 Q Mr. Charles Orr I believe, who was working with
14 Mr. Marvin Foster in the representation of some
15 of the people called before that sub-committee?

16 A Yes, sir.

17 Q And I believe you pled what you had a right to
18 plead, the Fifth Amendment rights?

19 A Yes, sir.

20 Q And you were called upon to testify sometime in
21 the early part of this year in Austin concerning
22 the matters on the operation of the school board,
23 and you pled the Fifth Amendment there and you
24 were thereafter called to testify September 15th
25 and 16th in the -- of 75, before the federal

1 district court in the case of the United States
2 versus Ramiro and O. P. Carrillo, and you did
3 testify here in Corpus Christi in that trial,
4 did you not?

5 A Yes, sir.

6 Q And then you have also, of course, been called
7 upon and have testified here before the Master,
8 Judge Jim Meyers, am I correct?

9 A Yes, sir.

10 Q All right, the Benavides Independent School
11 District did business then with the Olivera Imple-
12 ment and Hardware, a business owned by you and your
13 in-laws during the time you were tax assessor-
14 collector, did it not?

15 A I guess so, yes, sir.

16 Q Well, you know as a matter of fact they did,
17 don't you, Mr. Couling. There has been ample
18 testimony that you, as a matter of fact, caused
19 to be issued checks in excess of a hundred thou-
20 sand dollars from the Benavides Independent
21 School District to the Olivera Hardware or the
22 Benavides Implement and Hardware Company?

23 A There were checks, but I don't remember the exact
24 amount.

25 Q As a matter of fact, you forged many checks, I

1 believe you forged the names on the fact of the
2 checks and I believe you forged your wife's name,
3 going from the Benavides Implement -- from the
4 Benavides Independent School District to the
5 Benavides Implement and Hardware Company or to
6 the Olvera Hardware Company?

7 A Yes, sir.

8 Q And I believe you forged Mr. Zertuche's name also
9 on some checks, did you not?

10 A I believe so, but I don't recall.

11 Q And I believe you forged other people's names
12 on checks from the Benavides Independent School
13 District to the Olvera Implement and Hardware,
14 is that correct?

15 A I don't know, if you can name and specify which
16 ones I can testify to them.

17 Q Yes, sir, there were quite a few of them if you
18 recall.

19 A I don't recall, if you will give me the names.

20 Q As a matter of fact, I went over them with you
21 in careful detail or Mr. Haynes did in the last
22 thirty or forty days, didn't we?

23 A They were the same checks, just repetition, there
24 were not a lot of them, sir.

25 Q There were also many checks you testified to that

1 while you were the tax assessor-collector with
2 the Benavides Implement -- I mean the Benavides
3 Independent School District, you forged the face
4 of the checks, you forged the payees of the checks
5 and cashed them and gave the money to Judge
6 Carrillo, you testified to that didn't you?

7 A Yes, sir.

8 Q That was in the federal trial, did you not, Mr.
9 Couling?

10 A Yes, sir.

11 Q And in that instance you testified, if I recall,
12 and I suppose it is a fact, that you cashed in
13 excess of twenty-one thousand dollars worth of
14 checks by forging the payee or the maker and just
15 handing the cash to Judge O. P. Carrillo. You
16 testified to that.

17 A I don't remember the exact amount, but I did
18 testify to that.

19 Q And you did that, I believe you were asked directly
20 at that time why you did it and you just did it
21 because you just liked him, I suppose. Why did
22 you do that?

23 A Repeat the question.

24 Q Why would you take and develop a scheme of forging
25 the face of checks and forging the payees of

1 checks and cashing those checks and handing the
2 money to Judge Carrillo? I am talking about now
3 prior to May of 71, and that is, I believe, was
4 your testimony.

5 A I believe I testified at that time every time I
6 did that I was ordered by O. P. Carrillo.

7 Q That's right, that was what I thought you testi-
8 fied to. It was at that time he had some order
9 that he had given you some order to forge a check
10 and you would proceed to forge the check, have
11 it issued, endorse it, cash it and deliver the
12 money to Judge Carrillo, is that correct?

13 A Yes, sir.

14 Q Now, that was prior to May of 1971, is that cor-
15 rect?

16 A I guess so, yes, sir.

17 Q Well, of course, during the time you were deal-
18 ing with Olivera Implement and Hardware, was it
19 not, Mr. Couling?

20 A I believe so, sir.

21 Q And in this trial you testified that in May of
22 1971 that the game changed, that is, that you and
23 O. P. Carrillo and Ramiro Carrillo entered into a
24 partnership known as the Benavides Implement and
25 Hardware and there you proceeded on the basis of

1 some false invoices to crank out money which was
2 given to the benefit of O. P. Carrillo, that has
3 been your testimony in this trial, hasn't it?

4 A Yes, sir.

5 Q So I would suppose that --

6 MR. ODAM: Your Honor, for the clarity
7 of the record, if the Court will recall the
8 testimony given by the partnership was
9 excluded and it is not the testimony and
10 that is not the evidence in this case as
11 to the partnership existing. I had asked if
12 he, O. P. Carrillo, had been a partner and
13 that was objected to on the grounds of hear-
14 say and I believe as Mr. Mitchell stated
15 that was sustained.

16 The only statements that were there-
17 after made by Mr. Couling were with respect
18 to the partnership -- with respect to the
19 partnership was on the bill of exceptions
20 so again for the purpose of this record,
21 there has not been established and is not
22 in evidence at this time that there was,
23 in fact, a partnership.

24 I do not object to the questions being
25 asked, but the questions are based upon

1 evidence that is not entered into and
2 admitted in a part of this record.

3 MR. MITCHELL: I am amazed that Counsel
4 would take a position that he has, Your
5 Honor. He hammered that point in highwise,
6 sidewise and edgewise and as I stated at the
7 outset, I didn't intend to waive my objec-
8 tion.

9 The witness has testified under oath
10 that there was a partnership and I think I
11 can touch on his credibility.

12 MR. ODAM: Again, just simply for the
13 purpose of the record, it is not the evidence
14 in the trial at this point, the objection is
15 not waived by Mr. Mitchell and I don't mind
16 the questions being asked, but again, it is
17 not evidence that there was a partnership.

18 THE MASTER: That is true. As I recall,
19 I had some possible reservations about that,
20 and I might change my ruling.

21 MR. ODAM: Yes, sir, that is right.

22 THE MASTER: And so this -- if I
23 change my ruling, then this is proper cross-
24 examination and if I do not, then it is
25 further development of the bill of exception.

1 MR. ODAM: That is correct.

2 THE MASTER: You may proceed, Mr.
3 Mitchell.

4 MR. MITCHELL: Thank you.

5 Q Mr. Couling, let's talk about that partnership.
6 Your testimony was under oath in this court that
7 the partnership was formed in the name of Benavides
8 Implement and Hardware in May of 1971. I believe
9 that has been established.

10 I will ask you, did you get a -- was there
11 any tax returns filed in the name of Benavides
12 Implement and Hardware specifically a form 1066
13 which you know to be a partnership return, show-
14 ing Ramiro and O. P. Carrillo as partners?

15 A No, sir, it was just a Benavides Implement and
16 Hardware Company.

17 Q I understand that. As a matter of fact, your
18 tax return filed with Uncle Sam shows the Bena-
19 vides Implement and Hardware being a sole proprie-
20 torship being owned by you?

21 A Yes, sir.

22 Q And the first time that you ever actually have
23 taken the position in any court anywhere that
24 this was a partnership between Ramiro Carrillo,
25 O. P. Carrillo and you was in this court in May

1 of 1971 doing business as Benavides Implement
2 and Hardware.

3 A I don't recall if I testified in federal court
4 or not.

5 THE MASTER: By last week, you mean
6 week before last.

7 MR. MITCHELL: I am sorry, Judge, week
8 before last.

9 Q Well, let's not worry about what you testified to,
10 let's direct our attention to the truth. The
11 truth of the matter is, according to your testi-
12 mony, there was a partnership in May of 1971
13 between O. P. Carrillo and Ramiro Carrillo and
14 you doing business as Benavides Implement and Hard-
15 ware. That is what you testified to under oath
16 week before last?

17 A Yes, sir.

18 Q Is that correct?

19 A Yes, sir.

20 Q And in September of 1971 when Mr. Haynes put the
21 same question to you --

22 THE MASTER: You said 71.

23 MR. MITCHELL: I stand corrected.

24 Q In September 17th, 1975, when the same question
25 was put to you by Mr. Haynes as to the ownership

1 of Benavides Implement and Hardware, you testified
2 it was then -- you testified then that you were
3 the sole owner and was up until 1971.

4 I will ask you if that question on page 5
5 of the federal proceeding wasn't put to you, "Now,
6 Mr. Couling, when did you become the sole owner
7 of Benavides Implement and Hardware". "I opened
8 the store in 1971", isn't that correct, and then
9 you were asked later on, "Do you at this very
10 moment own it", and you said, "No".

11 A I didn't own it any more, no, sir.

12 Q All right, now let me ask you this, you recall
13 testifying when Mr. Haynes put that very ques-
14 tion to you September the 17th of 1975 that you
15 were the sole owner of Benavides --

16 A It says there --

17 Q Excuse me, let me finish asking the question,
18 Mr. Couling, because I am going to have to ask
19 you some followup questions.

20 That you were the sole owner of Benavides
21 Implement and Hardware in 1971?

22 A And I answered in 1971 --

23 Q That you were the sole owner?

24 A I didn't answer if I was the sole owner.

25 Q What is the truth, were you the sole owner or not?

1 A No, sir, when we opened the store I testified that
2 me and Ramiro went to the bank and asked for a
3 loan of three thousand dollars.

4 Q You are testifying that the truth is it was a
5 partnership in May of 1971?

6 A Yes, sir.

7 Q And your testimony is that you did not testify
8 in federal -- in the federal trial that you were
9 the sole owner in 1971?

10 A No, sir, according to that transcript I said I
11 opened it in 1971, yes, sir.

12 Q Let's see if I can read this, you were asked read-
13 ing up here, "Benavides Implement and Hardware
14 Store belongs to you, doesn't it". That's the
15 question put to you by Mr. Haynes. "Yes, sir."

16 A Yes, sir.

17 Q And your answer was what?

18 A Yes, sir.

19 Q And it is what used to be Olivera Implement and
20 Hardware then?

21 A Yes, sir.

22 Q The question put to you by Mr. Haynes on the
23 17th day of September, the same building, the
24 same business, except the name is changed, isn't
25 that correct?

1 A Yes, sir.

2 Q And the answer was, "We changed some of the busi-
3 ness, yes, sir." And Mr. Haynes asked you then,
4 "Well, you still are selling feed and hay and
5 parts and pipe and fencing and barbed wire and
6 so forth, aren't you?" And your answer then was,
7 "Yes, sir."

8 A Yes, sir.

9 Q And you so answered today, did you not?

10 A Yes, sir.

11 Q The question put to you again, "That is the same
12 thing that Olivera was selling during the time
13 it was -- that it was the name of the business,"
14 and your answer there, "He used to sell tractors
15 and Studebaker cars then." And question, "Tractors
16 and Studebaker cars", and your answer there was,
17 "Yes."

18 A Yes, sir.

19 Q And again, question, "All right now, Mr. Couling,
20 when did you become the sole owner of the Bena-
21 vides Implement?"

22 A I didn't answer yes, I said I opened the store in
23 71.

24 Q All right, let's go right on through your testi-
25 mony, the answer to the question that was put to

1 you, "Benavides Implement and Hardware belongs
2 to you, does it", and you say, "Yes".

3 Now that doesn't -- that isn't inconsistent
4 with your position taken in this court?

5 A It doesn't say that it was in essence the sole
6 owner.

7 Q All right. Then I -- were you asked then, "When
8 you transfer the ownership of the Benavides
9 Implement and Hardware to Cleofus Gonzalez", and
10 you said what, two or three months ago?

11 A Two or three months ago, yes, sir.

12 Q All right, your testimony then was that you did
13 not then own the Benavides Implement and Hard-
14 ware Company any longer, isn't that correct?

15 A Two or three months, yes, sir.

16 Q You had sold it to Cleofus Gonzalez, the gentle-
17 man that preceded you on the stand here and I
18 believe has been on the stand three times?

19 A Yes, sir.

20 Q And that when Cleofus Gonzalez bought it, he
21 bought it under and agreement with you this
22 year, am I correct?

23 A Yes, sir.

24 Q And the agreement was to assume the outstanding
25 accounts due and payable?

1 A Yes, sir.

2 Q By the Benavides Implement and Hardware?

3 A Yes, sir.

4 Q And, of course, you accounted to your partners,
5 Mr. Ramiro Carrillo and O. P. Carrillo, an
6 accounting was made when you sold to Mr. Cleofus
7 Gonzalez?

8 A No, sir.

9 Q You did not, of course, file any tax returns
10 reflecting any Benavides Implement and Hardware
11 partnership at any time, in 71 or 72 would be the
12 first return, 73, 74, 75, have you?

13 A I just made the report at my own, sir.

14 Q That's right, and you did not, of course, have
15 a store license issued in the name of a partner-
16 ship that was Benavides Implement and Hardware,
17 but you as sole owner, isn't that correct?

18 A Yes, sir.

19 Q And there were never any disbursements made
20 to Ramiro Carrillo on a partnership account
21 that you can tell this court about under oath,
22 is that correct?

23 A What do you mean by disbursements?

24 Q Any payment made on account of a partnership
25 that Ramiro had you -- you never paid him anything

1 on account of a partnership?

2 A No, sir, whenever he needed a blank check, I
3 gave him a blank check. I don't know what he
4 did with them.

5 Q Do you have any partnership books as a matter of
6 fact?

7 A No, sir.

8 Q Mr. Couling, let me ask you this, who kept the
9 books for the Benavides Implement and Hardware
10 partnership?

11 A There was -- the books were kept in the store
12 by Lorenzo Garcia in 1973, I believe.

13 Q When did Lorenzo die?

14 A I can't tell you exactly, if it was late 73 or
15 74, I don't know the exact date, sir.

16 Q And you have the partnership books, of course?

17 A It was just the books of the store.

18 Q I'm talking about the partnership books.

19 A Just one set of books for the store on Benavides
20 Implement and Hardware Company.

21 Q Let me ask you this, back in September when you
22 were asked under oath about whether or not
23 Benavides Implement and Hardware was owned by
24 you, was it your intent at that time to testify
25 that it was owned by you individually or that it

1 was, in fact, a partnership?

2 A When we opened the store it was -- the understand-
3 ing between Ramiro and I it was a partnership,
4 sir.

5 Q Although you never did file a partnership tax
6 return?

7 A No, sir.

8 Q You never did give any accounting to your part-
9 ners?

10 A No, sir.

11 Q You never did -- incidentally, the only person
12 that ever drew on that bank account was you,
13 wasn't it?

14 A Yes, sir, except with the time whenever they
15 wanted a blank check, I gave them one.

16 Q All of the evidence shows that the checks were
17 all signed by you on Benavides Implement and
18 Hardware?

19 A Yes, sir.

20 Q What blank checks are you talking about that
21 you gave to Ramiro Carrillo?

22 A Some checks that he -- I believe there are two or
23 three checks that he made out to Charley Truck
24 Parts in San Antonio.

25 Q When did you and Mr. Cleofus Gonzalez make your

1 deal, your first deal?

2 A The only one we had was about two or three months
3 ago. I don't know if it was on the first of
4 June or July, I don't recall the exact date.

5 Q When he left the Farm and Ranch, Mr. Couling,
6 did he come over to your store and go to work
7 for the Benavides Implement and Hardware?

8 A He was working for the county, sir.

9 Q Yes, I understood he terminated his employment
10 with the Farm and Ranch sometime in 1974, am I
11 correct?

12 A I imagine it was 74, yes, sir.

13 Q And that is when he came over to your business
14 as the Benavides Implement and Hardware?

15 A Yes, sir.

16 Q He had a run-in with Judge O. P. Carrillo who
17 was a partner with the Farm and Ranch and had a
18 quarrel and left that business and came to your
19 store, isn't that correct?

20 A He came to my store, yes, sir.

21 Q Did you ever tell him if you had a fuss with
22 O. P. and Ramiro, you better not come to work
23 for me because they own this business, too?

24 A We didn't discuss that.

25 Q Certainly you didn't. As a matter of fact, O. P.

1 and Ramiro never did own Benavides Implement and
2 Hardware, did they?

3 A When we opened the store, Ramiro and I went to
4 the bank --

5 Q I know that, and as a matter of fact that is a
6 story you cooked up for this proceeding, they
7 never have owned it, O. P. and Ramiro Carrillo
8 never have owned that business?

9 A You can go check the bank.

10 Q Ramiro signed a lot of notes for you?

11 A No, sir.

12 Q You all have been close up to the time --

13 A That is the only notes that he signed for me.

14 Q You all were close up to the time you all removed --
15 up to the time you were removed as auditor for
16 the Benavides Independent School District, were
17 you not, up until the time you were removed?

18 A Repeat the question, what is it?

19 Q You all were close, you all were friends?

20 A Yes, sir.

21 Q And he has helped you on numerous occasions by
22 signing many notes?

23 A That is the only note he signed for me, sir.

24 Q All right. At any rate, Mr. Couling, so that the
25 record is accurately -- so that the record

1 accurately reflects the full scope of your testi-
2 mony, you made a deal with the state of Texas and
3 with the federal government to testify against
4 the Carrillos in the state proceedings and the
5 federal proceedings or any others in exchange for
6 a dismissal of those six indictments that you
7 would plead guilty to one and get probation on
8 it, isn't that correct?

9 A Five indictments, sir.

10 Q Yes, I am sorry, I didn't mean six, five. Isn't
11 that what the deal was that was made, you made
12 that deal in August, didn't you?

13 A I made the deal with the state, yes, sir.

14 Q All right, and part of the deal, your end of the
15 deal was that you would testify wherever they
16 wanted you to. am I correct?

17 A Yes, sir.

18 Q And a party to that deal or parties to that
19 deal were the District Attorney, Arnulfo Guerra
20 of Duval County, am I correct, the 229th Judicial
21 District?

22 A Yes, sir.

23 Q And also Mr. John Blanton, the Assistant Attorney
24 General of the State of Texas?

25 A Yes, sir.

1 Q The cousin of the folks that is representing the
2 Examiner in this case, the Attorney General repre-
3 senting -- the folks representing the Attorney
4 General here.

5 You have talked to Ms. Levatino, you have
6 talked to Mr. Odam, and you have talked to Max
7 Flusche, have you not?

8 A Yes, sir.

9 MR. MITCHELL: All right.

10
11 (Marked for identification by reporter
12 as Exhibit R-57.)

13 Q I hand you what has been marked as R-57 and ask
14 you if you recognize this instrument as being
15 signed by you?

16 A Yes, sir.

17 Q And I believe you recall seeing the original in
18 the federal court, being Exhibit 115 -- what is
19 that?

20 A 113.

21 Q That is 113, do you recall, Mr. Couling?

22 A Yes, sir.

23 Q It is signed by you and signed by Mr. Blanton
24 and signed by Mr. Guerra and I believe you testi-
25 mony is that you recognize those signatures?

1 O Yes, sir.

2
3 (Handed to counsel.)

4 MR. ODAM: Your Honor, the only
5 objection we would pose to R-57 is the
6 relevance of this document, the memorandum
7 of understand, it states in paragraph 4 that
8 Mr. Couling agrees to testify as a witness
9 for the State of Texas or the United States
10 of America under subpoena in any criminal
11 proceeding for which he is furnished informa-
12 tion or evidence under the provision of this
13 agreement.

14 I object on the grounds of relevancy.
15 He is not testifying pursuant to this memor-
16 andum. This is not a criminal proceeding.
17 I am sure Mr. Mitchell is going into it for
18 the purpose of impeaching the gentleman's
19 credibility.

20 Again, we would object on the grounds
21 of relevancy.

22 MR. ~~ODAM~~ ^{MITCHELL}: May I speak to that just
23 briefly, Your Honor?

24 THE MASTER: You don't need to, I
25 overrule the objection.

1 MR. MITCHELL: Thank you, I didn't
2 hear the Court.

3 THE MASTER: I just -- I hadn't ruled,
4 but I was prepared to. And Counsel is
5 correct, this goes to the credibility.

6 MR. MITCHELL: Yes, sir.

7 THE MASTER: And that is the only pur-
8 pose of the offer, isn't it?

9 MR. MITCHELL: That's right, Judge.

10 MR. ODAM: Your Honor, we would also --
11 I notice that the copy referred to in the
12 record, I believe it has a notation on the
13 bottom besides the R-57 and we would object
14 on the best evidence, it is obviously -- it
15 is obviously a xerox copy and we would
16 object on the grounds of best evidence.

17 MR. MITCHELL: I believe I laid the
18 predicate that the original was offered in
19 federal court and he said yes and I thought,
20 Your Honor, that would satisfy the best
21 evidence objection.

22 THE MASTER: Well, for the purpose of
23 the record, I think you ought to develop this
24 as a copy a little better.

25 MR. MITCHELL: All right, Judge.

1 Q In line with the instructions --

2 THE MASTER: Excuse me, Mr. Odam, I --
3 well, nothing, go ahead.

4 Q (By Mr. Mitchell:) Mr. Couling, in line with
5 the instructions by the Court, you recall that
6 the agreement which is R-57 in this procedure
7 was introduced on 9-11-75 as government's Exhibit
8 113 and you were questioned about it, I believe,
9 in the federal court, were you not?

10 A Yes, sir.

11 Q Now look at the signatures and see if you recall
12 that the very same agreement -- that this is the
13 very same agreement that is the original agree-
14 ment being produced, I believe, by yourself
15 through your lawyer, Mr. Lloyd, in the federal
16 court.

17 A The only signature that is readable is mine on
18 the top, sir.

19 Q And you recognize it as a copy to that agreement,
20 no doubt but that it is a copy of the original,
21 is it not, that was introduced in the federal
22 court and if you need an opportunity to read it,
23 we will take an opportunity for you to do so.

24 THE MASTER: Excuse me, Mr. Couling, did
25 you -- Mr. Couling?

1 A Yes, sir.

2 THE MASTER: Did you have a copy of
3 this agreement?

4 A Yes, sir.

5 THE MASTER: Where is your copy?

6 A My lawyer has it, Mr. Lloyd, sir.

7 THE MASTER: Was your copy the copy
8 that was introduced into evidence in federal
9 court?

10 A I can't say if it was or not, sir.

11 THE MASTER: You do not have your
12 copy?

13 A The original, no, sir, I don't have the original.

14 THE MASTER: Do you recognize that as
15 a xerox copy of the original albeit the
16 signatures are not as clear as they were
17 on the originals?

