

**INQUIRY CONCERNING A JUDGE  
NO. 5**

**DECEMBER 2, 1975**

**PAGE 2170 - 2375**

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BEFORE THE  
STATE JUDICIAL QUALIFICATIONS COMMISSION

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INQUIRY CONCERNING A JUDGE, NO. 5

DECEMBER 2, 1975

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

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1 THE MASTER: Are you ready to proceed,  
2 Mr. Mitchell?

3 MR. MITCHELL: Yes, I am.

4 THE MASTER: Proceed.

5 MR. MITCHELL: I would like to have  
6 marked for exhibits, Your Honor, a series  
7 of checks.

8 THE MASTER: You want to mark them  
9 individually?

10 MR. MITCHELL: Yes, sir -- no, Your  
11 Honor. Would it be all right to do the same  
12 as we did with 162, if the Court please?

13 THE MASTER: It is as you wish.

14 MR. MITCHELL: One exhibit, Your Honor,  
15 with subnumbers.

16 THE MASTER: What is it, 58?

17  
18 (Whereupon, said documents were  
19 marked for identification as Respondents'  
20 Exhibit 58, 1 through 10.)

21  
22 MR. MITCHELL: And may I also have  
23 marked as exhibits, Your Honor, these five  
24 indictments -- certified copies of these  
25 five indictments.

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THE MASTER: Separately?

MR. MITCHELL: Your Honor, the same procedure, R-59, one, two, three and so forth.

THE MASTER: That is fine.

(Whereupon, said documents were marked for identification as Respondents' Exhibit 59, 1 through 5.)

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1 RUDOLFO COULING,  
2 the witness, having been first duly sworn, testified  
3 as follows, to-wit:  
4

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

6 (CONTINUED)  
7

8 BY MR. MITCHELL:  
9

10 Q Mr. Couling, I believe yesterday I asked you as  
11 regards certain indictments presently pending  
12 against you and I will hand you what has now been  
13 marked as R-59, 1, 2, 3, 4, 5 which appear to be  
14 certified copies of indictments presently pending.

15 First of all, R-59-1 being in Cause No.  
16 3598, State of Texas versus Rudolfo N. Couling  
17 in the 229th District Court, is that correct?  
18 That appears to be that against you, does it not?

19 A Yes, sir.

20 Q And R-59-2, which appears to be a certified copy  
21 of an indictment in Cause No. 3602, State of Texas  
22 versus Rudolfo N. Couling, which is also you, am  
23 I also correct?

24 A Yes, sir.

25 Q And R-59-3, which appears to be certified copies

1 of an indictment in Cause No. 3601, State of  
2 Texas versus Rudolfo N. Couling, which is you?

3 A Yes, sir.

4 Q And R-59-4, which appears to be a certified copy  
5 of an indictment in Cause No. 3600, State of Texas  
6 versus Rudolfo N. Couling, which is you, is that  
7 correct?

8 A Yes, sir.

9 Q And R-59-5, which appears to be a certified  
10 copy of an indictment in Cause No. 3599, State of  
11 Texas versus Rudolfo N. Couling; am I correct?

12 A Yes, sir.

13 MR. MITCHELL: We offer these, Your  
14 Honor.

15 I state for the record that previously  
16 to commencing our session, I have shown  
17 copies to counsel, but I hand them back to  
18 him.

19 While counsel is examining, Your Honor,  
20 may I state for the record also as I  
21 previously noted yesterday in the case,  
22 Motion for Leave to File Petition for Writ  
23 of Mandamus and Prohibition, that I would  
24 file the number for those proceedings and I  
25 do have that number that can be put into the

1 record.

2 THE MASTER: All right.

3 MR. MITCHELL: And this is the docket,  
4 the Supreme Court of the State of Texas that  
5 would be B-5668, Judge Meyers, and that would  
6 be on Exhibit --

7 THE MASTER: R-55?

8 MR. MITCHELL: -- R-55. Yesterday,  
9 there was two of them, Judge.

10 THE MASTER: I know, but you weren't  
11 denied to lead --

12 MR. MITCHELL: Well --

13 THE MASTER: I don't know whether they  
14 gave a number to 56 or not, did they?

15 MR. MITCHELL: Yes, sir, they gave us --

16 THE MASTER: The same number?

17 MR. MITCHELL: -- the same number.

18 THE MASTER: Mr. Odam, is it agreeable  
19 that I may just insert that on the exhibit  
20 myself?

21 MR. ODAM: Yes.

22 THE MASTER: It's B-5668.

23 MR. MITCHELL: B-5668, Judge Meyers, on  
24 the docket of the Supreme Court.

25 THE MASTER: Is there objection to R-59?

1 MR. ODAM: Your Honor, we would object  
2 on the grounds I have not had a chance to  
3 go through each one of these. I think  
4 R-59-2 states that Mr. Couling has been  
5 indicted and with intent to obtain the  
6 benefits for himself naming the person or  
7 the benefits of an Exxon credit card such  
8 and such issued to him by the said school  
9 district for his official use and misapplied  
10 the credit card, and here is another one on  
11 Texaco credit card. Just glancing through  
12 these, I had the opportunity as Mr. Mitchell  
13 pointed out to do so before we started the  
14 proceedings and glancing through them right  
15 now, we would object on the grounds of  
16 relevancy as far as the impeachment is  
17 concerned. These indictments we have here  
18 do not obtain the controversy top side or  
19 bottom, even for impeachment purposes and do  
20 not go to the credibility of the witness.

21 THE MASTER: The indictments do not  
22 impeach, but these are not offered for that  
23 sort of impeachment. They are offered to  
24 show what this witness got by way of benefit  
25 or value by virtue of his agreements to



1 testify. It's just a background to that  
2 agreement, as I understand it.

3 MR. MITCHELL: That's right, Your Honor.

4 THE MASTER: I think he is entitled to  
5 that. A bargain was struck.

6 MR. MITCHELL: Pardon me, Your Honor.  
7 I didn't mean to interrupt the Court, but I  
8 think the objection is partially well taken  
9 and I might ask a few questions to be sure  
10 that the record is completely clear on the  
11 predicate, but that is correct, Your Honor,  
12 to show the agreements behind R-57 and also,  
13 Your Honor, out of fairness to the record,  
14 to show a spill-over -- well, not only the  
15 general impeachment, but impeachment of  
16 misconduct.

17 THE MASTER: I do not think they impeach  
18 on that basis. I think only final conviction  
19 is impeachment.

20 MR. MITCHELL: I will have to ask him  
21 a predicate question and I will submit another  
22 rule of law.

23 THE MASTER: You're correct. I know  
24 what that is going to be, but you haven't  
25 asked it.

1 MR. MITCHELL: I haven't asked it. That  
2 is why I ask you with leave of court.

3 THE MASTER: Do you withdraw your offer  
4 at this time?

5 MR. MITCHELL: Yes, sir. The way it's  
6 stated, the objection is good, Your Honor,  
7 and I would like to continue.

8 THE MASTER: Of course, I think they  
9 are admissible on another ground, and that  
10 is just to show what was exchanged for his  
11 agreement to testify, but you need to  
12 develop a little more.

13 MR. MITCHELL: All right. And I would  
14 like to, if I could. I would like to develop  
15 the record a bit. It's a little green at  
16 this point, and I would like to develop it a  
17 little more.

18 MR. ODAM: On the basis of the Court's  
19 statement as to the admissibility on other  
20 points, we would again point out that the  
21 memorandum of understanding on which the  
22 Court would allow them to go in on the  
23 agreement to testify, the memorandum of  
24 understanding, as pointed out yesterday,  
25 is a memorandum of understanding to testify

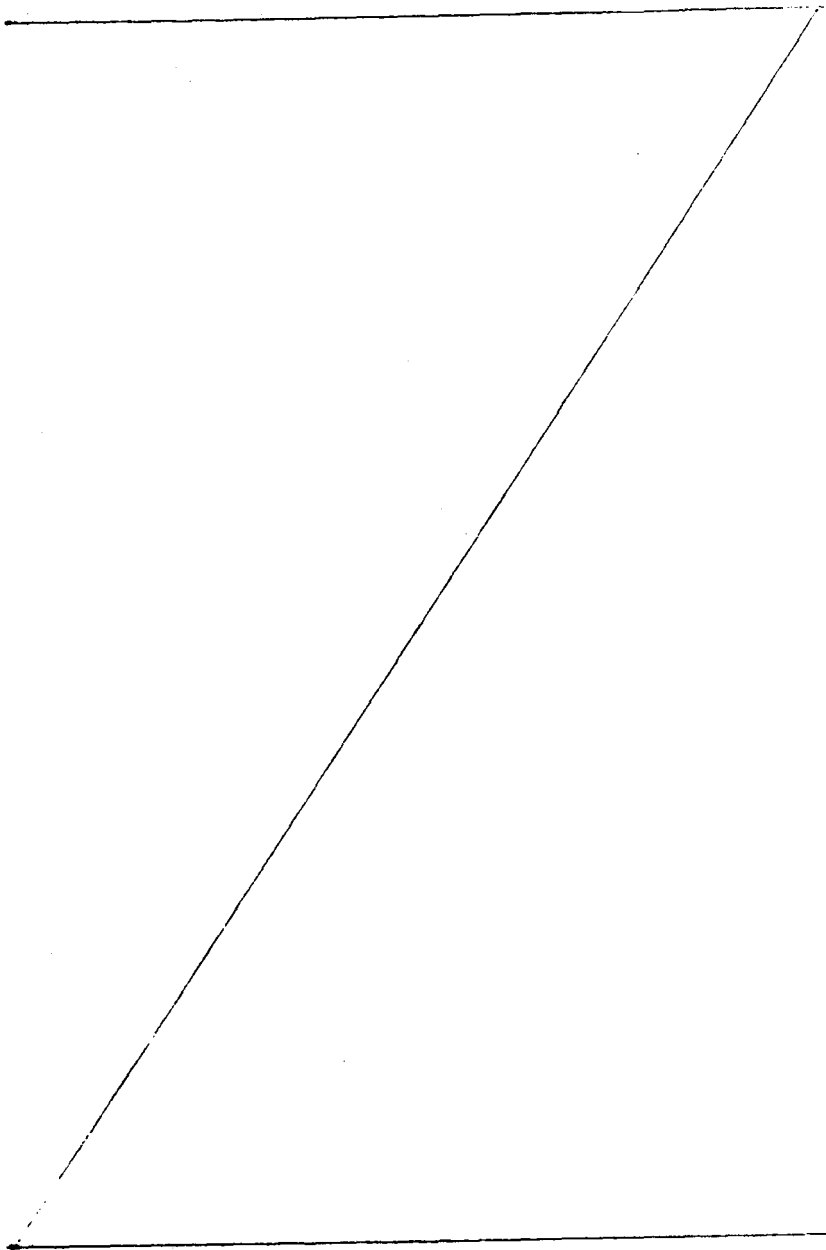
1 in all criminal proceedings by the State of  
2 Texas, and this is not a criminal proceeding.  
3 This witness is not testifying here pursuant  
4 to that memorandum of understanding and  
5 because of that again I would say they are  
6 not relevant to that because the witness is  
7 not testifying with reference to that  
8 memorandum of understanding.

9 I presume, but I don't know. I imagine  
10 if the memorandum were entered in federal  
11 court and he went about it over there, perhaps  
12 it would be relevant there, but I think the  
13 memorandum of understanding is not relevant  
14 and then we go one step further to face  
15 indictments, which I said were irrelevant  
16 and I do not think the indictments would be  
17 relevant --

18 MR. MITCHELL: And I will say this,  
19 unless the record be silent, I think you have  
20 here a criminal proceeding, at least a  
21 quasi-proceeding as to the statute and  
22 constitution and the full import of the due  
23 process protection, the right of confronta-  
24 tion, the right -- all rights guaranteed at  
25 a criminal trial.

1 THE MASTER: Go ahead with your  
2 development.  
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1 Q Mr. Couling, let me go back and ask you some  
2 questions. I think I asked you previously about  
3 the Exhibit which was a contract and agreement  
4 entered into by you, which is now in evidence as  
5 R-57 and it is between you and Arnulfo Guerra,  
6 the District Attorney of the 229th Judicial Dis-  
7 trict of Texas, and Mr. John Blanton. You recall  
8 that testimony, do you not?

9 A Yes, sir.

10 Q And I believe I had asked you yesterday previously  
11 whether or not at the time that this agreement  
12 had been entered, prior to that time you had not  
13 been indicted five times. I believe I asked you  
14 six and you corrected me and I believe you said  
15 no, I believe it was five. Do you recall that  
16 question?

17 A Would you repeat it?

18 Q I had asked you whether or not at the time you  
19 had entered into an agreement in R-57 which was  
20 August of this year, you had been previously  
21 indicted five times?

22 A In August, yes.

23 Q And I believe I also asked you this morning if  
24 R-59-1, 2, 3, 4 and 5 were copies of those  
25 indictments?

1 A Yes, sir.

2 Q All right, then, in addition now this morning,  
3 I will ask you as to part of the agreement in --  
4 that you made with the State of Texas and the  
5 Attorney General, was to give testimony, whatever  
6 the agreement specified, in exchange for the  
7 dismissal of these indictments, all but one to  
8 which you will plead guilty and will receive pro-  
9 bation, isn't that correct?

10 A Yes, sir.

11 Q And, of course, you have up to this point, no  
12 reason to believe that if you carry out your end  
13 of the bargain, that is if you testify against  
14 Judge Carrillo or Ramiro Carrillo in the federal  
15 court, which you have already done, or any other  
16 procedure as covered by that agreement R-57, that  
17 the State of Texas will dismiss these indictments,  
18 all but one to which you will be allowed to  
19 plead guilty and you will receive probation?

20 A Yes, sir, that is what it states here.

21 Q Sure, and you're relying on it and that is the  
22 reason why you gave up your rights that you pre-  
23 viously exercised in Austin before the select --  
24 the sub-committee of the House to claim your  
25 privilege and testify on September the 16th and

1 17th of this year in the federal court against  
2 Judge Carrillo in the U. S. v O. P. Carrillo and  
3 Ramiro Carrillo in the federal trial.

4 A Would you go ahead and rephrase the question.  
5 You mean I was indicted before I went to Austin or  
6 afterwards.

7 Q You were indicted after you went to Austin?

8 A I was indicted after I claimed the Fifth.

9 Q Right?

10 A Yes, sir.

11 Q And you gave up your right to claim your Fifth  
12 Amendment after you made your deal?

13 A Yes, sir.

14 Q And you testified very clearly and for two days  
15 as I recall back in September in the federal  
16 court here in Corpus Christi, am I correct?

17 A Yes, sir.

18 Q And the reason was that you were guilty of the  
19 offenses set out in these indictments and you  
20 did not want to be prosecuted for them and you  
21 are willing to exchange your right to claim your  
22 privilege in exchange for the dismissal of these  
23 indictments. Am I correct?

24 You were guilty of them, they weren't shams,  
25 they weren't phonies, were they? The indictment,

1 the charges for which you were guilty?

2 A Well, I don't know, sir.

3 Q You don't know whether or not you were guilty of  
4 these offenses when you struck your deal?

5 A Well, I wasn't going to take a chance, so I went  
6 ahead and made the deal.

7 Q In other words there was enough smoke there to  
8 where you figured there might be a little fire  
9 so you went ahead and made your deal?

10 A Yes, sir.

11 Q And will plead, of course, to one of them?

12 A Yes, sir.

13 Q Either one or -- on R-59-1, 2, 3, 4 or 5, am  
14 I correct?

15 A Yes, sir.

16 Q And you know at the time you w'll be asked by  
17 the judge whether or not you are guilty and I  
18 suppose you are guilty and you will so testify  
19 under oath, am I correct?

20 A Yes, sir.

21 Q All right.

22 MR. MITCHELL: Now, Your Honor, we  
23 offer R-59-1, 2, 3, 4 and 5.

24 THE MASTER: I think one of them is  
25 admissible but I don't know which one. On



1 that basis, you know, I think they are  
2 still admissible despite what Counsel says.

3 MR. MITCHELL: All right, Your Honor.

4 THE MASTER: Because I believe the  
5 record yesterday indicated that Mr. Couling's  
6 mind -- in Mr. Couling's mind he was testi-  
7 fying here pursuant to that agreement irres-  
8 pective of the exact words of the agreement  
9 and I admitted them on that basis.

10 He has admitted his guilt to one of  
11 those, but not specified which one.

12 MR. MITCHELL: That's right, Judge,  
13 and it depends on which one they select.

14 THE MASTER: That is correct.

15 MR. MITCHELL: So we are out in a  
16 position of -- a strange position where you  
17 have an indictment as the Court well knows  
18 the rule, and that is the reason the Court  
19 is hesitant in admitting, where you have an  
20 indictment and no admission of guilt.

21 But, on the theory that the Court has  
22 expressed this is the quid pro quo of R-57.

23 THE MASTER: I admit it.

24 Q (By Mr. Mitchell:) Let me ask you the questions  
25 before I go into the questions of yesterday

1           afternoon, let me ask you some questions about  
2           these indictments.

3                     First, let's look at R-59-1. That R-59-1  
4           charges you with theft of a check number 1727  
5           issued by the Benavides Independent School Dis-  
6           trict, does it not, Mr. Couling?

7           A Yes, sir.

8           Q And that offense arose, I suppose, from the  
9           charges -- the charge arose at such time as you  
10          were the tax assessor-collector of the Benavides  
11          Independent School District?

12          A Yes, sir.

13          Q Is that correct?

14          A Yes, sir.

15          Q Now, was that a check which you had caused to be  
16          issued to the Zertuche General Store of the  
17          Olivera Implement and Hardware or the Benavides  
18          Implement and Hardware, do you recall?

19          A I can't recall unless I see the check, Mr.  
20          Mitchell.

21          Q All right, do you know whether or not it was one  
22          that you were -- that you had forged the endorse-  
23          ment on?

24          A No, sir, I don't remember.

25          Q Are you quite sure that it is not one of the

1 checks that we have talked about here in this  
2 case involving the Benavides Implement and Hard-  
3 ware?

4 A No, sir.

5 Q You are not sure?

6 A I am not sure, I believe this had to be a check  
7 from the school, not the county check, sir.

8 Q All right, so your answer would be that you are  
9 sure to the extent that the indictment arose out  
10 of a theft claim by the Grand Jury of a check  
11 from the Benavides Independent School District  
12 as distinct from the Duval County, is that cor-  
13 rect?

14 A Yes, sir.

15 Q Am I correct?

16 A Yes, sir.

17 Q And consequently your testimony before this  
18 Court is that you are assuming, therefore, that  
19 the offense arose not in connection with any of  
20 these checks we have talked about in this case?

21 A Not from this indictment, no, sir.

22 Q All right. Now, while I am on that, do you  
23 recall, Mr. Couling -- set that aside just a  
24 minute, in the federal case, and I am going to  
25 go through these, do you recall testifying on the

1 stand under oath in the federal case that you  
2 caused to be issued certain checks from Duval  
3 County, to Benavides Independent School District  
4 in the total amount of twenty-two thousand dollars  
5 in the year 1968; seven thousand dollars in the  
6 year 1969 and five thousand five hundred in the  
7 year 1970, checks that you caused to be issued  
8 either from the Benavides Independent School  
9 District or Duval County or the Conservation Dis-  
10 trict payable to Olivera Implement and Hardware,  
11 Zertuche General Store and which you either  
12 forged the endorsement, and I believe the endorse-  
13 ment with Olivera Implement that you forged; your  
14 wife that you forged, am I correct?

15 A Yes, sir, so far, yes.

16 Q And Zertuche General Store, I believe, which you  
17 forged?

18 A I believe you had one check in there, yes, sir.

19 Q And Arturo Zertuche?

20 A Which was the same check.

21 Q Right, there was no doubt about those trans-  
22 actions and I believe Mrs. Olivera?

23 A Yes.

24 Q Your mother-in-law?

25 A Yes.

1 Q And your daddy-in-law after he went blind?

2 A No, I didn't put his name, no, sir.

3 Q But at any rate, in the federal court you were  
4 also -- you do recall having testified that those  
5 checks were issued by you, caused to be forged by  
6 you and the cash -- and cashed and the cash, I  
7 believe, given to Judge Carrillo is what you testi-  
8 fied to?

9 A All the checks were from the Benavides Independent  
10 School District, sir.

11 Q But you -- you do recall that testimony that those  
12 checks were issued by you, they were forgeries  
13 when they were issued and they were forgeries  
14 when they were cashed and I believe you said over  
15 there you just handed the money to Judge Carrillo?

16 A Part of the money, sir.

17 Q You kept some of it?

18 A Yes, sir.

19 Q And that was in 68, 69 and 70, am I correct, Mr.  
20 Couling?

21 A Yes, sir.

22 Q All right, now, do you recall at the same time  
23 testifying that you had caused to be forged or  
24 issued a check number 6832 for five hundred  
25 dollars to the Zertuche General Store which you

1           forged?

2           A I don't recall, I would have to see the check,  
3           sir.

4           Q All right, I will see if I can get that over here  
5           to refresh your memory.

6                     Do you recall that you had one also in the  
7           amount of two thousand one hundred and two dollars  
8           from Duval County?

9                     Now, that is the same one we are talking  
10          about here in this case, you understand the  
11          Duval County checks, I'm not talking about the  
12          Benavides Independent School District.

13          A From what year, sir?

14          Q From 1970 -- 68.

15          A I have got to see the check.

16          Q All right, do you recall any checks that you  
17          issued -- caused to be issued, fraudulently from  
18          Duval County in 69 to Zertuche General Store,  
19          Olivera Implement and Hardware or Benavides Imple-  
20          ment and Hardware?

21          A I'll have to see them.

22          Q And I will ask you the same question as regards  
23          1970, do you have any recollection of a thousand  
24          and ten dollar check being check number 3137 from  
25          Duval County to Zertuche General Store or Benavides

1 Implement and Hardware that you forged and gave  
2 the money, or you testified you gave the money  
3 to Judge Carrillo?

4 A I'll have to see the check.

5 Q And I'll ask you the one on a thousand and eight  
6 dollars, now there is a thousand and eight dollar  
7 one here.

8 A What year?

9 Q We are talking about 1970 -- yes, 1970.

10 A I'll have to see the check.

11 Q Check number 3439 that you testified to over  
12 there that you forged?

13 A I'll have to see that check, sir.

14 Q All right.

15 A 1970?

16 MR. ODAM: Your Honor, if I might, the  
17 material apparently -- I was not at the  
18 federal trial, but it sounds like, based on  
19 the questions he is propounding, these ques-  
20 tions that were asked of this witness in the  
21 federal case involving certain years with  
22 regard to Judge Carrillo, we would merge the  
23 objection to this testimony, that it is  
24 going now partly on the indictment dealing  
25 with the Benavides Independent School District

1 and we would urge the objection of relevance  
2 and credibility number one as the witness  
3 previously testified he does not know if the  
4 one thousand dollar -- the one thousand eight  
5 dollar check is the check just referred to  
6 and by pointing out the year, it could not be,  
7 it was 1970.

8 We think the witness' testimony as to  
9 what transpired back in those years with  
10 regard to Zertuche General Store, Oliver's  
11 Implement and Hardware and the Benavides  
12 Independent School District and the Water  
13 District, those are not issues that are  
14 even raised with Judge Carrillo here and  
15 don't even go to the credibility of this  
16 witness for impeachment purposes and we would  
17 object on the grounds of relevance to go  
18 back through this case.

19 The impeachment which took place in  
20 the federal case perhaps was relevant there,  
21 but is entirely a different procedure here  
22 with different issues and different public  
23 entities involved.

24 MR. MITCHELL: May I respond to that,  
25 Judge?



1 THE MASTER: Well, I'm just debating  
2 whether you need to. Yes, go ahead.

3 MR. MITCHELL: Well, Your Honor, of  
4 course, with the contract and agreement out-  
5 standing, R-57, and this man's testimony in  
6 the previous trial, following that contract  
7 our theory is that what he did -- strike  
8 that.

9 Our theory is he is not credible and  
10 that he would do anything to save his skin.  
11 So, at the federal trial he just lumped  
12 together five thousand five hundred in one  
13 year, seven thousand one hundred and twenty-  
14 nine in another year and twenty-two thousand  
15 in another year and that would be for 1968  
16 through 1970, the same type of checks, differ-  
17 ent entities: roll them all into a big ball  
18 of wax, pay them to Judge Carrillo.

19 Then, I say the scenario changed, he  
20 just moved over to this one and started in  
21 71, the same modus operandi, same scheme to  
22 save his hide.

23 THE MASTER: What is the rule of impeach-  
24 ment where a person on the stand, though not  
25 charged with a felony, admits to one, is

1 that impeachment?

2 MR. MITCHELL: Prior acts of mis-  
3 conduct, not in the form of a final convic-  
4 tion or an indictment of a felony, a non-  
5 remote felony involving moral turpitude  
6 would be admissible.

7 THE MASTER: He has not been charged  
8 with these things, he is admitting these  
9 things.

10 MR. MITCHELL: Misconduct short of  
11 indictment or short of conviction and that  
12 would admissible, Judge, we submit.

13 Incidentally, Judge, it would also be  
14 admissible on what we consider would be a  
15 question of his total credibility, the  
16 pattern that he has followed. He just steps  
17 out of one forum into another forum and we  
18 say unless this Court has got all of this  
19 in front of it, his story just gets abso-  
20 lutely incredible.

21 MR. ODAM: I certainly do not mind  
22 putting this witness to the same test that  
23 the federal jury did in the trial that  
24 went to the federal conviction. He was  
25 one of the main witnesses and I have no

1 question in my mind as to his credibility  
2 as the jury did in that case and I don't  
3 mind going into it.

4 I think it prolongs the proceeding  
5 unduly and particularly when these proceed-  
6 ings that we are going into right now are  
7 not proceedings but transactions, are remote  
8 both in point of time and with regard to the  
9 entities.

10 I would submit that even for impeachment  
11 purposes this line of questioning is irrele-  
12 vant, even to the credibility of this wit-  
13 ness on these transactions which he is tes-  
14 tifying to here.

15 THE MASTER: I am going to overrule the  
16 objection.

17 MR. MITCHELL: I had completed that  
18 line of questions, Your Honor, but I could  
19 save the Court some time.

20 Q (By Mr. Mitchell:) At any rate, Mr. Couling,  
21 the indictment that I have asked you about R-59-1  
22 does -- was one that was sought and -- well, that  
23 was at the time R-57 was entered into?

24 A Yes, sir.

25 Q Am I correct?

1 A Yes, sir.

2 Q And you don't -- and I believe in summary the  
3 check which you were charged with stealing in that  
4 indictment, that is R-59-1, is not involved in  
5 the testimony that you have given in this court  
6 under oath, because it is a Benavides Independent  
7 School District check, am I correct?

8 A Yes, sir.

9 Q All right, now, let me ask you about R-59-5, which  
10 is the indictment, I believe, for theft?

11 A Yes, sir.

12 Q It charges you on or about the 14th day of Janu-  
13 ary, 1974, with theft of property in excess of  
14 two hundred dollars belonging to the Benavides  
15 Independent School District, am I correct?

16 A Yes, sir.

17 Q Now, I will ask you if you know, please, sir,  
18 whether or not the charge there deals with any  
19 property, the theft that is charging you, the  
20 Grand Jury is simply accusing you in that indict-  
21 ment of any theft of any property that is  
22 involved in the present lawsuit?

23 A No, sir.

24 Q No equipment, no money?

25 A No, sir.

1 Q Or anything you have testified to before Judge  
2 Meyers here?

3 A I don't remember what it was because I don't  
4 even know what that is.

5 Q All right, then the indictments 3 -- R-59-2, 3  
6 and 4 deal with theft and misapplication of  
7 Benavides Independent School District property  
8 in the form of credit cards. They, of course,  
9 have nothing to do with the present proceeding  
10 in terms of being the same property, am I correct?

11 A No, sir.

12 Q All right. Now, let me direct your attention,  
13 if I might, back to yesterday's --

14 MR. MITCHELL: Strike that. May I have  
15 just a second, Judge?

16 (Discussion off the record.)  
17

18 Q Do you recall I had asked you yesterday, Mr.  
19 Couling, on several occasions about the rental  
20 of a bulldozer to Judge Carrillo and particularly  
21 I believe we talked about the year 1973 and 74,  
22 do you recall that?

23 A Yes, sir.

24 Q Do you recall that testimony?

25 A Yes, sir.

1 Q And I believe to put the questions that I am  
2 going to ask you in proper reference, if I recall,  
3 when the state called you, when the Examiner  
4 called you, your testimony was in sum and sub-  
5 stance that there was a scheme hatched in May 6th,  
6 1971, whereby you and Ramiro Carrillo agreed that  
7 you would institute or originate false invoices  
8 upon which there would be county checks issued  
9 which -- for the purpose of issuing that money to  
10 Judge Carrillo for the purpose of buying in part  
11 or paying for some bulldozers?

12 A Well, in 1971, sir, are we talking about the  
13 account in San Diego or Rio Grande, that is what  
14 I am confused on those two cases.

15 Q All right, Mr. Couling, out of fairness to you  
16 I am talking really, I want to direct my atten-  
17 tion -- your attention and my questions will be  
18 directed to you on the bulldozer purchase which  
19 was December of 72, I believe, and that is when  
20 they were purchased. Do you recall that?

21 A Yes, I believe it was 72, sir.

22 Q All right.

23 A The latter part, I believe.

24 Q And that was R-160, if my memory serves me.

25

THE MASTER: No, not R-160, it was

1 E-160.

2 MR. MITCHELL: Yes, Judge.

3 A I believe the first payment was in January.

4 Q January of 1973, you are right, fifteen hundred  
5 dollars, am I correct?

6 A Yes.

7  
8 (Discussion off the record.)

9 Q Yes, that is E-160, I am actually going to ask  
10 you now and I want to direct your attention to  
11 December 14th, 1972, contract E-160 between  
12 Benavides Implement and Hardware Company and  
13 Plains Machinery Company from Corpus Christi,  
14 all right?

15 A Yes, sir.

16 Q And you have that, I believe, there before you,  
17 is that correct?

18 A Correct, sir.

19 Q Now, I had asked you questions, Mr. Couling, as  
20 regards the payment of the note and I believe we  
21 had gone through the original checks that had  
22 been paid -- or checks that were in evidence  
23 which you say were for the purpose of paying the  
24 1973 payments and I had asked you whether or not  
25 as a matter of fact, you had taken that money in

1 that -- that is, from the county in the amount of  
2 eleven thousand four hundred and eight dollars  
3 and fifteen cents and at the same time had  
4 received rental payments from Judge Carrillo, if  
5 you recall that?

6 A Yes, you asked me if I was getting checks from  
7 O. P. Carrillo, yes, sir.

8 Q And I believe your testimony was you do recall  
9 having received checks but you did not remember  
10 without seeing the checks themselves the amounts  
11 when or where, am I correct?

12 A That is correct, sir.

13 Q Now, when I say you, I am talking about the  
14 Benavides Implement and Hardware?

15 A Yes, sir.

16 Q Am I correct?

17 A Yes, sir.

18 Q All right, so that the record is abundantly clear,  
19 your testimony has been generally that this  
20 device, this scheme, was for the purpose of buy-  
21 ing, paying for the Caterpillar tractors that  
22 are represented by the purchase of Benavides  
23 Implement and Hardware. am I correct? That con-  
24 tract that you have, E-160 in your hand?

25 A Yes, sir.



1 Q All right, now E-160, so the record reflects  
2 further, it does not have Judge O. P. Camillo's  
3 name on it, does it?

4 A No, sir, but he made the deal to buy it.

5 Q I understand that has been your testimony. It  
6 is a contract whereby the legal title of that  
7 equipment is in Benavides Implement and Hardware?

8 A Yes, sir.

9 Q And if Benavides Implement and Hardware bought it,  
10 paid for it, complied with the contract, Benavides  
11 Implement and Hardware, you will agree, would  
12 have owned those two tractors, am I correct?

13 A Yes, sir.

14 Q All right, and the total purchase price of the  
15 two tractors were in excess of what, thirty-five  
16 or thirty-six thousand dollars, am I correct?

17 A I don't remember the exact price.

18 Q Thirty-five thousand dollars?

19 A Yes, sir.

20 Q And as a matter of fact, Mr. Couling, when you  
21 purchased -- that is, when Benavides Implement  
22 and Hardware purchased those two tractors in  
23 1972, the name Benavides Implement and Hardware  
24 was the only name that appeared as the purchaser?

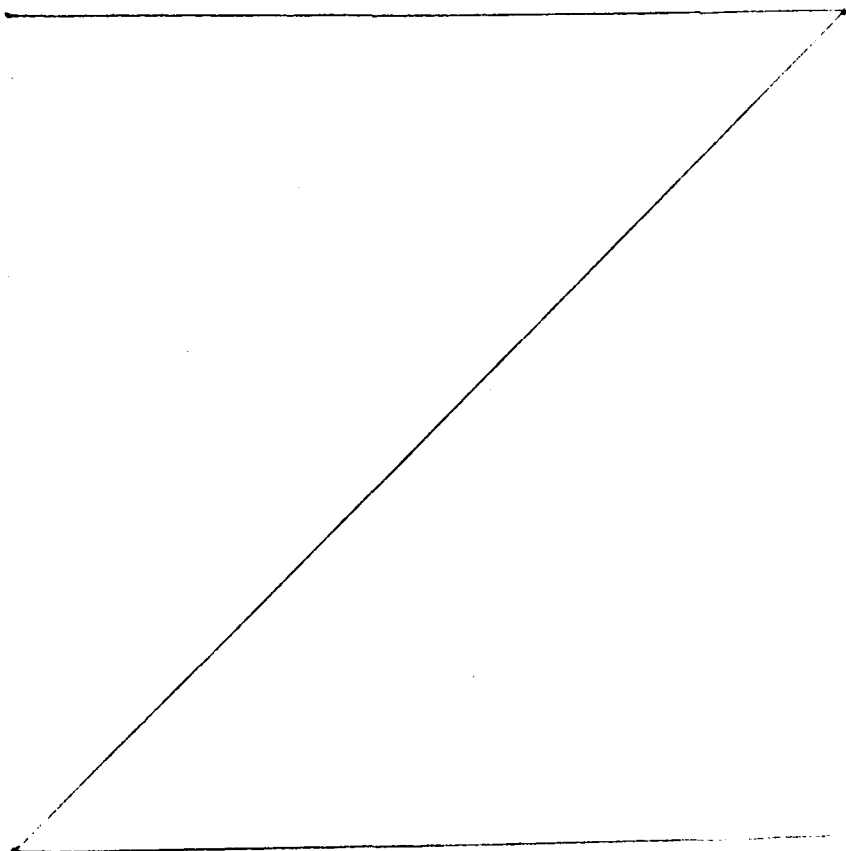
25 A Yes, sir.

1 Q You also carried that tractor on your tax return,  
2 that is the Schedule C, Benavides Implement and  
3 Hardware for 1973, did you not?

4 A I don't recall, sir. I don't remember. I can't  
5 say yes or no.

6 Q Do you know when you filed your income tax for  
7 75, by April of 75 for your '74 income, that you  
8 depreciated those two tractors for 1974?

9 A In 75, I haven't filed a report yet for 75, sir.



1 Q (By Mr. Mitchell) Well, when you made your  
2 settlements for your sixty-nine thousand dollars,  
3 wasn't that part of the deal?

4 A I don't remember if it was in there, sir. I  
5 can't say one way or another.

6 Q Well, at any rate, the checks that are in  
7 evidence indicate that Benaides Implement and  
8 Hardware did receive in 1973, eleven thousand  
9 four hundred dollars for various reasons from  
10 Duval County, am I correct?

11 A I imagine so, sir.

12 Q And it was your testimony, I believe, yesterday,  
13 that that scheme or that device was for the  
14 purpose of paying for those two tractors, correct?

15 A Part of the deal, yes, sir.

16 Q And that when Judge Carrillo -- if Judge Carrillo  
17 paid you any rent, that was to make up any  
18 difference between the payments required under  
19 that contract and what you got from the county.  
20 I believe that was your further testimony; am I  
21 correct?

22 A Well, the difference was that he made -- that the  
23 payments would be met at Plains Machinery.

24 Q That is what I understood your testimony to be.  
25 And I believe we further went into the arithmetic

1 of those checks and found that there was about  
2 eleven thousand four hundred and eight dollars  
3 received by Benavides Implement and Hardware for  
4 1973 from the county?

5 A I don't remember. I don't know the exact amount.

6 Q You haven't got -- if the record reflects  
7 thereabouts, you wouldn't have any quarrel with  
8 the record, am I correct?

9 A No, sir.

10 Q And I believe the record reflects further, to  
11 bring us up to date so I can ask you some  
12 additional questions, that the payments for that  
13 period of time, and that is January to December  
14 of '73, would have been fifteen hundred dollars  
15 a month or a total of eighteen thousand dollars;  
16 am I correct?

17 A You're not including '74?

18 Q No, just '73.

19 A I don't know the exact month, because we had the  
20 checks for '74.

21 Q Yes, if you will recall in March of 1974, you  
22 paid three thousand dollars to Plains Equipment  
23 and paid -- I believe you couldn't decide  
24 whether it was March, April, February or March  
25 payments, could you?

1 A There was one in January and one in March.

2 Q One in January for three and one in March for  
3 three?

4 A Yes.

5 Q Let's set that aside because that is the period  
6 you measured payments up to that time that that  
7 note went into default and it was repossessed.  
8 We are talking about '73 now.

9 A Yes, sir.

10 Q There is no question that that would have been  
11 about eighteen thousand dollars under that  
12 contract, am I correct, the payments?

13 A Well, if it shows that on the record, that is  
14 what it is.

15 Q All right. Now, I will hand you what's been  
16 previously marked and identified as R-58-1, 2,  
17 3, 4, 5 and through and including 10, and ask  
18 you if you recognize these checks to Benavides  
19 Implement and Hardware by Judge Carrillo and  
20 particularly if you will note the endorsement of  
21 Benavides Implement and Hardware Company; most of  
22 them are for deposit. I will ask you to go  
23 through those, Mr. Couling, and see if you can  
24 recognize those as checks given to you by my  
25 client for rental on those tractors in '73.

1 MR. MITCHELL: While he is looking at  
2 that, Your Honor, may I have an additional  
3 one marked?

4 THE MASTER: Yes, sir.

5 MR. MITCHELL: That would be R-58-11.  
6

7 (Whereupon, said document was  
8 marked for identification as Respondents'  
9 Exhibit No. 58-11.)  
10

11 Q (By Mr. Mitchell) Have you examined those now,  
12 Mr. Couling?

13 A Yes.

14 Q And do they appear to have been checks that you  
15 received in the name of Benavides Implement and  
16 Hardware from Judge Carrillo at the times and in  
17 the amounts indicated on the checks?

18 A They appear to be so.

19 MR. MITCHELL: Your Honor, we have  
20 previously shown this to the attorney for  
21 the Examiner because we have added one,  
22 Mr. Odam, that I somehow overlooked, and we  
23 offer them.

24 MR. ODAM: Your Honor, for the purposes  
25 of deciding whether or not to level objection

1 on these checks, I wonder if I could take  
2 the witness on voir dire in establishing --

3 THE MASTER: You may.  
4  
5  
6  
7  
8

9 V O I R D I R E E X A M I N A T I O N  
10

11 BY MR. ODAM:  
12

13 Q Mr. Couling, I show you what has been marked by  
14 the court reporter as R-58-1, a check in the  
15 amount of two thousand five hundred dollars. You  
16 can identify that as being Judge O. P. Carrillo's  
17 signature?

18 A Yes, sir.

19 Q And perhaps you testified to this earlier and I  
20 did not hear; can you identify the signature as  
21 to who filled out and paid to the order of and  
22 how much money?

23 A Yes, sir, it looks like Mr. O. P. Carrillo's,  
24 Benavides Implement, twenty-five hundred dollars.

25 Q In the bottom left, can you read into the record

1 what it states to be the purpose of the check?

2 A Cat rental and equipment.

3 Q Cat rental and equipment?

4 A Yes, sir.

5 Q Now, can you recall what would be the purpose of  
6 this check for two thousand five hundred dollars?

7 MR. MITCHELL: Judge, we are going to  
8 object. I believe the question goes beyond  
9 voir dire. He has a right to take him on  
10 recross. The witness has identified the  
11 signature and the endorsement as his own.

12 THE MASTER: I am inclined to agree,  
13 Mr. Odam, but tell me what objection that  
14 question would lead to.

15 MR. ODAM: Your Honor, the witness has  
16 previously testified that Judge Carrillo  
17 made payments to make up in part the payments  
18 to go to Plains Machinery on two Caterpillars.  
19 These checks have been offered apparently  
20 to show the rental payments, et cetera.  
21 This particular check says rental -- I mean  
22 Cat rental and equipment. The purpose of  
23 my question is to determine whether or not  
24 this particular check is relevant to the  
25 payments for the rental of the Caterpillar



1 and is to determine what the equipment is  
2 on here.

3 Now, this is a check for two thousand  
4 five hundred dollars payment for February of  
5 1973. Is this a check that is relevant to  
6 the payment for the Caterpillars? Is it a  
7 check relevant to payments of something else?  
8 I am trying to determine through this witness  
9 whether or not to object on the grounds of  
10 relevancy of the offer of this check on the  
11 relevancy of the payments on the rental of  
12 the Caterpillar. It says it's for Cat rental  
13 and equipment.

14 MR. MITCHELL: Excuse me, Judge. I  
15 submit without being facetious it says Cat  
16 rental. I don't know how close you can get --  
17 if it said tent rental, I could see counsel's  
18 purpose, but the document speaks to the  
19 contract directly and the year.

20 MR. ODAM: It says Cat rental and  
21 equipment.

22 THE MASTER: Yes, I think, however, that  
23 the purpose for which these checks were given,  
24 that is whether it was all Cat rental or  
25 part Cat rental, part something else may well

1 be disputed. You may take one position and  
2 Judge Carrillo another position with respect  
3 to that, but as of now, if they are admitted,  
4 my notes don't show that they have been  
5 offered.

6 Did you offer them?

7 MR. MITCHELL: Yes, Your Honor, I did.

8 THE MASTER: I just didn't make a note  
9 of them.

10 MR. MITCHELL: I made an offer of them.

11 THE MASTER: It seems to me it goes  
12 just to the weight. This is money received  
13 by Benavides Implement and Hardware to some  
14 extent obviously including some rental, but  
15 it does seem to be that this is more cross-  
16 examination than voir dire.

17 MR. ODAM: Well, obviously I do not  
18 want to quarrel with the Court. The only  
19 point I have about the check is that that  
20 of the grounds of relevancy as to whether or  
21 not they were made for payment on the  
22 Caterpillars. My objection as to their  
23 issuance or their offer would be for example,  
24 R-58-5, which has been offered as being the  
25 check in payment for the Caterpillars. The

1 check might --

2 MR. MITCHELL: I haven't asked him  
3 that. None of that which I have asked has  
4 been authenticated by --

5 MR. ODAM: Well, he --

6 MR. MITCHELL: Such as do you recognize  
7 the documents; do you recognize the signature?

8 I offered them. I haven't gone into the  
9 scope. You know, he might have -- I am not  
10 precluding, but I haven't gone into that far  
11 with him. I intend to go into them to get  
12 the full scope of the man's knowledge.

13 THE MASTER: I suppose Mr. Odam's  
14 problem is that it may be premature to offer  
15 them at this time. Obviously, if this  
16 witness fails to identify them as payments  
17 for rental on Caterpillars, then, what is  
18 the relevancy?

19 MR. MITCHELL: Well, Judge, I haven't  
20 asked him -- I haven't asked him what they  
21 went in for. I asked the predicate question  
22 of authentication. I would like to go back  
23 if they are admitted and find out if the  
24 recitals are correct, and if he has any  
25 quarrel with that. If he does --

1 THE MASTER: Does each check contain  
2 a recital for rental for Cat?

3 MR. MITCHELL: I think most of them --  
4 Judge, I don't have them in hand and I don't  
5 recall.

6 THE MASTER: Then, I take it that all  
7 you're offering them at this time is checks  
8 he received and you don't offer them as  
9 payment on the Caterpillars until you tie it  
10 in further?

11 MR. MITCHELL: That's right. That's  
12 right, Judge.

13 THE MASTER: All right. Now, they may  
14 or may not be proved relevant. You're  
15 correct, Mr. Odam, but I don't agree to  
16 proceeding in this manner.

17 MR. ODAM: You don't object to me  
18 proceeding to ask him about the checks or  
19 you had rather I wait?

20 THE MASTER: I had rather you wait  
21 because I think it's cross-examination. You  
22 may well show they don't have anything to  
23 do with the Caterpillars, but obviously to  
24 the intent that they recite Caterpillars, even  
25 if that recital is denied, those checks come

1 in to some extent.

2 MR. ODAM: I will limit my questions  
3 then for this voir dire for simply as my  
4 first question and that is to clarify for  
5 the record who filled out this information.

6 THE MASTER: All right. That is fine.  
7 You can do that. You're entitled to that.

8 Q (By Mr. Odam) R-58-1, you just testified, I  
9 believe it was before we had the last series of  
10 questions for the Court, that Benavides Implement  
11 and Hardware, in your opinion, was filled out by  
12 Judge Carrillo?

13 A Yes, sir.

14 Q And on the back it says for deposit. Can you  
15 identify who wrote that on there?

16 A I wrote this here, sir.

17 Q 58-2 is marked with --

18 A A rubber stamp.

19 Q A rubber stamp. And on the back, can you  
20 identify who made that deposit?

21 A I did, sir.

22 Q I skip over to 58-5. Part of it looks like it's  
23 in pencil and part in ballpoint. Can you identify  
24 who filled in the Benavides Implement and Hardware  
25 there?

1 A That was Mr. Carrillo, sir.

2 Q You say Mr. Ramiro Carrillo or O. P.?

3 A No, O. P.

4 Q What about the amount of money, who filled in  
5 that?

6 A I believe that looks like my handwriting, sir.

7 Q You filled in where it says --

8 A One thousand seven hundred dollars, yes, sir.

9 Q And did you fill in where it says rent on plows  
10 at the bottom on the left?

11 A Yes, sir.

12 Q This check No. R-58-8.

13 A I filled out the amount of this, one thousand  
14 two hundred dollars. Where it says cash, I didn't  
15 fill that out.

16 Q Can you identify whose signature that would be?

17 A No, sir.

18 Q In the lower left-hand corner where it says  
19 memo on R-58-10, can you read what that says?

20 A Says pear burner and equipment.

21 Q What?

22 A Pear burner.

23 Q Pear?

24 THE MASTER: To burn pears.

25 A Burn pears for the cattle. It's a pear burner.

1 It's a butane tank that --

2 Q Pear burner and equipment?

3 A Yes, sir.

4 Q Two hundred and seventeen dollars and fifty cents?

5 A Yes, sir.

6 Q And you filled out the amount of money?

7 A Yes, sir.

8 Q And you filled out the pear burner and equipment?

9 A Yes, sir.

10 MR. ODAM: Your Honor, the only  
11 objection we would have at this time as to  
12 these checks, and it probably is not -- well,  
13 I have no objection at this time.

14 THE MASTER: They are admitted.

15  
16 (Whereupon, previous documents having  
17 been marked for identification as R-58,  
18 1 through 10 were admitted.)  
19  
20

21 - - - - -

22

23

24

25

E X A M I N A T I O N

(CONTINUED)

BY MR. MITCHELL:

Q Now, the check R-58-1 which Mr. Odam was questioning you, Mr. Couling -- these checks were all paid to the Benavides Implement and Hardware in 1973 for the purposes indicated on the checks; am I correct, except one which is R-58-9, which appears to be one paid January 18, '74 for thirty-five hundred and fifty dollars for rent on -- what is that D.C.?

A Looks like for D.C.

Q For the D.C. That is the tractor, isn't that correct?

A Yes, sir.

Q All right. Now, in each instance, I believe you have testified under oath that they were deposited in the Benavides Implement and Hardware account by you; am I correct? Look through them.

MR. ODAM: For purpose of that question, you said they are all 1973 except that one. I think there is another one in there for the pear burner and equipment, January the



1 18th, 1974.

2 MR. MITCHELL: Thank you, Counsel. I  
3 will ask him about that.

4 A Yes, sir.

5 Q (By Mr. Mitchell) All right. Now, what account  
6 was that money put into? Now, by that money, so  
7 that we are specific --

8 MR. MITCHELL: Excuse me, Counsel.

9 May I have them back?

10 Q (By Mr. Mitchell) What I would like for you to  
11 do, if you would, we lawyers got to have the  
12 record speak. If you would take the Exhibits  
13 R-58-1, 2 and go through those, please, sir, and  
14 call those out and tell us for the record, if you  
15 can, tell from the way you filled out the way --  
16 you endorsed them, what account. Now, as a  
17 question, I am going to ask you ahead of that.  
18 You had at this time, I believe, two accounts, did  
19 you not?

20 A Yes, sir.

21 Q You had one at the Rio Grande City bank, did you  
22 not?

23 A Yes, sir.

24 Q And that bank would have been named the what,  
25 exactly?

1 A First State Bank and Trust.

2 Q Right. And then you had, also --

3 A One in the First State Bank in San Diego.

4 Q Right.

5 Okay. Now, if you can go through that and  
6 tell us where you put that -- where you made  
7 those deposits.

8 A R-58-1 was deposited at the Rio Grande Bank and  
9 Trust Company, sir.

10 Q All right. That would have been a deposit made  
11 when?

12 A Well, the check was issued in February, sir.

13 Q Of 1973?

14 A Yes, sir.

15 Q And its amount would have been for how much?

16 A Twenty-five hundred dollars.

17 Q Now, I am going to show you, please, E-162, which  
18 is the bank statement introduced through Mr. Bates  
19 in the First State Bank and Trust Company for  
20 February of '73. Do you see a deposit there for  
21 twenty-five hundred dollars?

22 A No, sir, it had to be included on that big  
23 deposit, sir.

24 Q So, what you're saying is that there is a deposit  
25 made of three thousand five hundred and fifty-one

1 dollars for February of 1973, which you assume  
2 includes R-58-1 in the amount of twenty-five  
3 hundred; am I correct?

4 A Yes, sir, it says for deposit. It had to be.

5 Q Absolutely, and my question is put to you for  
6 that reason. There is no deposit for twenty-five  
7 hundred.

8 A It's included -- got to be included in that one.  
9 sir.

10 Q So, if I look at R-58-1 and twenty-five hundred  
11 and I went back -- well, is there any other check  
12 here, February of 1973 that would make up that  
13 deposit?

14 A I don't know, sir.

15 Q Well, if you will hold on a minute, we'll see.

16 MR. MITCHELL: May I have just a minute,  
17 Judge Meyers?

18 THE MASTER: Yes, sir. I thought some  
19 request was made as to deposit slips on that.  
20 Do you not have the deposit slips either  
21 here or coming?