18 A They are not as clear as they were on the
19 original.

20 THE MASTER: Do you recognize it as
21 a copy?

22 A Yes, sir.

23 THE MASTER: It is admitted.

24 MR. MITCHELL: Go ahead and read it.

25 Mr. Couling, I want to ask you some questions
about it.

1 Q (By Mr. Mitchell) All right. You recognize
2 the agreement. As a matter of fact, it's a
3 contract or an agreement for your testimony both
4 as a witness in state procedures as well as
5 federal procedures to testify when called upon
6 by the State of Texas; am I correct?

7 A Yes, sir.

8 Q And you have -- I believe the record reflects,
9 after you have claimed your privilege
10 appropriately or as you had a right to do up in
11 Austin in the first part of the year that you
12 after the execution of this agreement in August
13 of 1975 did testify quite at length, I believe
14 for two days, September the 16th and 17th, did
15 you not, in the case of the United States versus
16 Ramiro and O. P. Carrillo; that was September 16th
17 and 17th of 1975, isn't that correct?

18 A Yes, sir.

19 Q Now, of course, the agreement R-57 states that
20 you would be given immunity from prosecution in
21 effect for every offense except perjury, isn't
22 that correct? That is, you had to testify
23 truthfully?

24 A Yes, sir.

25 Q Now, I am going to ask you with that in mind,

1 once again, did you or did you not testify here
2 under oath that a partnership came into
3 existence between you, Ramiro and O. P. Carrillo,
4 Mr. Couling, in May of 1971?

5 A Yes, sir.

6 Q Is that fact true?

7 A Yes, sir, it is.

8 Q I will ask you then again whether or not you
9 testified under oath in the federal court on the
10 16th or the 17th day of September of 1975 that
11 you were the sole owner of Benavides Implement
12 and Hardware in May of 1971?

13 A I am going to say that I didn't answer yes. All
14 I said was that we opened the store in 1971, yes.

15 Q Now, just a minute. Did you testify that you were
16 the sole owner of the Benavides Implement and
17 Hardware in May of 1971 on the 16th day or 17th
18 day of September of '75 in the U.S. v. O. P.
19 Carrillo and Ramiro Carrillo?

20 A If you read the answer, it doesn't say I said yes.
21 It says I opened the store in '71, yes.

22 Q I am asking you did you testify that you were the
23 sole owner of the Benavides Implement --

24 A The same answer. What it says in the transcription.

25 Q Then, I will ask you: Did you own the Benavides

1 Implement and Hardware as a sole proprietorship
2 in May of 1971 or did you not?

3 A We were partners, Ramiro and I and Mr. Carrillo,
4 sir.

5 Q Even though when you filed your tax return you
6 carried it as a sole proprietorship?

7 A Yes, sir.

8 Q And even though you have not maintained and cannot
9 produce any store license reflecting a partnership
10 in the operation of that business for any years
11 beginning May of '71 to date; am I correct?

12 A Yes.

13 Q And even though when you sold it to Cleofus
14 Gonzalez, you did not account to O. P. Carrillo
15 or Ramiro Carrillo for any proceeds of the sale
16 as partners or give them an accounting as
17 partners, am I correct?

18 A That's correct.

19 Q Your tax problems with Uncle Sam also disappeared
20 along about the first part of this year -- I am
21 sorry. Strike that.

22 Your tax problems with Uncle Sam also
23 disappeared in the latter part of 1975, did they
24 not?

25 A No, sir, I have still got an outstanding debt

1 with them, sir.

2 Q I know, but at one time you were under
3 investigation by the Criminal Investigating
4 Division of the I.R.S., were you not?

5 A I was under the understanding that I was, sir.

6 Q All right. And I will ask you when did the
7 criminal become civil?

8 A It was somewhere -- I can't specifically -- but
9 it was on the early part of 1975, sir.

10 Q All right. And at that time you were told, were
11 you not, by the special agent or the agents
12 involved, that your matter was no longer criminal
13 but had become civil?

14 A I got a letter to that effect, sir.

15 Q Right. And you were audited at that time and a
16 determination made that you owed in excess of
17 sixty thousand dollars in taxes, am I correct?

18 A That's correct, sir.

19 Q And the audit was of your businesses for what year,
20 your income for what year, Mr. Couling?

21 A 71-72, and I believe part of '73.

22 Q Right. And the tax audit reflected a deficiency
23 of in excess of sixty thousand dollars?

24 A Yes, sir.

25 Q And you made a deal that the criminal would no

1 longer be pursued and that you would pay twenty
2 thousand in cash and forty thousand deferred on
3 your civil liability, isn't that correct?

4 A No, sir, there was no deal made, no, sir.

5 Q Well, how much did you agree to pay them?

6 A Whatever they sent me -- for the amount they sent
7 me.

8 Q It was twenty thousand cash, wasn't it, Mr. Couling?

9 A It was twenty thousand for part of the years,
10 those taxes that were due.

11 Q And how much for th. balance?

12 A It was forty-nine -- I believe forty-nine
13 thousand.

14 Q All right. So, that it was actually somewhere in
15 the neighborhood of sixty-nine to seventy
16 thousand dollars that you were determined to owe
17 the federal government for the years 1970, '71,
18 '72?

19 A I don't believe '70. It was '71, '72 and '73.
20 I don't recall.

21 Q 1971 --

22 A I don't know if it was '70 or not.

23 Q All right. And as a matter of fact, as part of
24 that audit and part of the determination of that
25 liability, the Benavides Implement and Hardware

- 1 were audited, were they not?
- 2 A Would you repeat the question?
- 3 Q I say as part of the audit that resulted in the
4 deficiency being assessed against you in the
5 neighborhood of sixty-nine thousand dollars,
6 your cattle business was audited, was it not?
- 7 A The returns were all made together, sir.
- 8 Q Sure, your cattle business, correct?
- 9 A Right.
- 10 Q Your Benavides Implement and Hardware business?
- 11 A Yes, sir.
- 12 Q And your salary as the tax assessor-collector of
13 Benavides Independent School District, right?
- 14 A Yes, sir.
- 15 Q And at that time it was determined that you were
16 operating the Benavides Implement and Hardware as
17 a sole proprietorship and correctly entered it on
18 your Schedule C to Uncle Sam?
- 19 A I always report it, sir.
- 20 Q And that was the basis, was it not, or part of
21 the basis, Mr. Couling, for the determination of
22 the sixty-nine to seventy thousand dollars in
23 tax liabilities; am I correct?
- 24 A I don't understand your question, sir.
- 25 Q Well, did you tell the bureau representatives that

1 the Benavides Implement and Hardware was your
2 business and that you were reporting it as a
3 sole proprietorship correctly for those years on
4 a Schedule C on your 1040?

5 A They never asked me.

6 Q But they accepted it as correct and you represented
7 it as correct, didn't you, Mr. Couling?

8 A Yes.

9 Q And you did not at any time ever tell those folks
10 that O. P. and Ramiro Carrillo were partners and
11 you were incorrectly reporting that return for
12 the years '71, '72 and '73 on your 1040 form,
13 Schedule C rather than a 1066 partnership return?
14 You never did tell them that, did you,
15 Mr. Couling?

16 A No, sir.

17 Q And, of course, you are a smart enough man to know
18 that if you had a partnership and it was a fact
19 that you had one for the years 1971, '72 and '73,
20 and that there were two folks, Ramiro and O. P.
21 sharing in that partnership return or that income
22 from that partnership, that the effects of those
23 additional folks sharing would reduce the taxable
24 income to you on your 1040?

25 A I approached Ramiro several times and he told me

1 to make my own report.

2 Q And you did?

3 A Yes, sir.

4 Q And you, of course, signed those tax returns of
5 '71, '72 and '73; you signed on the bottom of
6 that 1040 return that that tax return was true
7 and correct under the penalties or perjury, did
8 you not?

9 A Yes, sir.

10 Q Now, when you got ready to sell the business to
11 Cleofus, I believe in September you told Mr. Haynes,
12 when he put the question to you that you did not
13 own the business, but that Cleofus owned it,
14 correct?

15 A Yes, sir.

16 Q I will ask you some questions about that
17 transaction.

18 First of all, I don't recall, but when did
19 you and Cleofus get together and under what --
20 the first of the year, let's get that out of the
21 way.

22 A I didn't talk to him about selling the business
23 until the latter part of May or June. I can't
24 say.

25 Q You misunderstood my question. I am sorry I did

1 not make myself clear, Mr. Couling.

2 I mean, when did you and he ever talk about
3 any kind of business?

4 A That was the only time.

5 Q And what year?

6 A 1975, sir.

7 Q All right. At that time he had terminated his
8 employment with the -- or association with the
9 Carrillos in the farm and ranch, is that correct?

10 A I imagine it was before that, sir.

11 Q All right. And as a matter of fact, he terminated
12 sometime in '74, in May, to be specific, did he
13 not?

14 A I am not sure, sir.

15 Q And he had terminated his connection with the
16 Zertuche General Store; you knew that, didn't you,
17 sometime in the latter part of 1970?

18 A I always saw him working at the farm and ranch.

19 Q I said you knew he had terminated his relationship
20 with the Zertuche Store in 1970?

21 A I can't testify to that.

22 Q Well, you sold goods to the Zertuche General
23 Store, did you not?

24 A Mr. --

25 MR. FLUSCHE: That question is

1 assuming a fact that is not in evidence.
2 There is no testimony that Zertuche even
3 existed.

4 MR. MITCHELL: He can testify, Your
5 Honor, I think, if permitted to ask the
6 question and answer, he will testify he not
7 only sold, but he forged the name of
8 Zertuche to --

9 THE MASTER: The objection is overruled.

10 MR. MITCHELL: Thank you, Judge Meyers.

11 THE WITNESS: Would you repeat the
12 question again?

13 Q (By Mr. Mitchell) You knew that Cleofus had
14 terminated his business or employment with
15 Zertuche General Store at the tail end of 1970,
16 did you not, Mr. Couling?

17 A I don't know.

18 Q Do you know when he terminated it?

19 A No, sir.

20 Q You knew, of course, there was a Zertuche Store
21 and that Cleofus ran the Zertuche Store, did you
22 not?

23 A No, sir.

24 Q You did not know -- strike that.

25 Then, as a matter of fact, didn't you

1 previously testify to questions put to you on
2 the 15th and 16th of September that you issued
3 checks to Zertuche General Store, and, in fact,
4 forged Zertuche General Store and Arturo
5 Zertuche's name to those checks and cashed those
6 checks and gave those to my clients, O. P.
7 Carrillo?

8 A Checks from the store, sir?

9 Q No. From the Benavides Independent School
10 District as the tax collector?

11 A Yes, sir.

12 Q So, you knew the Zertuche General Store existed,
13 did you not, Mr. Couling?

14 A By name, yes, sir.

15 Q And you knew that Cleofus had a connection with
16 it and had terminated that connection when he
17 approached you about getting in business with you?

18 A No, sir, I didn't know anything about Cleofus.

19 Q Did you know that he had terminated his
20 relationship with the farm and ranch partnership
21 owned by Judge Carrillo and Ramiro Carrillo?

22 A 1974, yes.

23 Q All right. Now, when he first approached you,
24 then, it was this year, 1975?

25 A Yes, sir.

1 Q And did you know that he had come to you from
2 the farm and ranch?

3 A 1975?

4 Q Yes.

5 A He was there already in 1974, sir.

6 Q Where?

7 A At the Benavides Implement.

8 Q Well, actually, that is what I had thought you
9 had previously testified, but you said today it
10 was '75.

11 A When we made the deal, sir,

12 Q Well, actually, he went to work in '74, didn't
13 he?

14 A He went to work for the county in '74, sir, and
15 moved to my offices over there at that store.

16 Q All right. Maybe my questions have not been
17 clear. Let me see if I can be sure that the
18 record is clear.

19 He left the farm and ranch and came to you
20 in 1974. By you I mean Benavides Implement and
21 Hardware.

22 A He was working for the county.

23 Q But he did come to work at the Benavides
24 Hardware --

25 A He was working for me, yes, sir.

1 Q All right. He was on the county payroll still,
2 Mr. Couling, when he came over to the Benavides
3 Implement?

4 A He was working with the Welfare Department
5 there.

6 Q That is the next question. He was actually a
7 welfare man and he would listen to folks that
8 needed welfare, make out the welfare applications
9 and send them to the proper authorities so they
10 could be given food and medicine and so forth?

11 A Well, I imagine, sir, that is what he was doing.

12 Q Now, when he came to your store, he was still
13 working for the county and you put him to work on
14 a commission basis?

15 A Yes, sir.

16 Q And that was in 1974?

17 A Yes, sir.

18 Q And can you tell us about what month, Mr. Couling?

19 A No, I can't specify what month it was, sir.

20 Q All right. And did he work in the store in '74?

21 A But he was -- his office was in the store, sir.

22 Q All right. Now, by that time, and that is by
23 1974 when he had come over there, all of this
24 business that you have previously testified to
25 about Judge Carrillo, all of this business as to

1 the dozer had been completed, isn't that correct?

2 A Yes, in 1974.

3 Q The last check is dated in this record, 1974,
4 mostly in '71, '72 and '73, am I correct?

5 A There might be a few '74's; I am not sure.

6 Q Cleofus came to you after the Carrillo-Parr split,
7 is that correct, did he not?

8 A Yes, sir

9 Q Cleofus came to you after the Parr-Carrillo split;
10 am I correct?

11 A Yes, sir.

12 Q You then apparently negotiated a sale of the
13 Benavides Implement and Hardware to him, did you
14 not?

15 A Not until this year, sir.

16 Q All right. But he worked on commission from '74
17 till 1975 for you, at which time you sold him the
18 business?

19 A Yes, sir.

20 Q All right. Now, let's talk about that just a
21 minute. First of all, when did you sell him the
22 business?

23 A I don't know if it was in June or July, sir.

24 Q Had you made your deal with the Bureau of Internal
25 Revenue before the payment of the roughly seventy

1 thousand or before that sale?

2 A Well, we had settled the taxes way before that.

3 Q Now, the sale did not, of course, carry with it
4 the sale of the business, did it? I mean -- I
5 am sorry. The sale of it did not carry with it
6 the sale of the building in which the business is
7 located?

8 A No, sir.

9 Q That is your in-laws' building?

10 A Yes, sir.

11 Q Do you charge him rent? Was that part of the
12 deal?

13 A Not right now, sir.

14 Q He is just there for nothing?

15 A Just there until it gets -- until he pays all of
16 the accounts that were outstanding.

17 Q What type of deal did you all strike in June or
18 July --

19 A Told him if he could take over and pay all that
20 was due from the store that had outstanding debts,
21 after he got through, then, we could come to an
22 agreement of how much he was going to pay me for
23 the business.

24 Q He was to go in there and -- well, how about the
25 inventory? What was going to happen to it?

1 A Well, he run in the inventory -- I mean he took
2 the inventory and subtracted from the amount of
3 inventory to the amount that was owed.

4 Q And pay you anything?

5 A No, sir.

6 Q How much did you get out of the sale of your
7 business? That is the Benavides Implement and
8 Hardware to Cleofus?

9 A Not a penny right now, sir.

10 Q What are you going to get?

11 A I don't know, sir.

12 Q Do you have any control over his business? Is
13 he drawing a salary or commission?

14 A Right now he is running on his own. He draws
15 checks and everything himself. I don't know what
16 he is doing right now.

17 Q Do you know whether or not the store license with
18 the comptroller's office of the State of Texas had
19 been changed to Cleofus Gonzalez's name?

20 A I don't believe you're required to have a store
21 license now, sir.

22 Q You don't know whether he has made any change?

23 A I don't believe you have to have a store license
24 now, sir.

25 Q All right. You don't know whether or not there

1 has been any change with the assumed named record
2 over there at the county clerk's office?

3 A No, sir, I don't know anything, sir.

4 Q You all just don't have a deal when all of this
5 is over you're going to go back in there and take
6 it over, are you?

7 A No, sir.

8 Q Is he still on the county payroll; do you know?

9 A I don't know.

10 Q Now, after the Parr-Carrillo split, not only did
11 Cleofus, who was a - who went from the Carrillos
12 to the Parr, but came over to the Benavides
13 Hardware. There was quite a few of the people
14 came over to the Benavides Hardware that were
15 Parr employees, the Chapa boys, who were Parr
16 people, Rudolfo and his brother Ruben working out
17 of that store?

18 A They were not working for me, no, sir.

19 Q I am not talking about working for you. I am
20 talking about working out of the store.

21 A No, sir, they have a shop in the back, sir.

22 Q They have a shop in the back of the building?

23 A Yes, sir.

24 Q What did they do at that shop in the back?

25 A I don't know, sir.

- 1 Q That would include Oscar Sanchez; isn't he over
2 there?
- 3 A Yes, sir.
- 4 Q And Vicente Chapa?
- 5 A Yes, sir.
- 6 Q And Francisco Ruiz?
- 7 A Yes, sir.
- 8 Q All a gathering place, really, for the Parr
9 people and the anti-Carrillo people; that is what
10 it amounts to, isn't it, sir?
- 11 A I don't know, sir. I very seldom visit the shop.
12 I don't know what goes on there.
- 13 Q You're sure that the folks names that I have
14 called off are all over there at the Benavides
15 Implement and Hardware?
- 16 A No, sir, not over there. They are in the back of
17 the shop, sir.
- 18 Q Are they conducting some character of lawful
19 business back there?
- 20 A I don't know.
- 21 Q Now, to summarize thus far, have you pled guilty
22 to any of these indictments under this agreement
23 in August?
- 24 A No, sir.
- 25 Q But you do expect if the State carries out its

1 part of the agreements, you carry out your part
2 that all of them will be dismissed except the one
3 to which you will plead for probation; am I
4 correct?

5 A That is what the agreement --

6 Q I am sorry. I didn't mean to -- were you
7 completed with your answer?

8 A I said that is what the agreement reads, sir.

9 Q That is what the agreement reads and that is what
10 you're going to request that they stand by; am I
11 correct, Mr. Couling?

12 A Yes, sir.

13 Q And, of course, in talking with the -- who did
14 you talk to before you came up here now?

15 A Where?

16 Q Did you talk to Mr. Blanton about your testimony
17 here?

18 A Not to Mr. Blanton, no, sir.

19 Q Did you talk to Mr. Odam?

20 A I talked to him when I got to Corpus.

21 Q And Miss Levatino, did you talk to her?

22 A I believe --

23 Q Who else did you talk to representing the
24 Attorney General's office about what your
25 testimony would be? Did you talk to Mr. Pipkin?

- 1 A No, sir.
- 2 Q Do you know Mr. Pipkin, the gentleman sitting
3 over there?
- 4 A No, sir.
- 5 Q Did you talk to Mr. Bob Flusche?
- 6 A Not about coming up here, no.
- 7 Q Who did you talk to? You had to have somebody --
8 you didn't just walk into the door, did you?
- 9 A No, sir, I was called and I came up here to
10 Mr. John Odam's room and that was all.
- 11 Q All right. And did he go over the record that
12 has been produced here and show you these checks
13 and -- who did that?
- 14 A Mr. Odam did, sir.
- 15 Q Did Mr. Odam talk to you about the deal that you
16 had struck with Mr. Blanton in August about
17 your testimony?
- 18 A I believe if I am not right -- it's the first
19 time he sees the records.
- 20 Q Your answer was that he did not talk to you about
21 the agreement that you had struck back in August?
- 22 A I don't remember if he asked me or not, sir.
- 23 Q But you're quite sure that you will not be
24 prosecuted but for one of those indictments, am
25 I correct?

1 A Well, according to the agreement.

2 Q The district attorney has assured you of that, has
3 he not, in writing and verbally, I am sure?

4 A (No response)

5 Q Has he assured you that the deal will be carried
6 out?

7 A Yes.

8 Q Has anybody told you, Mr. Couling, as part of
9 the deal you would be expected to testify in the
10 federal case on September the 15th and 16th that
11 you have done, and that you would be expected to
12 testify here?

13 A I didn't know about testifying here until I got --
14 until I was subpoenaed, sir.

15 Q Yes, I understood at the time they didn't expect
16 to call you, but were you told that part of that
17 agreement would include your testifying here?

18 A It states on the deal wherever I needed to testify,
19 I will testify.

20 Q In coming here you have carried out your end of
21 the bargain?

22 A Yes, sir.

23 Q The testimony that you have given here differs
24 from the testimony you gave in the federal court
25 involving the same people essentially, and I know

1 I am cutting across about two days testimony
2 over there and two days over here; was that over
3 there prior to May of 1971 you were caused to
4 cash checks drawn on the Benavides Independent
5 School District payable to various persons whose
6 names you forged and cashed those checks and gave
7 the money to Judge Carrillo?

8 A That was prior to 1971.

9 Q Yes. That was your testimony essentially in the
10 federal case.

11 A You have it there.

12 Q Yes, as you remember. Was it or not?

13 A I would like to read it so I can answer.

14 Q Well, isn't that essentially what you testified
15 to?

16 A I would like to see it, sir.

17 Q Your testimony is here beginning in May of '71
18 that through various schemes and devices
19 involving Cleofus or you or Lorenzo that you did
20 likewise cause checks to be issued directly to
21 Judge Carrillo in the amount reflected in Exhibit
22 57 through and including 159?

23 A I made those checks personally to O. P. Carrillo.

24 Q And the reason you did was that you testified,
25 as I recall here, that you were in the federal

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1 court, and you did it because he told you to do
2 it; am I correct? That is where Olivera Implement
3 and Hardware was concerned.

4 A Yes, sir.

5 Q And here you all did it because you were partners
6 in May of '71?

7 A No, sir, because he said he bought some tractors
8 and the money was coming from the county and for
9 me in turn to pay the check to him.

10 Q I understand that is what those checks were made
11 for. I will get to that later.

12 Did you testify that those earlier checks,
13 the checks, for example, in April of 1971 that
14 you made those checks because he was your
15 partner at that time?

16 A No, sir, because he needed -- said the money was
17 his because they were bills that were put through
18 the county for his own personal use.

19 Q As a matter of fact, Mr. Couling, the first
20 check, the very first check, E-57 is dated in
21 April of 1971, a full month prior to the time
22 you testified there was a partnership. I will
23 hand it to you to refresh your recollection.
24 That check is No. 4962, for a thousand and eight,
25 payable to Benavides Implement and Hardware;

1 isn't that correct?