22 MR. MITCHELL: No, I see I am going to  
23 need them now.

24 THE MASTER: I was curious. We  
25 discussed them yesterday.

1 MR. MITCHELL: Sure did, Judge. Sure  
2 did.

3 Well, of course, may I state for the  
4 record, all of this was brought about by the  
5 witness's statement that there was no amount  
6 of money going into that account except the  
7 amount to cover these payments and that about  
8 thirty minutes later the bank statements were  
9 introduced showing, of course, that wasn't  
10 the fact --

11 MR. ODAM: I object to that statement,  
12 Your Honor. That is not his testimony. We  
13 tried to get about some root plows and about  
14 some payments for root plows and I, of  
15 course --

16 MR. MITCHELL: I will proceed in this  
17 way, Judge, if I might.

18 Q (By Mr. Mitchell) Mr. Couling, let me hand you --  
19 I am going to hand you back then certain other  
20 exhibits. I will give you, for example, E-109,  
21 which is a check for a thousand and six dollars,  
22 June the 5th of '73; hold them together because  
23 we are going to match them up.

24 Have you got that in your lap? I am going  
25 to give you E-100, which is a check in the amount

1 of a thousand and fifty-one; am I correct, 1973?

2 A Yes, sir.

3 Q All right. Now, E-100 and R-58-1 total what,  
4 please, sir? That would be for 1973, the month  
5 of February? How much would that be?

6 A Thirty-five fifty-one, sir.

7 Q And it appears that in that bank statement for  
8 the First State Bank and Trust Company of Rio  
9 Grande City, E-162 for the month of February,  
10 there was a deposit of three thousand five  
11 hundred and fifty-one dollars; am I correct?

12 A Yes, sir.

13 Q So that focusing in on February of 1973, you  
14 deposited in the Benavides Implement and Hardware  
15 account, the First State Bank and Trust Company  
16 Judge O. P. Carrillo's check in the amount of  
17 twenty-five hundred, am I correct, dated --

18 A Yes.

19 Q And the check issued by Duval County, Claim No.  
20 D-453 in the amount of a thousand fifty-one  
21 dollars payable to the Benavides Implement and  
22 Hardware; am I correct?

23 A Yes, sir.

24 Q And I assume you issued a check, or if you didn't,  
25 I want to know, in payment of the February payment

1 to Plains Implement under your contract E-160.

2 A I don't know if I did, sir.

3 Q Let me see if I can find that.

4 MR. MITCHELL: May I have just a minute,  
5 Judge Meyers?

6 THE MASTER: Yes, sir.

7 Q (By Mr. Mitchell) Now, I want to show you what  
8 has been introduced as E-147, which appears to be  
9 your check -- I can't hardly read it, Mr. Couling.  
10 But it does appear to be fifteen hundred dollars  
11 to Plains Machinery Company drawn on the First  
12 State Bank and Trust Company, Rio Grande City;  
13 am I correct?

14 A Yes, sir.

15 Q Does that fairly doubt -- I say that, the  
16 combination of E-147, R-58-1 and E-100 reflect  
17 correctly the transaction appearing on the bank  
18 statement or E-162 for February?

19 A Here is that check right there, sir.

20 Q It would appear that that is accurately reflected?

21 A Yes, sir.

22 Q So, then, in February of '73, you ended up with  
23 a deposit into the Benavides Implement and  
24 Hardware account of three thousand five hundred  
25 and fifty-one made up by Judge Carrillo's rent

1 check, county check and a check issued in the  
2 amount of fifteen hundred to Plains as payment  
3 on the contract with Plains being E-160 and  
4 showing a net profit for that month, at any rate,  
5 of two thousand?

6 A The two thousand was a check made to B. D. Holt,  
7 to B. D. Holt for the root plow, sir.

8 THE MASTER: I didn't understand you,  
9 Mr. Couling.

10 THE WITNESS: The two thousand dollar  
11 check that shows on the bank statement had to  
12 be a check that was paid to B. D. Holt for  
13 a root plow, sir.

14 Q (By Mr. Mitchell) All right. Now, you said had  
15 to be?

16 A Yes.

17 Q Do you have the check?

18 A Yes.

19 Q All right. Let me have it.

20 MR. MITCHELL: Oh, I am sorry. Counsel,  
21 I didn't mean to be impolite. I thought the  
22 witness said he had it.

23 Your Honor, may I have the Court request  
24 counsel to deliver me the check?

25 THE MASTER: Do you have the check?

1 MR. ODAM: Yes.

2 MR. MITCHELL: May I have it, Your  
3 Honor?

4 THE MASTER: Yes, sir.  
5 Off the record.  
6

7 (Whereupon, an oif-the-record  
8 discussion was had.)  
9

10 MR. MITCHELL: Your Honor, may I ask  
11 counsel a question?

12 THE MASTER: Yes.

13 MR. MITCHELL: Your Honor, may I ask  
14 counsel a question as regards Exhibit E-161,  
15 if those were the purchase orders for the  
16 root plows that the witness keeps alluding  
17 to and referring to?

18 MR. ODAM: Yes. You want to introduce  
19 those as yours?

20 MR. MITCHELL: Yes. I don't want to  
21 offer them as mine. I don't want to be  
22 married to them. Perhaps, for continuity  
23 of the record -- I might withdraw my  
24 objections to those exhibits previously made  
25 if counsel would be kind enough to reoffer



1                   them as his E-161, so that the record speaks  
2                   accurately to the facts --

3                   MR. ODAM: E-161 has been marked and  
4                   that is a copy of a purchase order for root  
5                   plow SND-8RP11-257A. The other piece of  
6                   paper is not marked and it's for D8RP11256A.  
7                   For purposes of continuity, I would have the  
8                   256A marked as E-161-1 and offer those two.  
9                   Well, E-161 has been offered and I would now  
10                  offer 161-1.

11                  THE MASTER: Let's make it dash A. And  
12                  you withdraw your objection to 161?

13                  MR. MITCHELL: Yes, sir, I do, Judge.

14                  THE MASTER: It's admitted.

15                  What about 161-A?

16                  MR. MITCHELL: Likewise.

17                  THE MASTER: It's admitted.

18  
19                  (Whereupon, said documents having  
20                  been previously marked for identification  
21                  as E-161 and E-161-A were admitted.)

22  
23                  MR. ODAM: Off the record.

24  
25                  (Whereupon, an off-the-record

1 discussion was had.)

2  
3 MR. ODAM: Now, the comment about these  
4 two contracts which you have in your hand  
5 and you asked me if I had the check, I do  
6 have the check in my hand, February, 1973.  
7 You want to offer it as your exhibit?

8 MR. MITCHELL: Yes, Your Honor. May we  
9 just attach it to his E-161? That goes in  
10 tandem to that.

11 MR. ODAM: As to the rest of these  
12 checks --

13 THE MASTER: I think it should be marked  
14 separately.

15 MR. ODAM: You want to mark them as  
16 your --

17 MR. MITCHELL: Judge, actually I don't  
18 mind offering them as mine and making them  
19 mine, but for the continuity of the record,  
20 they are in the 161 series. Whatever the  
21 Court wants. I don't mind marking them as  
22 R exhibits. I think anyone reading the  
23 record -- I don't mind marking them and  
24 introducing them as mine, Judge Meyers, except  
25 I think they should be in the 161-A series,

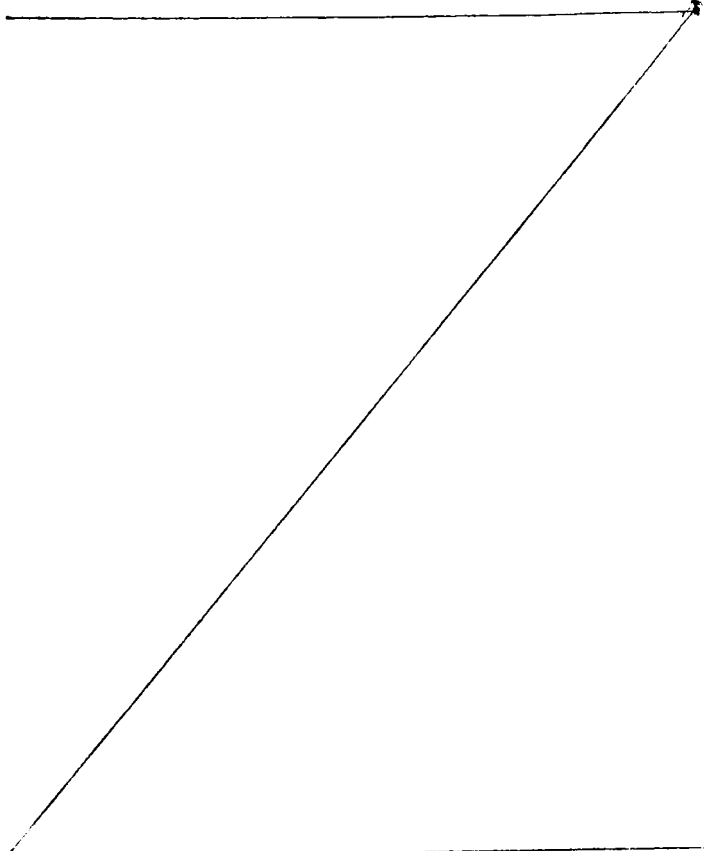
1 161, 161-A. I will do whatever the Court  
2 wants to do.

3 THE MASTER: All right. That is fine.

4 MR. ODAM: Can have them marked as his  
5 exhibits and you can offer them.

6 MR. MITCHELL: Fine. You want to do  
7 that?

8 MR. ODAM: Let's see if I can get them  
9 in a chronological order.



1 (Marked for identification by the  
2 reporter as Exhibit 161B through 161H.)

3 MR. MITCHELL: We offer E-161B through H.

4 THE MASTER: They are admitted.

5 MR. ODAM: Your Honor, also for the  
6 purposes of the record, Mr. Mitchell, I  
7 notice that these, as well as the Plains  
8 Machinery checks that Mr. Couling wrote or  
9 the bank made are not as good a photostatic  
10 copies as what they made earlier.

11 Apparently, they got a new machine  
12 from the time those were made. We had -- I  
13 believe that Mr. Flusche this morning had  
14 telephoned Mr. Bates and had asked him to  
15 send, when he sends that other material,  
16 some better photostatic copies of these  
17 checks, plus to be sure that we have all of  
18 the Plains Machinery checks off the micro-  
19 film, plus all of the B. D. Holt checks.

20 So if they are better photostatic  
21 copies of those, I might substitute those,  
22 particularly those Plains Machinery checks  
23 and there might be some additional Plains  
24 Machinery checks and might be some additional  
25 B.D. Holt checks, I don't know.

1 MR. MITCHELL: We have no objection,  
2 Judge Meyer\*. ~~AND~~ Judge Meyers, while we  
3 are at this pause for housecleaning, may I  
4 also have permission to withdraw at an  
5 appropriate time the R-58 checks which are  
6 Judge Carrillo's checks and substitute  
7 copies of those.

8 THE MASTER: Yes, of course.

9 MR. MITCHELL: We certainly want to  
10 leave them in the record for all examination  
11 Counsel would make of them and for them.

12 MR. ODAM: And we would, of course,  
13 like to withdraw them at some time to make  
14 copies for our purposes on cross-examination.

15 MR. MITCHELL: No objection.

16 THE MASTER: That is fine.

17  
18 EXAMINATION CONTINUED

19 BY MR. MITCHELL:

20 Q Now, Mr. Couling, let me go back and start all  
21 over again here.

22 All right, let's -- I am going to hand you  
23 E-161B, which appears to be a check. If you will  
24 look at it, real carefully, from Benavides  
25

1           Implement and Hardware to B. D. Holt Company for  
2           two thousand dollars in February 19th, 1973, am  
3           I correct?

4           A    Yes, sir.

5           Q    All right, now, is that the check that you earlier  
6           referred to, that apparently was written on the  
7           Benavides Implement and Hardware account, First  
8           State Bank and Trust Company, February, 1973, as  
9           per the Exhibit 162 that I handed you?

10          A    Yes, sir, it looks like the same one.

11          Q    All right, so that in summary then, taking for  
12          example as a month, in the Benavides Implement  
13          and Hardware Company account at the First State  
14          Bank, the deposit of three thousand dollars,  
15          three thousand five hundred and fifty-one dollars  
16          are composed of, now, you recall the check that  
17          we have already introduced into evidence being  
18          R-58, one from ~~Juke~~ Carrillo to Benavides Imple-  
19          ment and Hardware and check -- and the check is  
20          labeled what, Cat rental and equipment rental?

21          A    Yes, sir.

22          Q    And that has reference to what, please, sir?  
23          Does that have reference to the rental of the  
24          Caterpillar and the two pieces of equipment  
25          purchased that you keep referring to, do you

1 know, the plow, the root plow?

2 A I didn't have a contract for rental. All that  
3 was made and the amount was given to me to make  
4 up for the payment that was due to B. D. Holt  
5 and Plains Machinery.

6 Q It was a rental, that is what it says?

7 A I didn't have it rented to O. P. Carrillo, sir.

8 Q You didn't?

9 A No, sir.

10 Q When you got the check, did you say, "Judge  
11 Carrillo, you shouldn't put that Cat rental or  
12 equipment rental on it"?

13 A No, sir, we didn't discuss that. He just said  
14 this should be the amount that takes care of the  
15 payment that is due to B. D. Holt and Plains  
16 Machinery.

17 Q You did deposit it to your account?

18 A Yes, sir.

19 Q And you wrote a check on it?

20 A Yes, sir,

21 Q And the check for fifteen hundred dollars to  
22 Plains Machinery, check number one to Plains  
23 Equipment to buy those two Caterpillars 36-A-470  
24 and 36-A-473 in the name of Benavides Implement  
25 and Hardware?

1 A Yes, sir.

2 Q And also, the check for two thousand dollars  
3 that is February, 1973, which you wrote out of  
4 Benavides Implement and Hardware account to pay  
5 for two root plows as shown by contracts to  
6 purchase E-161 and E-161A. E-161 being the con-  
7 tract of purchase for Benavides Implement and  
8 Hardware, am I reading it correctly?

9 A Yes, sir.

10 Q From B. D. Holt, is that who that is? Who did  
11 you buy it from, do you know?

12 A Right here. (Indicating.)

13 Q Yes, B. D. Holt and Company, Corpus Christi, Texas.

14 A I didn't buy them. I testified that who ordered  
15 them.

16 Q But they are in the name of Benavides Implement  
17 and Hardware?

18 A I didn't sign the contract, sir.

19 Q Sir?

20 A I didn't sign that contract.

21 Q You took title to it and paid for it, I thought.  
22 didn't you?

23 A I didn't sign it, sir, none of them, none of  
24 them.

25 Q How about 161A, is that also purchased -- that



1 is also purchased for Benavides Implement and  
2 Hardware, is that correct?

3 A Yes, sir, and it was verified that it was --  
4 the order was placed by Ramiro Carrillo, sir.

5 Q I know that is what it says on the document,  
6 but the document, the title is in the name of  
7 Benavides Implement and Hardware?

8 A I didn't sign it, sir.

9 Q Doesn't the contract say Benavides Implement  
10 and Hardware?

11 A Yes, sir.

12 Q It doesn't say that the title is in the name of  
13 Ramiro Carrillo, does it?

14 A No, sir.

15 Q It doesn't say the title is in the name of O. P.  
16 Carrillo, does it?

17 A No, sir.

18 Q Likewise, it doesn't say on E-161 the title that  
19 that one is in the name of O. P. Carrillo, it  
20 is Benavides Implement and Hardware, isn't it?

21 A Yes, sir.

22 Q And the checks came out of Benavides Implement  
23 and Hardware to pay for the two root plows and  
24 the two Caterpillars, am I correct?

25 A Yes, sir.

1 Q The legal title, all of which were in the  
2 name of Benavides Implement and Hardware?

3 A Yes, sir.

4 Q And at least as to E-161, that was prior -- that  
5 was in February of 73, prior to the time that  
6 you said you had a partnership with Ramiro  
7 Carrillo and O. P. Carrillo?

8 A What do you mean prior?

9 Q You testified in May 6th, 19 --

10 MR. MITCHELL: I am sorry, I am  
11 incorrect. I withdraw that.

12 THE MASTER: Let me ask Mr. Couling  
13 a question: Mr. Couling, are -- the equip-  
14 ment of this -- is there any sort of  
15 certificate of title to it like there is  
16 to an automobile?

17 A I don't know, sir. I didn't get anything after  
18 they were paid, I didn't get any papers or noth-  
19 ing.

20 MR. MITCHELL: Judge, the closest that  
21 we come to that would be the package, the  
22 documents issued -- introduced as E-160  
23 which are the financing statement and the  
24 full documents of title as well as the con-  
25 ditional sales notice and the followup which

1                   would be our R-50.

2           Q (By Mr. Mitchell:) In light of the question  
3           out to you by the Court, Mr. Couling, do you  
4           know of any other documents on these two Cater-  
5           pillars other than those reflected in E-160 or  
6           in R-50?

7           A From Plains Machinery, sir?

8           Q Or any -- from anywhere?

9           A I signed a release to O. P. I don't see it in  
10          there, so I don't know what it was.

11          Q So there might be a release of that equipment  
12          to O. P., I suppose, prior to the time or after  
13          the time there was a default on E-160?

14          A I don't know what date it was, sir.

15          Q All right.

16                         MR. MITCHELL: Judge, I might give  
17                         these to the Court.

18                                 (Handed to the Court.)

19  
20          Q Now, you are not testifying that --

21                         MR. ODAM: Your Honor, excuse me,  
22                         if I might.

23                         MR. MITCHELL: Excuse me.

24                         MR. ODAM: The last question posed to  
25                         the witness asked if he knew that there were

1 other -- any other papers to go along with  
2 E-160 and the document that is marked R-50.

3 We do have some papers including some  
4 notes receivable cards from B. D. Holt --  
5 correction, from Plains Machinery and I  
6 would not want it to -- we would offer those  
7 at a later time. They might support the --  
8 that question right there and it might  
9 complete the record at this point.

10 These could go ahead and be just like  
11 we did on these checks from B. D. Holt, put  
12 them in and make them a part of the entire  
13 package now, or if not, if Mr. Mitchell  
14 would prefer not to, we could complete this  
15 at a later point.

16 I do think there are some other  
17 papers that would fill out R-50 and R-60  
18 in the light of the last question.

19 My question is, Mr. Mitchell, would  
20 you like to go ahead and drop those in the  
21 record now?

22 MR. MITCHELL: No, but thank you,  
23 Counsel, I do think in answer to the Court's  
24 question we both have to answer that -- I  
25 was attempting to answer the question through

1 the witness and I appreciate that, because  
2 the Court was inquiring concerning the title  
3 documents and certainly at such time that  
4 you feel you want to introduce them, it  
5 would be relevant.

6 MR. ODAM: All right.

7 MR. MITCHELL: May I continue, Judge?

8 THE MASTER: Yes, please do.

9  
10 Q (By Mr. Mitchell:) My last question to you was  
11 you are not testifying under oath that in 19 --

12 MR. MITCHELL: Strike that.

13 Q Mr. Couling, let me ask you this, this business  
14 of the purchase of the Caterpillar tractors didn't  
15 arise until January of 1973, did it?

16 A Yes, sir.

17 Q In other words, none of these checks that are  
18 introduced in evidence previously and I say none  
19 of them, I am going to hand them to you.

20 I am just going to call them off by number,  
21 None of these checks, 151, which is in 1971, 152,  
22 which is in 1971, 153, which is in 71, those  
23 are checks to you by Judge Carrillo and 154 in  
24 71 and 155 which is in 71 and 156 which is in 71,  
25 and 157, which is in 71, or 65 which is in 71,  
or 69 which is in 71 -- excuse me, Mr. Couling,

1 and 75 which is in 71, and 76 which is in 71,  
2 and 70 -- no, 82, which is in 71, none of those  
3 had to do with the purchase of any tractors.

4 A No, sir, this is in the First State Bank of San  
5 Diego.

6 Q Yes, not only are they not on the account of  
7 which the checks were issued for the purchase of  
8 the two root plows and the Caterpillars, that is  
9 the one down at Rio Grande City, they are not  
10 even on that account and they are, of course,  
11 three years prior to the purchase of the Cater-  
12 pillars. They are in 71, am I correct?

13 A Well, did I --

14 Q It could have nothing to do with the purchase  
15 of the Caterpillars?

16 A Did I ever testify that they did?

17 Q No, I want the record clear.

18 A No, sir.

19 Q I think you did.

20 A No, sir.

21 Q I want to be sure.

22 A I didn't testify on those checks that they had  
23 to do anything with the caterpillars.

24 Q You didn't testify that those checks you are  
25 holding issued in 71 were for the purpose of

1           ripping off the county for payment on Cater-  
2           pillar tractors, the title of which was in Judge  
3           Carrillo?

4           A   No, sir, not from the First State Bank of San  
5           Diego, sir.

6           Q   But at any rate, we want the record abundantly  
7           clear, those checks that I just went through,  
8           those are all the ones that are in evidence?

9           A   Yes, sir.

10          Q   That I can find.

11          A   Yes, sir.

12          Q   They have nothing to do, do they, with the pur-  
13          chase of any Caterpillar tractor for Judge  
14          Carrillo, the monies issued out of Duval County  
15          and going into the Benavides Implement and Hard-  
16          ware and checks written by you to Judge Carrillo?

17          A   Not for the Caterpillars, no, sir.

18          Q   Or the root plows?

19          A   No, sir.

20          Q   Because the root plows contract, one of them  
21          which is dated 2-6-73, and that is E-171 and the  
22          other one, E-171A, which is dated 12-4-72, is  
23          that correct?

24          A   Yes, sir, that is correct, sir.

25          Q   Now, as to these checks going to Judge Carrillo,

1 look at, for example, E-157, you have given him  
2 a check for nine hundred and eighty-two dollars  
3 on July the 2nd, 1971, and he labels it tubing,  
4 isn't that correct?

5 A I labeled it tubing, yes, sir.

6 Q You labeled it tubing?

7 A Yes, sir.

8 Q But it is your testimony today under oath that  
9 there was no contract or transaction involving  
10 the sale of tubing by Judge Carrillo to you for  
11 nine hundred and eighty-two dollars on July of  
12 71?

13 A I didn't get any tubing for him, sir.

14 Q It is in your handwriting?

15 A Yes, sir.

16 Q And 156, is a check from you to Judge Carrillo  
17 for a thousand dollars on 5-20-1971, and that  
18 says store counter from Carrillo Drug Store, from  
19 O. P. Carrillo Drug Store?

20 A Yes, sir.

21 Q That is what you put in that check?

22 A Yes, sir.

23 Q And, of course, you do know Judge Carrillo was  
24 going in the drug store business abo<sup>u</sup>t that time,  
25 don't you?



1 A Yes, sir.

2 Q And you do know, in fact, that he did acquire  
3 a building with counters, drug store appliances  
4 and so forth, don't you?

5 A With counters, yes, sir.

6 Q And, but you are telling the Court, that you did  
7 not buy one of those counters from him as that  
8 checks, E-156, indicates?

9 A No, sir, I didn't, I did not buy anything from  
10 him, sir.

11 Q And looking at E-155 which is another check from  
12 you to Judge Carrillo, that -- did you put that --  
13 is that in your handwriting in the lower left-hand  
14 corner on the face of the check?

15 A Yes, sir.

16 Q Loan?

17 A Yes, sir.

18 Q But that is not a loan either, I don't suppose?

19 A No, sir.

20 Q Excuse me. The check goes from Benavides Imple-  
21 ment and Hardware to Judge Carrillo?

22 A Right.

23 Q It is not a loan?

24 A No, sir.

25 Q Now, E-153 is a check, October the 5th of 71,

1 from Couling to Carrillo for rent, that is just  
2 not rent either?

3 A I don't -- I don't know if I signed that there  
4 rent or not, I don't know -- I don't believe it  
5 looks like my handwriting, sir.

6 Q But if it -- but you are saying it just wasn't  
7 so?

8 A No, sir.

9 Q And it certainly had nothing to do with the pur-  
10 chase of any tractors?

11 A No, sir.

12 Q And it certainly didn't have anything to do with  
13 the purchase of any root plows?

14 A No, sir.

15 Q All right. I am tempted to ask the question:  
16 What was it for, tell me.

17 A What that money that was bills were submitted to  
18 the county and that was submitted either by myself  
19 or Cleofus, which was money that O. P. wanted.  
20 That is the way we funneled the checks out to  
21 him, sir.

22 Q I think in sum and substance is that was money  
23 that was issued or represented by checks coming  
24 from the county to your business, the Benavides  
25 Implement and Hardware in 1971 and the county

1 issued it on the basis of a false or fraudulent  
2 invoice on a printed Benavides Implement and  
3 Hardware invoice, either executed by you or  
4 Cleofus, pursuant to a fraudulent scheme to get  
5 the county to issue it and you say for the pur-  
6 pose of taking that money, when you once got it,  
7 and the scheme worked, and giving it to Judge  
8 Carrillo?

9 A Those are the checks for them, sir.

10 Q All right.

11 MR. CUMM: Your Honor, if this line  
12 of questioning is to continue, it seems  
13 like it is totally repetitious of every  
14 question that I asked of Mr. Couling on  
15 direct examination. The purpose of the  
16 check, whether it did what it did, it looks  
17 like Mr. Mitchell is going back for page  
18 after page over what I tried to develop as  
19 the purpose of those checks and I would  
20 object, if this is going to continue, on  
21 the grounds of repetition just because it  
22 is taking time to do what I tried to do on  
23 direct. I object on the grounds of repeti-  
24 tion.

25 MR. MITCHELL: Well, I -- pardon me,

1 Judge Meyers.

2 THE MASTER: It seems repetitious to  
3 me. You may have a purpose in it, but I  
4 don't --

5 MR. MITCHELL: It is, Judge Meyers, to  
6 the extent that I do recall Counsel having  
7 developed that testimony except that I now,  
8 in the proper -- or in the context I believe  
9 have the contract to purchase for the equip-  
10 ment, et cetera. I believe the questions of  
11 the credibility of the man being raised, I  
12 think the questions are proper and perhaps  
13 are to a certain amount repetition touching  
14 on his credibility.