2 A Yes, sir.

3 Q What is the date on it, April of '71; am I
4 reading it correctly?

5 A Yes, sir. There was a bill made by Cleofus at
6 their store.

7 Q It was a bill made -- a false bill made by Cleofus
8 Gonzalez, the man to whom you subsequently
9 employed and you sold your business for a check
10 issued to you in April of 1971, isn't that correct?

11 A Yes, sir.

12 Q You were not the partner; he wasn't your partner
13 in April of '71, was he, Mr. Couling?

14 A I can't say when we borrowed the money at the bank.
15 All I know, we opened the account at the bank in
16 May. Maybe we discussed that agreement on April
17 or March. I can't testify.

18 Q Now, you want to change your testimony and say
19 perhaps you entered into the agreement a little
20 earlier than May, Mr. Couling?

21 A All I say is we opened the account at the store
22 in May--

23 Q That is within twelve months. I want you to be --

24 A The check is for '71, too.

25 Q I understand. It's April of '71.

1 A Right.

2 Q And I have asked you probably ten different
3 times whether or not you formed a partnership in
4 May of '71 and you said yes, it was in May of '71
5 and Ramiro and you did it and O. P. was your
6 silent partner.

7 A Yes, sir.

8 Q Although you didn't report it on your income tax
9 that way and although you didn't file any other
10 evidence of it that you could tell us or produce,
11 but nevertheless, I agreed with you it was in
12 May?

13 A Yes.

14 Q Then, I asked you why in April of '71 you under-
15 took based upon false and fraudulent invoices
16 by Cleofus Gonzalez to pay O. P. Carrillo one
17 thousand and eight dollars.

18 A Well, those bills were made and taken to the
19 county and the checks were brought to me by Ramiro,
20 so, I don't know why they were done that way.

21 Q I am going to get into that.

22 Looking at 57, E-57 and 60 and 61 in
23 connection with Article 7, if it please the
24 Court.

25 Now, there is an invoice made in the hand

1 of Cleofus -- handwriting of Cleofus Gonzalez,
2 is it not; that would be E-60; am I correct?

3 A Yes, sir.

4 Q And that is on the invoice or form, order form
5 of Benavides Implement and Hardware?

6 A Yes, sir.

7 Q At a time when Cleofus Gonzalez was working for
8 the county, but was handling the business of
9 farm and ranch, am I correct?

10 A Yes, sir.

11 Q All right. Did you give Cleofus Gonzalez those
12 invoice forms of Benavides Implement and Hardware
13 on it?

14 A I don't know if O. P. or Ramiro picked them up
15 from my store or my office. I can't tell you
16 who picked them up.

17 Q That wasn't my question. My question was did you?

18 A No, sir, I didn't give them the invoices.

19 Q You did not give them the invoice?

20 A No, sir.

21 Q Can you tell this court how Mr. Gonzalez got the
22 invoice with your name on it? That is your
23 store name.

24 A I believe he picked -- I believe Ramiro or O. P.
25 picked them up from my office or from the store.

1 Q That invoice is March the 30th, 1971?

2 A Yes, sir.

3 Q Am I correct?

4 A Yes, sir.

5 Q According to your testimony there still wasn't
6 any kind of partnership agreement between O. P.,
7 Ramiro and you in March of '71. We agree on
8 that, don't we?

9 A I agreed that when I opened the store, officially
10 opened the store, Ramiro said he wanted to go
11 partnership with me.

12 Q That was in May of '71?

13 A That was when I went to the bank and we borrowed
14 the money, sir.

15 Q No, no, that is not good enough. In May of '71,
16 I believe you testified, and I need to get some-
17 thing firm here, that you entered into the
18 partnership agreement.

19 A That is when we went to the bank and borrowed the
20 money, sir.

21 Q I will ask you again. Was that the month you all
22 formed your partnership?

23 A I can't testify exactly if it was or if it was a
24 month before or a month after or what.

25 Q All right. So, now, you want to say now it was

1 either in April of '71 or June of '71?

2 A The only thing I can testify is that we went to
3 the bank on May and got the money.

4 Q And you formed your partnership at that time?

5 A That is when we borrowed the money, sir.

6 Q And is that when you considered that you had a
7 partnership deal, Mr. Couling? I have got to ask
8 you because you're the only person I can ask.

9 A The only answer I can give you, it could be before
10 or afterwards. That is the time we opened the
11 account.

12 Q At any rate, if it was May, you're, of course,
13 looking at an invoice drawn by Cleofus Gonzalez
14 in March?

15 A Yes, sir.

16 Q On Benavides Hardware printed order form, aren't
17 you?

18 A Yes, sir.

19 Q And you're looking at a fraudulent invoice on
20 which Check No. 4962 for a thousand and eight
21 dollars was issued to you, your business?

22 A Yes, sir.

23 Q Am I correct?

24 A Yes, sir.

25 Q At a time when it wasn't a partnership, am I

1 correct?

2 A I don't know about the time of the partnership.

3 I can't answer that.

4 Q It's April the 12th.

5 A I understand the date and everything, but I
6 cannot testify truly to when it was made, on
7 May or June or July, the agreement. I went to
8 the bank and borrowed the money on May.

9 Q Well, Uncle Sam never did find out about the
10 partnership because you never reported it as a
11 partnership?

12 A I never reported it because Ramiro told me to
13 report it on my own.

14 Q You did what Ramiro told you?

15 A Yes.

16 Q Now, the invoice, E-61, the statement, now, that
17 thing -- let me see if I can't get the original
18 on that.

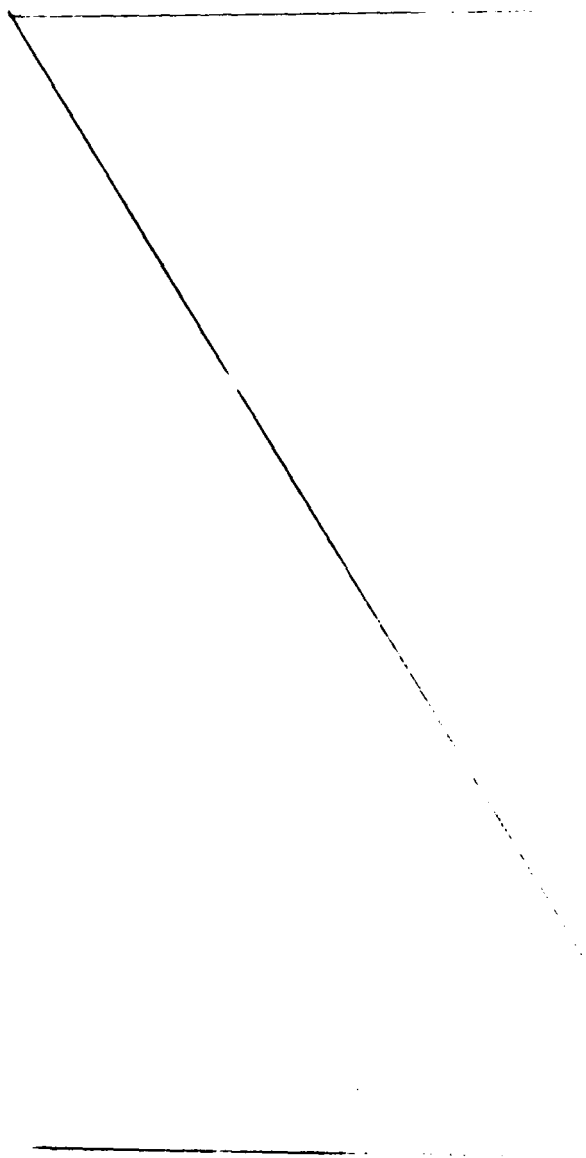
19 MR. MITCHELL: Excuse me, Your Honor.
20 I don't mean to have my back to the Court.
21 I am trying to find the original.

22 THE MASTER: I was wondering,
23 Mr. Mitchell, if you could fill in the
24 next -- well, we could recess five minutes
25 earlier and let you find it and let's do

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that. Let's be in recess until 10:15.

(Whereupon, a short recess was taken.)



1 THE MASTER: Mr. Mitchell, you may
2 proceed. You are looking for an Exhibit,
3 an original, and I presume you found it.

4 MR. MITCHELL: No, sir, but I will
5 proceed with a copy.

6 Q (By Mr. Mitchell:) Going back to the check, just
7 prior to our morning break which was E-57, the
8 check for one thousand and eight dollars payable
9 to Benavides Implement and Hardware on the 12th
10 day of April, 1971, that is the one you are hold-
11 ing in your lap, is it not, Mr. Couling?

12 A Yes, sir.

13 Q And it appears to have been endorsed Benavides
14 Implement and Hardware by R. M. Couling.

15 A Yes, sir.

16 Q Am I reading that correctly?

17 A Yes, sir.

18 Q All right, sir, and I believe your testimony was
19 that that check, that is E-57, was issued on the
20 basis of this E-60 which had been previously
21 identified to be an instrument on Benavides
22 Implement and Hardware. What do you call that,
23 an order form or invoice?

24 A That is an invoice sir.

25 Q Is that an invoice?

1 A Yes, sir.

2 Q So that the record reflects it is printed Benavides
3 Implement and Hardware Company dated March 30,
4 1971?

5 A Yes, sir.

6 Q Am I reading it correctly?

7 A Yes, sir.

8 Q That is E-60?

9 A Yes, sir.

10 Q That is Benavides Implement and Hardware Company
11 at a time when you were sole proprietor, I sup-
12 pose?

13 A I never did have a store license prior to 71,
14 sir.

15 Q Well, in March of 71, when E-60 was executed on
16 Benavides Implement and Hardware invoice form
17 printed Benavides Implement and Hardware was a
18 sole proprietorship owned by you, was it not?

19 A I don't know if it was, like I stated back -- if
20 it was temporarily opened or open part of the
21 time.

22 Q Well, I'll try one more time: was it owned by
23 you at the time that E-60 was executed, Mr.
24 Couling?

25 A There was no Benavides Implement and Hardware

1 owned by me, by myself, before that time, sir.

2 Q How about on the date that E-60 was executed,
3 did you own it by yourself at that time?

4 A No, sir, I don't remember if I owned it by myself
5 or not, sir.

6 Q You don't know who owned it?

7 A I just said I didn't own it by myself. I don't
8 know if I owned it by myself or not, s'r, I
9 don't remember, sir.

10 Q Did you own it at the time that you endorsed the
11 check in the name of Benavides Implement and
12 Hardware, which you are holding in your lap as
13 E-70?

14 A I don't remember if I owned it myself or not, sir.
15 I still don't remember.

16 Q The check is Benavides Implement and Hardware
17 Company, isn't it?

18 A Yes, sir.

19 Q And it is dated in April, April the 12th, 1971,
20 isn't it?

21 A That's correct, sir.

22 Q And it is endorsed?

23 A By me, sir.

24 Q And has a stamp Benavides Implement and Hardware?

25 A Yes, sir.

1 Q You had a rubber stamp that said Benavides Imple-
2 ment and Hardware by R. M. Couling, isn't that
3 correct?

4 A Just a rubber stamp as Benavides Implement and
5 Hardware Company, sir.

6 Q And you had a bank account Benavides Implement
7 and Hardware where you were the only one that
8 could write a check on that account, isn't that
9 correct, in April, 1971?

10 A According to this -- to these documents, yes, sir.

11 Q Well, according to your prior sworn testimony, Mr.
12 Couling, that check, your testimony was, as I
13 recall it, that you received the check, you deposited
14 it in your account and then you drew a check on
15 your account and gave it to O. P. Carrillo?

16 A Yes, sir.

17 Q My question to you is was the Benavides Implement
18 and Hardware at that time that that check was
19 written E-57 owned by you individually?

20 A I can't recall offhand, sir.

21 Q All right.

22 A If it was or not.

23 Q Was the Benavides Implement and Hardware owned
24 by you individually at the time that Cleofus
25 executed E-60 on Benavides Implement and Hardware

1 Company stationery?

2 A Still the same answer, sir.

3 Q You do not know?

4 A I cannot remember, sir.

5 Q As a matter of fact, Benavides Implement and
6 Hardware did business in 1969, did it not?

7 A I don't remember, sir.

8 Q As a matter of fact it did business in 1970 as
9 Benavides Implement and Hardware, R. M. Couling,
10 isn't that correct?

11 A I don't remember, sir. I would like to see some
12 bills from 1970 if I may.

13 Q Don't you -- you can't tell us that as a matter
14 of fact you issued checks from the -- in the
15 Benavides Independent School District to -- I
16 mean from the Benavides Independent School District
17 to the Benavides Implement and Hardware in 1970,
18 1971 and as a matter of fact endorsed them and
19 cashed them?

20 A I don't remember if it was Benavides or Olivera
21 Implement, sir.

22 Q Well, they were both of them -- you have already
23 told me that you recall doing it through Olivera
24 when you were tax assessor-collector with the
25 Benavides Independent School District. As a

1 matter of fact there were checks payable to Benavides
2 Implement and Hardware during the time you were
3 tax collector and prior to 1971, isn't that cor-
4 rect?

5 A I could have been when the store was opened and
6 closed most of the time.

7 Q And you testified under oath that you took those
8 checks and you would endorse them and cash them
9 in the name of Benavides Implement and Hardware,
10 that is Benavides Implement and Hardware was the
11 payee, didn't you, Mr. Couling?

12 A Didn't I endorse them?

13 Q Yes.

14 A I don't remember, as I say I don't remember if I
15 cashed them or deposited them in the bank.

16 Q At any rate, did you have any conversation with
17 Cleofus Gonzalez before he executed that invoice --

18 MR. MITCHELL: Strike that.

19 Q You know as a matter of fact that this invoice
20 E-60 was made the basis of a statement of claim,
21 do you not, presented to the county and upon
22 which a check was issued, the check being E-57,
23 is that correct?

24 A It was issued from this invoice, yes, sir.

25 Q And this invoice being E-60?

- 1 A Yes, sir.
- 2 Q And the claim jacket is E-64?
- 3 A Yes, sir.
- 4 Q You know that?
- 5 A Yes, sir.
- 6 Q All right, now I'll ask you some questions about
7 E-60 prior to the time that Cleofus Gonzalez
8 executed E-60, which you are holding in your lap,
9 which is an invoice on the printed invoice form of
10 Benavides Implement and Hardware, did you and he
11 talk?
- 12 A No, sir.
- 13 Q You had no conversation with him?
- 14 A Not about any business or bills or nothing, no,
15 sir.
- 16 Q Did you have any conversations with him about
17 E-60?
- 18 A No, sir.
- 19 Q When you got the check for the amount that E-60
20 was ordered for, that is E-70 -- which is E-57,
21 did you talk to Cleofus Gonzalez?
- 22 A No, sir, I talked to Mr. Ramiro Carrillo to see
23 what it was for.
- 24 Q My next question then, if you talked to Ramiro --
25 A Yes, sir.

1 Q In April of 1971 to determine what the thousand
2 and eight dollar check was issued for?

3 A Yes, sir.

4 Q And your testimony is that you had no dealings
5 with Cleofus Gonzalez prior to the issuance or
6 the execution of this invoice number E-60?

7 A No, sir.

8 Q All right, when did you talk to Mr. Ramiro
9 Carrillo?

10 A When he brought the check in, sir.

11 Q So that would have been sometime when?

12 A Sometime in April.

13 Q All right. And where was that conversation held?

14 A I believe it was in the tax office, sir.

15 Q Benavides, Texas?

16 A Yes, sir.

17 Q I'll show you E-61 and ask you if you recognize
18 it?

19 A Just a statement, sir.

20 Q Dated when?

21 A March the 30th, 1971.

22 Q All right. And it is addressed to whom?

23 A Duval County Precinct 2 in care of Juan Leal.

24 Q Right, isn't it a fact that you and Juan Leal,
25 the commissioner and Cleofus Gonzalez had a deal

1 made whereby you were going to rip the county
2 off for a thousand and eight dollars and that is
3 what these documents are?

4 A No, sir, I never talked to Mr. Juan Leal about
5 any dealings at all, sir.

6 Q All right, sir, so you deny prior to April that
7 is the date of the issuance of that check, having
8 any conversations with Juan Leal, am I right?

9 A I never talked to Juan Leal, sir.

10 Q And you deny having any conversations with Cleofus
11 Gonzalez?

12 A I never talked with him about this invoice, sir.

13 Q Although we know that 61 and 60 were executed in
14 the handwriting of Cleofus Gonzalez, isn't that
15 correct?

16 A Yes, sir.

17 Q On stationery that is in 60, at least that is
18 printed with your business name across the top,
19 isn't that correct?

20 A Yes, sir, with the exception of this statement,
21 sir.

22 Q 61, I'm going to get to that in a minute, but
23 let me get your answer to 60, it says Benavides
24 Implement and Hardware?

25 A Yes, sir.

1 O And that was your business, wasn't it?

2 A According to this bill, yes, sir.

3 Q All right, now, let's look at 61. It is an
4 invoice that has been obviously mutilated or cut
5 off, hasn't it?

6 A It looks like it, yes.

7 O Do you recognize it at all?

8 A Yes, sir.

9 Q On what -- tell us what it was without the top
10 cut off?

11 A I believe it was the Farm and Ranch store, I
12 believe, sir.

13 Q All right.

14 A I am not sure if it was the Farm and Ranch or
15 even if they had one of those invoices that they
16 had at Zertuche, I am not sure either way.

17 MR. MITCHELL: May I have just a
18 minute, Judge, to go over this.

19 (Discussion off the record.)
20

21 Q As a matter of fact, the invoice forms for the
22 Zertuche General Store and the Farm and Ranch
23 were the small size of the type of Benavides
24 Implement and Hardware, you know that?

25 A Which ones are you talking about?

- 1 Q The same size as the Benavides Implement and
2 Hardware?
- 3 A This one?
- 4 Q No, Zertuche General Store and Farm and Ranch
5 were the size of E-60, isn't that correct?
- 6 A I've got to see one, sir, I don't know if they
7 were wider or not, I don't know.
- 8 Q Your recollection is that it was E-61, the size
9 of E-61?
- 10 A No, sir, I didn't say it was the same size, I
11 don't know.
- 12 Q As a matter of fact, isn't that E-61 the Benavides --
13 I mean, Olivera Implement and Hardware invoice
14 with the ton cut off of it?
- 15 A No, sir, the Benavides Implement and Hardware
16 never did have no Whirlpool appliances or nothing,
17 sir.
- 18 Q The Olivera did not?
- 19 A Not Whirlpool appliances, no, sir.
- 20 Q As a matter of fact, you know that the Farm and
21 Ranch never did, don't you?
- 22 A I probably saw some stoves in there but I don't
23 know if they handled them.
- 24 Q Mr. Couling, I'm surprised to hear you say that.
25 You didn't know the Zertuche General Store existed

1 sir.

2 A I just know by paper, sir.

3 Q That's right.

4 A Just by paper.

5 Q But you did see some appliances that they owned?

6 A At the Farm and Ranch, sir.

7 Q All right, at any rate, so that the record here
8 is clear, your testimony is that you had no
9 conversation with Juan Leal, is that correct, sir?

10 A That is correct.

11 Q So that the record reflects who is Juan Leal?

12 A He is the county commissioner of Precinct 2.

13 Q And how long was he county commissioner?

14 A I don't recall, for a long time.

15 Q Let's be a little more specific. Was he commis-
16 sioner at the time that E-60 and 61 was --

17 A He was commissioner before that.

18 Q He was commissioner for a period of time in the
19 60's right on through the 70's, wasn't he, Mr.
20 Couling?

21 A I believe so, sir.

22 Q And you knew him well?

23 A I knew him, yes, sir.

24 Q He was from Benavides?

25 A No, from Conception.

1 Q I'm sorry, that's right, and that is why it was
2 addressed to him in Conception.

3 A It doesn't say Conception, it just says Duval
4 County Precinct Number 2, in Duval County.

5 Q Some of the others were addressed to him in Con-
6 ception?

7 A I don't remember seeing that.

8 Q Didn't you, as a matter of fact, execute that
9 invoice?

10 A Not this one.

11 Q But you had occasion to execute similar ones on
12 your stationery and your invoice forms?

13 A Yes, sir.

14 Q To him?

15 A Yes, sir.

16 Q But your testimony is here now as to these, so
17 I can move on, Juan Leal was, in fact, a truthful
18 figure, that is in existence?

19 A Yes, sir.

20 Q He was a commissioner?

21 A Yes, sir.

22 Q He was a friend of yours?

23 A Yes, sir.

24 Q And he lived at Conception?

25 A Yes, sir.

1 Q And you have known him for how long?

2 A Fifteen or twenty years.

3 Q All right, and your testimony is that you did
4 not have a conversation with Juan Leal prior to
5 the time that you received the check for the
6 Benavides Implement and Hardware, which is marked
7 as E-57?

8 A No, sir, I never did.

9 Q You had no conversation with Cleofus Gonzalez
10 before Cleofus executed E-60?

11 A No, sir.

12 Q Did you have a conversation with O. P. Carrillo
13 prior to the time that Cleofus Gonzalez executed
14 E-60?

15 A I don't remember, I don't know if I had a conver-
16 sation with him or Ramiro, I can't --

17 Q Did you recall having a conversation first with
18 Judge O. P. Carrillo prior to E-60?

19 A I still say I don't remember if it was him or
20 Ramiro, sir.

21 Q All right. All right, did you have one -- well,
22 can you tell us when the conversation was with
23 either him or Ramiro?

24 A When the day -- it was the day I got the check,
25 sir.

1 Q That would be in April of 1971?

2 A Yes, sir.

3 Q You didn't answer my question. My question was
4 did you have a conversation prior to March of 71
5 when E-60 was issued, Mr. Couling, the invoice?

6 A No, sir.

7 Q On the Benavides Implemment --

8 A No, sir, I didn't know anything on the invoice
9 until I got the check.

10 Q All right, fine. So your answer is you had no
11 conversation with O. P. Carrillo prior to March,
12 1971?

13 A I said I don't recall having a conversation. I
14 might have, and I might not have.

15 Q Well, if it was a swindle on the county and you
16 were a party and Judge Carrillo was a party, don't
17 you think you could remember if you had a conversa-
18 tion with him?

19 A I don't know.

20 Q Prior to the time that Cleofus put the document
21 into issuance in March or May?

22 A The only time I knew about it was when I got the
23 check.

24 Q All right, so you had no conversation with Judge
25 Carrillo prior to 1971?

1 A I don't remember.

2 Q And you had no conversation with Judge O. P.
3 Carrillo prior to the time he came to you in
4 April of 1971, according to your testimony?