15 THE MASTER: Well, of course, you can  
16 reexamine and cross-examine a witness on  
17 prior testimony to see if you can change it.

18 MR. MITCHELL: Yes, sir.

19 THE MASTER: But perhaps it could be  
20 done with a little less repetition, I don't  
21 know.

22 MR. MITCHELL: Excuse me, Judge Meyers,  
23 I must confess that I have the distinct  
24 recollection, and I am not saying it is  
25 correct, that this witness testified that

1           these series of checks, the ones I have  
2           just gone through, were for the purpose of  
3           paying for that bulldozer and that root  
4           plow. I might have been mistaken, but then  
5           if they were not, then, of course, the  
6           obvious question is why, and that is why I  
7           just asked the last question, why would a  
8           man develop a complicated comprehensive  
9           fraudulent scheme just to take the fruits  
10          of that scheme and give them to somebody  
11          else.

12           THE MASTER: I think that question is  
13          perfectly valid.

14           MR. MITCHELL: It has got to be asked.  
15          Judge Meyers.

16           THE MASTER: I suppose the objection,  
17          the part of the objection I agree with, is  
18          perhaps it is over-repetitious to go over  
19          in detail building up to that question.

20           MR. MITCHELL: Yes, Your Honor.

21           THE MASTER: All of the questions that  
22          were asked on direct.

23           MR. MITCHELL: All right, Judge Meyers,  
24          I will limit my questions. I only have one  
25          other and I am trying to limit them, if it

1           please the Court, and for Counsel, you  
2           understand only to those where there have  
3           been pencil notations on the checks.

4           THE MASTER: All right.

5           MR. MITCHELL: Again, to point up the  
6           credibility factor.

7           Q (By Mr. Mitchell:) I believe I asked you about  
8           152 --

9           MR. MITCHELL: With that understanding,  
10          Judge, I have only one.

11          THE MASTER: Yes, sir.

12          Q All right, with 152, the check dated September 22nd,  
13          1971, in the amount of seven hundred dollars from  
14          you, that is Benavides Implement and Hardware,  
15          to Judge O. P. Carrillo, and it states there what  
16          rent on trucks, doesn't it, Mr. Couling?

17          A Yes, sir, but --

18          Q Wait a minute, let me ask you a question about  
19          it. Is that there in your handwriting?

20          A And the one that is scratched out was my hand-  
21          writing, too, sir.

22          Q In other words, actually what it is, you dis-  
23          tinctly recall it, the one saying legal advice  
24          and it appears to be stricken, doesn't it?

25          A Yes, sir.

1 Q And under it, it is rent on truck?

2 A Right, sir.

3 Q And your testimony is here today there was no  
4 payment on any truck?

5 A I didn't rent no truck from Mr. O. P. Carrillo,  
6 sir.

7 Q Did Judge Carrillo have anything on you? Were  
8 you frightened of him? Was there any reason why  
9 you would take money that you got out of this  
10 money-making machine that you and Cleofus had  
11 going, Mr. Couling, and once you've got it, once  
12 you got the money give it to him?

13 A No, sir, we were --

14 Q Just good friends?

15 A At that time we were the best of friends, sir.

16 (Discussion off the record.)

17  
18 THE MASTER: It is a good time for a  
19 break, Mr. Mitchell.

20 MR. MITCHELL: If I could just finish  
21 this --

22 THE MASTER : I thought you were going  
23 to a new area.

24 MR. MITCHELL: No, Judge, but I do  
25 appreciate that, Judge Meyers.

1 Q Didn't you buy a pickup from him about that time?

2 A Yes, sir.

3 Q Let me see if I can find the pickup that you  
4 bought from him about that time and I'm talking  
5 about the time now that this check E-152 was  
6 given.

7  
8 (Discussion off the record.)

9 Q Look at R-49, is that it?

10 A I have got to see the rest of the pickup, sir.

11 Q Well, does it look like the one that you bought  
12 from him?

13 A I have go to see the side, sir.

14  
15 (Discussion off the record.)

16 Q Your testimony is you can't recognize that that  
17 is the one you bought?

18 A I believe it probably was, when I bought it, at  
19 the beginning, but I didn't buy it new, I bought  
20 it, it was old when I bought it.

21 Q From Judge Carrillo?

22 A I didn't -- I don't deny it, I bought one from  
23 him.

24 Q All right, about the time of that check?

25 A I don't remember the date, s'r. I can't say if



1 it was that check or not.

2 Q It was in 1971?

3 A I don't know if it was in 71 or later on, I can't  
4 say.

5 Q How much did you give him for it?

6 A I might have given him seven or five hundred,  
7 I don't know.

8 Q Well, as a matter of fact, the check we just  
9 looked at, E-152 in September of 71, is for how  
10 much?

11 A Seven hundred dollars, and it states for rent  
12 of truck so I don't know if it was the one for  
13 the truck or not.

14 Q Mr. Couling, do you remember that as a matter of  
15 fact, that was the payment for that truck?

16 A I don't remember, sir.

17 Q In the amount of seven hundred dollars?

18 A I don't remember, sir, I can't say if I did or  
19 not.

20 Q All right, but we do establish that you bought  
21 the truck?

22 A Yes, sir.

23 Q It was bought in 71?

24 A I can't say 71, I don't remember the date.

25 Q And you did agree to pay between seven hundred

1 and what was your testimony?

2 A Seven and five hundred dollars, but I don't  
3 remember exactly.

4 Q Right, but you're quite sure that that Exhibit  
5 152 was money that you cranked -- or you or  
6 Cleofus cranked out of the county and gave to  
7 Judge Carrillo because you all were just close  
8 friends?

9 A Yes, sir.

10 Q All right.

11 THE MASTER: It is break time now,  
12 Mr. Mitchell.

13 MR. MITCHELL: Yes, Judge Meyers, I  
14 believe that's all I have recitals on.  
15 Thank you, Judge.  
16

17 (Whereupon the hearing was in recess  
18 from 10:00 a.m. until 10:20 a.m. of the  
19 same day.)  
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WANETTE DRISKA,  
called as a witness, having been first duly sworn  
upon her oath to tell the truth, the whole truth and  
nothing but the truth, then testified as follows,  
to-wit:

THE MASTER: All right. Have a seat  
there and give your name to this gentleman  
and spell it, please, ma'am.

THE WITNESS: Wanette, W-A-N-E-T-T-E,  
Driska, D-R-I-S-K-A.

THE MASTER: You can have a seat in  
the chair.

E X A M I N A T I O N

BY MR. ODAM:

Q Would you please state, again, your full name,  
for the record.

A It's Wanette Driska.

Q Is it Miss or Mrs.?

A Mrs.

Q Mrs. Driska, my name is John Odam. I just met  
you a few minutes ago. Could you please explain

1 for the record what prompted you to be here  
2 today, other than the subpoena that the Department  
3 of Public Safety patrolman just gave you?

4 A I work as a bookkeeper and secretary for Plains  
5 Machinery Company.

6 Q And did someone talk with you this morning, either  
7 Plains or from the Attorney General's office  
8 about coming down here?

9 A They called me from down here.

10 Q And do you know who that would be? Would that  
11 be Mr. Flusche, perhaps; a man or a woman, do  
12 you know?

13 A It was a man.

14 Q And they asked you to --

15 A To come down here this morning at 10:00.

16 Q Okay, fine.

17 And you say you work for Plains Machinery  
18 Company?

19 A Yes, sir.

20 Q Here in Corpus Christi?

21 A Corpus Christi, yes, sir.

22 Q How long have you been employed with them?

23 A Four years.

24 Q And your position is that of bookkeeper?

25 A Yes, sir.

1 Q And what are your responsibilities, generally,  
2 of being a bookkeeper?

3 A Well, that is kind of vast, but -- well, I make  
4 out the notes and cash receipt reports. Well,  
5 just everything about keeping the books.

6 Q Would it be your job, for example, to post when  
7 the money comes in that is applied to sales,  
8 et cetera?

9 A Yes, sir.

10 Q Who are you a secretary to?

11 A Mr. Kurtz.

12 Q Is that Mr. Red Kurtz?

13 A Red Kurtz.

14 Q And what is his position with the company?

15 A He is the store manager.

16 Q And at time I would suppose in your position of  
17 bookkeeper and secretary, that you would post and  
18 make entries, et cetera, pursuant to his  
19 instructions to you, is that correct?

20 MR. ODAM: This is one document and  
21 mark it with the next Examiner's number.

22

23 (Whereupon, said document was  
24 marked for identification as Examiner's  
25 Exhibit 163-A and B.)

1 MR. ODAM: Mark this Xerox 164, A and  
2 B.

3  
4 (Whereupon, said document was marked  
5 for identification as Examiner's Exhibit  
6 No. 164-A and B.)

7  
8 MR. ODAM: Mark this 165.

9  
10 (Whereupon, said document was marked  
11 for identification as Examiner's Exhibit  
12 No. 165.)

13  
14 Q (By Mr. Odam) Mrs. Driska, I show you what the  
15 court reporter has marked as 163-A and B which  
16 appears to be a machine copy. Could you identify  
17 this generally for the record.

18 A This is a copy of the one I keep in my office  
19 after I get money in and deposit it in the bank.  
20 I post it to this.

21 Q And the pencil markings on there are markings  
22 that you personally made?

23 A Yes.

24 Q And where is the original copy of this machine  
25 copy?

- 1 A I have it in my safe at Plains Machinery Company.
- 2 Q And this 163-A and B, is B --
- 3 A This is just the back page.
- 4 Q The back page, or back side of the card.
- 5 A It's a card like this and it's the back page.
- 6 Q Back side?
- 7 A Back of Page 1.
- 8 Q So, actually this would be in your file simply  
9 as one piece of paper?
- 10 A Card like that?
- 11 Q Card, a yellow card.
- 12 A Uh-huh.
- 13 Q And the entries that are made here on this card  
14 which you say that you made, they also appear  
15 on the original yellow card which is back in the  
16 safe, is that correct?
- 17 A Yes.
- 18 Q And this 163-A and B, did you have occasion  
19 yourself to make this Xerox copy of the card  
20 this morning to bring with you?
- 21 A Yes.
- 22 Q And also, for further identification, could you  
23 identify in whose handwriting this particular  
24 card 163-A is?
- 25 A Benavides Implement and Hardware Company.

1 Q And this would be for what items of purchase?

2 A Two used Caterpillar D-8 tractors, Serial No.  
3 36A470 and 36A143.

4 Q And what is the date of the note that this starts  
5 up a note receivable card on?

6 A December 13th, 1972.

7 MR. ODAM: Your Honor, we would offer  
8 into evidence E-163-A and B as being the  
9 card which shows the payments made on the  
10 Caterpillars which have been in question  
11 thus far kept by Mrs. Driska.

12 MR. MITCHELL: Your Honor, for the  
13 purposes of the record, I suppose this is  
14 as good a time as any to reassert our  
15 continuing objections to the offer of  
16 evidence which is beyond the formal notice  
17 and the amended notice and the scope of the  
18 term of Judge Carrillo for 1975 and also  
19 that the act as set out in these  
20 specifications relates to nonjudicials.

21 With those objections out of the way,  
22 I would like to ask some questions on voir  
23 dire to determine if there are any other  
24 technical objections to the offer, Your  
25 Honor.



1 THE MASTER: Well, you may certainly  
2 do that. The objections are overruled,  
3 Mr. Mitchell.

4 Off the record.

5  
6 (Whereupon, an off-the-record  
7 discussion was had.)  
8  
9

10 - - - - -  
11

12  
13 VOIR DIRE EXAMINATION  
14

15 BY MR. MITCHELL:  
16

17 Q Mrs. Driska, Mr. Odam asked you as regards the  
18 Exhibit 163-A and I am going to show you what  
19 has already been in evidence as 160, which  
20 appears to be a contract between your company;  
21 that is the Plains Machinery and Benavides  
22 Implement and Hardware, and that contract, 160,  
23 the Judge has allowed in evidence, and it shows  
24 that it's dated December 14th, 1972 and it called  
25 for payments in the amount of fifteen hundred

1           dollars pretty well as shown on this little  
2           ledger sheet, 163-A and B, doesn't it?

3           A    Uh-huh.

4           Q    And what I want to ask you is: As a matter of  
5           office practice and procedure, is the contract  
6           such as 160, is that information reproduced on  
7           this type of a card, note receivable card as you  
8           have shown and testified to in 163-A and B?

9           A    Yes, on every note, because that is how, you  
10          know, we see where a customer stands.

11          Q    Right.

12          A    You know, when it's getting paid for.

13          Q    Right. And each note receivable form, of course,  
14          that shows you also at any given time what Plains  
15          Company, Machinery Company has done in terms of  
16          their business, how much money they have got  
17          outstanding.

18          A    True. I make my report from it, also, you know,  
19          at the end of the month.

20          Q    Sure. And tax returns and so forth. You rely on  
21          this data?

22          A    Uh-huh.

23          Q    I will ask you this: The material appearing --  
24          the data appearing on 163-A as to the description  
25          of the tractors, that is correct; it's taken

1           correctly off the contract, is it not?

2           A    Uh-huh.

3           Q    As well as the number of payments?

4           A    (Witness nods head yes.)

5                         THE MASTER:   Excuse me, Mrs. Driska.

6                         It's important that you answer rather than  
7                         nod because we are making a record.  It  
8                         needs to be complete.

9           Q    (By Mr. Mitchell) This gentleman is taking it down,  
10           Mrs. Driska, and the Court has asked you to speak  
11           up.

12                         I say even as regards to the payments, you  
13           will notice on E-160 there are twenty-six payments  
14           at fifteen hundred dollars each with a final  
15           payment of one eighty-six and you have brought  
16           that over on this card, E-163-A, is that correct?

17           A    Yes, sir.

18           Q    And also it's true with the buyer, Benavides  
19           Implement and Hardware, that is correctly reflected,  
20           is it not, on 163-A?

21           A    Yes, sir.

22           Q    The buyer's address?

23           A    Yes.

24           Q    And also the number of -- the amount of payments  
25           that he makes with the date of that payment and

1 a posting reference, which I suppose is some sort  
2 of interoffice reference that you have in your  
3 business?

4 A Yes, that is my cash receipt report number, if I  
5 ever need to go back to it.

6 Q You can always pick it up from there, is that  
7 correct?

8 A Yes.

9 Q And I notice it's written up here at the top, the  
10 insurance certificate 100285. Now, that  
11 corresponds on the 160 to an insurance certificate,  
12 does it not?

13 A Yes.

14 Q Which is labeled conditional sales notice of  
15 insurance; am I correct?

16 A Yes.

17 Q So that your card is shown as E-163-A shows that  
18 certificate number and ties into that package,  
19 is that correct?

20 A Yes.

21 Q Now, I will hand you what appears to be another  
22 contract, R-50, covering the same equipment, but  
23 to a different buyer. You see that. This has  
24 been introduced into evidence and allowed by the  
25 Court; you see that?

1 A Yes.

2 Q Now, you notice it has also the same conditional  
3 sales notice of insurance on it?

4 A (Witness nods head yes.)

5 Q Do you not, E-160?

6 A Yes.

7 Q Were you asked to bring a ledger card that  
8 applied to the contract reflected by R-50?

9 A No, I wasn't asked to bring anything.

10 Q Well, could you pull that same ledger card on  
11 R-50 and bring that if we asked you to?

12 A Yes.

13 Q Or could you do me a favor and look at these  
14 checks -- excuse me. Let me get them marked,  
15 please, ma'am.

16 MR. MITCHELL: I would like to have  
17 these marked, please.

18  
19 (Whereupon, said documents were marked  
20 for identification as Respondents' Exhibits  
21 60-1 through 7.)

22  
23 MR. MITCHELL: Your Honor, I pass the  
24 witness. Our objection stands as previously  
25 noted by the --

1 THE MASTER: They are overruled and  
2 the exhibits are admitted, E-163-A and B.  
3

4 (Whereupon, said documents marked  
5 for identification as Examiner's Exhibits  
6 163-A and B were admitted.)  
7  
8  
9

10  
11  
12 E X A M I N A T I O N

13 (CONTINUED)  
14

15 BY MR. ODAM:  
16

17 Q Mrs. Driska, I show you what has been marked  
18 as 164-A and 164-B, which is a Xerox copy and  
19 also hand you an original yellow copy which is  
20 not marked as an item, but it appears to be an  
21 original of it.

22 Can you identify, first of all, what is the  
23 Xeroxed copy, 164-A? Can you generally describe  
24 what that is?

25 A Well, this is our notes receivable card and this

1 is the original that is kept Amarillo.

2 Q When you say this is the original, you're referring  
3 to the yellow card?

4 A Well, the typing -- this is the yellow card which  
5 is the original that is kept in our Amarillo  
6 office.

7 Q Is 164-A --

8 A This is a copy of it.

9 Q Okay. Now, is 164-A, is that -- well, it appears  
10 to be on the Benavides Implement and Hardware,  
11 on the same two Caterpillars we are talking  
12 about. Do I take it then from what you're saying  
13 about Amarillo, Amarillo keeps a card and you  
14 keep a card; could you explain that?

15 A Well, Amarillo is our home office. You know,  
16 that is where our books are kept. I mean I keep  
17 them here, but they keep them for all nine stores  
18 and I get the money in Corpus and I deposit it  
19 in the bank and I post it to my card. I keep a  
20 card just like this.

21 Q Which we just introduced in evidence and which --

22 A The other one.

23 Q Yes, ma'am. And then how does --

24 A I send my -- it's on my cash receipt report, this  
25 number out here to the right and I send it on to  
Amarillo and they post their card.

1 Q I see.

2 A 164A.

3 MR. ODAM: We would offer into evi-  
4 dence, for just the fullness and complete-  
5 ness of the record, Your Honor, the card  
6 which is kept in the home office in Amarillo  
7 which also shows the same payments based  
8 upon the information sent from Mrs. Driska  
9 for completeness of the record.

10 I appears to be identical with the last  
11 Exhibit that went in, but it is the card  
12 that they keep in Amarillo on the same  
13 equipment.

14 THE MASTER: All right, but you don't  
15 intend to offer the original, you intend to  
16 offer the copy that has been marked.

17 MR. ODAM: I have present the original.

18 THE MASTER: For Mr. Mitchell's compari-  
19 son, perhaps.

20 (Discussion off the record.)

21  
22 MR. MITCHELL: The same objection as  
23 previously made, Judge.

24 THE MASTER: That is the four basic  
25 objections that you previously referred to?



1 MR. MITCHELL: Yes, sir.

2 THE MASTER: The objections are over-  
3 ruled and the Exhibit is admitted, that is  
4 Exhibit E-164A and B.

5 Q (By Mr. Odam:) Mrs. Driska, I show you what  
6 has been marked as E-165 and ask you if you  
7 can identify E-165 for the record, please, ma'am.

8 A It will take some doing.

9 Q First of all, let me assist you in that. Who  
10 is the party involved in this particular card?

11 A This is O. P. Carrillo and this is our notes  
12 receivable card.

13 Q And would this be a copy of --

14 A This is a copy of the one I have in my safe --  
15 no, I have this in my book, this is an open note.

16 Q Okay, and this is a copy of an open note that is  
17 back at Plains Machinery right now?

18 A Yes, sir.

19 Q And the postings that are made there are these  
20 postings that you personally made?

21 A These postings are mine, yes.

22 Q And the equipment described there, does it  
23 indicate on the card what the equipment is?

24 A It is two used Caterpillar D-8 tractors, serial  
25 number 36-A-470.

1 Q And I take it that the purpose of that card is  
2 again to post when payments were made?

3 A Yes, sir.

4 Q On those particular tractors?

5 A Yes, sir.

6 Q All right.

7 MR. ODAM: Your Honor, we would offer  
8 into evidence E-165 as a copy of what she  
9 keeps back at her office and she has in her  
10 records at Plains Machinery.

11 MR. MITCHELL: May I have just a  
12 minute, Judge?

13 THE MASTER : Certainly.

14 MR. MITCHELL: Judge, we object to the  
15 offer of 165 on the grounds previously  
16 stated.

17 THE MASTER: The objection is overruled  
18 and the Exhibit is admitted.

19 Q Now, Mrs. Driska, I would like to refer back,  
20 if we might, to the --

21 (Discussion off the record.)  
22

23 Q The first one we offered into evidence, and  
24 which is admitted, is 166A which is a card that  
25 you kept which was for Benavides Implement and

1 Hardware which you kept here at Plains Machinery.

2 The next one that we go to a xerox copy of  
3 the original card, which is the same equipment,  
4 the same party, Benavides Implemment and Hardware,  
5 which is kept in Amarillo, is that correct?

6 A Yes, sir.

7 THE MASTER: You said that the first  
8 one that was admitted was E-163A?

9 MR. ODAM: And B, Your Honor.

10 THE MASTER: And B, just for the record.

11 MR. ODAM: Yes, sir, the front and  
12 back of the card.

13 Q Now, for the -- have you ever testified in court  
14 before?

15 A No.

16 Q Okay, let me explain for you that the reason I  
17 go into the detail and have you read off what is  
18 in here is not only for our benefit, but for the  
19 benefit of what this gentlemen here is writing  
20 down because there might be someone else that  
21 looks at this later on so, therefor, what we might  
22 be able to talk about here is very involved and  
23 repetitious, it all speaks for itself.

24 For the purpose of the fullness of this  
25 record, it is for the benefit of whoever picks

1 up that book and can read and understand what  
2 is on this card.

3 You might think my question was obvious  
4 on what the card states. You can look on there  
5 and tell, but for the purpose of this record , it  
6 needs to be very full so I can go into a little  
7 bit of detail here with you as to what the figures  
8 are, et cetera, for that little machine there,  
9 okay?

10 A Okay, I understand.

11 Q That is the reason for all of that.

12 A Okay.

13 Q Now, we start off and this is 163A and B, that  
14 is the card that you kept and the payments are  
15 indicated to be fifteen hundred dollars.

16 Now, then you write in when a fifteen hun-  
17 dred dollar payment is made, is that correct?

18 A Yes.

19 Q And then you, when payment is made, you reduce  
20 the balance a little bit each time?

21 A Yes.

22 Q And you also note in here what the date of the  
23 payment is that is received, for example, on the  
24 second line it is received 2-21-73, payment was  
25 due 2-16-73, and you have got a payment of

1 fifteen hundred dollars?

2 A Yes.

3 Q And skip down, for example, here is one on  
4 2-26-73 of three thousand dollars and I would  
5 presume that is for these --

6 A Two payments.

7 Q Two payments for March and April of 73?

8 A Yes.

9 Q And then we go down like that through the cards  
10 and the card that is kept in Amarillo number  
11 E-164A and B is on here.

12 When we get down to 1974, for example, your  
13 card shows 1-24-74 three thousand dollar payment  
14 and there is a posting in Amarillo of fifteen  
15 hundred dollars on 1-24-74 and another on 1-24-74.  
16 Do they just make two --

17 A They just make two entries, but see, one number  
18 out here on the cash receipt for it. But I just  
19 do it the simple way, I just drop down two lines.

20 Q I see, so their card shows that when the 1-24-74 --  
21 that credits the payment for December 16, 73, and  
22 for January 16th, 74.

23 A Yes, sir.

24 Q And that is what you meant here when you drop  
25 it down, three thousand dollars, you are crediting

1 the December payment and the January payment, is  
2 that correct?

3 A Yes.

4 Q For three thousand dollars?

5 A Yes.

6 Q And going back to E-164A again, your next post-  
7 ing is -- of April the 2nd of '74, you have a  
8 posting of fifteen hundred dollars and another  
9 fifteen dollars of 4-2- -- I'm sorry, correction,  
10 this is a posting made in Amarillo?

11 A This is Amarillo s.

12 Q But your posting was for April the 1st, three  
13 thousand dollars. Now, I notice on the card that  
14 you had there is a line scratched through that,  
15 can you describe why that would be a line through  
16 it?

17 A Well, I can. It is going to take a little bit.  
18 This was the same time -- not at the same time,  
19 but right after this. This note was changed  
20 from Benavides Implement and Hardware Company  
21 to O. P. Carrillo and if you will notice, you  
22 don't have the other card --

23 Q Well, I have it right here.

24

(Handed to the witness.)

25

1 A Then this six thousand dollars, this check wasn't  
2 good.

3 Q The three thousand dollars check?

4 A You will probably notice this is bracketed. When  
5 we bracket it, the check came back and we re-  
6 deposited it and in the meantime --

7 Q If I could interrupt you for a second, on 4-22- --  
8 correction, on E164A and B --

9 MR. ODAM: I apologize, Your Honor,  
10 for not having enough xerox copies for us  
11 all to look at it at the same time. I'm  
12 trying to explain it to the Court and to  
13 Mr. Mitchell as we go along since I don't  
14 have the copies here for us all to look at  
15 at the same time.

16 Q On April the 2nd, 1974, the two fifteen hundred  
17 dollar payments are not bracketed, are they?

18 A No, on my copy it is not. I just struck a line  
19 through mine when the check came back.

20 Q But there is a bracket here?

21 A Yes, there is a bracket on the Amarillo copy.

22 Q On April the 22nd? In other words, there is,  
23 perhaps, two good ones on April the 2nd?

24 A You see --

25 Q And then a check for, I guess, three thousand

1           dollars bounced?

2           A   This would be the date when the check came back  
3           and I entered it on this cash receipt report.

4           I posted it on 3-29 and I took it away on 4-02.

5           Q   All right, so in other words you gave them credit  
6           for fifteen hundred dollars on April the 2nd and  
7           you gave them credit again on April the 2nd and  
8           when it bounced you deducted it?

9           A   Yes.

10          Q   Okay.

11          A   And then the check was redeposited, but in the  
12          meantime, if you will note this figure is the  
13          same number we started with here.

14          Q   Well, when the payment was made on April the 2nd  
15          of 1974 and the check was good, for bookkeeping  
16          purposes you reduced the balance that was owed  
17          to sixteen thousand six hundred and eighty-six  
18          dollars?

19          A   Yes.

20          Q   And when the check was bounced or bounced, you  
21          ran it back up again to nineteen thousand dollars?

22          A   Well, we then -- I just struck a line through  
23          there and it shows there is still nineteen  
24          thousand six hundred and eighty-six dollars.

25          Q   All right.



1 A Nineteen thousand six hundred and eighty-six  
2 dollars instead of the sixteen thousand six hun-  
3 dred eighty-six dollars.

4 Q Now, on this -- that is the last entry on E-163A  
5 and B, that is the last entry you made is to  
6 strike through it?

7 A Yes.

8 Q Now, on E-164A and B, which is kept in Amarillo,  
9 pardon me, they continue after that with a six  
10 thousand dollar payment.

11 A But I typed this card over and we started the  
12 new note on that date and my six thousand is  
13 paid like as a down payment when we just rewrote  
14 the note.

15 Q So the last entry on this E-164A for six thousand  
16 dollars is the same as your first entry on  
17 E-165, is that correct?

18 A Yes. I am sure the figures will correspond.  
19 What is your balance on that? I am sure because  
20 the note we just carried it over and changed  
21 names.

22 Q Well, they are not the same and I --

23 A Oh, well, the interest was added in again on  
24 this note when we rewrote the note, the interest  
25 figure changed and that is why it would be

1 different.

2 Q And that is all recited on -- over on the left-  
3 hand side, the balance on the note?

4 A We started out with this figure.

5 Q Which would be nineteen thousand six hundred  
6 and eighty-six dollars?

7 A And then we added this interest and insurance and --

8 Q Who made the computation on the balance on the  
9 note that shows on E-165?

10 A Mr. Curtz did and I typed the card.

11 Q So you couldn't say what the basis for that, I  
12 mean he computed what the various interest would  
13 be, et cetera?

14 A Yes.

15 MR. ODAM: Your Honor, the only other  
16 thing I would do with this witness is to  
17 go through the checks which Mr. Mitchell  
18 has. If he is going to take her on cross-  
19 examination, and do that, I would pass the  
20 witness and let him develop that and if  
21 not, I will do it.

22 Are you going to go into the checks,  
23 Mr. Mitchell?

24 MR. MITCHELL: Yes, I will represent  
25 to him that I will.

1 THE MASTER: If he doesn't, I would  
2 let you -- you could request to go through  
3 them certainly.

4 MR. ODAM: All right, and I would --  
5 let's see --

6 MR. MITCHELL: Give me the yellow sheet  
7 that goes with this one if you would, the  
8 one that goes with 160 and the one that  
9 goes with R-50 if you don't mind, and I  
10 believe it is 160.

11 MR. ODAM: This is Plains Machinery.

12 MR. MITCHELL: That is this one, right?

13 MR. ODAM: All right, that is the --  
14 that is the Benavides Implement and Hardware.

15 MR. MITCHELL: That is the Amarillo  
16 copy and her copy and the contract.

17 MR. ODAM: And Judge Carrillo's.

18 MR. MITCHELL: And the yellow sheet  
19 for that one.

20 MR. ODAM: Judge Carrillo's is here  
21 and this one is the one that she kept.

22 MR. MITCHELL: For this one?

23 MR. ODAM: Yes.

24 MR. MITCHELL: All right.  
25

1 (Discussion off the record.)  
2

3 MR. ODAM: I pass the witness, Your  
4 Honor.  
5

6 - - - - -  
7

8 RE - EXAMINATION  
9

10 BY MR. MITCHELL:

11 Q Mrs. Driska, I am going to ask you a few more  
12 questions, please, ma'am. Let's see if I can  
13 get this all back to you.

14 Now, I am going to hand you back the con-  
15 tract which I showed you when I was asking you  
16 some questions earlier, which is what we call  
17 Exhibit -- Examiner's Exhibit 160. Do you recall  
18 that?

19 A Yes.

20 Q And then I'm going to hand you your yellow sheet  
21 back and also the one that you kept here in this  
22 office in your Corpus Christi office which is  
23 E-163A, am I correct?

24 A Yes.

25 Q And then E-164A is a copy of the one that was

1 in the Amarillo office, is that correct?

2 A Yes.

3 Q Okay, now, let me ask you this, in sum and  
4 substance, what has happened is, when that con-  
5 tract was entered into by the folks there at  
6 Plains, someone in the bookkeeping department,  
7 which would be you, extracted the information and  
8 set up the card that you have in this office and  
9 there is one maintained in the Amarillo office?

10 A Yes.

11 Q Is that correct?

12 A Yes.

13 Q And I previously asked you about the information  
14 that is put on the other card that would be the  
15 name, the description of the equipment, the  
16 terms of the contract and the agreement, is that  
17 correct?

18 A Yes.

19 Q All right, now, it -- the material that you have  
20 there in your lap, there is that contract, the  
21 first contract with Benavides Implement and  
22 Hardware, it reflects that that contract was  
23 terminated, doesn't it, at some time in 1970 --

24 A In 1974, I believe.

25 Q That it was terminated and a new contract was

1 set up at least on your books, on the same  
2 equipment with O. P. Carrillo as purchaser?

3 A Yes.

4 Q Okay, now, I am going to see if I can't follow  
5 that through and keep it separated here.

6 That new contract, I believe, has been  
7 introduced into evidence as A-50, along with  
8 E-165.

9 MR. MITCHELL: Let's just wait a  
10 minute.

11 (Discussion off the record.)

12 MR. ODAM: Your Honor, could we take  
13 just one moment to get a blank subpoena  
14 form?  
15

16 THE MASTER: Yes.

17 (Discussion off the record.)

18 MR. ODAM: I am sorry, Your Honor.

19 THE MASTER: That is all right.

20 Q All right, now, Mrs. Driska, the R-40 and E-165  
21 now is a computation then of the paperwork in  
22 E-160 and E-164A and 164B, am I correct?  
23

24 A Yes.

25 Q On the same equipment?

1 A Yes.

2 Q Okay, and is it generally correct that the  
3 opening figure on E-165 is the last or closing  
4 figure on E-164A and B, but for, I believe, a  
5 chargeback?

6 A Well, I --

7 Q But that is the way it should have been, is  
8 that correct?

9 A Yes.

10 Q And it appears that when Judge Carrillo took  
11 over the contract or however he ended up buying  
12 it, there was a payment of six thousand dollars  
13 made at that time?

14 A Yes.

15 Q By Judge Carrillo?

16 A Yes.

17 Q And that is shown on E-165, isn't it?

18 A Yes.

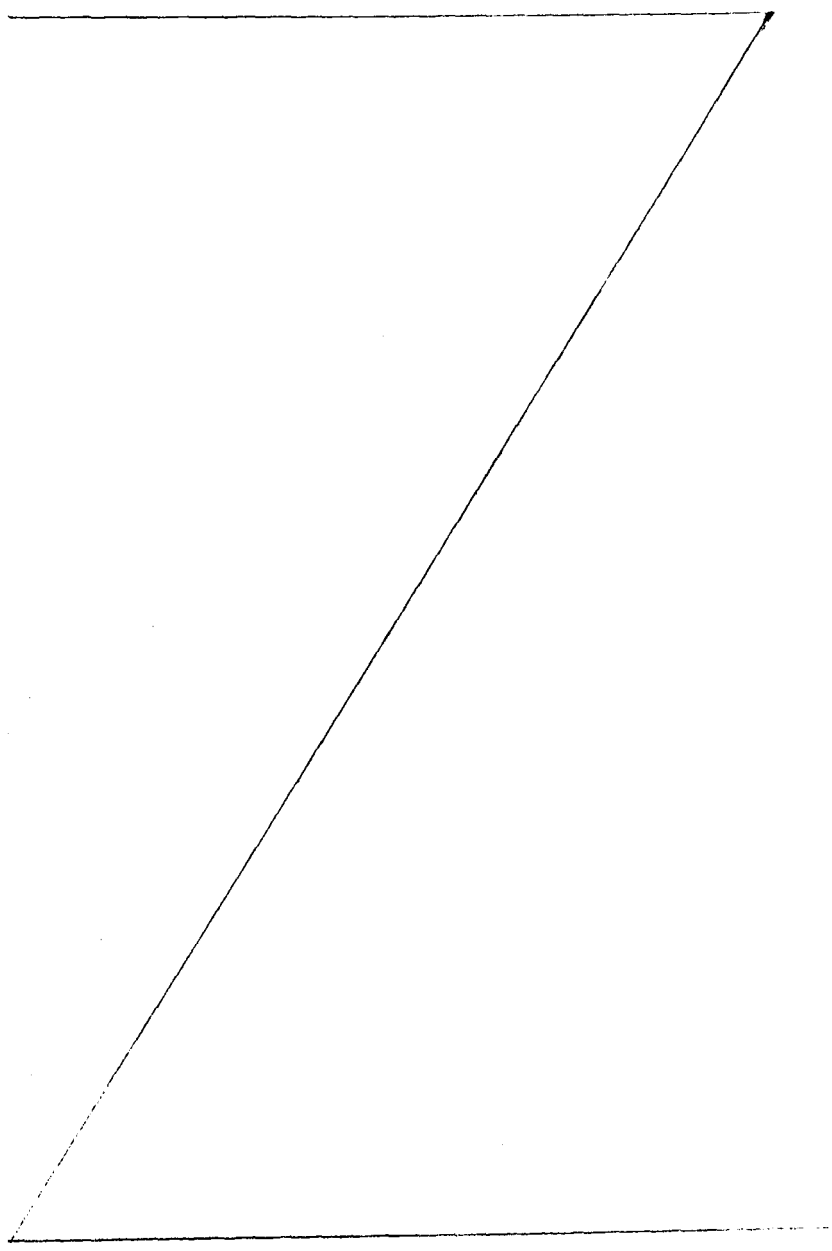
19 Q Okay. Now then, as I assume, that is what  
20 happens as Judge Carrillo has made the payments,  
21 under the contract which is R-50, which you are  
22 holding in your hand, those payments are picked  
23 up and put in on E-165 as well as the original  
24 which is in the Amarillo office?

25 A Yes.

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Q Is that right?

A Yes.





1 Q (By Mr. Mitchell) Now, let me hand you some  
2 checks from Judge Carrillo to what appears to be  
3 Plains Machinery and they are now R-60-1, 3, 4  
4 and 7 and I will ask you to examine them and see  
5 if they are all payable to Plains?

6 THE MASTER: Go ahead and ask the  
7 question. I have got to get something  
8 clarified after you have asked the question.

9 MR. MITCHELL: Those do not include  
10 R-60-2, 5 and 6, Judge, that I am asking  
11 the witness about. I know that is what the  
12 Court is asking me about, so, for the  
13 record --

14 THE MASTER: There are some exhibits --  
15 some of the sub exhibits to R-60 which have  
16 not yet been presented to her.

17 MR. MITCHELL: And I think, Judge, for  
18 the record, that it's R-60-5 and 6 that  
19 have not.

20 THE MASTER: R-60-2, 5 and 6?

21 MR. MITCHELL: Yes, and I handed to  
22 you R-60-1, R-60-3, R-60-4 and R-60-7, have  
23 I not?

24 THE WITNESS: Yes.

25 Q (By Mr. Mitchell) And those are all checks

1 payable to Plains Equipment and deposited, if  
2 you will turn them over, I think.

3 A I already have.

4 Q They are all for deposit only into you-all's  
5 account, correct?

6 A Yes.

7 Q And for the purpose, I have to ask the technical  
8 questions. Is that the copy for your deposit  
9 paid to the order of Corpus Christi State National  
10 Bank for deposit only, Plains Machinery Company,  
11 Account No. 031032-6, correct?

12 A Yes, sir.

13 Q Have you recognized that as being you-all's  
14 stamp?

15 A Sure.

16 Q Do you not?

17 A Yes.

18 Q Now, will you do me a favor? I want to first  
19 take R-60-7, which is a payment made in October  
20 you notice in the amount of two thousand four  
21 forty-nine -- I withdraw that whole question.

22 MR. MITCHELL: I am going to offer  
23 them, first, Judge Meyers. I offer R-60-1,  
24 R-60-3, R-60-4 and R-60-7.

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

1 moment to examine these?

2 THE MASTER: Yes.

3 MR. ODAM: Off the record.

4

5 (Whereupon, an off-the-record  
6 discussion was had.)

7

8 MR. ODAM: Mrs. Driska, R-60-3 is a  
9 check dated June the 19th, 1975 in the  
10 amount of one thousand two dollars and fifty-  
11 six cents. It does not state on here what  
12 the check is for unlike R-60-1, where it  
13 does state thereon made payment for two  
14 Caterpillars. R-60-1 is also dated 6-19-75.  
15 And my question to you is: Is R-60-3, which  
16 is the same date as R-60-1, is it your  
17 testimony that that would appear to be a  
18 check of one thousand two dollars and fifty-  
19 six cents in payment for the two Caterpillars  
20 on the same date?

21 MR. MITCHELL: Excuse me, John. She  
22 has got the ledger sheet in front of her.  
23 Perhaps if she had the two items with her,  
24 she could interrelate. I was going to ask  
25 those questions, Judge, and have her

1 interrelate them. You can do it if you want  
2 to.

3 THE WITNESS: Now, which, the 60-3, is  
4 this the one you're asking about?

5 MR. ODAM: 60-3, is that the payment  
6 on the Caterpillars?

7 THE WITNESS: I have a question I want  
8 to ask.

9 THE MASTER: Better ask it on the record.

10 MR. MITCHELL: May I ask the witness a  
11 question? There appears there was a credit  
12 made on that date, but there was a mis-  
13 statement of the exact amount, isn't it?  
14 That is on the 20th of June and there was a  
15 posting of an amount of about that same  
16 amount, Mrs. Driska. I am not being critical  
17 of your bookkeeping system. It appears that  
18 check was credited on the Caterpillar  
19 purchase contract.

20 THE WITNESS: Well, Mr. Carrillo has an  
21 open account with us and he has another note  
22 besides this, so, until I could -- I should  
23 have brought my book. This to me -- I just  
24 can't believe that I would make a mistake  
25 like that.

1 MR. MITCHELL: How much is the mistake?

2 THE WITNESS: Well, this check I am  
3 looking at is -- here is one for a thousand  
4 and --

5 MR. ODAM: When you say here --

6 THE MASTER: Just a minute. Mr. Odam,  
7 you may proceed on voir dire, if you wish,  
8 but we must preserve the integrity of the  
9 record without too much bouncing back and  
10 forth.

11 MR. MITCHELL: Pardon me, Your Honor.  
12 I had intended to go through that very line.  
13 I don't have any preference whether Mr. Odam  
14 wants to do it. I had intended to carry  
15 through on these items that are not on there  
16 for the purpose of clarifying the record.  
17 Items on October, Judge, that were not even  
18 posted --

19 MR. ODAM: Well, the reason that I  
20 would -- I was trying to clarify it for my  
21 own purposes whether or not to pose an  
22 objection if the checks are being offered  
23 like the other checks we have had in the  
24 past, and I went into voir dire --

25 THE MASTER: You may proceed. Counsel

1                    says it doesn't matter. It's proper  
2                    inquiry on voir dire.  
3  
4

5                    - - - - -  
6

7  
8                    VOIR DIRE EXAMINATION  
9

10                  BY MR. ODAM:  
11

12                  Q    Again, my question to you, Mrs. Driska, is --  
13                                  R-60-3 the check for one thousand and two dollars  
14                                  and fifty-six cents.

15                  A    Okay.

16                  Q    Did that check go to pay for two Caterpillars?

17                  A    It's not on this card.

18                                  THE MASTER: I will ask the next  
19                                  question. Could it have gone on some other  
20                                  account of Judge Carrillo's?

21                                  THE WITNESS: That is what I had tried  
22                                  to tell you all. He has an open account with  
23                                  us and he has another note with us.

24                  Q    (By Mr. Odam) And what is the other note for;  
25                                  do you know what it's for?

1 A It's for an air compressor.

2 Q All right.

3 MR. ODAM: Your Honor, the only  
4 objection I would level at R-60-3 is that  
5 of relevancy if it's being offered to prove  
6 that this check was made in payment and a  
7 continuing sequence of payments on the two  
8 Caterpillars because from her testimony, it  
9 was not made for that purpose. I don't deny  
10 that it was made for some other purpose and  
11 that Plains Machinery received it. I do not  
12 think it's relevant to show a continuing  
13 chain on this particular one and we would  
14 object to its introduction on the grounds of  
15 relevancy.

16 MR. MITCHELL: May I, Your Honor, have  
17 the witness in connection with another item  
18 of the same date and perhaps we'll clarify  
19 the record.

20 THE MASTER: Well, the objection at  
21 this time is good. This witness cannot  
22 identify this check as one that went to pay  
23 off the Caterpillars.

24 MR. MITCHELL: I understood, and her  
25 answer being that he had another account on

1 compressors and I would like to offer  
2 another exhibit on the compressor payment  
3 made that very same date that will hopefully  
4 clarify the record.

5 THE MASTER: She said compressor plus  
6 open account. I take it by that, Mrs. Driska,  
7 you say it could be a payment on the open  
8 account or a payment on the compressor,  
9 either one?

10 THE WITNESS: Yes, because we have done  
11 shop jobs and things and this could be  
12 something else. I should have brought my  
13 books.

14 THE MASTER: All right, Mr. Mitchell.  
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E X A M I N A T I O N

(CONTINUED)

BY MR. MITCHELL:

Q Mrs. Driska, let me hand you another exhibit that has been marked as R-60-2, which is a check of the same date. That is 6-19-75, in the amount of three forty-two sixty-eight from Judge Carrillo to Plains Machinery, and I believe -- excuse me, ma'am.

It's also endorsed and deposited in Plains' account; am I correct?

A Yes, sir.

Q It's the same date as R-60-3, is it not?

A Yes, sir.

Q And it's labeled, however, May-June compressor.

A That is two payments on the compressor.

Q Now, excuse me. Let me take E-165. The question has been asked about this entry, 6-20-75, the day after R-60-3, which is the 19th of June, and R-60-1, which is the 19th of June and I will ask you the same question asked you by counsel, whether the payment made of a thousand twenty-two ninety-one on 6-20-75 was a payment represented

1           somehow in the combination of the two checks  
2           R-60-1 and R-60-2 on those two tractors, and you  
3           can take a look at those two documents to answer  
4           that question.

5           A   Well, the check for a thousand twenty-two ninety-  
6           one is R-60-1 and I deposited it on June the 20th  
7           of '75. That is the amount I have on my card.

8           Q   The account insofar as you know to date is current,  
9           Judge Carrillo's account?

10          A   Which account, his open account or note?

11          Q   No, the purchase of the Caterpillars.

12          A   He owes one note.

13          Q   And that would be for the month of December?

14          A   Well, it's really due on October the 2nd for one  
15          thousand two hundred and seventy-four dollars and  
16          eighty-one cents.

17          Q   All right. Now, let me show you another check.

18                         MR. MITCHELL: John, do you have that  
19                         one?

20          Q   (By Mr. Mitchell) Now, I show you the R-60-7 and  
21          see if you can recognize that as being a check for  
22          two thousand five hundred and forty-nine dollars  
23          and sixty-two cents payable to Plains Machinery  
24          from Judge Carrillo on two tractors, and, excuse  
25          me, ma'am, and endorsed, deposited, rather, and

1 put in you-all's account?

2 A Yes, sir.

3 Q Now, look, if you would, for R-165 and tell the  
4 Judge whether or not, and that is R-60-7 for  
5 two thousand five forty-nine sixty-two is credited  
6 or shown on R-165?

7 A It's not posted because this was taken two or  
8 three months ago.

9 Q All right. Now, if it were posted, how would  
10 R-60-7 show as to the currency of 165? That is  
11 on the journal. Go right on through what,  
12 December 1st?

13 A It would go -- well, no, it would go through  
14 August the 2nd. These are my dates I go by over  
15 here. This is the due date of the note.

16 Q All right.

17 A And it would bring it down two more lines and  
18 that would be August the 2nd of '75.

19 Q So, you have no reason to believe R-60-7 was not  
20 received and properly credited; am I correct?

21 A Oh, I know we received it.

22 Q All right. Just not posted on 165, correct?

23 A It just hadn't been posted to this as this  
24 picture was taken some time ago.

25 MR. MITCHELL: Judge, we offer R-60-7.

1 MR. ODAM: I have no objection to  
2 R-60-7.

3 THE MASTER: It's admitted.

4  
5 (Whereupon, said document having been  
6 previously marked for identification as  
7 Respondents' Exhibit 60-7 was admitted.)  
8

9 Q (By Mr. Mitchell) Let me ask you this: As a  
10 matter of fact, now, that would bring the account  
11 current down through August; am I correct, if I  
12 followed you?

13 A That's right.

14 Q Now, I will show you R-60-4 and if that appears  
15 to be a check to Plains Machinery, 12-74?

16 A That is posted on the card.

17 Q That somehow got posted on the card, although it's  
18 dated August 8, 1975; that has been deposited in  
19 your account, am I correct?

20 A Yes, sir.

21 Q And you recognize that?

22 A Yes.

23 Q And, so, credit had been given Judge Carrillo on  
24 you-all's card, which is E-165, for that  
25 payment?

1 A Yes, sir.

2 MR. MITCHELL: Your Honor, we offer  
3 R-60-4, also.

4 MR. ODAM: No objection.

5 THE MASTER: R-60-4 is admitted.

6  
7 (Whereupon, said document having been  
8 previously marked for identification as  
9 Respondents' Exhibit R-60-4 was admitted.)  
10

11 Q (By Mr. Mitchell) Now, I am going to ask you  
12 one that we will have to go by memory on.

13 A I haven't got a very good memory.

14 Q Do you recall whether you received still another  
15 check from Judge Carrillo?

16 A Yes, we received it just within the last, I  
17 would say, week or two.

18 Q And that check would be dated in November, I  
19 suppose?

20 A Uh-huh.

21 Q And it's the payment on the Caterpillar account,  
22 correct?

23 A Yes.

24 Q That leaves then, if my calculation is correct,  
25 only about twelve hundred dollars due on Judge

1 Carrillo's purchase contract for the two  
2 Caterpillars?

3 A Yes, one payment exactly.

4 Q Right. As of today as we sit here on the 2nd day  
5 of December, 1975.

6 A Yes.

7 Q Now, there is a time lag, I suppose then, and  
8 that is really what I was driving at from the time  
9 those checks are received and the time that they  
10 do post and then, of course, you indicated that  
11 E-165 was taken some time ago and naturally would  
12 not include payments made within the last week  
13 or two; am I correct?

14 A That's correct.

15 Q I will ask you -- I don't know whether I asked  
16 you this. I have to ask you certain technical  
17 questions about R-60-1 and R-60-3. You recognize  
18 those as being checks by Judge Carrillo?

19 THE MASTER: Let's make it R-60-1 and  
20 R-60-3.

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

22 Q (By Mr. Mitchell) R-60-1 and R-60-3; dash 1  
23 being endorsed by you for deposit only in the  
24 Plains Machinery account; am I correct?

25 A Yes.

1 Q And also R-60-3 being endorsed and put into the  
2 bank by Plains Machinery Company, am I correct?

3 A Yes, sir.

4 Q I am going to ask you to hold those two, R-60-1  
5 and 3 and hand you 165 and see if you can tell  
6 the Court whether or not they have credited  
7 correctly to Judge Carrillo's Caterpillar  
8 account?

9 A Well, R-60-1 has been posted on the card, but  
10 R-60-3 has not been posted on the card, but I  
11 don't know that that is a note payment.

12 Q That is the one that we -- there is a discrepancy  
13 of about twenty dollars, isn't there? The check  
14 is in the amount of a thousand and two dollars  
15 fifty-six cents, but the --

16 A This one is. This one right here, it's a thousand  
17 twenty-two ninety-one is this check.

18 Q By that you mean R-60-1, correct?

19 A Yes.

20 Q But we don't know what R-60-3 is, but we do know  
21 it was paid to the Plains Machinery and  
22 deposited in the Plains' account?

23 A Yes, that has been paid to us.

24 MR. MITCHELL: We offer R-60-1,

25 Judge Meyers.

1 MR. ODAM: I have no objection to 60-1.

2 THE MASTER: Admitted.

3  
4 (Whereupon, said document having been  
5 previously marked for identification as  
6 Respondents' Exhibit 60-1 was admitted.)  
7

8 Q (By Mr. Mitchell) Now, R-60-2, R-60-5, R-60-6  
9 appear to be checks from Judge Carrillo to Plains  
10 Machinery and are all endorsed for deposit only  
11 to the account of Plains Machinery, do they not?

12 A That's correct.

13 Q Is that correct?

14 A (Witness nods head yes.)

15 Q Now, these are noted May and June compressor  
16 payments. You don't have any of the compressor  
17 book payments to show whether that account is  
18 current or not, do you?

19 A No, I didn't bring anything like that.

20 Q All right. But those --

21 A But I believe the account is current.

22 Q Those checks, that is 60-2, 5 and 6 along with  
23 60-3 are payments made by Judge Carrillo to the  
24 Plains Machinery people and deposited in the  
25 Plains' account; am I correct?