5 A I don't remember, sir.

6 Q Isn't it a matter of fact, Mr. Couling, that
7 those documents, that is, 60, 61 and the check
8 57 was part of a deal that you had with Cleofus
9 Gonzalez in 1971 and Mr. Leal to get money with
10 which to pay debts and obligations you owed to
11 Judge Carrillo for buying some of those one
12 hundred and twenty cows?

13 A No, sir.

14 Q You did not buy some cattle from him?

15 A Yes, sir, and I borrowed the money from FHA in
16 San Diego, sir.

17 Q Just a minute, I'm going to ask you about that.
18 You bought five, ten, fifteen thousand dollars
19 worth of cattle: how many?

20 A I don't remember if it was seven or eight thou-
21 sand, or twelve, I don't remember, sir.

22 Q But you were buying cattle from Judge Carrillo
23 in 70 and 71?

24 A I bought eight or nine heifers from him.

25 Q How much, how much would you say, five thousand,

1 wouldn't you say or ten thousand?

2 A No, they were not -- I don't remember if I paid
3 three hundred and fifty dollars a piece or more,
4 I don't remember, sir.

5 Q But you don't remember how much -- do you have
6 cancelled checks showing what you paid for them?

7 A I believe I had one from the FHA account, sir.

8 Q From what account?

9 A From the Farm and Ranch -- from the farm account.

10 Q Your farm account?

11 A Yes, sir.

12 Q For how much?

13 A I don't remember, sir, the amount.

14 Q Mr. Couling, in each instance I believe you testi-
15 fied -- that is, for the first part of these
16 Exhibits going through from about 59 through 114
17 there would be an invoice drawn up and a check
18 issued, am I correct, such as -- much in the
19 same manner as E-57 that we were talking about
20 in April. That is about the way it worked on up
21 until the time you got to the Plains Machinery
22 transaction and you got your rentals on that,
23 isn't that correct? This deal going back to --
24 to the partnership?

25 A This check from the county to me and from me to

1 O. P.?

2 Q Right.

3 A Yes, sir.

4 Q All right, but we know that you were not partners
5 in May of 1971 when E-57 was issued to you?

6 A I don't recall, sir.

7 Q All right, sir. Now, let me show you for example,
8 E-114, and look at specifically what appears to
9 be claim Benavides Implement and Hardware a thou-
10 sand thirteen dollars, is it not, your check for
11 E-115, which appears to be a check for a thousand
12 and thirteen dollars payable to Benavides Imple-
13 ment and Hardware, that is July of 1973?

14 A Yes, sir.

15 Q Two years later?

16 A Yes, sir.

17 Q Am I correct?

18 A Yes, sir.

19 Q Do you recognize that endorsement as being your
20 endorsement for deposit only?

21 A Yes, sir.

22 Q Anything outstanding about that check payable
23 to Benavides Implement and Hardware? You were
24 Benavides Implement and Hardware, were you not?

25 A What do you mean outstanding?

1 Q Anything you can recall about it, anything you
2 can recall about what I am asking you about the
3 invoice that is for seven dollars and thirty cents
4 upon which that thousand dollar check was issued.
5 I wondered if you could -- if you hadn't previously
6 testified under oath that the check was based upon
7 the invoice if you can throw any light for my
8 benefit at any rate?

9 A No, sir, I can't tell unless I see an invoice to
10 cover the difference.

11 Q Obviously, the invoice doesn't go with the check,
12 does it?

13 A No, sir.

14 THE MASTER: What Exhibit is that?

15 MR. MITCHELL: That is 113A, Your
16 Honor, it is in tandem with 114 and 155.

17 Q Mr. Couling, beginning with Exhibit 57, I want
18 to run through these to be sure we understand.

19 THE MASTER: But you mean E-57.

20 MR. MITCHELL: Yes, sir, going back --

21 THE MASTER: There is not an R-57,

22 MR. MITCHELL: It is E-57, I'm going
23 back, Judge.

24 THE MASTER: I just want the record to
25 reflect correctly.

1 MR. MITCHELL: Yes, sir, it is E-57.

2 Q All right, going back now to E-57, and I am going
3 to show them to you and go through them with you,
4 and ask you certain questions about them.

5 MR. ODAM: Your Honor, if I might just
6 for my own clarification, referring to the
7 check in the amount of one thousand and
8 how much, one thousand --

9 THE MASTER: On 113A?

10 MR. MITCHELL: 113A, the invoice is
11 for seven dollars and thirty cents and the
12 check is for a thousand dollars and, John,
13 it might be just a mistake, if it is --

14 MR. ODAM: Did you have one for 113A
15 as seven dollars and thirty cents and 113B
16 as one thousand dollars -- one thousand and
17 six dollars?

18 MR. MITCHELL: No, I don't have that,
19 that is perhaps where the error is, Judge.

20 If you state there is a supporting one
21 that agrees with the face amount of the
22 check --

23 THE MASTER: Let me see.

24 MR. MITCHELL: Could I see it please,
25 John.

1 MR. ODAM: This should have been --

2 MR. MITCHELL: Yes, Your Honor, Counsel
3 has shown me 113B and that is a thousand
4 and six dollar check.

5 MS. LEVATINO: No, an invoice.

6 THE MASTER: No, it is not a check, it
7 is an invoice.

8 MR. ODAM: An invoice.

9 MR. MITCHELL: An invoice.

10 THE MASTER: For rental of equipment,
11 that is correct.

12 MR. MITCHELL: Right.

13 THE MASTER : The check is 115.

14 MR. MITCHELL: That's right, Your
15 Honor, 115.

16 THEMASTER: The check is for a thousand
17 thirteen dollars and thirty cents.

18 MR. ODAM: Yes, sir.

19 MR. MITCHELL: That is right, Judge.

20 MR. ODAM: E-115.

21 MR. MITCHELL: I did not have a record,
22 Your Honor, of E-113B.

23 THE MASTER: There is an A and a B
24 and there is a C.

25 MR. ODAM: Yes, sir, a C also.

1 MR. MITCHELL: Then the question is
2 unfair to the witness and I want to withdraw
3 it, Your Honor. The question is not fair to
4 the witness.

5 THE MASTER: All right, sir.

6 MR. MITCHELL: I asked him only about
7 113A which would obviously -- which obviously
8 did not include --

9 THE MASTER: It is not in -- is it not
10 attached to the Exhibit?

11 MR. MITCHELL: Yes, we found it, thank
12 you, Judge.

13 THE MASTER: All right.

14 Q (By Mr. Mitchell:) Now, Mr. Couling, with that
15 background, let me run through these various
16 Exhibits.

17 First of all, let's take -- I'm going to
18 repeat just a bit here at the beginning.

19 (Discussion off the record.)
20

21 Q Now, as I understand your testimony about the
22 transaction represented in E-57, which I now
23 hand you, and the invoices supporting it, that
24 the -- there was simply just no work performed
25 for the amount of that check in the amount of

1 one thousand and eight dollars by your business,

2 Benavides Implement and Hardware, am I correct?

3 A I would like to see the invoice for it, sir.

4 Q That would be E-60 and E-61, E-60, could you read
5 that, what does it say?

6 A Contract on fencing county roads and -- I don't
7 know the last part, sir.

8 Q All right, but at any rate, is it your testimony
9 that E-60 which is the Benavides Implement and
10 Hardware Company invoice simply is false?

11 A Yes, sir.

12 Q That the recital is false about the work done,
13 the price is false, is that correct?

14 A Yes, sir.

15 Q And, is it your testimony that E-61 just didn't
16 exist also, that is false?

17 A Yes, sir.

18 Q And it was -- but Juan Leal does exist?

19 A Yes, sir.

20 Q And, of course, Duval County Precinct Number 2
21 did exist?

22 A Yes, sir.

23 Q But it is based on a false invoice?

24 A Yes, sir.

25 Q And that, therefore, the check which was payable

1 to you and deposited by you would be false insofar
2 as it undertook to perform work under the claim
3 number B-911?

4 A Yes, sir.

5 Q Is that correct?

6 A Yes, sir.

7 Q It just ain't so?

8 A It ain't so, sir.

9 Q All right. I hand you what is marked as E-62
10 and E-63, which appear to be --

11 MR. MITCHELL: They are in connection
12 with Article Roman 3, Your Honor.

13 Q A check number B -- number code 229, a thousand
14 and eighteen sixty-five. I hand those to you
15 and ask you in -- now, E-63 appears to be in the
16 name of -- I mean in the handwriting of Cleofus
17 Gonzalez, isn't that right, Mr. Couling?

18 A It looks like it.

19 Q It is addressed to Mr. Leal?

20 A Yes, sir.

21 Q And it is on Benavides Implement and Hardware,
22 is that correct?

23 A Yes, sir.

24 Q And what is it for?

25 A It says rental on equipment and contract hauling

1 caliche for county roads.

2 Q All right. Now, is it your testimony that that
3 is false?

4 A Yes, sir.

5 Q And that was executed in June of 1971?

6 A Yes, sir.

7 Q June 30th, am I correct?

8 A Yes, sir.

9 Q And is it your testimony that E-62 which is
10 Benavides Implement and Hardware Company written
11 in the top, for a thousand eighteen sixty-five,
12 that is also false?

13 A Yes, sir, that is the same thing that the state-
14 ment over here, that is the bill and this is the
15 statement.

16 Q All right, and that is the claim of Benavides
17 Implement and Hardware, which is you, submitted
18 to the county, which is false?

19 A Yes, sir.

20 Q And that the check issued just shouldn't have
21 been issued, is that correct, which would be
22 this Exhibit E-68?

23 A Well, it was issued for work not performed, sir.

24 Q All right, but you did deposit in your bank
25 account?

1 A Yes, sir.

2 Q But none of the supporting documents are true
3 and correct, is that correct?

4 A They were never -- the work was never performed,
5 sir.

6 Q I understand. I will hand you now E-71 and ask
7 you the same, and it is your testimony under oath
8 that this -- to this Court that is that E-71
9 which is again printed on -- what, Benavides
10 Implement and Hardware invoice, am I correct?

11 A Yes, sir, that is correct.

12 Q Incidentally, did it maintain a post office box
13 drawer in Benavides, Texas?

14 A Yes, sir.

15 Q 78341?

16 A Yes, sir.

17 Q And it handled hardware, janitor supplies, cement,
18 auto parts, paint, tires, complete ranch and farm
19 supplies?

20 A Yes, sir.

21 Q That was Benavides Implement and Hardware, right?

22 A They handled a few tires, one in a while.

23 Q You printed them up?

24 A Yes, sir.

25 Q You printed the invoices in E-71?

1 A Yes, sir.

2 Q And when did you print them up?

3 A I don't remember, sir.

4 Q 71, 69?

5 A I don't remember what year it was.

6 Q Well, you did have them in 70?

7 A I can't recall, sir.

8 Q You had them in 71, in the early part of 71?

9 A I saw some in 71, yes, sir.

10 Q Sure you did, you saw some as early as March
11 and February of 71, we know you had them then,
12 didn't we?

13 A Yes, sir.

14 Q You are not saying Mr. Carrillo printed them up,
15 are you?

16 A No, sir.

17 Q You did print them up?

18 A Yes, sir.

19 Q And you don't know how they got to Cleofus?

20 A I told you who took them over there already.

21 Q You didn't get with Cleofus and hand them to
22 him?

23 A No, sir.

24 Q And tell him what to put in them?

25 A No, sir.

1 Q But insofar as your store is concerned, in
2 August of 1971 the -- this rental equipment
3 invoice was false?

4 A Yes, sir.

5 Q And you knew it was false?

6 A I knew after I seen the bills, the checks and
7 asked him what it was for.

8 Q All right. And you got the check?

9 A Yes, sir.

10 Q And you deposited the check E-74, am I correct?

11 A Yes, sir.

12 Q And that is your stamp?

13 A Yes, sir.

14 Q On the back of the check?

15 A Yes, sir.

16 Q Am I correct?

17 A Yes, sir.

18 Q All right. Now, I'll show you -- I will show
19 you a check E-75 for seven hundred dollars to
20 O. P. Carrillo from you.

21 MR. MITCHELL: That is in connection
22 with Article 9, Your Honor.

23 Q And E-71, that is just previously asked of you,
24 and E-72, you see that check, don't you?

25 A Yes, sir.

1 Q It has got a notation in the corner that says
2 what?

3 A Rent on trucks, sir.

4 Q So that when you made that check to Judge O. P.
5 Carrillo you put down in the lower lefthand
6 corner seven hundred dollars and you labeled it
7 rent on truck?

8 A Yes, sir.

9 Q And that, of course, was to indicate in the proper
10 space provided for on the check what the purpose
11 of the check was for?

12 A Yes, sir.

13 Q But it was false?

14 A Yes, sir.

15 Q There was no truck that you rented?

16 A No, sir.

17 Q The Judge owned no truck which you rented?

18 A Not that I know, sir.

19 Q Now, the Judge had no truck which you rented to
20 the county?

21 A No, sir.

22 Q Now you know that you have done that on numerous
23 occasions, don't you, Mr. Couling?

24 A What, sir?

25 Q Took Judge Carrillo's equipment that he made

1 available to you that you and Benavides Implement
2 and Hardware Company rented for a fee?

3 A No, sir.

4 Q It is just not so?

5 A No, sir.

6 O Well, Judge had some drilling rigs, too, didn't
7 he?

8 A I don't know.

9 Q A drilling rig?

10 A I don't know if they had one or not. There was
11 one in Benavides and I don't know if it was his
12 or the county's.

13 Q You don't know as a matter of fact that he owned
14 trucks that were rented?

15 A No, sir.

16 Q You also know he had some caliche that you sold
17 to the county for him?

18 A No, sir.

19 Q He did own caliche pits, didn't he?

20 A Yes, sir.

21 Q And your testimony is that by the prior check
22 that was labeled for caliche that Judge Carrillo --
23 that you got an order from the county for the
24 caliche and sold the caliche and it was Judge
25 Carrillo's caliche and your check to him was the

- 1 remittance for the payment of that caliche?
- 2 A No, sir. The caliche -- I don't believe O. P.
- 3 Carrillo sold any caliche to the county.
- 4 Q At any rate, you told us under oath it was false?
- 5 A Yes, sir.
- 6 Q That the notation was false?
- 7 A Yes, sir.
- 8 Q And the check by you that was written by you to
- 9 him which is Exhibit Number 75 is false?
- 10 A It was money that was issued against the check
- 11 for the county that he wanted.
- 12 Q I understand, but the recitals I'm talking about
- 13 what you wrote on there was false?
- 14 A Yes, sir.
- 15 Q Just wasn't so, and then also let's look at
- 16 E-76, what did you write on that?
- 17 A Rent, sir.
- 18 Q That is check number -- that is your check Octo-
- 19 ber of 71?
- 20 A For three hundred and six dollars.
- 21 Q Three hundred and six dollars, it says O. P.
- 22 Carrillo. is that correct?
- 23 A Yes, sir.
- 24 Q Did you write that?
- 25 A Yes, sir.

1 Q You did write it for three hundred and six
2 dollars?

3 A Yes, sir.

4 Q But when you put rent in there that is just
5 false?

6 A Yes, sir.

7 Q There was no rent?

8 A No, sir.

9 Q You weren't paying him back for renting -- for
10 equipment of his that you rented to the county?

11 A No, sir.

12 Q Or to the Benavides Independent School District?

13 A No, sir.

14 Q But you are quite sure that you deposited a
15 thousand and six dollars and the three hundred
16 and twelve sixty in your account?

17 A Yes, sir.

18 Q I show you now an Exhibit number 80, which is a
19 check 995 and one thousand and one hundred and
20 eighty-six dollars payable to Benavides Implement
21 and Hardware. Do you see that, Mr. Couling, and
22 the endorsement to Benavides Implement and Hard-
23 ware, am I correct?

24 I'll ask you some questions about it, that
25 is these two here, Mr. Couling.

1 (Handed to the witness.)

2

3 A This is the one here.

4 Q That is the 995?

5 A Yes, sir.

6 Q All right. Now, let me turn here please, sir,
7 if I might, now looking at E-78, it appears to
8 be again a Benavides Implement and Hardware invoice
9 dated October of 1971 for nine hundred and ninety-
10 five dollars and it is for what?

11 A Rental of equipment in county, on county roads,
12 and hauling caliche, sir.

13 Q All right, now, is it your testimony under oath
14 that that recital just is false?

15 A Yes, sir.

16 Q There was no rental of any equipment by Benavides
17 Implement and Hardware to the county?

18 A No, sir.

19 Q And that -- you had no conversation with Cleofus
20 Gonzalez prior to the time of that invoice?

21 A No, sir.

22 Q You had none with Juan Leal?

23 A No, sir.

24 Q Did you have any with O. P. Carrillo?

25 A Not that I remember, sir.

1 Q Did you have any with Ramiro Carrillo prior to
2 the issuance of that invoice?

3 A I can't recall offhand. I might have, and I
4 might have not, I don't know.

5 Q Did you have -- let me go back to the previous
6 one I had asked you about, had you had any conver-
7 sation with Juan Leal on the issuance of the
8 one I just got through asking you about?

9 A No.

10 Q That is E-71?

11 A I never had any conversation with Juan Leal at
12 all, sir.

13 Q Did you have any with O. P. Carrillo?

14 A Most of the time it was with Ramiro.

15 Q The answer to my question would be you did or
16 did not have any conversation with Judge Carrillo,
17 sir?

18 A I don't remember, sir.

19 Q All right. Can you give this court any conver-
20 sation specifically that you had with O. P.
21 Carrillo prior to the issuance of E-78 or any
22 of those, Mr. Couling, and let's be abundantly
23 clear about that, this invoice E-78?

24 A I don't remember, sir.

25 Q All right, and you were -- would you say without

1 being argumentative that if you had one about
2 it or the details of it you would remember it
3 so you could tell us?

4 A Yes, sir.

5 Q All right, but that it is in the handwriting of
6 Cleofus Gonzalez, am I correct?

7 A Yes, sir.

8 Q A man who at that time was working for the
9 county at two hundred and twenty-five dollars a
10 month, am I correct?

11 A I don't know his salary, sir.

12 Q At Farm and Ranch location, is that correct?

13 A Yes, sir.

14 Q Just handling the Farm and Ranch and Arturo
15 Zertuche General Store?

16 A I don't know, sir.

17 Q And three years before he bought your business --
18 four years before he bought your business, is
19 that correct?

20 A Yes.

21 Q All right, for nothing?

22 A He is supposed to pay whenever he gets through
23 settling the account --

24 Q I know, but he didn't give you a dime, did he?

25 A No, sir.

1 Q And certainly didn't give your partners any dime,
2 did he?

3 A No, sir.

4 Q Looking now at E-79 which appears to be again
5 Benavides Implement and Hardware, it is a state-
6 ment that is back to back to the claims?

7 A Yes, sir.

8 Q And it says October 29th, 71, invoice number 25⁰,
9 am I correct?

10 A Yes, sir.

11 Q It just ain't so either, it is false?

12 A Well, it represents this invoice over here.

13 Q But the recitals, what has been written there
14 is false?

15 A Yes.

16 Q And there is a Juan Leal but -- at Conception,
17 Texas, and that is addressed to him?

18 A Yes, sir.

19 Q Duval County Precinct Number 2?

20 A Yes, sir.

21 Q But your testimony is you never had any conversa-
22 tion with Juan Leal prior to the issuance of
23 E-79?

24 A No, sir, never did.

25 Q And you don't know of any that you personally

1 know that Cleofus had with him?

2 A No, sir, I don't know any.

3 Q And that was not part of a deal that you and
4 Juan Leal and Cleofus was ripping the county off
5 for the money involved in that?

6 A No, sir.

7 Q For the purpose of raising money for Judge Carrillo
8 for the cattle you purchased from him?

9 A Not the cattle, they were paid with the federal
10 loan money, sir.

11 Q All right, I didn't know that I had previously
12 asked you about that.

13 When did you get the loan from the federal
14 government?

15 A I don't remember, but I borrowed it when I
16 started my cattle business.

17 Q That would mean that you bought your 1969, that
18 you purchased -- when you began buying your
19 cattle -- when did you get in the cattle busi-
20 ness? You told me earlier this morning.

21 A I don't know if it was in 69 or 68 or 70, I
22 don't remember the exact year, sir.

23 Q And where did you file your application for
24 your cattle loan?

25 A At the -- at San Diego.

1 Q And for how much was it?

2 A I believe for twelve five.

3 Q Twelve thousand five hundred?

4 A Yes, sir.

5 Q Did you buy all hundred and twenty head of cattle
6 at that time?

7 A No, sir.

8 Q Did you buy any cattle from Judge Carrillo in
9 68?

10 A I bought about eight heifers, sir.

11 Q From Judge Carrillo in 68?

12 A 68 or 69, I don't remember.

13 Q But did you -- did you buy any bulls, any
14 Beefmaster bulls?

15 A One, sir.

16 Q When was that?

17 A Around a year, maybe, afterwards, after I bought
18 the heifers.

19 Q About 1970 or 71?

20 A I don't know if it was 69 or 70, I don't remember
21 the exact year, sir.

22 Q Have you paid that loan off yet?

23 A Which one, to the FHA?

24 Q Yes.

25 A Yes, sir.

1 Q You have the documentation, I am sure?

2 A Yes, sir.

3 Q All right, would you mind, if I asked you to
4 put it together for me, would you mind doing that,
5 Mr. Couling, in case we want to call you back and
6 it becomes relevant?

7 A If I find them, yes, sir, I'll be glad to.

8 Q As a matter of fact, there are a lot of questions
9 that you had some difficulty in the records in
10 the Benavides Independent School District, a
11 period for the entire year, isn't it, sir?

12 A Which year?

13 Q This year.

14 A 75?

15 Q Yes.

16 A I don't know.

17 Q They disappeared in 1974, didn't they?

18 A They are all there, sir.

19 Q As a matter of fact, that was one of the reasons
20 a move was made to remove members of the Benavides
21 Independent School District, am I correct?

22 A I don't know what the causes were, that they
23 were removed, sir.
24
25

1 Q (By Mr. Mitchell) Well, part of the cause was
2 the fact the records disappeared that you had
3 custody of and that the records were later found,
4 I believe, in the mens room in your office, in
5 the ceiling, weren't they?