1 A Yes.

2 Q And there is no doubt about that in your mind as  
3 you look at the documents?

4 A (Witness shakes head no.)

5 Q But you can't tell us without the books, as I  
6 understand it, Mrs. Driska, for what purposes  
7 those payments were made; that is on what accounts  
8 other than the notations to the extent that some  
9 of them were paid on the compressors?

10 A These three, I am sure, are compressors. It's  
11 two payments on one, on the R-60-2 and one  
12 payment on R-60-5 and two payments on R-60-6,  
13 but this is the only check I can't identify, which  
14 is R-60-3.

15 Q His business, I suppose, has been satisfactory  
16 as far as Plains Machinery is concerned? He has  
17 made all of his payments, whether it's the  
18 Caterpillar account, whether it's the compressor  
19 account or whether it's an open account?

20 A Yes, sir.

21 MR. MITCHELL: Your Honor, we offer  
22 R-60-2, R-60-3, dash 5 and dash 7.

23 MR. ODAM: Judge, we would object to  
24 the introduction of items just stated on  
25 the grounds of relevancy for the following

1 reason: We think that it's not relevant  
2 to the matter which is in question; that  
3 is payments on the Caterpillar. This  
4 witness's testimony obviously even by looking  
5 at the checks themselves is they are not the  
6 Caterpillar and put in the record simply to  
7 show that Judge Carrillo has made payments  
8 on the air compressor and on notes is not an  
9 issue in dispute and would simply clutter the  
10 record and is unnecessary and I would object  
11 and ask that they not be admitted and I am  
12 referring to R-60-6, dash 5, dash 3 and  
13 dash 2.

14 THE MASTER: What is the relevancy?  
15 Actually, 3 has not been identified.  
16 Mrs. Driska very candidly said she does not  
17 know what it's meant for and cannot tell us  
18 because of the incompleteness of the records.  
19 2, 5 and 6 are payments on a compressor,  
20 but what does that have to do with this case?

21 MR. MITCHELL: Your Honor, the objection  
22 appears to be good on its face, however, and  
23 I toyed with not offering them; however,  
24 the status of the card, 165, shows the  
25 account in arrears and out of abundance of

1 precaution, I wanted to establish that not  
2 only that account is current and only one  
3 payment due on it, but if there is any hold-  
4 over or doubt or residual doubt about the  
5 man's ability to perform or his genuineness  
6 of --

7 THE MASTER: I don't believe we are  
8 trying that issue. I sustain the objection.

9 MR. MITCHELL: I offer them, Judge,  
10 then, for the purpose of the form of the  
11 bill.

12 THE MASTER: Of course, they automatically  
13 become your bill.

14 MR. MITCHELL: And may I have permission  
15 of the Court to withdraw these originals,  
16 Your Honor, subject to any examination made  
17 in the record for the purpose and  
18 substituting copies.

19 THE MASTER: Certainly.

20 MR. ODAM: No objections.

21 MR. MITCHELL: May I have one minute,  
22 Judge?

23 THE MASTER: Yes, sir.

24 MR. MITCHELL: I have no further  
25 questions, Judge Meyers, for this witness.

E X A M I N A T I O N

BY MR. ODAM:

Q Mrs. Driska, I should point out one item to you and that is that these proceedings are confidential and therefore, the testimony that you give here should not be discussed with anyone outside this room. If you were to go outside and someone with the news media said, for example, what did you say; no one has said that to you before, but you should say, I am sorry. I under the Texas Constitution requires me not to say anything. You should not say a thing to anyone. That goes not only with the news media, but anyone else that asks you anything because that same rule applies not only to you or to anyone else; you're not privied, are you, to anyone else has testified, is that correct? You don't know who has testified and what they have said, is that right?

A I don't know. That's correct.

Q All right. Now, with that background, I would like to pose this to you: Some questions were posed to a witness earlier that certain payments

1 on a Caterpillar were in default and we are  
2 talking about the accounts there in the name of  
3 Benavides Implement and Hardware; for example,  
4 a question was, and he had six months in default;  
5 that is he paid six thousand dollars at that time.  
6 It was in default for six months and for the  
7 benefit of the record, I am referring to Page 2100  
8 of the testimony of December 1, 1975.

9 MR. MITCHELL: And for the record, of  
10 which copy I don't have.

11 THE MASTER: For the record, you now  
12 have it?

13 MR. MITCHELL: I thank you. It's by  
14 the courtesy of the Court.

15 You may continue, counsel. I have got  
16 it.

17 Q (By Mr. Odam) It's on that page, Mrs. Driska,  
18 and it says, as a matter of fact, the contract  
19 with Plains was already in default in February,  
20 1974. It was in default in February of 1974.  
21 Again, for the benefit of the record and for you,  
22 Mrs. Driska, the question was at Page 2102. It  
23 went into default and stayed in default for the  
24 full year of 1974, didn't it?

25 MR. MITCHELL: Now, wait a minute,

1 Your Honor.

2 THE WITNESS: No.

3 MR. MITCHELL: We are going to object.  
4 Of course, that question, it's highly  
5 improper. Counsel is taking a question  
6 propounded, I suppose by me some days in the  
7 past of another witness and asking this  
8 witness who has absolutely no knowledge  
9 beyond just extracting information from the  
10 contract for internal bookkeeping purposes  
11 which I think the record reflects she has  
12 done accurately and correctly. That would  
13 be in speculation and argumentative.

14 THE MASTER: He can quote her that  
15 testimony and then ask if her records verify  
16 or do not verify that conclusion. That is  
17 what I take it the way you are going.

18 MR. ODAM: Yes, sir.

19 MR. MITCHELL: I have no objection to  
20 that type of question, if the record reflects  
21 that type of --

22 THE MASTER: Well, that is what I  
23 thought he was going to do, Mr. Mitchell.  
24 It may have been a little unclear.

25

1 Q All right, at page 2103, the testimony of this  
2 witness says, "I don't know, I mean when they  
3 became due, I have got to see the sheet where  
4 they were credited every time they were paid."

5 And then at 2104, the witness said, "I  
6 don't know what date they were defaulted."

7 You can tell, Mrs. Drisko, from the ques-  
8 tions that were posed to that witness yesterday  
9 and Mr. Mitchell's comments just then, it was  
10 a question of when the contract with Benavides  
11 Implement and Hardware went into default, and I  
12 take it by your spontaneous exclamation there  
13 that they were not in default for a certain period  
14 of time.

15 That brings me up to ask you these questions  
16 back on the card, to clarify for the record,  
17 based on the cards when Benavides Implement and  
18 Hardware went into default, if they did go into  
19 default on the payments that they had.

20 I would refer, for example, in the record,  
21 the question that was posed to the witness on  
22 1974, "Am I correct, and he had a six month  
23 default, that is he paid six thousand dollars  
24 at that time?"

25 Now, I refer back to the card which you

1            kent for Benavides Implement and Hardware. Now,  
2            my question is, can you tell from that card  
3            which is E-163A and B when, if at all, Benavides  
4            Implement and Hardware "went into default" on  
5            their payments?

6            A Well, explain to me on default because a while  
7            ago you said they were in default for the whole  
8            year of 74, that's why I said no.

9            Q Well, that was the question that was posed.

10           A Now, do you mean by default just before we were  
11           going to repossess the machines or what is your  
12           definition of default before I answer.

13           Q Allright, now my question to you is, can you  
14           explain for us, based upon your cards, when, the  
15           way you would characterize default and when did  
16           Benavides Implement and Hardware default on their  
17           payment, if they did, according to your records.

18                        Would it be when that one check bounced,  
19           that they defaulted, if you would characterize  
20           that to be a default?

21           A Well, I wouldn't really consider that a default  
22           myself, just the check wasn't good. I'm sure  
23           they probably had some money out somewhere, but  
24           they didn't get it in.

25           Q And that was the check, that is shown on E-164 A and



1 that you received on April the 2nd, 1974, for  
2 three thousand dollars and you credited the  
3 account, and then on April the 22nd, 1974 you  
4 debited the account to give them back the balance.

5 A Added it back on.

6 Q So if there was any "default", if there was any  
7 "default", that would be right at that date, if  
8 that was a default.

9 A If that was a default, yes, sir.

10 Q Now, are you familiar with the -- do you know  
11 of your own personal knowledge if Judge O. P.  
12 Carrillo -- well, I asked you, do you identify  
13 Judge O. P. Carrillo as being present in the  
14 courtroom today?

15 A Yes.

16 Q You have seen him before?

17 A Yes.

18 Q At the Plains Machinery, I take it?

19 A Yes.

20 Q Did you personally have any dealings with  
21 Judge Carrillo about the six thousand dollar  
22 payment which is identified on his --

23 A It is on one of them, on his note.

24 Q Yes, ma'am, what can you tell Judge Meyers about  
25 that six thousand dollar payment?

1 A Well, really, that was at the time we rewrote  
2 the note, we applied, you know, the six thousand  
3 dollars I guess it would be like, you know, to  
4 bring the account current or more like a down  
5 payment, you know, at the time that we rewrote  
6 the note on May the 2nd of 74.

7 Q Now, what did the six thousand dollar payment  
8 that he paid on May the 6th, 1974, what did that  
9 six thousand dollars go for?

10 A Well, do you mean like for so many payments?

11 Q Yes, ma'am, in other words like --

12 A It would be four payments.

13 Q All right, four payments on --

14 A But you see, it was fifteen hundred dollars,  
15 back when it was Benavides Implement and Hard-  
16 ware.

17 Q Yes, ma'am, and E-165, which is the card on  
18 his account, right?

19 A Yes.

20 Q And we start off with a new balance of twenty-  
21 two thousand nine hundred and forty-six dollars  
22 and fifty-six cents?

23 A It might be fifty-eight.

24 Q Fifty-eight cents, I am sorry.

25 A Yes.

1 Q And then he made a six thousand dollar payment  
2 on May the 6th of 1974?

3 A Yes.

4 Q And then that reduced it by six thousand from  
5 twenty-two thousand dollars that leaves a  
6 balance of sixteen thousand nine hundred and  
7 forty-six dollars and fifty-eight cents, is that  
8 correct?

9 A Yes.

10 Q So the six thousand dollar payment --

11 A Really, to me that would be like four payments.

12 Q For which month?

13 A That would be from May, June, July and August  
14 of 74.

15 Q All right, so -- in May, in May the 6th of 74,  
16 he was paying for May, June, July and August?

17 A Yes.

18 Q Okay, so it wouldn't be a six thousand dollar  
19 payment because there wasn't any six thousand  
20 dollars in default?

21 A No, I think he just like said that in advance,  
22 to me, that's what that means.

23 Q All right.

24 A Now default to me means like when somebody  
25 refuses to pay. That is what that word means to

1 me.

2 Q All right.

3 MR. ODAM: Pass the witness.  
4

5 - - - - -  
6

7 R E - E X A M I N A T I O N

8  
9 BY MR. MITCHELL:

10 Q Mrs. Driska, do you all recall -- I say you all,  
11 do you know of your own personal knowledge that  
12 Plains, in fact, wrote a letter to Benavides  
13 Implement and Hardware sometime in the early  
14 part of 1974 that they were going to repossess  
15 the equipment unless the note was brought current?  
16 Do you remember that?

17 A No, I sure don't.

18 Q Would you mind checking the files, checking it  
19 at -- it would be in the first part of 1974.

20 A I don't remember typing such a letter.

21 Q All right, but you will check for me?

22 A I will check.

23 Q And I would ask you if you would notify me and  
24 I am Arthur Mitchell, which in line with the  
25 questions put to you by the other attorney, you

1 have never seen me before you took the stand  
2 today, am I correct? I have never talked to  
3 you about the case?

4 A No.

5 Q Would you mind checking the files to be -- to  
6 see if there were such a letter and, if so, would  
7 you mind -- well, if there isn't I want to know and  
8 if there is, I would like to have a copy of it.

9 THE MASTER: I would suggest, Mr.  
10 Mitchell, you are here in town, are you not?

11 THE WITNESS: Yes.

12 THE MASTER: And you can just call --  
13 Mr. Mitchell, you just call her around four  
14 this afternoon when she has had a chance  
15 to check it and ask her.

16 MR. MITCHELL: All right, fine, Judge  
17 Meyers.

18 THE MASTER: And you can go by.

19 MR. MITCHELL: All right.

20 Q I'll ask you also, Mrs. Driska, if there were  
21 not -- if there was not a letter -- doesn't  
22 Plains send out a notice when the payments are  
23 due?

24 A Yes, sir, we send out note notices once a month.

25 Q And then when they are in default or past due,

1 it is written across them that they are past  
2 due or in default?

3 A Mr. Kurtz will usually write a little note and  
4 say could you get this in by the -- you know,  
5 whatever day of the week it is, say, in the  
6 next few days.

7 Q All right, now do you all keep a copy, would you  
8 have any way of having a copy of that, say, with  
9 a note written on it that it was in default or  
10 past due?

11 A Now, I don't believe I would have that.

12 Q All right, you would check --

13 A Normally, each month when I type up the new  
14 ones, I just throw away the old ones because --

15 Q All right.

16 A -- you just can't keep everything.

17 Q I understand. It could have gone out to Benavides  
18 Implement and Hardware and you all not have kept  
19 a copy, a notice of that type, it could have, is  
20 that correct?

21 A We might have.

22 Q Yes, I say one could have gone out?

23 A One could have, but we -- I just normally don't  
24 keep those -- I just --

25 Q All right.

1 A I doubt if I have one.

2 Q Now, at the time that this -- that this new  
3 agreement was made up with Judge Carrillo, it  
4 was R-50, Mrs. Driska, in summary there was a  
5 new owner shown on you all's records, am I correct,  
6 Judge O. P. Carrillo became the new owner?

7 A Yes.

8 Q The same equipment but a new owner?

9 A Yes.

10 Q Is that correct?

11 A Yes.

12 Q New monthly payments?

13 A Yes, the amount changed.

14 Q Right. They were previously with Benavides  
15 Implement and Hardware fifteen thousand dollars  
16 a month, am I correct?

17 A Yes.

18 Q And then the payments were changed to twelve  
19 hundred --

20 A Twelve seventy-four eighty-one or something like  
21 that.

22 Q A month?

23 A Yes.

24 Q When Judge Carrillo bought the equipment, am I  
25 correct?

1 A Yes.

2 Q And there was a new balance, am I correct, and  
3 a different date of payment provided for in the  
4 agreement, I believe.

5 A I believe the date changed, yes.

6 Q All right, and do you know whether or not at the  
7 time that the agreement was made with Judge  
8 Carrillo that the old contract with Benavides  
9 Implement and Hardware reflected here on your  
10 records was, in fact, past due for several months,  
11 do you know that?

12 A Well, I believe it was.

13 Q Can you tell, is there anything you can tell on  
14 that and let me give it back to you. I will  
15 just hand all of the documents back and you are  
16 free to look at them.

17 A All I need is these two cards.

18 (Handed to the witness.)  
19

20 A Okay, on this -- I guess that is April 1.

21 MR. ODAM: Which item are we referring  
22 to?

23 MR. MITCHELL: She is looking at E-163A.

24 A This is E-163-A. This is the check on April 1st.  
25 1974, for three thousand dollars that didn't



1 clear the bank.

2 Q All right.

3 A And then May -- at that time, see, that would  
4 have been -- that would have been one month  
5 behind but with the check not good, that made  
6 it three months behind.

7 Q At fifteen hundred dollars each?

8 A At fifteen hundred dollars, that would have  
9 made February 16th, March 16th and April 16th of  
10 74 all due because the check didn't clear the  
11 bank. They would have at that time been three  
12 months or three payments behind.

13 Q Now, Judge Carrillo's contract commenced May 2nd,  
14 1974, at one thousand two hundred seventy-four  
15 dollars and eighty-one cents, am I correct?

16 A Yes, it was right after this that we rewrote the  
17 note and that is the one on May --

18 Q Excuse me, I didn't mean to interrupt you.

19 A On May 2nd of 74.

20 Q Do you know whether or not it was a requirement  
21 that he bring in effect what turned out to be  
22 four payments on that contract, before Plains  
23 would sell the same equipment, under this agree-  
24 ment that has been introduced into evidence as  
25 R-50, do you know if he had to bring that contract

1 current?

2 A No, I don't think that was any part of the agree-  
3 ment because, see, over here we have, if it  
4 would have been a down payment, we would have  
5 typed that in here and, see, it was down payment  
6 is zero.

7 Q Well, I'm suggesting it was not a down payment  
8 but it was a requirement that he bring that old  
9 contract current through April of 1974.

10 A Well, you see --

11 Q Let me see if I can help you. E-163-A shows you  
12 without that three thousand dollar payment made  
13 on January, 1974, through January of 74, is that  
14 correct?

15 A Yes.

16 Q That would mean there was no payment made accord-  
17 ing to that Exhibit for February, March or April  
18 or May, am I correct?

19 A Yes.

20 Q And on May the 4th Judge Carrillo paid six thou-  
21 sand dollars, am I correct?

22 A Yes.

23 Q So that would have brought that old contract,  
24 regardless of who made it or anything --

25 A Brought it up to date.

1 Q That would have brought the old contract up to  
2 date, am I correct?

3 A Yes.

4 Q Because that is four times the fifteen hundred  
5 dollars, am I correct?

6 A That's right.

7 Q And then he picked up under this new agreement  
8 at a different rate, at a different period of  
9 time and so forth, am I correct?

10 A That's correct.

11 Q And that is picked up in your other ledge sheet?

12 A Uh-huh, where I started over, the new note.

13 Q E-165?

14 A Yes.

15 Q And that is current and he paid it up, down  
16 to one payment?

17 A There is one payment due on this note.

18 Q Okay.

19 MR. MITCHELL: No further questions  
20 of this witness.

21

22

23

24

25

RE - EXAMINATION

1 BY MR. ODAM:

2

3 Q Well, you mentioned a couple of things that --

4 you just, I believe, testified to the fact that

5 you were looking at the items and said that they

6 were three months behind in payment, you said

7 February, March and April?

8 A Yes.

9 Q Now, there was a check received on -- as evidenced

10 by E-164A received April the 2nd, 1974, for

11 apparently three thousand dollars.

12 A But that was a check that --

13 Q Yes, ma'am, that is for the February and March

14 payments?

15 A Yes.

16 Q And then it was insufficient funds and you found

17 that on April the 22nd?

18 A Right.

19 Q So the payment for February and March had not been

20 made because that check bounced?

21 A That's correct.

22 Q And that brought the balance back up to nineteen

23 thousand six hundred eighty-six dollars?

24 A Yes.

25 Q Now, do you --

1 A You see this note started out of that.

2 Q All right, so that brought it back up to nine-  
3 teen thousand six hundred eighty-six dollars  
4 and that is the last figure or next to the last  
5 figure on E-164A?

6 A Yes.

7 Q And that, as you just pointed out on E-165, is  
8 the starting figure nineteen thousand six hundred  
9 eighty-six dollars, which is used to compute the  
10 new note?

11 A The new note?

12 Q Yes.

13 A That's right.

14 Q And the new note was to start off then at twenty-  
15 two thousand nine hundred forty-six dollars and  
16 fifty-eight cents?

17 A Yes, sir.

18 Q And then the payment was made on May the 6th of  
19 74 of six thousand dollars on that new note of  
20 twenty-two thousand nine hundred and forty-six  
21 dollars?

22 A That's right.

23 Q So now it is your testimony that the six thousand  
24 dollars paid on May the 6th of 1974 was that six  
25 thousand dollars a while ago when I asked you,

1 I understood that it was paid six thousand  
2 dollars which, in effect, would be the payments  
3 for May, June, and July, and I believe you said  
4 four months and now you are saying the six  
5 thousand dollars for the previous months payments?

6 A Well, this is kind of hard for probably me to  
7 explain to you.

8 You see, when we rewrote this note on  
9 May the 2nd, it is E-165, for this amount of  
10 money, the nineteen thousand six hundred and  
11 eighty-six dollars, that is what the note started  
12 out with. Well, that -- the interest was already  
13 in this figure.

14 Q Yes, ma'am.

15 A When we rewrote the note again we added in more  
16 interest because it is going to be carried a  
17 longer period of time and we cancelled that  
18 other insurance policy and rewrote the insurance.

19 You see, here is two interest figures, that  
20 is this interest for it being three months late  
21 and then this is the interest for -- well, now  
22 I had better not say that.

23 You see, the interest figure, see here is  
24 to carry this note and then this other interest  
25 is because the note was late but, of course, we

1 started these dates on May the 2nd.

2 Q Okay.

3 A These figures, I can see don't match, I guess  
4 that's what you are asking for.

5 Q Yes.

6 A The six thousand dollars is four payments at  
7 fifteen hundred dollars. It is not this one  
8 thousand two hundred and seventy-four dollars  
9 and eighty-one cents, is what the new note was.

10 Q All right.

11 A But then on down here, he caught this up later  
12 on and that is why these figures are different,  
13 you know.

14 Q Well, let me see if I can summarize and let you  
15 go with these questions.

16 Would it be fair to summarize your testi-  
17 mony then that the Plains Machinery got a check  
18 for three thousand dollars on April the 2nd?

19 A Yes.

20 Q Of 1974?

21 A Yes.

22 Q You've credited the account with that and the  
23 next thing that happened was the check came back  
24 and it bounced for three thousand dollars?

25 A That's right.

1 Q And that left a balance of nineteen thousand  
2 six hundred and eighty-six dollars?

3 A Yes.

4 Q And that was late April?

5 A Yes.

6 Q And then Judge O. P. Carrillo came in a couple  
7 of weeks thereafter on May the 6th, picked up the  
8 note and it was changed over and recomputed and  
9 he started off on it on May the 6th?

10 A That's correct.

11 Q Okay, now, you identified Judge Carrillo as being  
12 in the courtroom today. When, if you recall, was  
13 the first time that you had ever seen Judge  
14 Carrillo? Would it be on May the 6th when he  
15 came in to recompute it?

16 A No, I had seen him before then.

17 Q Do you know whether or not he had ever been in  
18 your store to have dealings with respect to these  
19 two Caterpillars prior to May the 6th of 1974?

20 A Oh, gosh, that would be hard to say specifically  
21 yes or no. I guess on that, I don't know.

22 Q That would be because he had other accounts like  
23 on an air compressor, I take it?

24 A Yes, like he would be in town and he would drop a  
25 check by or come in and check on his account.



1 THE MASTER: Mr. Odam, I think we  
2 must take a recess.

3 MR. ODAM: And I pass the witness and  
4 I don't believe I have any further questions  
5 about these items and I am completed with  
6 this witness.

7 MR. MITCHELL: Let me ask you, please  
8 ma'am, -- strike that and let me get this  
9 marked.

10 THE MASTER: Let's take a recess.

11 MR. MITCHELL: I am sorry, Judge Meyers,  
12 I am going like a machine.

13 THE MASTER: I thought maybe we could  
14 get through but I don't believe we can.

15 MR. MITCHELL: I am sorry, Your Honor.

16 THE MASTER: I thought I should probably  
17 have had a recess a little earlier so you  
18 could confer with her to get the six thousand  
19 dollar question straightened out and move a  
20 little faster.

21 MR. MITCHELL: As a matter of fact,  
22 Judge Meyers, it would be permissible for  
23 him to do that during the break. I was,  
24 as the Court can tell, I was on something  
25 else dealing with the witness and I am sorry

1 I missed you cue of the Court.

2 THE MASTER: That's fine. We will be  
3 in recess until 12:05.

4 MR. MITCHELL: I would like to have  
5 that marked. Maybe we could save a little  
6 time.

7  
8 (Marked for identification by the  
9 reporter as Exhibit R-61.)

10 (Whereupon the Court was in recess  
11 from 11:50 a.m. until 12:05 p.m. of the  
12 same day.)  
13  
14  
15  
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25

1 Q (By Mr. Mitchell) Mrs. Driska, at the time when  
2 Plains would sell equipment, say to me, and I  
3 signed an agreement, do you all, through you,  
4 send out notices or letters showing the extracts  
5 of the agreements such as the balances and the  
6 interest payments and so forth as a general rule;  
7 do you understand?

8 A Now, are you talking about when the notes first  
9 start?

10 Q Yes, ma'am, uh-huh, or at any time. When the notes  
11 first start -- let's be specific in this  
12 particular instance and maybe out of fairness  
13 show you an exhibit that has been marked R-61,  
14 and it's a carbon copy of a letter sent to --  
15 addressed to Judge Carrillo, a recap letter, and  
16 ask you if you recognize it.

17 Let me ask you a general question. Is that  
18 customary with you?

19 A That goes with every note. This is our recap  
20 sheet. It's a breakdown of what interest we are  
21 charging and insurance.

22 Q Now, where would the original -- that original  
23 of that instrument, Mrs. Driska, is that one that  
24 is kept in your office?

25 A I imagine I have the original.

1 Q And the copy goes to the customer, is that  
2 correct?

3 A Uh-huh.

4 Q And the exhibit number there is --

5 A R-61.

6 Q -- R-61. Does that appear to be the copy of a  
7 recap sheet that went to Judge Carrillo at the  
8 time, and I am going to hand you all of these  
9 documents back.

10 A I believe it's a copy.

11 Q R-50 was executed.

12 Now, you take your time and examine it for  
13 the figures. You look at all the documents that  
14 are in evidence, you know, because as you note on  
15 R-61, we have the balance of the old note,  
16 interest rebate, the insurance rebate, the  
17 delinquent interest, parts account, insurance and  
18 so forth, and be sure that those figures  
19 accurately reflect. That is R-61 now ties into  
20 the other evidence that has been introduced by  
21 the Judge, and if it does, would you tell us,  
22 please, if it appears to be a copy of the letter  
23 sent out to Judge Carrillo at the time he took  
24 over that agreement?