6 A Yes, sir.

7 Q As a matter of fact, Mr. Couling, I believe you
8 ordered them put there, didn't you?

9 A No, sir, I --

10 Q After you ordered --

11 A I didn't order nobody put them there.

12 Q After you made your deal, didn't you tell the
13 Texas Rangers where they were?

14 A Yes, sir.

15 Q And then you put them there. How would you know
16 how to tell them if you hadn't put them there?

17 A I put them there myself, sir.

18 Q And those are the records that are part of the
19 records and documentations we are looking at here
20 today?

21 A Not from the county.

22 Q From the Benavides Independent School District?

23 A I haven't seen any from the Benavides Independent
24 School District.

25 Q None of these that we are talking about today were

1 included in that batch that you hid?

2 A No, sir.

3 Q Now, looking at E-91 that appears to be again on
4 the Benavides Implement and Hardware, December
5 the 6th, 1972, an invoice, does it not,
6 Mr. Couling?

7 A Yes, sir.

8 Q And what does that invoice -- first of all,
9 written out in handwriting, what does it say for

10 A "Rental on county road."

11 Q "Rental on county road"?

12 A Yes, sir.

13 Q It appears to be in handwriting of Mr. Cleofus
14 Gonzalez.

15 A It looks the same, yes, sir.

16 Q Did you have a conversation with him prior to
17 the issuance of that invoice --

18 A No, sir.

19 Q -- with O. P. Carrillo?

20 A No, sir.

21 Q With Ramiro --

22 A No.

23 Q You're telling this court that it was false.

24 That is you as Benavides Implement and Hardware
25 performed no such service?

1 A No, sir, we never did.

2 Q And you had no conversation with Juan Leal?

3 A No, sir.

4 Q Thank you.

5 I will ask you in connection with E-92
6 which appears to be a Benavides Implement and
7 Hardware address, Duval County, Precinct No. 2,
8 Juan Leal for the same amount, which is one
9 thousand and six dollars; am I correct?

10 A Yes, sir.

11 Q That is in whose handwriting?

12 A It looks like Cleofus again, sir.

13 Q That is also false?

14 A Yes, sir.

15 Q The check, or exhibit I hand you, E-94, payable
16 to Benavides Implement and Hardware, that is true,
17 of course?

18 A Yes, sir.

19 Q And it's endorsed in your handwriting for note
20 payment Benavides department -- Benavides -- what
21 does that say?

22 A Benavides Implement and Hardware Company, it
23 looks like.

24 Q R. ^M Couling?

25 A Yes, sir.

1 Q So, the proceeds of the E-94 went to pay a note,
2 didn't it, or is that false?

3 A No, sir, that is right.

4 Q Didn't give that to Ramiro Carrillo, did you?

5 A No, sir.

6 Q You didn't give it to O.P. Carrillo, did you?

7 A No, sir.

8 Q It went to pay one of your personal notes, didn't
9 it?

10 A No, sir, it went to pay the original note we
11 borrowed in 1971.

12 Q That was for three thousand dollars?

13 A Yes, sir.

14 Q That is only a thousand and six.

15 A That is one of the payments.

16 Q Is there still a balance due?

17 A Not now, sir.

18 Q When was the balance paid?

19 A I don't remember if it was in late '72 or early
20 '73. I don't remember, sir.

21 Q All right. As a matter of fact, Mr. Couling,
22 that original three thousand dollars was money
23 that you borrowed in behalf of your business and
24 Mr. Ramiro Carrillo simply helped you get the
25 credit, isn't that correct?

1 A No, sir.

2 Q It had nothing to do with the establishment of
3 a partnership in May of '71, isn't that correct?

4 A No, sir, that is not correct.

5 Q And this check you're holding in your hand was a
6 check that you paid to the bank on your account.

7 That is Benavides Implement and Hardware had
8 nothing to do with the partnership you had
9 supposedly with my client, Judge Carrillo or
10 Mr. Ramiro Carrillo, isn't that true?

11 A No, sir, that is not true.

12 Q But you do admit, the recital, that is the
13 endorsement on the back of that note did not --
14 that money went directly for the payment of that
15 note?

16 A Yes, sir.

17 Q And it did not go to Judge O. P. Carrillo as you
18 previously testified?

19 A No, sir. This went to pay for a note at Rio
20 Grande City, sir.

21 Q And wasn't the note executed at the bank in Alice?

22 A No, sir.

23 Q And didn't you testify that the account was not
24 opened at Rio Grande City until late in your
25 business venture?

1 A It was opened, I believe, about that time, sir,
2 or before that time.

3 Q I understand. You have testified that the bank
4 account in the Rio Grande City bank was opened
5 sometime after the formation of the partnership
6 at the end of 1971 or '72, didn't you?

7 A It was opened when O. P. Carrillo made
8 arrangements to open that account.

9 Q And the note with Ramiro Carrillo as co-signator
10 was not at the Rio Grande City bank, but the
11 Alice bank?

12 A At the San Diego bank, not Alice bank.

13 Q At the San Diego bank.

14 So, the payment then is represented by the
15 check, E-94, to Rio Grande would not be in
16 payment of the so-called partnership in the San
17 Diego bank?

18 A O. P. made arrangements for me to make that at
19 the Rio Grande bank.

20 Q Tell us about that. That is in addition, now,
21 so the record is clear, in addition to the notes
22 that you previously testified in the amounts of
23 approximately three thousand dollars that was a
24 partnership note in early part of 1971 that was
25 co-signed by Ramiro Carrillo to San Diego bank?

1 A Yes, sir.

2 Q Is that the one you're talking about?

3 A Yes, sir.

4 Q All right. Tell us about the one you just got
5 through mentioning where O. P. made arrangements
6 for you to borrow money at the Rio Grande bank.

7 A He came by and told me he wanted me to open an
8 account at the Rio Grande City bank.

9 Q All right. Tell us when that was, sir.

10 A I don't remember the exact date.

11 Q He came by and told you he wanted you to open an
12 account at the Rio Grande City bank?

13 A Yes, sir.

14 Q Would that be in 1972?

15 A I can't remember the exact date, sir.

16 Q Well, if looking at this check, and let me hand it
17 back to you out of fairness for you, E-94; the
18 check is dated December of 1972.

19 A It could have been in 1972, in the middle part
20 or the early part, sir.

21 Q And that was the month you bought the two
22 Caterpillar tractors from Plains Implement. I
23 mean Benavides Implement and Hardware, isn't
24 that right?

25 A I don't know the exact date, sir. I would like

1 to see the --

2 Q Look at E-160. What date was that? December 14th
3 of '72, am I correct?

4 A Yes, sir.

5 Q And the check mentioned as a loan payment is
6 December 12th, 1972; am I correct?

7 A Yes, sir. So, the note was made previous to that
8 date, sir.

9 Q Well, are you telling us now that there is an
10 inter-relation or connection between the check
11 E-94 and the contract for the purchase of those
12 two Caterpillars?

13 A No, there was another personal tractor that he
14 bought, another Massey-Ferguson, sir.

15 Q A Massey-Ferguson?

16 A Yes, sir.

17 Q And your testimony is that E-94 has something to
18 do with a purchase of the Massey-Ferguson?

19 A Yes, sir, had to be because that is when we
20 opened the account, and he bought a tractor for
21 his ranch, sir.

22 Q Well, I am confused now. Is there still another
23 loan for the purchase of purchasing a Massey-
24 Ferguson tractor?

25 A We only borrow one note from Rio Grande City.

1 Q Let's see. You had one loan at the bank in
2 San Diego, am I correct?

3 A Correct, sir.

4 Q And that was in 1971, about what, May, I believe

5 A Around May; I don't recall.

6 Q That is what I believe you testified. It was in
7 the amount of three thousand dollars.

8 A Yes, sir.

9 Q And you had a second loan at the bank at Rio
10 Grande City?

11 A Yes, sir.

12 Q Can you tell us when that one was?

13 A No, sir.

14 Q If the note were -- well, strike that.

15 What did you borrow it for, six months?

16 A I don't remember the amount.

17 Q Ninety days?

18 A I don't remember, sir.

19 Q You don't remember?

20 A No, sir.

21 Q But you're now sure that E-94 was not in payment
22 of a loan at San Diego because it appears that
23 it was cleared through the Rio Grande City bank?

24 A To the payments of the Rio Grande City bank.

25 Q As a matter of fact, Mr. Couling, you had your own

1 business down there and you took the money and
2 made your own loan; isn't that the truth of the
3 matter?

4 A No, I had no business there until O. P. Carrillo
5 suggested I open the account.

6 Q Well, I understand that he suggested that you
7 open the account. You so testified previously
8 that a year or two after you commenced business,
9 but you didn't tell us that you had also gone down
10 there and borrowed some money?

11 A I wasn't asked that.

12 Q In addition then, there was still another loan
13 that represented the purchase price of a Massey-
14 Ferguson tractor?

15 A That is the note we were talking about while ago,
16 sir.

17 Q Which note?

18 A The one with the payment for that check, sir.

19 Q All right. So, that E-94 was in payment of a
20 loan for the purchase of a Massey-Ferguson tractor?

21 A Yes, sir.

22 Q Who bought the tractor, please, if you know?

23 A I believe it was O. P., sir.

24 Q You have any interest in the tractor?

25 A No, sir.

1 Q Do you know when he bought it?

2 A No, sir.

3 Q The purchase price?

4 A I had to make a check for forty-seven hundred
5 dollars and some cents, sir.

6 Q For the purchase of it?

7 A I don't know if it was a down payment or what it
8 was, sir.

9 Q Do you know who you made the check to?

10 A It was to Massey-Ferguson, sir.

11 Q Where?

12 A I don't know where, but it was --

13 Q The date?

14 A I can't recall the date, sir.

15 Q And is it your testimony that the check in E-94
16 was in payment of that loan?

17 A No, in payment of that note.

18 Q And you borrowed that money at the Rio Grande
19 City bank?

20 A Yes, sir.

21 Q And that was in advance of the time you opened
22 up -- I say you, Benavides Implement and Hardware
23 opened an account in the Rio Grande City bank.

24 A Under O.P.'s instructions.

25 Q I understand Judge Carrillo is running your

1 business. I said that was prior to the time you
2 had opened the account in the Rio Grande City
3 bank.

4 A What, sir?

5 Q That you have borrowed the money.

6 A I borrowed the money and I opened the account the
7 same week, I imagine.

8 Q All right. But back to my original question.
9 The back side of E-94, which is a check from the
10 county to Benavides Implement and Hardware which
11 is endorsed for note payment, Benavides Implement
12 and Hardware, R. N. Couling; that is the truth?

13 A Yes.

14 Q But the recitals in E-91 and E-92 supporting the
15 issuance of that check are false?

16 A Yes, sir.

17 Q But you had no conversations with Judge Carrillo,
18 Ramiro Carrillo, that you could recollect Juan
19 Leal prior to or Cleofus Gonzalez prior to the
20 execution of that invoice, and by that I mean
21 invoice being 91 and 92?

22 A Not until -- after I received the check, sir.

23 Q All right. I am going to ask you some separate
24 questions about this. I will take that back.

25 I hand you 95, Mr. Couling. Now, it appears

1 to be another Benavides Implement and Hardware
2 invoice, Drawer M, Benavides, Texas; am I
3 correct?

4 A Yes, sir.

5 Q In the amount of a thousand and eighteen ten.

6 A Yes.

7 Q It's simply not true?

8 A Not true, sir.

9 Q All right. The check which is E-97 payable to
10 Benavides Implement and Hardware for a thousand
11 and eighteen is true, however. It was a check
12 issued to Benavides Implement and Hardware.

13 A Yes, sir.

14 Q And it's deposited for deposit in the account of
15 Benavides Implement and Hardware?

16 A Yes.

17 Q Now, is it your testimony that you gave this
18 money to O. P. Carrillo, the thousand and
19 eighteen ten?

20 A I would like to see the check that was issued to
21 replace that check.

22 Q Well, Mr. Couling, if you gave the money to my
23 client, Judge Carrillo, by check, you would have
24 the check, wouldn't you?

25 A No, sir, it's supposed to be included in those

1 there, sir.

2 Q Well, I don't see it.

3 Well, let me ask you independently,
4 Mr. Couling. Certainly if you had a transaction
5 involving a thousand eighteen ten with a judge
6 of the district court, you would know whether you
7 gave him a check, wouldn't you, or the money?

8 A It was a check that would take care of the
9 tractor and the farm machinery.

10 MR. ODAM: For the purpose of the
11 question, the previous testimony was not
12 that he gave a check to Judge O. P. Carrillo,
13 but these were one of many that were made
14 out to Plains Machinery. The question that
15 he gave a check for a thousand eighteen
16 ten to Judge Carrillo is not in accordance
17 with his earlier testimony. This was a check
18 to the Plains Machinery, I think.

19 MR. MITCHELL: I don't want to mislead
20 the witness.

21 Q (By Mr. Mitchell) I am going to hand them to
22 you now for the purpose of issuing checks to
23 Plains Machinery and we can move on to the
24 contract for the purchase of those Caterpillars.
25 That is what we are talking about, isn't it?

1 A Yes, sir.

2 Q That is when you bought -- or the Benavides
3 Implement and Hardware bought those two
4 Caterpillars.

5 A By the instructions of the judge, yes.

6 Q I understand. He told you to go do it and it's
7 represented by contract one hundred -- E-160,
8 am I correct?

9 A Yes, sir.

10 Q And looking at 160, you have got it in front of
11 you there, is that correct?

12 A Yes, sir.

13 Q It appears to be a contract for the purchase of
14 two Caterpillar tractors?

15 A Yes.

16 Q In the name of Benavides Implement and Hardware?

17 A Yes, sir.

18 Q And it requires that payment in installment basis
19 of fifteen hundred dollars a month beginning
20 January of 1973.

21 A Yes, sir.

22 Q Am I correct?

23 A Yes, sir.

24 Q And I believe your testimony was that the reason
25 these other -- these checks were issued and that

1 counsel pointed out was the purpose of making
2 that fifteen hundred dollars a month payment?

3 A Yes, sir.

4 Q And there was a deal on that the county would
5 be -- that money would be cranked out of the
6 county and that money would come, what, from the
7 county to Benavides Implement and Hardware or
8 then from Benavides Implement and Hardware to
9 Plains?

10 A Yes, sir.

11 Q Was that the deal?

12 A Yes, sir.

13 Q And that if the contract to purchase which you
14 hold in your hand is correct, then, the contract
15 was January of 1973 and --

16 A Yes, sir.

17 Q Fifteen hundred dollars a month?

18 A Yes, sir.

19 Q Am I correct?

20 A Yes, sir.

21 Q And that, of course, would not explain any of
22 these checks that were dated prior to January of
23 1973; isn't that right, Mr. Couling?

24 A Yes, sir.

25 Q Because you didn't have any contract before

1 January of '73; am I correct? Am I correct?

2 A Whose checks are you talking about?

3 Q I am talking about checks out of the county to
4 pay an installment on those two Caterpillars as
5 represented by a contract you're holding in your
6 hands.

7 A Starting on January the 17th.

8 Q Yes, sir. So, that any checks made prior to 1973
9 in January couldn't have been for that purpose?

10 A I didn't state it was for that purpose, sir.

11 Q All right. Likewise, it would not explain why
12 there was a default by Benavides Implement and
13 Hardware of that installment payment and that in
14 the end that Mr. Carrillo had to go down and buy
15 that contract up?

16 A What year?

17 Q Well, we'll just let the record speak for itself.
18 That is R-50. What is the date of that O. P.
19 Carrillo contract? I believe this is in fairness
20 to you, and it has been introduced as the record
21 of May of '74. I believe one of these gentlemen
22 from Plains, Mr. Kurtz testified that it was in
23 default in -- the tail end of '73 or '74. I
24 will hand it to you. Apparently you weren't
25 remitting any money to Plains on this contract of

1 1960 after the tail end of '73 and '74, were
2 you, because it went into default and they were
3 repossessed, weren't they?

4 A According to this contract, the payments were made
5 up to January, 1975, sir. According to these
6 payments over here.

7 Q Well, if you were the one that made them, you
8 would know. Can't you testify under oath if you
9 made the payments through '75?

10 A I can't state, but according to this contract,
11 that is what it reads. I don't know if I made
12 them or not.

13 Q As a matter of fact, Mr. Couling, on the contract
14 for the purchase of those tractors, you as
15 Benavides Implement and Hardware bought those
16 tractors under this contract E-160; isn't that
17 right?

18 A Yes, sir.

19 Q And you collected rent from Judge Carrillo all
20 of '73 for those tractors?

21 A No, sir.

22 Q You deny that he executed to you checks in the
23 amount of approximately nineteen thousand dollars
24 from the year 1973 for the rental of those two
25 pieces of equipment?

- 1 A He gave me checks monthly to cover the amount,
2 the fifteen hundred dollars that were the rent
3 payments for the tractors from Plains Machinery.
- 4 Q Out of his personal account, isn't that correct?
- 5 A Yes, sir.
- 6 Q Now, he rented those for the year 1973 and paid
7 Benavides Implement and Hardware the rents?
- 8 A In other words, he was paying five hundred dollars
9 a month for two tractors?
- 10 Q Now, you know the transaction.
- 11 A Well, I am asking you. You figure that is what
12 he was paying a month?
- 13 Q Mr. Couling, did he or did he not pay for rental
14 on those tractors?
- 15 A He made the checks so I could cover the payment
16 of the tractors that were due from Plains
17 Machinery, sir.
- 18 Q All right. And the same tractors were also
19 rented to the county, weren't they?
- 20 A No, sir.
- 21 Q You're denying you ever got any money for the
22 rental of --
- 23 A I got the rental, but there was no rental to
24 the county.
- 25 Q Who were they rented -- George Parr rented them?

1 A All I know O. P. rented them; that is all.

2 Q O. P. rented them, didn't he?

3 A I don't know if he rented them or not.

4 Q You collected money in '73 and '74 from rental
5 on them?

6 A I collected them from the county.

7 Q I am talking about Judge Carril'o personally paid
8 you.

9 A He paid me personally five hundred or six
10 hundred dollars a month, sometimes a thousand
11 dollars a month.

12 MR. MITCHELL: Your Honor, may I state
13 to the Court, I have got those checks, but
14 I, unfortunately in the moving back and
15 forth from my office in Austin, I do not
16 have the keys to these filing cabinets out
17 here. I have got them in inventory, payable
18 to the Benavides Implement and Hardware, and
19 if I could leave a space in the record at
20 this point to put them in with the Court's
21 permission. I know it's a terrible thing,
22 but I am caught up in the inability to get
23 my filing cabinets here.

24 THE MASTER: That is no problem at all,
25 Mr. Mitchell. I don't think it would be wise

1 to reserve exhibit numbers because we don't
2 know how many there are going to be, but
3 you certainly can note that you intend to
4 do that at a later time. What are you going
5 to do, get the keys sent to you?

6 MR. MITCHELL: Yes, sir. I called last
7 night and we misplaced them. We thought they
8 were here; they were not. I called at
9 midnight last night and they are to get them
10 and put them on a Continental bus and I
11 should get them today and hopefully in time
12 to finish.

13 THE MASTER: No problem.

14 MR. MITCHELL: Thank you, Judge Meyers.

15 Q (By Mr. Mitchell) As a matter of fact, Mr.
16 Couling, Judge Carrillo rented those tractors to
17 you under a rental agreement dated 1973, didn't
18 he?

19 A Where is the agreement, sir?

20 Q I asked you. You should know.

21 A I want to see the agreement.

22 Q What age man are you?

23 A Fifty-four, sir.

24 Q And you have been in business at least twenty
25 years, haven't you?

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1 A Yes, sir.

2 Q All right. Mr. Couling, you asked me to show
3 you the contract. I will ask you, you're under
4 oath. Did you have an agreement with Judge
5 Carrillo whereby --

6 A We didn't --

7 Q Let me finish. How do you know what I am going
8 to ask you?

9 Do you have an agreement or Benavides
10 Implement and Hardware have an agreement to rent
11 those two tractors that were bought in '72 to
12 O. P. Carrillo?

13 A No, sir.

14 Q But you're not denying that you bought them?

15 A Well, I bought them -- he bought them and the
16 papers was taken to me to sign, sir.

17 Q Well, let's go back on that.

18 You say he bought them. You mean Judge
19 Carrillo bought them?

20 A He went and ordered them. I never seen the
21 tractors. All I know -- all I seen was the
22 papers for me to sign the contract.

23 Q But you do not deny -- looking at 160, it appears
24 to be Benavides Implement and Hardware signed
25 by who?

1 A Me. ^{WA}

2 Q R. N. Couling.

3 A Yes, sir.

4 Q But you're telling the Court that is not a fact?

5 A The contract is true, but I never did see the
6 contract.

7 Q Is the contract a fact or isn't it or is it
8 false?

9 A That contract, yes.

10 Q It's false?

11 A No, sir.

12 Q It's a fact?

13 A Yes, sir.

14 Q You bought the equipment?

15 A I didn't buy it. O. P. made arrangements to buy
16 them and all I did was take care of the papers.

17 Q Mr. Couling, let me be quite frank with you. You
18 have testified previously there was a scheme and
19 a device whereby the county was cranked down to
20 pay for these two pieces of equipment and that
21 you participated in it to the extent that you
22 carried the title.

23 Now, my question to you is this: If there
24 was such a scheme, then, I am going to ask you,
25 one, what was your participation in it? You said

1 you had no participation in it.

2 A All I did -- I paid the payment when I got the
3 check from the county for the tractors.

4 Q If there was a scheme, why did not the payments
5 continue right on up to date?

6 A For what date?

7 Q For the payments of the monies to be paid on the
8 Plains' note, Mr. Couling.

9 A In 1974 I decided I wasn't going to make no more
10 bills to the county, sir.

11 Q Oh, you decided you were not going to make any
12 more bills.

13 Now, I want to know when you started making
14 them.

15 A When I was instructed by Ramiro that O. P. had
16 purchased those tractors in my name, sir.

17 Q Up to this point you have told the Court under
18 oath that Cleofus Gonzalez, and I have gone through
19 each and every one of these; that in Cleofus
20 Gonzalez's handwriting or a gentleman who is now
21 dead, was working for you by the name of Lorenzo
22 Garcia?

23 A Yes, sir.

24 Q Did you personally execute any invoices?

25 A Yes, sir. You showed me one while ago.

1 Q How many did you execute?

2 A I can't tell you offhand. I have got to see them.

3 Q Out of this group we have got, pick us out how
4 many you executed.

5 A I will be glad to, sir.

6 Q Let me hand the originals to you. I want to know
7 how many you executed, how many invoices you
8 executed.

9

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1 Q Did you find any?

2 A I found five, sir.

3 Q All right and -- I wish you had kept them, if
4 you would pull them.

5 A You have got some of them right there, sir.

6 Q I wanted to see what your handwriting on these
7 invoices looks like.

8 THE MASTER: And identify them by
9 Exhibit Number.

10 MR. MITCHELL: Yes, sir, the Court
11 needs to know.

12 Q Just hold them out separate please.

13 (Discussion off the record.)
14

15 Q So that the record reflects, you have taken a
16 few minutes and have selected from the original
17 Exhibits certain Exhibits which were in answer
18 to my request that you pick out those claims that
19 were executed by you and that is where you filled
20 in the invoices, is that correct?

21 A Yes, sir.

22 Q And you have handed me for the record an Exhibit 99 --
23 Exhibit 99, 129, 132, 134, 135, 136, 137, 138 and
24 139, am I correct?

25 A Yes, sir.

1 Q Now, in the Exhibits beginning with E-57 and
2 going through and including all of those, Mr.
3 Couling, to E-158, those are the only ones where
4 you executed the invoices.

5 A That is the only ones I could find in there, sir.

6 Q All right. Now, in these, let me have them back,
7 please, sir.

8 (Handed to Counsel.)
9

10 Q These are executed on the Benavides Implement
11 and Hardware. Looking now at E-127, Benavides
12 Implement and Hardware invoices.

13 A Yes, sir.

14 Q The same as the others?

15 A Yes, sir.

16 Q Same address?

17 A Yes, sir.

18 Q Same everything. Now, let's look at E-137 that
19 was executed February the 22nd.

20 A Yes, sir.

21 Q In 1974?

22 A Yes, sir.

23 Q Am I correct?

24 A Yes, sir.

25 Q In the amount of fifteen hundred dollars?

1 A Right.

2 Q Now, your notation -- is this E-137 in your
3 handwriting?

4 A This one is, sir.

5 Q All right, so that -- here is a -- what do you
6 put down there, equipment rental?

7 A Equipment rental, yes, sir.

8 Q And was it true that this was an invoice from
9 Benavides Implement and Hardware to the county
10 of -- to the county for rental of equipment?

11 A There was no equipment to rent to the county.

12 Q By that time you had equipment to rent.

13 A But it wasn't rented to the county.

14 Q You did have the equipment E-160, didn't you?

15 A Yes, sir.

16 Q And isn't it a matter of fact that this E-137
17 and the check issued E-138 was, in fact, rental
18 for the equipment?

19 A No, sir.

20 Q Your testimony is that you knowingly, falsely,
21 fraudulently caused the county of Duval to pay
22 to the Benavides Implement and Hardware a check
23 for fifteen hundred dollars based on your false
24 invoice, being E-137?

25 A By instructions of Ramiro Carrillo to make payment

1 for the tractor. I can't answer you --

2 Q I understand that payment was February of 1974,
3 isn't that correct?

4 A That payment right there, sir, those checks right
5 here.

6 Q And as a matter of fact the contract with Plains
7 was already in default in February of 74 -- it
8 was in default in February of 74, was it not, Mr.
9 Couling?

10 A I don't know if it was 74 or 75, sir.

11 Q Well, let me hand you, if I can, Exhibit Number
12 R-50, which out of fairness to you --

13 A Right.

14 Q -- appears to have been previously identified as
15 a contract between O. P. Carrillo and Plains
16 Machinery for the purchase of the same two tractors
17 and the evidence reflecting he had to pay six
18 thousand dollars to pick up some arrearage and
19 pick up that new agreement.

20 A It says November the 2nd, 1975, sir.

21 Q That is the attachment -- what is the date of
22 the contract?

23 A May the 2nd.

24 Q Of 1974, am I correct, and he had a six months
25 default, that is, he paid six thousand dollars

1 at that time?

2 A I don't know what time the payment was stopped,
3 sir.

4 Q All right, let me ask you, sir, when you raised
5 the money 137, 138 and 139 for that fifteen
6 hundred dollars, was that money paid by Benavides
7 Implement and Hardware to Plains?

8 A You can look at the checks you have got there, sir,
9 and find out.

10 Q You paid that money to them on account of the
11 purchase of the tractors as was in E-160, am I
12 correct, under this contract 160?

13 A Just a minute, you look at the checks from my
14 store to the Plains Machinery to see if they
15 are the same date, sir.

16 Q I understand that you are telling us under oath
17 that the contract that that fifteen dollars was
18 a ripoff by Benavides Implement and Hardware to
19 pay on that note with Plains Equipment, which is
20 under the contract E-160 to Benavides Implement
21 and Hardware.

22 That is what you are telling us and you
23 caused the ripoff or the theft by executing that
24 false document E-137?

25 A And ordered by Ramiro Carrillo.

- 1 Q I understand he is standing there with a gun
2 to your head and telling you to do that?
- 3 A No, sir, he was telling me he wanted the money
4 to give to O. P. Carrillo to pay for the tractor.
- 5 Q So Ramiro told you to execute 137?
- 6 A Yes, sir.
- 7 Q And you did at Ramiro's insistence?
- 8 A Yes, sir.
- 9 Q Because Ramiro said that O. P. wanted you to
10 execute 137 so you got the check 139 to pay for
11 the contract for Plains Equipment, being E-160?
- 12 A Yes, sir.
- 13 Q And, of course, on the face of the contract 160,
14 O. P. doesn't have any interest in it at all,
15 does he?
- 16 A No, sir, he doesn't.
- 17 Q And as a matter of fact, Mr. Couling, that con-
18 tract went into default prior to the time of the
19 execution by you -- wait till I get through --
20 of E-137, didn't it?
- 21 A I don't remember, sir.
- 22 Q It went into default and stayed in default for
23 the full year of 74, didn't it?
- 24 A No, not according to here, there was a payment
25 made in January, 1975.

1 I don't know if I made them or not, but
2 according to this contract it was payment that
3 is dated January 75.

4 Q No, you are looking at 160. Isn't that the
5 schedule of payments you are looking at? I am
6 going to ask you about that, you signed that
7 agreement 160 that is a schedule of payment pro-
8 viding for, as I have already asked you, fifteen
9 hundred dollars a month beginning January of 1975
10 and going through and including March of 1975.
11 The last payment being a hundred and eighty-six
12 dollars, am I correct, twenty-six payments at
13 fifteen hundred dollars?

14 Look at it right there, Mr. Couling, twenty-
15 six payments at sixteen hundred dollars -- at
16 fifteen hundred dollars each and one payment of
17 one hundred and eighty-six, the final payment in
18 January -- the first payment January of 1972, am
19 I correct?

20 A Yes, sir.

21 Q And the last payment of January of 1975 or March?

22 A I don't know what the -- I mean, when they become
23 due, I have got to see the sheet where they were
24 credited every time they were paid.

25 Q You don't have any independent recollection of

1 saying these?

2 A I don't remember. I have got to see the sheets
3 when I pay them. All I do is just send the
4 checks every month.

5 Sometimes I send the payment for three
6 thousand dollars instead of fifteen hundred dollars.

7 Q Well, you don't deny, do you, and you know as
8 a matter of fact that those tractors were defaulted
9 on, that they were repossessed?

10 A I don't know what date they were defaulted, sir,
11 I don't remember what date.

12 Q You don't remember?

13 A No.

14 Q Well, you did know that there was a default,
15 thought, I believe we had established that?

16 A O. P. sent some papers for me to sign the tractors
17 over.

18 (Discussion off the record.)
19

20 Q In these Exhibits that you personally forged,
21 there are three in 1974 and I will hand them to
22 you, E-139, which is fifteen hundred dollars,
23 am I correct?

24 A Yes, sir.

25 Q And that is for the month of --

- 1 A March.
- 2 Q March, which you say is false and fraudulent and
3 there was no equipment rented by your company,
4 Benavides Implement and Hardware?
- 5 A No, sir, there was no equipment rented.
- 6 Q And I hand you E-136 which is a check payable
7 to Benavides Implement and Hardware February of
8 1974 which you, I suppose, also executed the
9 invoice 134 and it is false?
- 10 A Yes, sir.
- 11 Q Now, E-134 provides that a rent on two tractors,
12 does it not?
- 13 A Yes, sir.
- 14 Q Fifteen hundred dollars a month?
- 15 A Yes, sir.
- 16 Q And the check was deposited by you?
- 17 A Yes, sir.
- 18 Q And it is, in fact, specifically designated
19 to be deposited in a given account, Benavides
20 Implement and Hardware?
- 21 A Yes, sir.
- 22 Q Am I correct?
- 23 A Yes, sir.
- 24 Q And that was in the month of --
- 25 A February of 74, sir.

1 Q All right, then, looking at E-133, that appears
2 to be a check in the amount of what?

3 A Fifteen hundred dollars.

4 Q For what date, what month?

5 A January of 74.

6 Q Is that invoice E-131 rent on two cats, fifteen
7 hundred dollars, is that also executed by you?

8 A This top figure and somebody else erased it and
9 out fifteen hundred dollars.

10 Q Well, did you execute the part that is not
11 erased?

12 A Yes, sir.

13 Q That is written in ink?

14 A Yes, sir.

15 Q You don't know who wrote the eighteen ninety in
16 ink?

17 A I wrote the eighteen ninety in ink, yes, sir.

18 Q It becomes very important, doesn't it, because
19 if your testimony is correct that those three
20 checks, which is the only ones you can find there
21 I believe in 74, which you got out of the county
22 for the purpose of paying the rent on the tractor
23 that one check, that would be invoice -- which
24 you wrote in your handwriting is for eighteen
25 hundred and ninety dollars, isn't that, Mr.

1 Couling?

2 A Yes, sir.

3 Q And for some reason, I will ask you did you erase
4 the eighteen hundred and ninety and put fifteen
5 hundred dollars?

6 A No, sir.

7 Q Did you know who did?

8 A No, sir.

9 Q It doesn't square with your testimony that that
10 check and that invoice was for the purpose of
11 paying a fifteen hundred dollars a month payment
12 due in January of 1974 on a tractor, does it?

13 A The fifteen hundred dollars, yes, it does.

14 Q The fifteen hundred dollars was written in,
15 not in your handwriting, though, does it?

16 A No, sir.

17 Q The eighteen ninety which is in your handwriting
18 in ink has been stricken, isn't that correct?

19 A Yes, sir.

20 Q The eighteen ninety doesn't fit with your sworn
21 testimony that it was for the purpose of paying
22 that payment, though, does it?

23 A That fifteen hundred went for the payment of the
24 tractors.

25 Q The eighteen ninety?

1 A I do -- fifteen hundred went for it, and the
2 other probably would be some repairs or some parts
3 for the tractor. I can't testify to that.

4 Q But when you wrote the invoice in December of
5 1973, you didn't say anything about no repair.

6 A No, sir.

7 Q You said rent on two cats?

8 A Yes, sir.

9 Q Eighteen hundred and ninety, didn't you?

10 A Yes, sir.

11 Q Now, in 1974, did you -- if you will follow me,
12 the only two payments that were made in 74 were
13 E-134, that is January, and I am handing it to
14 you, is that correct, and February, am I correct?

15 A Yes, sir.

16 Q And is it your testimony that the proceeds of
17 those two checks that you made to Plains Equip-
18 ment, those fifteen hundred dollar -- those two
19 fifteen hundred dollar in January and February of
20 1974?

21 A I would like to see the schedule of their payments,
22 sir, before I answer.

23 Q By the time that Judge Carrillo picked that con-
24 tract up in May it was in default for over six
25 months, you know that, don't you?

1 A He picked it up in May of what year, sir?

2 Q Of 1974, Mr. Couling.

3 A I don't remember, sir.

4 Q And if that were the case, then your testimony
5 further here under oath that you wrote those two
6 invoices, those false invoices to make those
7 payments and made them would not be correct?

8 A If you check my cancelled checks, it will cover
9 those checks, sir.

10 Q I hand you E-131 and ask you if you know who
11 struck out the eight en hundred and ninety dollars
12 and put the fifteen hundred dollars in?

13 A I don't know.

14 Q Who struck out the eighteen hundred and ninety
15 and put in the fifteen hundred?

16 A I don't know, sir.

17 Q I'm sorry. All right, so that we -- if we were
18 to look at the rest of the Exhibits, then we would
19 find checks January and February and March of
20 74 from you to Plains Equipment, am I correct?

21 A I guess so, I don't know.

22 Q Well now, I believe you have invited me several
23 times to look at the checks. Before I do it, I
24 want to know if you can tell us under oath if you
25 made payments to Plains Equipment in January,

1 February, March or any of those months in 1974?

2 A I would like to see the checks before I answer
3 that question.

4 Q You have no independent recollection?

5 A I would like to see the checks first.

6 Q All right.

7
8 (Discussion off the record.)

9 MR. MITCHELL: May I direct a ques-
10 tion to Counsel, Your Honor?

11 THE MASTER: All right.

12 MR. MITCHELL: Mr. Odam, in these
13 checks that have been marked in the 140 series,
14 150, are these all of the ones that payments
15 from Benavides Implement and Hardware to the
16 Plains -- so that I can hand it to the witness
17 and be fair with him, Judge Meyers?

18 MR. ODAM: E-140?

19 MR. MITCHELL: Yes.

20 MR. ODAM: Through 149, I believe --

21 MR. MITCHELL: have them as high as 150 and
22 150A.

23 MR. ODAM: You're right, there is 150A
24 that would be B. D. Holt, but the rest of
25 them now that would be --

1 O (By Mr. Mitchell:) May I hand you then, Mr.
2 Couling, these checks being a series that we have
3 just described and pick out for me the fifteen
4 hundred dollar payments made in January, February --
5 or in 74, to begin with.

6
7 (Discussion off the record.)

8 THE MASTER: Gentlemen, I do not have
9 that series insofar as I can find in my
10 notes as offered and admitted. Is that the
11 reason you have --

12 MR. ODAM: Yes, Your Honor.

13
14 (Discussion off the record.)

15 THE MASTER: I am sorry, I have 140
16 through 150A and B offered and admitted. I
17 just had a very small notation.

18 MR. MITCHELL: According to my records
19 they are admitted.

20 THE MASTER: Yes, they are. I have a
21 very small notation in my notes and I lumped
22 them together and I simply overlooked it. I
23 normally note them individually but this
24 time I just lumped them together.

25

(Discussion off the record.)

1
2
3 Q (By Mr. Mitchell:) Did you find any?

4 A Yes, sir.

5 Q All right, Mr. Couling.

6 A Yes, sir.

7 Q And have you extracted from the Exhibits all of
8 the checks that were payable to Plains? (Handed
9 to Counsel.)

10 Q All right, you handed me 140, it appears to be
11 a check under date of 3/28/74 and am I reading
12 it correctly?

13 A Yes, sir.

14 Q From Benavides Implement and Hardware to Plains
15 Machinery. I can't read what it is for, can you
16 read that for us, the recital part?

17 A Payment on D-8 tractors for two months.

18 Q All right, and that was dated when?

19 A March the 2nd.

20 Q For two months?

21 A Yes, sir.

22 Q For three thousand dollars?

23 A Yes, sir.

24 Q That would be March of 74 and February of 74?

25 A I could have been -- yes.

- 1 Q You tell me, you wrote it.
- 2 A Well, I can't remember that far back, sir, but
- 3 it is for two months.
- 4 Q All right, but at any rate the other one, E-141,
- 5 is how much?
- 6 A Three thousand dollars.
- 7 Q And it is dated when?
- 8 A January the 27th.
- 9 Q Would it possibly be, if you look down in the
- 10 lower lefthand corner for December of 73?
- 11 A It could be for December and January.
- 12 Q December of 73 and January of 74?
- 13 A It could have been for that.
- 14 Q And the two more you made in March for February
- 15 and March?
- 16 A It looks like that way, sir.
- 17 Q Taking the contract through March of 1974, am
- 18 I correct?
- 19 A Yes, sir.
- 20 Q And then as far as you know there were no other
- 21 payments made?
- 22 A I don't remember, sir, I don't remember.
- 23 Q All right. Do you recall whether you personally
- 24 executed any more, at least those that you handed
- 25 me there were none that you forged the invoices

1 which you forged after, I believe, March of 74,
2 am I correct, sir, do you recall?

3 A I don't remember, sir.

4 Q All right, at any rate, you are not -- your testi-
5 mony is that the equipment was never rented to,
6 say, George Parr and rental paid to you?

7 A Not from George Parr, no, sir.

8 Q Was it ever rented -- was the equipment ever
9 rented to anyone else?

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

11 Q Was it ever rented to the county, Mr. Couling?

12 A No, sir.

13 Q It is your testimony that it was never rented to
14 anybody?

15 A The only one that used that equipment was O. P.,
16 as far as I know.

17 Q And O. P. paid you rent by personal check?

18 A No, sir, he paid the amount to cover the amount
19 of the payment due every month, sir.

20 Q You don't recall -- we have been through this,
21 I am just trying to close it so I can move on to
22 something else.

23 Do you recall his paying you rental on that
24 very same equipment in the year 1973 and 74?

25 A I still state it was not rental, just to make up

1 the full amount of payment due to Plains Machinery,
2 sir.

3 Q But, Mr. Couling, if you were taking fifteen
4 hundred dollars a month as you were telling us
5 that you did, there would be no necessity for
6 Judge Carrillo to pay you any more money because,
7 as I recall, R-160 doesn't require but one thousand
8 five hundred dollars a month.

9 A If you look further back on the checks, they are
10 a thousand dollars, a thousand and eighteen dollars
11 and a thousand and six, they were not for fifteen
12 hundred dollars.

13 Q But those were not checks or invoices that you
14 had anything to do with as I understand.

15 A But they were still for the payment of the tractor,
16 sir.

17 Q And it is your testimony the eighteen thousand
18 dollars he paid Benavides Implement and Hardware
19 in 74 was to make up the past deficiencies in the
20 payments?

21 A No, sir, it was for the payments that were due
22 monthly, sir.

23 Q All right, so that if you are talking about five
24 hundred dollars a month, a contract was dated
25 December of 1972, we are looking at twelve months

1 in 1973, am I correct, that is how much, six
2 thousand dollars?

3 A I didn't state --

4 Q Is it or isn't it?

5 A I didn't state he paid it every month, I didn't
6 state he paid it every month because once in a
7 while he paid, sir, I didn't state every month.

8 Q You are not denying he paid you eighteen thou-
9 sand dollars in 1974?

10 A I don't remember how much it was, sir.

11 Q I say, you are not denying that?

12 A I don't remember the amount it was. He paid some
13 but I don't know how much it was.

14 Q Do you deny he paid you anything, that is by you
15 now, Benavides Implement and Hardware in 1973 for
16 the tractor rentals?

17 A I don't know, he used to make checks, but I
18 don't know what months or what year. He used to
19 make checks whenever I needed money to make the
20 payments if I didn't make the fifteen hundred
21 dollars from the county, he made the difference
22 up.

23 Q To the tune of eighteen thousand dollars?

24 A I don't know the total amount, sir.

25 Q The total payment at fifteen hundred dollars

1 a month, that you obligated your store to pay
2 in December of 74 was fifteen hundred dollars a
3 month, am I correct?

4 A Yes.

5 Q And twelve months would be how much? Wouldn't
6 that be eighteen thousand dollars?

7 A (No answer.)

8 Q You don't owe but eighteen thousand dollars for
9 a full year, do you, Mr. Couling?

10 A I don't know, sir.

11 Q All right, sir, at any rate, when I asked you
12 earlier to pick out those invoices that you had
13 executed personally yourself for the payment of
14 the tractor note --

15 THE MASTER: Mr. Mitchell, let's take
16 a break at this time.

17 MR. MITCHELL: All right, that is fine,
18 thank you, Judge Meyers.

19 THE MASTER: We will be in recess until
20 12:00.

21
22 (Whereupon the hearing was in recess
23 from 11:40 a.m. until 12:00 noon of the same
24 day.)
25

1 THE MASTER: Are we ready for
2 Mr. Bates? Do you agree that he was under
3 oath?

4 MR. MITCHELL: He came with some
5 documents and we had agreed -- I don't really
6 know whether he was sworn or not.

7
8 (Whereupon, witness was duly sworn.)
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1 JAMES STORY BATES, JR.,
2 called as a witness, having been first duly sworn
3 upon his oath to tell the truth, the whole truth and
4 nothing but the truth, then testified as follows,
5 to-wit:

6
7 E X A M I N A T I O N

8
9 BY MR. FLUSCHE:

10
11 Q Will you state your full name, please, sir.

12 A James Story Bates, Jr.

13 Q And where do you live?

14 A Route 1, Box 248, Mission, Texas.

15 Q And where are you employed?

16 A First State Bank and Trust, Rio Grande City.

17 Q In what capacity are you employed by the First
18 State Bank and Trust Company?

19 A Assistant vice-president.

20 Q All right. Now, who is the cashier of the First
21 State Bank and Trust?

22 A Beulah Gonzalez.

23 Q And is she the custodian of the records of the
24 bank?

25 A I believe under the law the cashier is the

1 designated legal custodian. The board of
2 directors executive officer can designate other
3 people from time to time.

4 Q All right. Have you been designated by
5 Mrs. Gonzalez to appear in court here this
6 morning for the purpose of authenticating certain
7 records that we asked you to bring?

8 A Yes.

9 Q All right. Now, first of all, you have brought
10 one check and one deposit slip and then a long
11 ledger sheet and then the ledger sheet showing
12 the deposits and checks drawn on the Benavides
13 Implement and Hardware Company, is that correct?

14 A I believe so. If I could see them again.

15 Q (Whereupon, Mr. Flusche handed said documents
16 to witness.)

17 A I have the photostat copies of the Benavides
18 Implement and Hardware checking account from --
19 I believe all of them are here from November, '72
20 until December, '74.

21 Q All right, sir.

22 A If they are in the order they are supposed to be
23 in, and the judge's photostatic copy of this
24 long portfolio covering the period from August 16th,
25 '71 to September 6th, '72. That is what you all

1 asked for, I believe, and a deposit slip to his
2 account and a check on his account, photostatic
3 copies.

4 Q All right, sir. Now, would you tell the court
5 how those photostatic copies were processed, the
6 mechanical process by which those were reproduced?

7 A Well, they are photostatic copies on a photostat
8 machine that we have at the bank. Not being really
9 familiar with how a photostatic copier makes
10 copies, I don't know. It takes a picture of the
11 original document. That is about all I know about
12 the machine.