25 A Yes, this is our recap sheet for the new note.

- 1 Q All right. And you recognize it as such?
- 2 A Yes.
- 3 Q Now, I will read over your shoulder, if it's all  
4 right. You notice it points out balance of old  
5 note in the amount of nineteen thousand six  
6 eighty-six; am I correct?
- 7 A Yes.
- 8 Q Interest rebate, four sixty-four ninety-five given  
9 on that old note.
- 10 A Yes.
- 11 Q And if you will recall, I believe that one ninety-  
12 six eighty-six appears somewhere else in the  
13 document that you hold in your hand, does it not?  
14 Can you tell the Court?
- 15 A It's on the new note.
- 16 Q Yes. The four months delinquent interest, I  
17 believe you just answered a question about that,  
18 that the other attorney asked you just before our  
19 noon break, how that it was picked up of four  
20 ninety-four thirty-two and charged back into that  
21 figure to Judge Carrillo's account; am I correct?
- 22 A Yes.
- 23 Q Four months delinquent interest on R-61.
- 24 A Yes.
- 25 Q And then the parts account -- now, maybe we have

1 run down that one check we were talking about  
2 while ago. Will you hold R-61 and let me give  
3 you -- that parts account was one thousand two  
4 thirty-two seventy-four. Do you know, and I am  
5 just asking whether R-60-3 might be in payment of  
6 that account?

7 A No.

8 Q All right.

9 A This note was written in May of '74.

10 Q I just thought maybe you might be able to tell us  
11 because we couldn't place it.

12 But at any rate, do the rest of the figures  
13 that appear on R-61 appear to be a correct  
14 statement of the new account to Judge Carrillo;  
15 for example, the eighteen payments at twelve  
16 seventy-four eighty-one is exactly the way the  
17 new contract is.

18 A Yes.

19 Q And the first payment, May 2nd, 1974; that is  
20 exactly the way it is?

21 A Correct.

22 Q And the one ninety-six eighty-six was the exact  
23 balance, am I correct?

24 A That's correct.

25 MR. MITCHELL: Your Honor, we would offer

1 R-61.

2 MR. ODAM: No objection.

3 THE MASTER: Admitted.

4  
5 (Whereupon, said document having  
6 been previously marked for identification  
7 as Respondents' Exhibit 61 was admitted.)

8  
9 MR. MITCHELL: We have no further  
10 questions of this witness, Your Honor.

11 MR. ODAM: Will you mark this, please?

12  
13 (Whereupon, said document was marked  
14 for identification as Examiner's Exhibit  
15 166.)

16  
17 MR. MITCHELL: Judge, may I be excused  
18 to answer a phone call from Jim Bates, Jr.?

19 THE MASTER: Yes.

20  
21 (Whereupon, a short break was taken.)

22  
23 THE MASTER: You may proceed, Mr. Odam,  
24 and we are on the record.

25 - - - - -

E X A M I N A T I O N

1  
2  
3 BY MR. ODAM:  
4

5 Q Now, Mrs. Driska, I show you what has been marked  
6 and introduced into evidence as E-162 and explain  
7 to you that this is a ledger of activity in the  
8 checking account of Beavrides Implement and  
9 Hardware. There was an entry here, for example,  
10 of January the 29th for three thousand dollars,  
11 check by which I take it -- by way of explanation  
12 by Mr. Bates yesterday, which means they got a  
13 check back in which was written for three thousand  
14 dollars made --

15 MR. MITCHELL: Your Honor, we are going  
16 to object to that. That is not what  
17 Mr. Bates -- Mr. Bates was a pure,  
18 authenticating witness just like this lady  
19 is.

20 MR. ODAM: Withdraw the comment.

21 MR. MITCHELL: And that would certainly  
22 be improper.

23 MR. ODAM: Withdraw the question.

24 Q (By Mr. Odam) It's stated to be three thousand  
25 dollars and came back in January the 29th.



1           Now, on your card, is it your testimony that  
2           on 163-A that you received three thousand dollars  
3           on January the 24th in payment to Benavides  
4           Implement and Hardware?

5           A    Yes.

6           Q    And that was the payment for which months now?

7           A    That would be December and January.

8           Q    Okay, and then turning over on 162 --

9                       MR. ODAM: For the benefit of the Court  
10                      and the record, we decided not to submark  
11                      E-162, but just refer to it by months, and  
12                      this would be for the month of balance,  
13                      ending date May 31, 1974.

14          Q    And for May 31, 1974, it shows a check was  
15                written for three thousand dollars and came back  
16                into the bank on May the 7th.

17                      MR. MITCHELL: Wait just a minute.  
18                      Excuse me, Judge. That is improper  
19                      characterization; he is reading from the  
20                      ledger sheet. It could be a new deposit;  
21                      it doesn't show --

22                      MR. ODAM: No.

23                      MR. MITCHELL: I can't see it is what  
24                I am --

25                      MR. ODAM: It is a check.

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MR. MITCHELL: I can't see, John.

MR. ODAM: It is a check showing it came back in May the 7th for three thousand dollars.

THE MASTER: By came back in, you mean cleared?

MR. MITCHELL: Yes, sir.

THE MASTER: It was returned.

MR. ODAM: Yes, sir.

THE MASTER: It was returned to the bank upon which it was drawn.

MR. ODAM: Yes, sir.

MR. MITCHELL: Thank you, Judge Meyers, that is where I have a problem.

Q (By Mr. Odam:) You understand, the way that I characterized it, it was a check written on Benavides Implement and Hardware checking account, that cleared, came back in for three thousand dollars and that date is May the 7th.

A Now is this the check that we are talking about?

Q Well, that --

A The check that I deposited on April the 1st?

Q Yes, ma'am, there was --

MR. ODAM: Arthur, did you see there was one I just marked, it was the --

1 THE MASTER: E-166 is what you are  
2 looking for?

3 MR. ODAM: Yes, sir.

4 THE MASTER: You just marked it.

5 MR. ODAM: I laid it down right here.

6 THE MASTER: It was just marked as  
7 Exhibit E-166.

8 MR. ODAM: Here it is, I am sorry, I  
9 laid it on this desk.

10 Q E-166, can you describe what E-166 is?

11 A Well, this is the slip of paper that the bank  
12 sends when they return a check that is insufficient  
13 and and it is even marked number 9, not sufficient  
14 funds on the Benavides Implement and Hardware  
15 check for three thousand dollars.

16 MR. MITCHELL: Well, now, excuse me,  
17 Your Honor, that item which I have not seen  
18 is not the check, pardon me, it would be  
19 hearsay as to this witness. This is some  
20 other document. I haven't seen it so I am  
21 hard put to level a correct objection to it.

22 THE MASTER: It hasn't been offered.  
23 Now, I agree she can --

24 MR. MITCHELL: She is reading it into  
25 evidence.

1 THE MASTER: No, she is just identifying  
2 it except she did go a little further than  
3 identify, you are correct.

4 Q (By Mr. Odam:) Let me drop back and start over  
5 with the question. E-166, to identify for Judge  
6 Meyers and for the record, can you describe what  
7 that copy is on E-166, just --

8 Let me start over. What is the source  
9 of the piece of paper? From whom did it come?

10 A The State National Bank.

11 Q And is that the bank for Plains Machinery Company?

12 A It is our bank.

13 Q And what is -- does that indicate that they are  
14 returning a check or how could you describe this  
15 document E-166?

16 A It is just a returning of this item for three  
17 thousand dollars.

18 Q That is insufficient funds?

19 A Insufficient funds.

20 Q And what is the date that they are returning the  
21 item?

22 A April --

23 MR. MITCHELL: Excuse me, Your Honor,  
24 I hate to continue to object, it is highly  
25 improper to have the witness -- ask the

1 witness questions about an item.

2 First of all, it is objectionable and  
3 so far having the record completely replete  
4 from page after page of the testimony that  
5 comes from a document which obviously is  
6 not -- this witness doesn't have any personal  
7 knowledge about.

8 THE MASTER: Well, now, I'd --

9 MR. MITCHELL: I would object to the  
10 procedure.

11 THE MASTER: You, of course, can not  
12 get it in piecemeal, you have got to get it  
13 in by offering in evidence and she is just  
14 reading from it now.

15 MR. ODAM: Let me go to the next ques-  
16 tion.

17 Q This document you have before you, E-166, which  
18 granted is a copy, did you receive this at Plains  
19 Machinery?

20 A Yes.

21 Q And is this, can you say whether or not this  
22 is the basis, the items dated April the 22nd,  
23 is that the basis for the determination that the  
24 earlier check identified here, received April  
25 the 2<sup>nd</sup> and the next entry or correction, received

1 April the 2nd and then you debited on April the  
2 22nd, is this piece of paper which you received  
3 the basis for that debiting?

4 A Yes.

5 Q Now, this obviously is a xerox copy, the original  
6 of this would be returned to your records at the  
7 Plains Machinery Company?

8 A Yes.

9 Q But this would be the item upon which you debited  
10 the account and upon which, for example, in E-163-A  
11 that you struck out the three thousand dollars?

12 A That is the same.

13 Q Because of E-166?

14 A Yes.

15 MR. ODAM: Your Honor, we would offer  
16 166, the item from the State National Bank.

17 MR. MITCHELL: Judge, as I understand  
18 it, may I ask this question of Counsel?  
19 It is the three thousand dollar item that  
20 appears already in the documents the lady  
21 had testified to, that is an entry as I  
22 understand it?

23 MR. ODAM: Yes.

24 MR. MITCHELL: I would have no objection  
25 to the ultimate, but being a lawyer, I have

1 got to object on the grounds of the best  
2 evidence and authentication and hearsay.

3 But if the Court understands my posi-  
4 tion, the form of the Exhibit would force  
5 that objection, but I understand where it  
6 ties in to the record.

7 THE MASTER: Well, but the best evi-  
8 dence objection is good at this time and  
9 to one extent, hearsay would be good.

10 If it is offered to prove that there  
11 were, in fact, insufficient funds, I don't  
12 think you're offering it for that, you are  
13 just offering it as the document upon which  
14 she based her deletion.

15 MR. ODAM: That is right.

16 THE MASTER: Of the six thousand  
17 dollars -- the three thousand dollar credit.

18 MR. MITCHELL: I withdraw my objection,  
19 Judge Meyers.

20 THE MASTER: Then it is admitted.

21 Let me clarify something, Mrs. Driska,  
22 if I heard the testimony correctly, the  
23 check was dated April the 2nd?

24 A Yes.

25 THE MASTER: But it wasn't posted to

1 the books until April the 22nd?

2 A No, it is posted on April the 2nd, that was the  
3 day I deposited the check in the bank and then  
4 on the 22nd is when the bank notified me that the  
5 check was insufficient funds.

6 THE MASTER: You deposited it on the  
7 2nd also?

8 A I deposited it on the 2nd and then on the 22nd  
9 they sent a notice saying it wasn't --

10 THE MASTER: I heard three dates, April  
11 the 2nd, April the 22nd and then April the  
12 27th. I just misunderstood, apparently.

13 A The 2nd and the 22nd.

14 THE MASTER: That's right, thank you.

15 MR. ODAM: And for clarification, or  
16 to -- for clarification and to point out,  
17 if I could, the introduction of this, I  
18 will refer to E-162, the page for May the  
19 31st, 1974, it indicates a check coming  
20 back for three thousand dollars.

21 MR. MITCHELL: I haven't objected to  
22 the document, Your Honor.

23 MR. ODAM: And the fact that there is  
24 not insufficient funds in the bank at that  
25 time. But that is the only purpose for it



1 and I will stop at that point.

2 THE MASTER : All right.

3 MR. ODAM: We have no further questions.

4 MR. MITCHELL: I have no further ques-  
5 tions of this witness, Your Honor.

6 THE MASTER: You made a request that  
7 you may not wish to make any more, that she  
8 look for something and you may want to call  
9 her about it?

10 MR. MITCHELL: I think she satisfied  
11 us, Your honor, in connection with that  
12 matter that on frequent occasions the ques-  
13 tions of delinquency would be written on the  
14 notices sent to the people and they wouldn't  
15 keep any copies.

16 THE MASTER: That's fine, thank you,  
17 Mrs. Driska, and you are free to go.

18 (Whereupon the witness was excused.)  
19

20 MR. ODAM: Your Honor, we would call  
21 as the next witness Mr. Hinojosa.  
22

23 - - - - -  
24  
25

1                                   OCTAVIO HINOJOSA,  
2 called as a witness, having been first duly sworn,  
3 testified upon his oath as follows:  
4

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

7 BY MR. ODAM:

8 Q Would you please state your name for the record?

9 A Octavio Hinojosa.

10 Q All right.

11                                   MR. ODAM: Would you mark these,  
12 please.

13                                   (Marked for identification by the  
14 reporter as Exhibit E-167, 1 through 5.)  
15

16                                   MR. ODAM: I might clarify for the  
17 Court and for Counsel and the record, thus  
18 far today we have had testimony pertaining  
19 to Article or Paragraph XII primarily.

20                                   This gentleman has been kind enough  
21 and Mr. Mitchell has been kind enough to  
22 take him out of order and his testimony here  
23 pertains, for the benefit of the record,  
24 to the earlier testimony with regard to the  
25 Cash Store, which Ms. Levstino has conducted

1 the examination of the witness on -- not  
2 this witness, other witnesses.

3 MR. MITCHELL:ardon me, Counsel, so  
4 that I might be -- have the record clear.  
5 I will be permitted, would I not, Your Honor,  
6 to cross -- to go into matters that Mr.  
7 Hinojosa knows about, particularly from the  
8 testimony of Mr. Meek and others, will I  
9 not, otherwise I would not want to bring  
10 him in out of order because it disjoints  
11 the presentation of the case.

12 THE MASTER: I understand in Texas,  
13 when a witness takes the stand, he is subject  
14 to cross-examination on any matters.

15 MR. MITCHELL: All right.

16 THE MASTER: -- pending whether it  
17 relates to the Cash Store or anything else,  
18 is that your understanding?

19 MR. MITCHELL: Yes, Judge Meyers, I  
20 just simply did not want the Court or Counsel  
21 to be taken back by my moving to other  
22 areas, which I intend to do with this wit-  
23 ness.

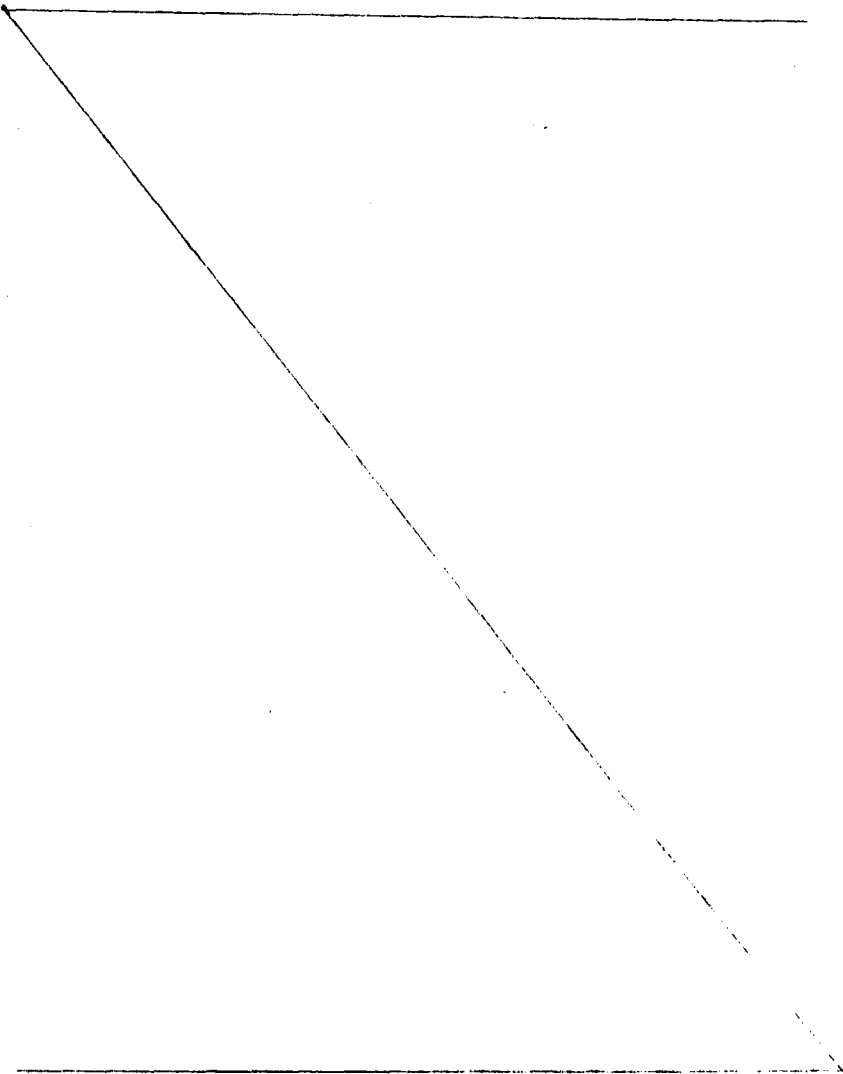
24 THE MASTER: Well, I don't think you  
25 are limited to direct examination in your

1 cross.

2 MR. MITCHELL: Thank you, Judge.

3 Q (By Mr. Odam:) Mr. Hinojosa, what is the place  
4 of your residence? Where do you live?

5 A I live in San Diego, Texas.



1 Q (By Mr. Odam) And by whom are you employed in  
2 San Diego?

3 A By Duval County.

4 Q And what is your position for Duval County?

5 A I am assistant county auditor for Duval County.

6 Q How many assistant county auditors are there?

7 A I am the only one, sir.

8 Q How many assistant county auditors are there?

9 A Just myself.

10 Q Who is the county auditor?

11 A Mr. Walter Meek.

12 Q You report directly to Mr. Walter Meek?

13 A Yes, sir.

14 Q And who else works for the county auditor except  
15 you and Mr. Meek?

16 A Nobody else.

17 Q Just the two of you.

18 How long have you worked for Duval County?

19 A A little over twenty years.

20 Q How long have you lived in San Diego -- correction.  
21 How long have you lived in Duval County?

22 A Well, all my life, except about five years that  
23 I spent in the service, the Army.

24 Q Mr. Meek -- correction. Mr. Hinojosa, I show you  
25 the items which the court reporter has marked as

1 E-167-1, dash 2, dash 3, dash 4, dash 5 and ask  
2 you to look at those for the moment and then I  
3 will have some questions to ask you about those  
4 items. You have had a chance to look at 167-1  
5 through 5.

6 A Yes, sir.

7 Q And for the benefit of the record and for the  
8 Court, could you generally describe what the  
9 documents are that you're holding in your hand?

10 A Well, actually, sir, I prepare these as a cross-  
11 index to locate the claims. Whenever I need a  
12 claim, all I have to do is go to this card over  
13 here. For instance, in this case, Cash Store  
14 draw.

15 Q It's a locator card?

16 A Yes.

17 Q Locator card.

18 A Yes, sir.

19 Q What do you call them? What do you call them,  
20 locator cards or cross-index cards?

21 A Cross-index cards.

22 Q Cross-index cards. The items you have in your  
23 hands, are those Xeroxed copies or are those  
24 originals?

25 A These look like the originals. Sometimes you

1 can't tell the difference, you know, but --

2 Q If you would, I take it from your statement,  
3 then, that you make up cards, you said, for Cash  
4 Store. On 167-1 through 5, could you state  
5 whether or not all of those cards pertain to the  
6 Cash Store or not?

7 A Yes, sir, they do.

8 Q Now, those particular cards you have in your hand,  
9 I believe you stated those are original documents  
10 there. The typing that is on those cards, who  
11 placed the typing on those cards?

12 A I did.

13 Q So, you personally prepared those cards yourself?

14 A Yes, sir, I did, personally.

15 Q On these cross-index cards, where they and all  
16 the cards stayed up in the top of them, for  
17 example, Cash Store on the left and then Benavides  
18 Texas, could you explain for the record what you  
19 mean when you typed Cash Store up on this card?

20 A Well, that is the name of the account. You know,  
21 that is actually the names I post there. That is  
22 the name of the store. That is the account  
23 number --

24 Q The person making the claim?

25 A Yes, sir.

- 1 Q The claimant here?
- 2 A The claimant, yes, sir.
- 3 Q Okay. So, the claimant on all of these cards  
4 would be the Cash Store?
- 5 A Yes, sir.
- 6 Q And Benavides, Texas simply indicates where the  
7 store is located?
- 8 A Correct, sir.
- 9 Q It would be a correct statement that E-167-1  
10 through 5 under the column of warrant numbers,  
11 there are no warrant numbers, is that correct?
- 12 A Well, actually I could have written the warrant  
13 number, but it takes a lot of time and I just keep  
14 the --
- 15 Q Okay. So, you could have written the warrant  
16 numbers, but you left it out?
- 17 A Yes, sir.
- 18 Q You filled in under the claim. Could you explain  
19 for the Court just generally where you get these  
20 claim numbers, A-139, for example?
- 21 A Yes, sir. We have a book there that we call the  
22 minutes of accounts allowed and every claim that's  
23 approved by the commissioners, it's posted into  
24 that book and we give them a claim number.
- 25 Q Now, are these cards made up when you make up a



1 claim jacket?

2 A They are made up after I type the check, you  
3 know, out of the claim, yes, sir.

4 Q After you make up the check?

5 A Yes, sir.

6 Q So, these cards would be made up say the very last  
7 thing right when the checks are made up, the  
8 warants are made up?

9 A Yes, sir. For instance, I prepare the checks  
10 today and then by tomorrow I post this card.

11 Q So, generally on claims, for example, one of the  
12 first things would happen is you would type up a  
13 claim jacket?

14 A Yes.

15 Q And those would be submitted to the Commissioners  
16 Court?

17 A Yes.

18 Q Come back approved?

19 A Yes.

20 Q Then, you would take the claim number and type  
21 on these cards at that time?

22 A Yes, sir. Give it a claim number.

23 Q And then you would put in the amount that had been  
24 on the claim jacket?

25 A Yes, sir, that is the amount in the claim; yes,

1 sir.

2 Q And the date that is in the far right-hand corner,  
3 for example, and I am looking at 167-1, the first  
4 date is 1-28-74. Could you explain what is the  
5 date that you put in on these.

6 A That is the date I typed the checks.

7 Q Okay. That you actually typed the check made out  
8 to claimant, Cash Store?

9 A Yes, sir.

10 Q Now, with that testimony, with respect to the  
11 procedure generally on the claims, the dates and  
12 when you do it, would that be the same on all of  
13 these for the Cash Store?

14 A Yes, sir. Well, I'll tell you, the date here  
15 might be a day or two off, you know. It depends  
16 on when I post the cards, but usually the same  
17 day of the check.

18 Q But the date that is on here is the date that you  
19 post it on your --

20 A Correct.

21 Q -- cross-index cards?

22 A Yes, sir.

23 MR. ODAM: We would offer into  
24 evidence, Your Honor, 167-1 through 5.

25 MR. MITCHELL: We would object on the

1 grounds it would be hearsay and not proper  
2 authentication and not the best evidence  
3 of the contents -- the contents of the jackets  
4 themselves and the claims themselves being  
5 the best evidence of what they contain.

6 MR. ODAM: Your Honor --

7 THE MASTER: Your objection is overruled  
8 and the exhibits are admitted.  
9

10 (Whereupon, said documents having  
11 been previously marked for identification  
12 as E-167-1 through 5 were admitted.)  
13

14 MR. ODAM: Pass the witness.  
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E X A M I N A T I O N

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3 BY MR. MITCHELL:  
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5 Q Mr. Hinojosa, where are the original documents  
6 that refer to these claims?

7 A What do you mean the original documents?

8 Q Well, Mrs. Yzaguirre testified previously before  
9 you had taken the stand that she had on the sales  
10 made of county welfare recipients had delivered  
11 back all of the documents and there were no  
12 documents made except she testified she found  
13 some behind a rug or under a rug or something  
14 dated back in August of 1972.

15 Now, I want to know where are the original  
16 documents for claims, say B-28?

17 A Well, they should be -- if they were subpoenaed  
18 for this hearing, they should be here.

19 Q Well, as a matter of fact, they are not and that  
20 is why I am asking. Do you know where the  
21 originals are?

22 A I will tell you, sir, these records have been  
23 subpoenaed for different cases, you know, and --

24 Q I understand.

25 A -- and the Attorney General has subpoenaed those

1 records and the Internal Revenue.

2 Q As a matter of fact, Mr. Hinojosa, and let me  
3 interrupt you. As a matter of fact, there are  
4 no documentations for any of these claims to the  
5 Cash Store in any of the jackets under the claim  
6 numbers that you have listed on E-167-1 through  
7 5.

8 A There should be, yes, sir.

9 Q Well, I will ask you then, please produce them.  
10 Will you go back and pick them up for me? I  
11 would like to see, in other words, so we can  
12 understand each other. I would like to know the  
13 recipient for B-232 under 167-2. You see the  
14 one I'm referring to?

15 A Well, I thought you had the claims here. Yes,  
16 sir.

17 Q You don't have the claims, though, do you?

18 A No, sir. I wasn't subpoenaed with those claims.  
19 I mean --

20 Q Well --

21 A I don't have them with me, no, sir.

22 Q What you're really telling us is that that  
23 information, Mr. Hinojosa, and I am not being  
24 critical of you; I understand from prior testimony  
25 that you gave in Austin that you are the assistant

1 auditor and what you do in that little index form,  
2 that is sort of your way to make up your own index  
3 of the claims that have been allowed and paid by  
4 the Commissioners Court?

5 A Yes, sir; that's right.

6 Q On the county recipients of welfare?

7 A Yes, sir.

8 Q And under my question are not any criticism of  
9 your making up these indexes. If you had made  
10 them, there wouldn't be any record of them, is  
11 that right?