13 Q Is that placed on film and then later used to
14 reproduce these documents?

15 A Only the check and deposit slip are on them. The
16 others are photocopies made Friday of the
17 original document.

18) All right, sir.

19 A Now, the other two -- the check and deposit are
20 off microfilm.

21 MR. FLUSCHE: Would it be acceptable to
22 mark all of these ledger sheets as one
23 exhibit?

24 THE MASTER: Are you asking me or are
25 you asking counsel?

1 MR. FLUSCHE: First of all, I would
2 like to know if counsel would have any
3 objection to what those --

4 MR. MITCHELL: I am guided by what the
5 Court says. I think they would be appropriate
6 if they are labeled with basic exhibit numbers
7 and a subnumber. I don't like to put any
8 exhibits under that label. If my opinion
9 means anything --

10 THE MASTER: I don't know how I will
11 reply to that, but I don't see -- let me see
12 how many there are. I don't see a problem
13 with putting them in as one exhibit. I
14 know the problem to which you refer, but,
15 you see, these are identified rather than
16 A, B and C, they could be examiner's exhibit
17 whatever is his next number, and you can
18 refer to as the statement dated 11-30-72,
19 and there's one dated 12-29-72. That takes
20 care of the sub part, does it not, since
21 each is self-identifying?

22 Now, that is the problem you have
23 with multiple exhibits. But seems to me
24 where each one is dated you have no problem.
25 I hand you Examiner's Exhibit 162 and call

1 your attention to the statement 11-30-72.

2 That handles the problem, doesn't it?

3 So, I think because it's self-identifying,
4 you can put it in as one exhibit.

5 Now, you have to staple it. Is there
6 going to be any -- suppose you can staple it
7 up here in this corner. Nothing will be
8 covered up.

9
10 (Whereupon, said document was marked
11 for identification as Examiner's
12 Exhibit No. 1962.)

13
14 MR. FLUSCHE: Would you mark this
15 document E-86-A.

16
17 (Whereupon, said document was marked
18 for identification as Examiner's
19 Exhibit No. 86-A.)

20
21 Q (By Mr. Flusche) And would you mark each of
22 these E-87-A.

23
24 (Whereupon, said documents were
25 marked for identification as Examiner's

1 Exhibits 87-A.)

2

3 Q (By Mr. Flusche) To sum up your testimony, the

4 deposit slip and the check were made from

5 microfilm which is in the custody of the bank on

6 Friday, last Friday, in response to a telephone

7 call from me and the loan ledger sheet and the

8 check and the deposit sheets were made from

9 actual records that are in the custody of the

10 bank, is that correct?

11 A That's correct.

12 THE MASTER: What are we waiting on,

13 Mr. Flusche?

14 MR. FLUSCHE: I'm waiting on Mr. Mitchell

15 to complete his examination.

16 MR. MITCHELL: Well, Your Honor, I have

17 to have the witness on voir dire with the

18 Court's permission in order to make my

19 objections.

20 THE MASTER: Okay.

V O I R D I R E E X A M I N A T I O N

1
2
3 BY MR. MITCHELL:
4

5 Q Mr. Bates, I hand you E-86-A and it appears to
6 be matters there in handwriting. Can you tell
7 the Court, please, for the purpose of the
8 authenticity of that, who put that on there, if
9 you know?

10 A No, I don't know who did that. Mr. Flusche asked
11 me this morning and I said I don't know who
12 wrote that on there or what it means. The pencil,
13 you're talking about here?

14 Q Yes.

15 A I don't know. We have had so many people working
16 for the different government agencies in looking
17 over things, and I can't keep up with who writes
18 notes where.

19 Q Obviously the pencil notation would not be part
20 of the bank's record as reproduced certainly by
21 the process that was used for E-86-A, would it?
22 Obviously not, the one that is in handwriting and
23 the other is in printing.

24 A I have no idea why it's on there.

25 MR. MITCHELL: Judge, we would like

1 to -- we would object to E-86-A to the
2 extent of the note taken and note paid, and
3 I hand it to the Court for the purpose of
4 passing on the objection. Those are, of
5 course, very significant recitals and would
6 not be within the confines of the
7 authenticating witness and would be hearsay.

8 MR. FLUSCHE: We would agree that those
9 items may be disregarded because we don't
10 know who put them on there, either.

11 THE MASTER. It appears to me that that
12 can just be erased. That is a pencil mark
13 on this piece of paper rather than a
14 photograph of a pencil mark, isn't it,
15 Mr. Bates?

16 THE WITNESS: It looks that way to me,
17 yes, sir. It was written on there.

18 MR. MITCHELL: I would suggest to the
19 Court, Your Honor, that it would be erased
20 in view that everyone agrees that it's not
21 part of the record.

22 THE MASTER: Yes, that request is
23 granted, Mr. Mitchell. Let the offering --

24 MR. FLUSCHE: I have got another copy
25 without those notations.

1 THE MASTER: Why do we have it E-86
2 and E-86-A?

3 MR. FLUSCHE: Well, my reasoning was
4 that these are the actual records that were
5 produced by the bank for me last Friday
6 whereas to the others are just copies, but
7 they are precisely the same.

8 THE MASTER: Has E-86 ever been offered?

9 MR. FLUSCHE: No, sir.

10 THE MASTER: That is what my notes
11 reflected.

12 MR. MITCHELL: I would like, for the
13 record, if it be deemed appropriate, that
14 the comment by counsel who offered E-86-A --
15 who put the notations note taken and note
16 paid when it was in his file with E-86
17 without the notation? I don't know if that
18 is an appropriate request.

19 MR. FLUSCHE: We don't know.

20 MR. MITCHELL: I would have no
21 objection and would make the suggestion for
22 the record that we withdraw E-86-A and
23 substitute E-86.

24 THE MASTER: All right. E-86-A is
25 withdrawn and is substituted therefor, E-86.

1 MR. MITCHELL: Thank you, Your Honor.

2 Q (By Mr. Mitchell) Mr. Bates, you received a call
3 last Friday, did you testify, from Mr. Flusche?

4 A No, sir, I didn't. Mr. Anderson, I understand,
5 was informed and then Mrs. Gonzalez. I have had
6 no contact with the State, I guess, is how you
7 would phrase it, until this morning when I showed
8 up and asked if they had a subpoena for me or not.

9 Q And the request was to produce the exhibit that
10 is now E-86 -- what is the technical designation
11 of that exhibit, please?

12 A What do we call it at the bank?

13 Q Yes.

14 A The original of this would be Judge Carrillo's
15 loan register sheet or loan sheet.

16 Q It does not reflect -- it does not undertake to
17 reflect what the activity is in his bank account?

18 A Checking account?

19 Q Yes.

20 A No, this is loan account.

21 Q All right. Now, it appears that in addition --
22 strike that.

23 Before I move from that one, Mr. Bates, did
24 you take supervision over reproducing E-86?

25 A No, I believe the head bookkeeper made these.

1 Q All right. But you can, for the purposes of
2 this record, authenticate it or testify as to
3 what it purports to be.

4 A Yes, sir.

5 Q And E-87-A and E-87 --

6 MR. FLUSCHE: Both of those are E-87-A.

7 MR. MITCHELL: They are both E-87-A's.

8 Q (By Mr. Mitchell) What are they again, please?

9 A Okay. This one here is a check on Judge
10 Carrillo's account.

11 Q Let me interrupt you. That is not reflected
12 in E-86?

13 A No, sir.

14 Q Okay, fine. Go ahead.

15 A And the other one is a deposit slip to his
16 account.

17 Q Okay. The check marked E-87-A is in the amount
18 of fifty-six thirty-one; am I correct?

19 A Yes, sir.

20 Q And the deposit slip E-87-A is fifty-six fifty;
21 isn't that correct?

22 A Yes, sir.

23 Q So, apparently the check didn't go into the
24 account at that amount because the amounts are
25 obviously not the same; isn't that correct, or am

1 I reading --

2 A Ask that question again, please.

3 Q Let me ask you: This check, E-87-A for fifty-
4 six thirty-one could not have been the subject
5 matter of the deposit on this other E-87-A; am
6 I correct?

7 MR. FLUSCHE: Your Honor, I don't
8 believe this witness can answer that
9 question.

10 A There is no way that any bank officer could
11 answer that question. We don't know what --

12 Q (By Mr. Mitchell) That is exactly what I want
13 the record to reflect.

14 MR. FLUSCHE: We'll stipulate there is
15 nineteen dollars difference between the
16 check and the deposit, but I think the
17 instruments themselves show there is
18 nineteen dollars difference.

19 MR. MITCHELL: Thank you.

20 Q (By Mr. Mitchell) Now, the entry on -- well, it
21 would speak for itself.

22 Excuse me, Mr. Bates. I will request to
23 withdraw that fragmentary question.

24 Now, I hand you E-162 and ask you what
25 exactly are those, Mr. Bates?

1 A These are the photostats of the duplicate
2 originals of Judge Carrillo's checking account.
3 This is the statement of his account, monthly,
4 each one.

5 Q Well, now, I thought that is what you testified,
6 but they are Benavides Implement and Hardware --

7 A Excuse me. What did I say, Judge Carrillo?

8 Q Judge Carrillo.

9 A I meant Benavides Implement and Hardware.

10 Q E-162 is Benavides Implement and Hardware, am
11 I correct?

12 A Yes, sir.

13 Q When you were asked to bring in E-162 or asked
14 about it, did Mr. Flusche ask you about the
15 signature card showing the person who had the
16 power to draw on that account?

17 A No, sir, he didn't.

18 Q Would you mind making a note to bring us a copy
19 of the signature card that underlies that
20 exhibit?

21 A Surely.

22 Q And tell us again what it precisely shows. Does
23 it show the account activity?

24 A It shows deposits and withdrawals to that account.

25 Q I guess the one -- the first one on 11-30-72

1 which would be three thousand four hundred and
2 seventy-three seventy-five --

3 A That is the --

4 Q Opening balance?

5 A -- opening balance.

6 Q Closing balance would be fourteen o six fifty;
7 am I right, Mr. Bates?

8 A Yes, sir.

9 Q And if I am doing it correctly, I go right on
10 through to 12-31-74 for a closing balance of
11 forty dollars and twenty-one cents.

12 A Yes, sir. And they should balance on -- this
13 balance you should pick up here.

14 Q All right. Fine. So, that the Exhibit 162 is
15 made up of in tandem a statement of accounts so
16 that the last one on the first sheet is the
17 opening one on the second sheet, and the last one
18 on the second one would be the opening on the
19 third and so forth.

20 A Yes, sir.

21 Q For a period of time of approximately two years;
22 am I correct?

23 A I believe so, yes.

24 Q All right. Now, do you, in examining the record
25 of the Benavides Implement and Hardware, could

1 you tell us if the period reflected in that
2 exhibit was the total period for which that
3 company did business with the bank?

4 A No, sir, I am not qualified to answer that
5 question at this time. I was asked to bring these
6 particular records. Now, there may be records
7 before and there may be records since.

8 Q Well, that is the thrust of my question.

9 A Right.

10 Q In other words, there might be a period of time
11 before and after which you were not asked about
12 and you did not bring.

13 A Right. And I did not familiarize myself with any
14 other.

15 MR. MITCHELL: Your Honor, may I
16 request -- I would like to have, if
17 possible, the signature card on that account
18 and the full history of that account, and I
19 sure hate to call this gentleman back from
20 his business back up here. If there is
21 any way -- I know the Court is imaginative
22 with the agreement of counsel without
23 calling him back up, and I know Mr. Bates
24 has got a busy schedule and would prefer not
25 to come back up. I would like to have either

1 a statement that that is the full activity
2 of the account, note -- incidentally, the
3 note as well as bank statement -- if there
4 are any note ledgers, I would like to have
5 those as a comparable one.

6 THE MASTER: Excuse me. How far do you
7 want to go?

8 MR. MITCHELL: The opening date of that
9 account, Your Honor, as testified to
10 previously by Mr. Couling, which was sometime
11 in 1972, I think he stated.

12 THE MASTER: So, you want the checking
13 account activity record of Benavides --

14 MR. MITCHELL: Implement and Hardware.

15 THE MASTER: -- Implement and Hardware
16 from the date it was opened until when?

17 MR. MITCHELL: Its closing date,
18 Your Honor.

19 THE MASTER: Well, maybe it's not been
20 closed. I understood it was still operating
21 under Mr. Gonzalez.

22 MR. MITCHELL: His testimony,
23 Mr. Couling's testimony was that he sold that
24 business to Mr. Gonzalez sometime in the mid-
25 1975, Judge.

1 THE MASTER: That's right.

2 MR. MITCHELL: So, I would say -- well,
3 here it is, June or July, 1975.

4 THE MASTER: That's correct. That may
5 or may not have closed out the account.
6 You don't know?

7 MR. MITCHELL: Your Honor, if there has
8 been a change in the account -- see, I want
9 to reflect -- I would like the record to
10 reflect and maybe I can't do it without
11 calling him back up, but if Cleofus Gonzalez --
12 go ahead, Mr. Bates.

13 THE WITNESS: The signature card that
14 we have on file, I think, Mr. Mitchell, when
15 the judge no longer signs on the account,
16 that would suffice the records up to the time
17 that he no longer signed on the account or
18 up to the date.

19 MR. MITCHELL: I am mainly interested
20 on Mr. Couling's control over that account
21 to date, he having previously testified he
22 sold the business and it would be relevant
23 if he is still a signature.

24 THE WITNESS: I would bring you all of
25 the records.

1 THE MASTER: That is the easiest
2 solution.

3 MR. MITCHELL: Yes.

4 THE MASTER: I don't know. I would
5 wonder if we need Mr. Bates to bring them.
6 I would assume there is someone with the bank
7 who has a less responsible position that you
8 might just send over here, but I will leave
9 that up to you. I suppose we could have the
10 understanding that if he sends these records,
11 he would testify that they are authentic in
12 what they purport and everything that there
13 is.

14 Now, you're talking about the Benavides
15 Implement and Hardware account?

16 MR. MITCHELL: That's right, Judge.

17 THE MASTER: Now, you want the signature
18 card on that account?

19 MR. MITCHELL: That's right.

20 THE MASTER: And that is the signature
21 card as it existed when it was opened?

22 MR. MITCHELL: Right.

23 THE MASTER: And any changes?

24 MR. MITCHELL: Right. And the loan
25 ledger sheet, Judge Meyers.

1 THE MASTER: On that account.

2 MR. MITCHELL: Yes, sir. And I would
3 like to have as a part of my continued
4 examination of the Witness Couling in view
5 of some of his statements under oath.

6 Q (By Mr. Mitchell) Where is this bank located,
7 in Rio Grande City?

8 A Yes. Let me ask you a question. You said you
9 wanted the ledger sheet on Benavides Implement
10 and Hardware Company, the loan ledger sheet?

11 Q Right.

12 A I wasn't aware that they had any loans under that.
13 I will check, though. Is that what you want?

14 THE MASTER: They may not have.

15 MR. MITCHELL: A statement to the
16 effect, Your Honor, that there is no history
17 of any loan, and I would like to have that in
18 the record in view of the witness's testimony--
19 prior sworn testimony that there were loans
20 at that bank.

21 See, that would be relevant. I would
22 like to have it if I could, a statement
23 properly authenticated of the existence of
24 a loan which would be under the statute
25 evidence of no loan ledger sheet --

1 THE MASTER: Mr. Bates, I believe it's
2 sufficiently complex that I am going to have
3 to ask you to come back with that
4 information. I was trying to do it some
5 other way.

6 THE WITNESS: That is fine. The only
7 thing -- I don't know what the procedure is
8 here, so, if I step out of line, don't get
9 mad at me.

10 THE MASTER: I won't get mad at you.

11 THE WITNESS: But 2:30, 3:00 o'clock on
12 Friday afternoon I can't produce all of the
13 records that you might ask for. I can't
14 come back here tomorrow with what you're
15 asking for. I need time to produce these
16 records. We have to search our microfilm
17 for every individual check.

18 THE MASTER: Well, we are not asking
19 for checks.

20 THE WITNESS: But I am giving you some
21 idea of some of the stuff.

22 THE MASTER: They just come up sort of
23 on a daily process and you may have a check
24 and then a ledger sheet and then something
25 else.

1 THE WITNESS: No, like you asked us
2 for a specific item, say a check. First,
3 we have to find this record, E-162, as you
4 have it marked. We have to find the date;
5 then, go to the microfilm and the microfilm
6 runs a week and we have to go to the day in
7 that week and then go through every item
8 because they are not listed numerically when
9 they are run through our processing center.

10 THE MASTER: But now you have the
11 duplicate originals of the checking account
12 activity sheet which I always call a ledger
13 sheet; is that --

14 THE WITNESS: Yes, sir.

15 THE MASTER: So, that can be photostated
16 without any search?

17 THE WITNESS: Right, that is no problem.

18 THE MASTER: Now, the signature card
19 should be available without searching?

20 THE WITNESS: Right.

21 THE MASTER: So, what is it that you
22 have to search for?

23 THE WITNESS: I need time. I don't
24 want to have to go home this afternoon and
25 try to get this and be back here in the

1 morning; like Wednesday or Thursday would
2 be sufficient time for me to make sure I
3 have everything that you all are asking for.

4 THE MASTER: Well, I can understand
5 that request, Mr. Mitchell.

6 MR. MITCHELL: The loan ledger and the
7 signature card should be in a natural
8 repository and the bank statements that go
9 beyond the exhibit that has been tendered
10 would be the only one that would be time
11 consuming, but we feel strongly about the
12 relevancy of those documents in view of
13 the sworn testimony, Judge.

14 I have written it, if he can understand
15 my writing.

16 Jim, there you are.

17 THE MASTER: Well, Mr. Bates, I will
18 just ask you to do your best. If you can do
19 it by tomorrow; if you can't, then, let us
20 know.

21 Mr. Mitchell, you're making the
22 request. Why don't you undertake to call
23 Mr. Bates -- excuse me, gentlemen. Let's
24 talk one at a time.

25 You just call him in Rio Grande City.

1 What time do you get to the office?

2 THE WITNESS: About 7:30.

3 THE MASTER: About 8:15, and -- but
4 you're in a loan committee meeting at 8:15,
5 aren't you?

6 THE WITNESS: No, our loan committee is
7 on Tuesday at 2:30.

8 THE MASTER: If Mr. Mitchell phones
9 you tomorrow morning, you can tell him
10 whether you can come tomorrow or Wednesday.

11 MR. MITCHELL: Or conceivably, if it
12 please the Court, if he has got the
13 documentation and if there is no argument
14 as to the authenticity, it would be
15 conceivably no more bank statements on
16 Benavides Implement and Hardware, and I
17 would hate to have him come back. If that
18 is all right --

19 MR. FLUSCHE: That is what we tried to
20 do last week. We will certainly agree to
21 that.

22 THE MASTER: That means you don't have
23 to come, if you can get them delivered up
24 here by some other mode of transportation.

25 THE WITNESS: Okay. It will be

1 Wednesday at the earliest because I will not
2 be able to make the bank today. It's two
3 hundred miles from here and my car -- in
4 fact, we were worried whether we were going
5 to make it this morning. It almost broke
6 down. So, I will have to have tomorrow to
7 get those records.

8 THE MASTER: Well, that is understandable.
9 I did not know the distances involved.

10 Mr. Mitchell, that means that Mr. Couling
11 will simply have to wait for further cross-
12 examination. I take it, if you get through
13 with him tomorrow, you will agree for some
14 other witness to go on. They say they have
15 some short witnesses.

16 MR. MITCHELL: I do, Judge.

17 THE MASTER: It's agreed, subject to
18 examination that Mr. Bates may not return;
19 that he delivered to this proceeding the
20 requested items that Mr. Mitchell has
21 identified and it will be agreed and I will
22 let you back out of the agreement if that is
23 something you have a doubt about, but at
24 least preliminarily it's agreed that Mr. Bates
25 would testify that there are authentic copies

1 and that these are all of these such
2 instruments that exist, and if there is no
3 loan ledger card or activity card, the
4 absence of it or a typed statement by him
5 signed by him to the effect that he found
6 none would be acceptable as evidence in this
7 proceeding; is that agreeable?

8 MR. FLUSCHE: We agree.

9 MR. MITCHELL: Yes.

10 Thank you, Judge. That correctly states
11 our understanding.

12 THE MASTER: Do you understand that?

13 THE WITNESS: Yes. I will write a
14 letter.

15 MR. MITCHELL: Thank you very much,
16 Mr. Bates.

17 THE MASTER: You're not through, are
18 you, Mr. Bates? You had not passed him.
19 This was all on voir dire.

20 MR. MITCHELL: Yes. I have leveled
21 an objection which the Court has met,
22 Your Honor, with the erasures and I pass
23 the witness on voir dire.

24 I would object only, Your Honor, and
25 I guess this is as good a time to renew my

1 objection as the Court has blueprinted it
2 for me at the outset of the trial beyond the
3 date of '72, the '73 date, '74, beyond the
4 term date, that we object on the grounds of
5 irrelevant, immaterial, beyond the formal
6 notice, the amended notice, beyond the term,
7 Judge Carrillo's term along with the
8 objections stated at the outset to this
9 court.

10 THE MASTER: But no best evidence or
11 authentication objection?

12 MR. MITCHELL: May I have a minute,
13 Judge?

14 THE MASTER: Yes, sir.

15 MR. MITCHELL: I would have the best
16 evidence objection, Your Honor, to -- I am
17 having trouble, Judge. I would have that to
18 E-87-A, the check, as distinct from E-87-A,
19 the ledger sheet. They are both marked.

20 THE MASTER: The deposit slip?

21 MR. MITCHELL: The deposit slip.

22 THE MASTER: Well, 162 and 86 are
23 admitted.

24
25 (Whereupon, said exhibits having been

1 previously marked for identification were
2 admitted into evidence as E-162 and E-86.)
3

4 THE MASTER: I think you need to get
5 the best evidence objection as to 87-A.
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10
11 E X A M I N A T I O N

12 (CONTINUED)

13
14 BY MR. FLUSCHE:
15

16 Q Let me ask you this, Mr. Bates: When a person
17 signs a note at the bank -- strike that.

18 What is the ordinary banking practice
19 insofar as the original checks on a person's
20 account? What happens to the original checks
21 that are placed in the bank for negotiation?

22 A At a set statement date that individual or that
23 company's statements are cut by the computer and
24 the original checks, debits and credits, whatever
25 they might be, and a statement of his account is

1 mailed to him.

2 Q To the person on whose account the check is
3 drawn?

4 A Right.

5 Q So --

6 A To the address given.

7 Q In the case of the check which is contained in
8 Exhibit 87-A, the original of that check would
9 have gone to Judge Carrillo, is that correct?

10 A Yes, that was his account. It would have gone
11 to the address listed in our computer files.

12 Q All right. What is the statement period of your
13 bank? How frequently do you send statements?

14 A Every month unless requested by an account
15 holder and then they can have a statement cut the
16 following day.

17 Q So, in accordance -- if that check shows it was
18 negotiated or written in November of 1971
19 according to the banking practice in your bank,
20 it would have long since been returned to Judge
21 Carrillo, is that correct, the original of that
22 check?

23 A Yes, under the circumstances that it was a
24 negotiated check -- cashed.

25 Q All right. Now, how about the deposit slip, what

1 is the banking practice at your bank with regard
2 to the original of the deposit slip?

3 A That is a credit to the account that I said
4 earlier, and the check is a debit and they are
5 all mailed out on the statement date.

6 Q The original of the deposit slip and the original
7 of the check, both?

8 A Yes, sir.

9 THE MASTER: So, all you have is a
10 microfilm copy?

11 THE WITNESS: Yes, sir.

12 THE MASTER: The objection is
13 overruled and E-87-A is admitted.

14
15 (Whereupon, Examiner's Exhibit E-87-A
16 was admitted.)

17
18 MR. FLUSCHE: Is E-162 admitted now?

19 THE MASTER: Yes, sir.

20
21 (Whereupon, Examiner's Exhibit 162
22 was admitted.)

23
24 MR. FLUSCHE: I have no further
25 questions.

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MR. MITCHELL: I have no further questions of this witness, Judge.

THE MASTER: You're excused subject to the work you have to do, Mr. Bates.

(Witness excused.)

MR. FLUSCHE: Let me just say here to clarify the record, E-86 relates to the charge leveled in Paragraph 11 of the Second Amended Notice of Formal Proceedings.

THE MASTER: No, there is no Second Amended Notice.

MR. FLUSCHE: The first.

THE MASTER: I struck that.

MR. FLUSCHE: First Amended Notice of Formal Proceedings.

THE MASTER: All right.

MR. FLUSCHE: I will recall Mr. Couling now.

1 RUDOLFO COULING,
2 recalled as a witness, having been previously sworn,
3 testified as follows, to-wit:
4

5 E X A M I N A T I O N
6

7 BY MR. MITCHELL:
8

9 Q Prior to our break, Mr. Couling, I had gone into
10 the amount of income of the Benavides Implement
11 and Hardware account for the purpose of paying
12 the Plains implement contract which was E-160
13 and I had also asked you with regards to the
14 amount of money paid you by Judge Carrillo as
15 rent for those two pieces of equipment bought by
16 Benavides Implement and Hardware in December of
17 1972 as appears in E-160. You recall that live
18 testimony -- those --

19 MR. FLUSCHE: Let me level one
20 objection to this: In fairness to the
21 witness, I think that Mr. Mitchell should
22 produce the checks that he alleges that he
23 has that have been paid to this account
24 before he examines the witness on this
25 because the witness has already testified

1 that he doesn't have any independent
2 recollection of the amount, and I think that
3 Mr. Mitchell has represented to the Court
4 that he has the checks and I think that this
5 line should be deferred until he produces
6 those checks.

7 MR. MITCHELL: Well, are you -- may I
8 ask counsel: Do you have any question in
9 your mind that I would misrepresent to this
10 court and that I do not have them?

11 MR. FLUSBERG: I am not suggesting that.
12 I am saying it's not fair to examine
13 this witness on material that he says he
14 has, but not in the courtroom.

15 MR. MITCHELL: Your Honor, I asked the
16 witness if he had received rental payments
17 knowing full well the defect that counsel
18 just pointed out because I made that known
19 to this Court where the checks were and we
20 have since located them as I have made
21 known to the Court and they are being sent
22 here. I can ask the witness, I believe,
23 Your Honor, and clear it up.

24 Q (By Mr. Mitchell) Mr. Couling, do you recall
25 having received rental payments from Judge

1 Carrillo for those two pieces of equipment in
2 '74?

3 A I received some checks, but I can't tell you the
4 exact amount of them, sir.

5 MR. MITCHELL: Well, without regard to
6 the exact amount, Your Honor. I appreciate
7 the limitation of the witness's knowledge.

8 THE MASTER: I don't see anything
9 unfair about the examination.

10 Objection is overruled.

11 Q (By Mr. Mitchell) Mr. Couling, I really was making
12 a statement to try to direct -- as to prior
13 questions because I was going to ask you some
14 specific questions. You had earlier testified
15 that it was your opinion based on your recollection
16 of the amounts due and owing under 160, the
17 amounts that -- strike that.

18 Your testimony was that the arrangement which
19 you had which as you previously testified to
20 you by O. P. Carrillo, conversation with Cleofus
21 Gonzalez, that execution of the false invoices,
22 the issuance of the check was to pay the payment
23 on that equipment for 1973 and 1974; was that the
24 sum and substance of your testimony?

25 A Well, there were two root plows at the same time.

1 Q I understand. The two tractors and the root
2 plow which I believe the contract has been
3 introduced in evidence, you previously testified.
4 Then, I asked you further, if it was a matter of
5 fact that Judge Carrillo rented the equipment
6 from you and your statement was that you said
7 you recall amounts varying around seventeen or
8 eighteen thousand dollars, but that amount was
9 to make up the amount of difference between what
10 you were receiving from the county in '73 and
11 what was due the Plains Equipment under the
12 contract of December of 1972; wasn't that your
13 testimony?

14 A Well, it was to make up the payments --

15 Q All right.

16 A -- due Plains Machinery.

17 Q All right. My next question: I have pulled
18 during our break the following exhibits which
19 appear previously in the record as checks to
20 Benavides Implement and Hardware for 1973. I am
21 going to hand them to you and call them off for
22 the record. That would be E-97, E-98, 99 and
23 100, E-101-1-2-3 and 103, E-104, 5 and 6, E-107,
24 8 and 9, E-110-A and B and E-111 and E-112 and
25 E-119-A, 19-B, 120 and E-121.

1 I am handing those to you, am I not?

2 A Yes, sir.

3 Q E-122, 123 and 124 and E-125, 126 and 127; am
4 I correct? E-128, 29 and 30. And there appears
5 to be -- first of all, they appear to all be
6 Benavides Implement and Hardware invoices,
7 jackets of the county and checks, all in 1973
8 and you examine them and see if I am not correct.

9 While you are examining them, run a rough
10 total and you will find they run about eleven
11 thousand four hundred dollars if my arithmetic
12 is correct for the year 1973.

13 While you're looking at them, Mr. Couling,
14 to assure accuracy of the record, they all appear
15 to be as I stated checks from the county of
16 Duval County to Benavides Implement and Hardware;
17 am I correct, so far as you have gone through
18 those that I have called off?

19 A Yes, sir.

20 _____

21 _____

22 _____

23 _____

24 _____

25 _____

1 Q This appears to be then about eleven thousand
2 four hundred and eight dollars going into Bene-
3 vides Implement and Hardware by those checks,
4 that is roughly, I understand.

5 A More or less.

6 Q All right, now if we look at 160, E-160 there by
7 your left hand in the chair, that is the contract
8 for the purchase of that equipment, am I correct?

9 A Yes, sir.

10 Q For the same period of time, January of 1973
11 through December, you are obligated, Benavides
12 Implement and Hardware is obligated to pay fifteen
13 hundred dollars a month and if my arithmetic is
14 correct, there is eighteen thousand dollars, am I
15 correct?

16 We arrived at that figure simply by taking
17 the fifteen hundred dollars a month times twelve,
18 didn't we?

19 A I suppose so, sir.

20 Q All right, so that for the same period of time,
21 that is assuming this arrangement that you have
22 told the court about under oath was for the
23 purpose of making the payments on that equipment,
24 it seems that there was eleven thousand -- about
25 eleven thousand four hundred and eight dollars

1 paid in 1973 to Benavides Implement and Hardware
2 and that the note payments due and owing Plains
3 Equipment was eighteen thousand dollars, am I
4 correct, or a difference roughly of six thousand
5 five hundred dollars for the year 1973?

6 A Yes, sir, and the same time these checks were
7 going to pay for the root plows, too.

8 Q I understand, but I am saying in answer to my
9 question if we take that contract for the purchase
10 and the Exhibits you hold in your hands there is
11 just about a sixty-five hundred dollar difference
12 in what was owed under the contract in 160A and
13 the Exhibits that we have set out in the record,
14 am I correct?

15 A I can't tell you unless we add them up, sir.

16 Q Well, let me -- prior to asking you to do that,
17 we are pretty well certain that for 74 -- you have
18 already looked at those checks now for January,
19 February and March, through March those payments
20 were made, do you recall those that you looked
21 at earlier?

22 A Yes, sir.

23 Q All right, now assuming that Judge Carrillo paid
24 you eighteen thousand dollars and I understand it
25 is a controverted fact and Counsel has pointed out

1 that fact that he is correct, but assuming he
2 paid you eighteen thousand dollars for rental in
3 1973, Mr. Couling, and assuming that the contract
4 called for a payment of eighteen thousand dollars
5 for 73 and you took in, under that arrangement,
6 eleven thousand four hundred and eight dollars,
7 it would appear that you made a profit of eighteen
8 thousand dollars less the sixty-five hundred
9 dollars, isn't that correct?

10 A I don't know where the profit is because every-
11 thing went to pay for the tractors and the root
12 plow.

13 Q That is what I am asking you to point out, you
14 have said that two or three times and I am asking
15 you to look at the figures and, as a matter of
16 fact, that is not the case is it? You took in
17 about eleven thousand four hundred and eight
18 dollars under those invoices and checks you have
19 in your hand, right?

20 A Right.

21 Q And that was in 1974, no question about that,
22 correct?

23 A 74 and 73. This was 73 here.

24 Q That last one -- the first one is in 73, the
25 rest is -- that's right, they are paid in 73,

1 were they not?

2 A All of them are 73, sir.

3 Q All right, I meant 73.

4 MR. MITCHELL: The record stands
5 corrected, Your Honor, I am sorry.

6 Q 73, I am sorry, they are all in 73, are they not?

7 A Yes, sir.

8 Q Eleven thousand four hundred and eight dollars
9 paid in 1973 to Benavides Implement and Hardware
10 on that account and assuming Judge Carrillo paid
11 you eighteen thousand dollars more.

12 A Yes, sir.

13 Q Then, you made a profit, did you not?

14 A Well, are you counting the payments on the root
15 plow?

16 Q I am counting the payments --

17 A You are not counting the root plows in there, sir.

18 Q As a matter of fact, Mr. Couling, that is not
19 only the money that went into the Benavides
20 Implement and Hardware, I say by that, I am
21 talking about the money represented by these
22 Exhibits which are one hundred and twenty-five
23 through and including, that you are holding in
24 your lap -- I'm sorry, 103 through and including
25 126.

1 A On Rio Grande City, sir?

2 Q That is not the only money that was in your
3 Benavides Implement and Hardware account?

4 A I don't know, I would have to see it.

5 Q As a matter of fact, Mr. Couling, there were
6 ample monies in the Benavides Implement and
7 Hardware account from monies that were earned
8 from renting that equipment always to pay that
9 fifteen hundred dollars a month payment, am I
10 correct?

11 A Repeat it again.

12 Q There was always money that Benavides Implement
13 and Hardware earned through 71, 72 and 73, to
14 make that fifteen hundred dollar a month payment.

15 A It was deposited every month, the money was deposited
16 every month.

17 Q I mean in addition to the ones that are represented
18 by these checks that you are holding in your lap,
19 I would hand you -- that is 103 through and includ-
20 ing 127, you were paid -- you were making enough
21 money always to pay the fifteen hundred dollars.
22 You didn't even need this money represented by
23 103 to 126 or 127 to make those payments.

24 A It had to come in there, how could I pay them
25 otherwise? Where would I get the money from?

1 Q Let me ask you what has been introduced as
2 E-162, which is the Benavides Implement and
3 Hardware statement at the Rio Grande City bank,
4 do you recognize that?

5 A Yes, sir.

6 Q The first one is November of 72, November 30th
7 of 72, am I reading it correctly?

8 A Yes, sir.

9 Q It shows deposits that month alone of how much?

10 A Four thousand dollars.

11 Q Four thousand four hundred eighty-one dollars and
12 seventy-five cents, am I correct?

13 A Yes.

14 Q December it shows no deposits, am I correct?

15 A Yes, sir.

16 Q All right, now, let's look at January of 1973,
17 a deposit of January of 1973 in the Benavides
18 Implement and Hardware account at the First State
19 Bank and Trust Company of Rio Grande City.

20 A Three thousand dollars.

21 Q Three thousand eighteen dollars and ten cents,
22 correct?

23 A Right.

24 Q A deposit of how much in February?

25 A Thirty-five hundred and fifty-one dollars.

1 Q Right, and February of 1973 there was a deposit
2 of three thousand five hundred and fifty-one
3 dollars in that very account, isn't that correct?

4 A Yes, sir.

5 Q All right, so obviously there was enough money
6 in January deposited to make the fifteen hundred
7 dollar a month payment, wasn't there, twice as
8 much as a matter of fact? Am I correct, in your
9 Benavides Implement and Hardware, there was twice
10 as much money that was necessary to pay that
11 fifteen hundred dollar account?

12 A It was fifteen hundred dollars plus the root
13 plows, sir.

14 Q The root plows was about five hundred dollars
15 a month.

16 A Two root plows.

17 Q About five hundred dollars a month, wasn't it?

18 A On each one.

19 Q The two root plows then -- incidentally, that
20 root plow was not purchased, was it, until the
21 middle part of --

22 MR. MITCHELL: Excuse me, Your Honor,
23 I didn't mean to break right in the middle
24 of that, there is an Exhibit -- I don't
25 know whether it was admitted or not, may I

1 address the question to Counsel?

2 He had an agreement and I think I
3 leveled an objection to it.

4 THE MASTER: On the root plows?

5 MR. MITCHELL: To Mr. Odam on the root
6 plows.

7 THE MASTER: Let's see.

8 MR. MITCHELL: On the purchase of the
9 root plows.

10 THE MASTER: Yes, sir, it is 161 and
11 there was an objection and it was sustained.

12 MR. MITCHELL: That is what I thought.

13 MR. ODAM: Are you waiving the objection?

14 THE MASTER: And I remember now why it
15 was sustained.

16 MR. ODAM: Excuse me, Your Honor.

17
18 (Discussion off the record.)

19
20 O (By Mr. Mitchell:) I understood, Mr. Couling,
21 that the increase of five hundred dollars a month
22 was to take care of the root plows, that is the
23 basic payment was --

24 MR. MITCHELL: Strike that, let me go
25 back at it this way.

1 Q Looking at 162A, without regard to how much
2 money was to be paid, look with me right quick
3 so that we can finish the record off in some
4 neat form.

5 Every month, looking now at 162, November
6 of 72, there was a deposit, was there not, in
7 September now on the 12th there was none and on
8 November of 72 there was four thousand four hun-
9 dred and eighty-one dollars deposited by you in
10 the Benavides Implement and Hardware account?

11 A According to your figures.

12 Q Assuming this is right.

13 MR. MITCHELL: This is 162 we are read-
14 ing from, Your Honor.

15 Q And January of 1973 there were three thousand
16 eighteen dollars and ten cents, is that correct?

17 A Correct.

18 Q And February of 73, three thousand five hundred
19 fifty-one, am I right?

20 A Yes, sir.

21 Q And March, twenty-six hundred dollars, am I
22 correct?

23 A Yes, sir.

24 Q April, nine hundred and ninety-eight dollars,
25 am I correct?

1 A Right.

2 Q May, a thousand dollars deposited?

3 A Yes.

4 Q Am I correct?

5 A Yes.

6 Q June, three thousand four hundred and thirty-
7 two dollars deposited, am I correct?

8 A Right.

9 Q None in July. Twenty-seven hundred and thirteen
10 dollars and thirty cents that was deposited. There
11 were all but about one or two of those and the
12 record speaks of it, more money than represented,
13 were there not -- now, listen to my question.

14 A I am listening to your question.

15 Q Than represented by Exhibits 103 through 127,
16 wasn't there?

17 A Right.

18 Q All right, now, where was the additional source
19 of income?

20 A You are talking about extra monies here. The
21 statement for a month on February of 72 I had a
22 balance after making the payments of a hundred
23 and eight dollars. You call that a lot of money
24 left over?

25 Q I'm not talking about what your payments were,

1 I'm talking about your income per month always
2 exceeded the fifteen hundred dollars, it was
3 always, if you add them up, add them all up, you
4 are going to find incidentally, if my arithmetic
5 is correct again, you are going to find about
6 twenty-eight thousand dollars worth of income into
7 that account for that period shown by that Exhibit.

8 A Well, I can testify that almost ninety per cent
9 or eighty per cent -- or ninety per cent of this
10 money went to pay for the tractors and the root
11 plows, sir.

12 Q All right. If the contract for the Caterpillars
13 was fifteen hundred dollars a month that you will
14 agree would be only eighteen thousand dollars a
15 year, wouldn't it, if that contract 160 is correct,
16 am I correct, and for the same period of time if
17 you took and deposited eighteen thousand dollars
18 in that account, that means that you had ten
19 thousand dollars more than those payments called
20 for. Wouldn't that be correct, Mr. Couling?

21 A Well, I don't know, sir.

22 Q Well, let me hand them back to you. Here is 160,
23 it calls for how much?

24 A For fifteen hundred dollars.

25 Q A month?

1 A Right.

2 Q For 73, the year we are talking about?

3 A Yes, sir.

4 Q In the Exhibit you are holding in your hand shows
5 a deposit of twenty-eight thousand dollars for
6 the same period.

7 I am saying approximately now, and I am not
8 going to hold you to the exact figure, you can
9 look at them.

10 Now, if that is the truth, if that is the
11 case, it would be about a ten thousand dollar
12 profit that the Benavides Implement and Hardware
13 made for that year on that operation, wouldn't it?

14 A Well, it appears more than one year up here.

15 Q I understand the contract runs -- the contract
16 runs for longer than a year, but just taking the
17 twelve month period beginning in January and
18 ending December of 73, Mr. Couling, and the same
19 corresponding period on the deposits in your
20 account, you will find that there is about ten
21 thousand dollars more into the account that you
22 paid out, I suggest, and if I am wrong I would
23 like for you to point out to the record.

24 A Everything that was paid -- everything that went
25 in there, ninety per cent was paid on the tractors

1 and the rest please.

2 Q. I also call an exhibit into evidence, Exhibit 160,
3 Exhibit 160, purchased a Caterpillar tractor.

4 A. Go ahead.

5 Q. I also direct your attention to the first page of
6 160 -- what is it you are holding in your hand,
7 those ledge sheets?

8 A. Before me THE MASTER: 162.

9 A. That was MR. MITCHELL: Thank you, Judge Meyers.

10 Q. 162, that deposit of four thousand dollars was
11 made when, into the Inavides Implement and Hard-
12 ware account, do you see the deposit of four
13 thousand dollars?

14 A. One was made on November the 8th and one on
15 November the 27th.

16 Q. A full month before the tractors were ever bought
17 by the Exhibit 160?

18 A. Right, and I stated that we had --

19 Q. And -- excuse me, two months before the first
20 payment was due under the contract for the pur-
21 chase of the Caterpillars?

22 A. How about the payment on the --

23 Q. Mr. Couling, please. Isn't it a two month
24 period prior to that time that you had four
25 thousand dollars in that account before that

1 equipment was ever bought?

2 A When the bank account was opened I told you we
3 had -- had purchased a Massey-Ferguson tractor.

4 Q All right, now -- he had purchased a Massey-
5 Ferguson tractor?

6 A Yes.

7 Q I knew you mentioned that earlier.

8 A Before he bought that tractor.

9 Q That was a loan payment that was made. He bought
10 a tractor and he paid it out of the account and
11 that was that check that we talked about a while
12 ago that was a loan payment check, right?

13 A No, no, I'm talking about a check from the store
14 to the Massey-Ferguson Company for forty-seven
15 or forty-eight hundred dollars.

16 Q Do you have that check?

17 A No, I don't.

18 Q I thought that was the loan that you testified
19 to?

20 A No.

21 Q That was paid off by that check?

22 A It was paid -- that loan was paid off but in
23 the meantime I had to make checks to that account,
24 for the Massey-Ferguson.

25 Q Because that check that we talked about earlier

1 for the loan payment wasn't until way later in
2 1973, was it?

3 A I don't know how late it was.

4 MR. MITCHELL: Judge, I would like at
5 this point -- we have about two minutes and
6 I would like to have the opportunity to have
7 those checks that we should have by tomorrow
8 morning before I continue my cross-examina-
9 tion.

10 I don't know whether I could accomplish
11 anything in the time that we have remaining.

12 THE MASTER: I wouldn't make you go two
13 minutes. Your office has assured you as
14 best they can assure you, that you will have
15 those --

16 MR. MITCHELL: Yes, sir.

17 THE MASTER: -- those checks.

18 MR. MITCHELL: I was told, Your Honor,
19 that they would be on Continental. There is
20 one in here at 7:45 which we have received
21 other material on.

22 THE MASTER: Yes, I know.

23 MR. MITCHELL: It will be here at 7:45
24 and I will state to the Court that if they
25 are not, I certainly will not impose on the

1 Court.

2 THE MASTER: Well, by that you simply
3 mean that you will agree to other witnesses
4 going on?

5 MR. MITCHELL: That's right, Judge. That
6 is exactly right.

7 THE MASTER: That is fine. We will be
8 in recess until 8:30 tomorrow morning.

9 MR. ODAM: Is that all you have left
10 with him? so we can line up some more wit-
11 nesses? How much longer do you think tomorrow?

12 MR. MITCHELL: I think, John, that per-
13 haps, I would say an hour and a half or two
14 hours more.

15 MR. ODAM: We will get some people lined
16 up.

17 MR. MITCHELL: I think I will be through,
18 if that is what the question is, John, before
19 quitting time.

20 MR. ODAM: Yes.

21
22 (Whereupon the hearing was in recess
23 from 1:00 p.m. on December the 1st, 1975,
24 until 8:30 a.m. on December the 2nd, 1975.)
25