12 A That's right.

13 Q But you can't know the full scope of all the  
14 testimony that has been introduced and some of  
15 that testimony as I repeat it to you is that the  
16 tickets, orders by the Cash Store, Mrs. Yzaguirre  
17 testified that they are nonexistent because she  
18 gave them back to the people at the time she  
19 received the check.

20 Now, my question is: Do the jackets that  
21 you have listed on these Exhibits 167-1 through 5  
22 have in them any supporting documents at all  
23 today?

24 A They had, yes, sir. Not today. I don't know  
25 where the claims are. When I made the claim,

1 there was tickets from the store and an order  
2 authorizing whatever it was, you know, groceries  
3 or whatever. There was.

4 Q But they are nonexistent today?

5 A Well, as far as I know. I don't know where the  
6 claims are.

7 Q Well, let me --

8 THE MASTER: It was your question when  
9 you asked him if they are nonexistent today,  
10 and you see the problem this witness has  
11 with that question?

12 MR. MITCHELL: Yes, Judge.

13 THE MASTER: The question that they are  
14 nonexistent would be that they are not in the  
15 county auditor's office of Duval County today.

16 Q (By Mr. Mitchell) Did you understand the Court's --

17 A Yes, sir. Well, they are not now -- somebody  
18 subpoenaed them and I don't know who. Different  
19 people have taken out these records.

20 Q Well, let me see if I can't find --

21 MR. MITCHELL: Well, Judge, I am going  
22 to have to take -- that is the trouble with --  
23 I have got to go back and dig up some earlier  
24 evidence as regards those Cash Store tickets  
25 and I am sorry I am delaying the procedure,

1 but I just can't call them off the top of  
2 my head by Mrs. Yzaguirre, Judge.

3 THE MASTER: I will see if I can help  
4 you.

5 MR. MITCHELL: Judge, it was in the  
6 area of R-47.

7 Q (By Mr. Mitchell) Let me just handle it, I  
8 believe, this way:

9 Mr. Hinojosa, you testified that in the  
10 jackets there were the original of the documents  
11 supporting the Cash Store claims against your  
12 county.

13 A Yes, sir.

14 MR. MITCHELL: All right. We renew  
15 our objection, then, Judge Meyers, on the  
16 grounds the best evidence rule and these are  
17 obviously extracts made by this witness.

18 THE MASTER: Well, that is all I admit  
19 them as, Mr. Mitchell. They are a cross-  
20 reference check made by this man, is that  
21 correct, sir?

22 THE WITNESS: Yes, sir.

23 THE MASTER: I admit them as that.

24 MR. MITCHELL: Well, then, Your Honor,  
25 I am going to further object to them as being



1           irrelevant and certainly if counsel is  
2           offering them to show that my client got all  
3           of that money, then, they will go completely  
4           beyond the scope of the formal notice. I am  
5           somewhat taken back by a blanket notice of  
6           every check --

7           MR. ODAM: Well, he --

8           MR. MITCHELL: May I ask counsel's  
9           intent?

10          THE MASTER: I will ask counsel the  
11          relevanc,

12          MR. ODAM: Yes, Your Honor. As far as  
13          relevancy goes, number one, they obviously  
14          all pertain to Cash Store. Number two, they  
15          are offered just as Judge Meyers pointed out  
16          and that is simply to show that this  
17          gentleman on all of these prepared a cross-  
18          index and they are simply offered as a  
19          cross-index of those items of all of the ones  
20          here. They are not offered to expand the  
21          notice to charge him with stealing every  
22          amount of money here, but simply what they  
23          are, and that is a cross-index of the claims  
24          made by the Cash Store, which he prepared on  
25          or about the time that he prepared the check

1 to the Cash Store; just that, as the Court  
2 pointed out.

3 MR. MITCHELL: We renew our objection.  
4 On what ultimate issue are they offered,  
5 Judge? We would say they are irrelevant  
6 and immaterial and I will proceed to ask him  
7 some questions about them and get on with it.

8 THE MASTER: You may be right. They  
9 may not be probative, but I would suppose  
10 that they are sort of back-up documents to  
11 show that cross checks were made. I don't  
12 know. They are admitted as that. I am not  
13 announcing from the bench what they prove  
14 to be.

15 MR. MITCHELL: All right. Then, Your  
16 Honor, may I continue my cross-examination  
17 without waiving my objection?

18 THE MASTER: Certainly.

19 Q (By Mr. Mitchell) Mr. Hinojosa, on your  
20 Exhibit 167-1 and dash 5 which I assume you're  
21 going to want these originals back and leave  
22 copies here. You want these back for your file?

23 A Yes, sir, we need them, yes, sir.

24 Q So, that the record speaks to what you have done  
25 here. First of all, you weren't -- who were you

1 asked by -- who asked you to go back and pick up  
2 these records? Who, Mr. Odam or Mr. Flusche?

3 A I believe they were subpoenaed through Mr. Meek,  
4 you know, by the Attorney General's office. I  
5 don't know directly who it was.

6 Q All right. Now, when you made up your index,  
7 the county -- the Commissioners Court had acted  
8 on each and every one of these claims; am I  
9 correct?

10 A Yes, sir.

11 Q And your information came only after the  
12 Commissioners Court would have acted on a given  
13 claim and that claim, I believe, you have testified  
14 to was posted on the books of the Commissioners  
15 Court's minutes?

16 A Yes, sir.

17 Q All right. So, that it's clear again, 167-1 and  
18 5, each and every one of these items has been  
19 posted on a public book in the Commissioners  
20 Court of Duval County; am I correct?

21 A Yes, sir.

22 Q And it's from that posting that you got the claim  
23 number, the warrant number, the amount, the funds  
24 to which it was charged and the date; am I  
25 correct?

1 A That information was posted from the claim, sir,  
2 from the original claim.

3 Q All right, sir. And in addition, I believe the  
4 code number, you testified back up there in Austin,  
5 if I remember, that is a number you assigned to  
6 it.

7 A Well, that is a system we have for our bookkeeping.

8 Q Right. You have your little code number index  
9 and once that jacket comes out and the payment is  
10 authorized to be made, you assign the code number  
11 and that is the code number that is put on each  
12 and every one of these jackets?

13 A Yes, sir.

14 Q That comes out of the book you take the number  
15 out of, Mr. Hinojosa, I believe, is that correct?

16 A Well, we have a little reference book where we  
17 have this code system, yes.

18 Q Nothing in this exhibit indicates, of course,  
19 that -- strike that. There is nothing that -- that  
20 is also a bad question.

21 Let me back up. You're not telling this  
22 Court that Duval County did not pay other grocery  
23 stores for groceries on account of welfare  
24 recipients, are you?

25 A No, sir.

1 Q There are other grocery stores that received  
2 money, am I right?

3 A Well, there is a few other grocery stores the  
4 county used to purchase groceries.

5 Q Okay. And Mr. Hinojosa, you cannot by looking at  
6 the records that you have looked at, the records  
7 reflect that the Cash Store received these  
8 warrants made payable to the Cash Store; am I  
9 correct? That is the warants were made payable  
10 to Cash Store?

11 A They were, yes, sir.

12 Q All right. And on the dates now, in looking at  
13 all the dates, I find only one and that is on  
14 E-167-2 that appears to be here one, two, three,  
15 four, five entries made in 1975, am I correct?

16 A Uh-huh.

17 Q All of the other entries are made prior to 1975?

18 A Correct.

19 Q All right. And looking now as to the entries  
20 made in 1975, E-167-2 appears to be certain claims,  
21 B-232; am I reading it correctly?

22 A Yes, sir.

23 Q B-325, B-459, B-460 and B-400 are checks made  
24 payable to Cash Store beginning the 10th of  
25 February, '75 and ending 3-12-75; am I correct?

A Yes, sir.

1 Q And there are none after 3-12-75 to the Cash  
2 Store?

3 A We haven't paid no bills since March.

4 Q All right, so the answer to the question would  
5 be yes -- no, there is none or is there, there is  
6 none made payable after 3-12 to the Cash Store  
7 on account of welfare recipients?

8 A No, sir.

9 Q And only these five in the year of 1975?

10 A The year 1975.

11 Q All right, sir, and I believe it reflects that  
12 that was -- that last one was March 12th, 1975?

13 A Yes, sir.

14 Q Now, in going back into the original jackets, Mr.  
15 Hinojosa, and I am talking now about when you  
16 made up your index card in that original jacket,  
17 of course, there would be the voucher, or in this  
18 particular case the sales slip, would it not?

19 A Yes, sir.

20 Q Signed by either Abel Yzaguirre or Lauro Yzaguirre  
21 or Mrs. Lauro Yzaguirre on behalf of the Cash  
22 Store or someone in behalf of the Cash Store, am  
23 I correct?

24 A Well, actually, no, sir. They have a ticket and  
25 then they have another piece of paper attached to

1 the ticket, you know.

2 Q All right, that is --

3 A With the authorization of either the welfare  
4 officer or county commissioner.

5 Q Right, so that they're -- well --

6 MR. MITCHELL: Strike that.

7 Q Well, what you are telling us in the jacket is  
8 that official form that says Duval County Welfare  
9 on it?

10 A Yes, sir.

11 Q That is issued by the welfare officer or some  
12 authorized officer?

13 A Yes, sir.

14 Q Is that correct?

15 A Yes, sir.

16 Q And in that jacket would be that official authori-  
17 zation?

18 A Yes, sir.

19 Q And you would always check to be sure that that  
20 official authorization was there, am I correct?

21 A Correct, sir.

22 Q And, of course, they would have been approved by  
23 the commissioner's court and posted on a public  
24 notice, when you got to them anyway, and took  
25 them off for your index, wouldn't it?

- 1 A Yes, approved by the commissioners court.
- 2 Q Yes, sir, I understand. And so that the record
- 3 reflects, the commissioners court there in Duval
- 4 County regularly meets every month, I understand.
- 5 A The second Monday of every month, yes, sir.
- 6 Q And as far as you know, as long as you have been
- 7 down there, has done so for the twenty years that
- 8 you have been with Duval County?
- 9 A Yes, sir.
- 10 Q All right, and it maintains a docket, does it
- 11 not, Mr. Hinojos?
- 12 A Yes, sir.
- 13 Q The court does?
- 14 A Yes, sir.
- 15 Q And it also maintains -- is there a posting in
- 16 addition to the docket? Is there an additional
- 17 posting to the minutes of the claims allowed that
- 18 you know of?
- 19 A We have this book, what I call the minutes of
- 20 accounts allowed, and, of course, the commissioners
- 21 have their docket, the county clerk is responsible --
- 22 Q I am sorry, were you finished, I didn't mean to
- 23 step on your answer.
- 24 A The commissioners meet and they have a docket,
- 25 you know, of their own.



1 Q All right.

2 A And they write whatever they approve in the  
3 minutes and talking about claims, when they  
4 approve the claims, we get them back, you know,  
5 and we post them into this book we have in the  
6 office, minutes of accounts allowed.

7 Q So that the minutes of the commissioners court  
8 are the source for the minutes of the accounts  
9 allowed which you extract and you keep in your  
10 office?

11 A Yes, sir.

12 Q The tax assessor-collector, am I correct?

13 A The county clerk.

14 Q I am sorry, the county clerk's office?

15 A Yes.

16 Q And that is a public record?

17 A It is, yes, sir.

18 Q So that if, let's say for example, a check went  
19 out in January of 1975 to the Cash Store, that  
20 check, that notation of that would be in the  
21 minutes of the -- that you just mentioned the  
22 minutes of accounts allowed?

23 A I would say it has something written in there,  
24 claims presented or approved, they write that in  
25 the minutes, yes, sir.

1 Q Okay, now, let me just hand you just one at  
2 random, for example, that has been introduced  
3 by the Examiners.

4 All right, let's say E-90 -- this is a claim  
5 E-98 and E-99 and E-100. That is essentially  
6 the same general format as followed in these,  
7 for these groceries, am I correct?

8 A Yes, sir.

9 Q That is, there would be a claim and the gross  
10 receipts instead of E-98, which is here on the  
11 Benavides Implement and Hardware, would be the  
12 welfare, the Duval County welfare form approved  
13 by the -- by an officer, am I correct?

14 A Yes, sir.

15 Q The jacket, am I correct?

16 A Yes, sir, where the jacket is the same except  
17 the --

18 Q The coding would be different?

19 A The code would be different.

20 Q And the coding -- and the claim number would be  
21 different, am I correct? The jacket would have  
22 a different claim number as reflected on your  
23 Exhibit here?

24 A Yes, sir, it would have another claim number,  
25 yes, sir.

1 Q And you would extract from any and all claims  
2 the information as to the claimant and the  
3 amount of money and would you put the date on  
4 the minutes of the claims allowed?

5 A Yes, sir.

6 Q Okay. So that if it is a fair statement for the  
7 record, when a claim is made by Duval County,  
8 be it the grocery claim or a claim such as the type  
9 of E-99, we would have the claim number assigned,  
10 the claim jacket, the supporting documentation,  
11 depending upon the type and character of claim,  
12 am I correct?

13 A Yes, sir.

14 Q And on the jacket would be your coding, showing  
15 your examination and your code number. Look at  
16 E-99. Did you put that code number 229?

17 A Yes, sir.

18 Q It would be your coding from your examination,  
19 am I correct, Mr. Hinojosa?

20 A Yes, sir, it is.

21 Q And an examination and an approval by the  
22 commissioners court of that claim, am I correct?

23 A Correct, yes, sir.

24 Q And the issuance of the voucher?

25 A Yes, uh-huh.

1 Q And the return of the voucher in the due  
2 course and that voucher would then be put in  
3 the treasurer's office, or where?

4 A Yes, sir, the treasurer is the custodian of the  
5 cancelled checks, yes, sir.

6 Q All right, so that in each and every case then  
7 in addition to the written documentation, there  
8 is the posting, the official posting in the  
9 commissioners court minutes and the official  
10 posting where the claims are involved and com-  
11 missioners court action involved payments of  
12 claim in a book called minutes of accounts  
13 allowed.

14 A Besides that minutes of accounts allowed, we  
15 also have our bookkeeping records, you know, the  
16 ledger and the journal where we post each and  
17 every check that is issued by Duval County.

18 Q Yes, I meant to ask you about that. Under the  
19 law, in addition to the documentation of these  
20 things that we have gone into, the law requires  
21 a posting in a daily journal, does it not?

22 A Yes, sir.

23 Q Of the claims allowed and that is in a well  
24 bound book, I suppose, that you keep in your  
25 office?

1 A Yes, sir.

2 Q So the county clerk has got a record in the  
3 minutes of accounts allowed, am I correct?

4 A Yes, sir.

5 Q The county judge or the commissioners court  
6 would have a record in the minutes of the com-  
7 missioners book?

8 A Yes, sir.

9 Q And then your office would have a record in  
10 the ledger and journal entries made?

11 A Yes, sir.

12 Q And the county auditor would audit your books?

13 A Well --

14 Q The state, does the state audit your books?

15 A We don't have any audits, no, sir. Well, lately  
16 the Attorney General has been investigating, you  
17 know.

18 Q All right.

19 A But we -- the commissioners have never made an  
20 audit.

21 Q Well, the books are made available for audit  
22 under the law and they are a matter of public  
23 record are they not?

24 A They are public records, yes, sir.

25 MR. MITCHELL: May I have just one

1 minute, Judge Meyers?

2 THE MASTER: Yes, sir.

3  
4 (Discussion off the record.)

5 Q Let me show you some documents that have been  
6 introduced, Mr. Hinojosa, and let me take again,  
7 just using as a pattern E-99 I hand that to  
8 you.

9 A Yes, sir.

10 Q E-99 is a joint Exhibit that has got E-99, E-98  
11 and E-100.

12 A Yes, sir.

13 Q I don't know, out of fairness to you E-98 was  
14 previously identified as an invoice executed by  
15 Benavides Implement and Hardware Company by  
16 either Mr. Couling or Mr. Gonzalez.

17 Now, this portion here that is written on  
18 here in red ink, I am talking about the ink on  
19 the invoice, you see it is written in red, 229,  
20 that appears to be the code number, doesn't it?

21 A Yes, sir, I write it.

22 Q All right, now, that is what I was going to ask  
23 you. On each and every one of these, there  
24 appears to be a coding and that coding is brought  
25 forward on the jacket, code 229, isn't it?

1 A Yes, sir.

2 Q All right, now I will ask you this once -- I  
3 really want the procedure, once you receive, let's  
4 assume you have got -- when would be the first  
5 time you would see E-98 in the claim procedure  
6 and the claim for Benavides Implement and Hard-  
7 ware, Mr. Hinojosa?

8 A Well, I say maybe a week before the commissioners  
9 meet, you know.

10 Q All right.

11 A That will give me about five days to process  
12 all of these claims.

13 Q All right, now, do you have -- what do you have  
14 before you at that time? Do you have -- other  
15 than let's say the invoice, do you have the jacket  
16 or do you make the jacket up?

17 A No, sir, I check the invoices and write a code  
18 number and then I prepare a jacket.

19 Q All right.

20 A All the claims are inside the jackets when they  
21 are taken to the commissioners court for approval.

22 Q All right, fine. So that when the commissioners  
23 get it, you have already looked at the invoice,  
24 assigned it a code number, prepared the jacket,  
25 you assign it a claim number or do they do that?

1 A No, after they are approved, we write every  
2 claim in the minutes of accounts allowed.

3 Q All right.

4 A And that is when we give it a claim number.

5 Q I see, after it has been approved?

6 A Yes, sir.

7 Q Good. All right, now, Mr. Hinojosa, what is  
8 this R and B underneath that 229?

9 A That is the fund, you know, road and bridge.

10 Q Fund?

11 A Fund.

12 Q That you make a determination from what, looking  
13 at the invoice that that ought to be charged to,  
14 assign it a code number, that is all so the code  
15 number is tied in to the type of expenditure,  
16 isn't it?

17 A Yes, sir.

18 Q So when you come back over here and say code  
19 number 229, your index would show that 229 would  
20 be what, road work?

21 A 229 in this case is truck hire rental.

22 Q Fine.

23 A Lease of a truck or tractor, whatever.

24 Q All right. Now, looking at, for example, Mr.  
25 Hinojosa, E-101 and I know there again I am



1 not going to go through it, there again is  
2 red writing, a circle made on this little tape  
3 on E-101.

4 A Yes, sir.

5 Q Is that your handwriting on E-101?

6 A That is my handwriting and notation.

7 Q If there is a mistake or if you can't read the  
8 claim, what do you do with it? Do you stop it's  
9 processing at that point?

10 A Well usually -- I have been checking these claims  
11 so long I don't have much trouble in reading  
12 whatever they have in the bills, you know.

13 Q Well, the reason, for example, I am going to  
14 ask you about E-104 and 105. Now, E-104 appears  
15 to be a Benavides Implement and Hardware, on 4-5-73  
16 for eleven hundred and eighty-nine dollars and  
17 there again you have got your code number 229  
18 R and B on it, am I correct?

19 A Yes, sir.

20 Q And that is in your handwriting, correct?

21 A Correct.

22 Q With the red ink circling of the eleven hundred  
23 eighty-nine dollars?

24 A Yes, sir.

25 Q Now, I notice on E-105 that someone disallowed

1 a part of that claim because the eleven hundred  
2 and eighty-nine was not allowed, but only nine  
3 hundred and ninety-eight dollars. Do you see  
4 that?

5 A Yes, sir.

6 Q On E-105?

7 A Yes, sir.

8 Q So that even though you might have approved it  
9 as shown by E-104 for eleven hundred and eighty-  
10 nine dollars, it wasn't really finally approved  
11 but for nine hundred and ninety-eight dollars.

12 I was wondering if you could tell the Court  
13 how that happens. Does that happen at the  
14 commissioners level?

15 A Yes, sir, it does sometimes, you know. They  
16 don't have enough funds or the commissioners decide  
17 to disallow a certain amount, they usually put  
18 in whatever amount they want to allow, yes, sir.

19 Q So that the commissioners court does play a real  
20 part in the allowance or disallowance of those  
21 apparently down there, do they not? If that, for  
22 example, in Exhibit there, E-104 --

23 A Yes, sir.

24 Q -- speaks of typical situations because you,  
25 your claim is for one thousand one hundred and

1           eighty-nine dollars and it is approved by you  
2           for one thousand one hundred and eighty-nine but  
3           when you got before the court it is approved for  
4           only nine hundred and eighty-nine dollars, isn't  
5           that correct?

6           A   Mr. Mitchell, we have no authority to approve  
7           or disapprove.

8           Q   I understand.

9           A   We just prepare the documents.

10          Q   My question is not put to you in the form of  
11          criticism, it is only to actually get the facts  
12          as to how the commissioners sytem works.

13          A   That is right.

14          Q   And if you go back and pick up now such as you  
15          were asked to do by the attorney general here,  
16          like Exhibit E-167-2, you would pick up the  
17          corrected figure allowed by the commissioners  
18          court and not the claim amounts, am I correct?

19          A   Yes sir.

20          Q   Okay.

21                           MR. MITCHELL: I believe I am about  
22                           through, Judge, if I -- to avoid bringing  
23                           him back.

24                           THE MASTER: Yes, I want the record  
25                           to reflect that you are the one who is

1 working past one o'clock, and not under  
2 any whip of me.

3 MR. MITCHELL: Well maybe, Judge, I  
4 might have some more questions. I notice  
5 there are some other corrected material  
6 here and I don't want to --

7 MR. ODAM: Your Honor, I don't know  
8 exactly how to -- for example, to pose the  
9 objection as to the corrections, et cetera.  
10 I suppose it would be on the grounds of  
11 relevancy.

12 I think the testimony on all of the  
13 claims presented by the county is pretty  
14 clear as to what took place and I presume  
15 it goes to the legal theory that Mr. Mitchell  
16 has that the county commissioners court put  
17 the stamp of approval and, therefore, there  
18 can be no fraud, et cetera.

19 MR. MITCHELL: No, my authority is  
20 it is a judicial action of the commissioners  
21 court. It is a court and that it is  
22 passed by them and it is res judicata just  
23 like any other court.

24 MR. ODAM: I appreciate that. I guess  
25 as I said, my objection would be on the

1 grounds of relevancy if that is his theory  
2 to go through that type of procedure.

3 I would stipulate, for example, if  
4 it would speed up the process, that for  
5 every time that there is a change on there,  
6 that Mr. Hinojosa's testimony would be that  
7 the county commissioner's court made the  
8 type of change, like he said, and ran down  
9 the one thousand one hundred eighty-nine  
10 dollars back to nine hundred and ninety-eight  
11 dollars, if he wants to develop that.  
12 I think they would speak for themselves  
13 and it would be no dispute as to what that  
14 would be.

15 All I'm saying is, I do not see a  
16 necessity to go through each one of these  
17 documents with the claim jacket to line out,  
18 to indicate who disapproved them or who  
19 reduced them, et cetera.

20 MR. MITCHELL: Your Honor, may I --  
21 I am obviously not going to be able to  
22 finish within the working schedule, but may  
23 I -- it would be very important to me and  
24 my client to have this witness, I imagine  
25 he is just going to drive back to Benavides

1 and back in the morning, ask him to bring  
2 me the internal documentation on these  
3 claims that are on E-167-2, which are the  
4 claims shown paid by -- to Cash Store,  
5 February and March of this year. Those  
6 are very important to us.

7 THE MASTER: Mr. Minojoss, can you  
8 find those jackets and supporting documan-  
9 tation? Is there any reason why you could  
10 not bring them tomorrow?

11 A No, sir, if I can find them in the office, I  
12 will be more than glad to bring them over.

13 THE MASTER: Well, they wouldn't be  
14 in your office, will they? Wouldn't they  
15 be in the county treasurer's office?

16 A Well, the checks, the cancelled checks will be  
17 in the county treasurer's office.

18 THE MASTER: But the others, the  
19 claim jackets and supporting documents  
20 would be in your office, if it is there?

21 A Yes, sir, if it is there.

22 THE MASTER: All right, can you get  
23 the county treasurer to turn over the  
24 cancelled checks to you, if they are there?

25 A Yes, sir, I can ask the county treasurer to let

1 me have them.

2 MR. MITCHELL: If he needs a subpoena,  
3 Your Honor, we are, of course, prepared to  
4 ask the Court to issue a subpoena.

5 THE MASTER: You may have to go to the  
6 county treasurer or you may have to subpoena  
7 the county treasurer.

8 Well then, I will ask you to do that,  
9 Mr. Hinojosa. State it again what you want  
10 so Mr. Hinojosa will understand fully.

11 MR. MITCHELL: Yes, Your Honor. I  
12 would like to have, if it please the Court,  
13 on E-167-2 Mr. Hinojosa's claims numbered --

14 A Yes, sir.

15 Q You understand what I want, Mr. Hinojosa?

16 A Yes, sir.

17 Q I want the supporting documents for B232, 235,  
18 459, 460, 600, showing the supporting documenta-  
19 tion for the payment of the forty-five dollars,  
20 the 430, the 30, the six hundred and thirty-five  
21 dollars and the seven hundred and eighty dollars  
22 to Cash Store on 2-10-75, 2-20-75 and 3-12-75  
23 and I would like to have also the cancelled  
24 checks to see who endorsed them.

25 A Yes, sir, I understand.

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MR. MITCHELL: Thank you, Judge  
Meyers.

THE MASTER: At 8:30 tomorrow morning,  
Mr. Hinojosa.

A At 8:30.

THE MASTER: Yes, sir, and we will be  
in recess until then.

(Whereupon the hearing was in recess  
from 1:10 p.m. on December the 2nd, 1975,  
until 8:30 a.m. on December the 3rd, 1975.)